Date of Hearing: June 19, 2024

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
Christopher M. Ward, Chair
SB 721 (Becker) – As Amended April 29, 2024

SENATE VOTE: 38-0

SUBJECT: General plan: annual report: suite-style student housing quarters

SUMMARY: Adds to the list of information local governments must provide in their Annual Progress Report (APR) by April 1 of each year the number of new and demolished suite-style student housing quarters by income category thus far in the housing element cycle, as determined by the Department of Housing and Community Development (HCD).

EXISTING LAW:

1) Provides that each community's fair share of housing be determined through the Regional Housing Needs Determination (RHND)/Regional Housing Needs Allocation (RHNA) process. Sets out the process as follows: (a) Department of Finance (DOF) and HCD develop regional housing needs estimates or RHNDs; (b) COGs allocate housing via RHNA 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 a planning agency to provide an APR to the legislative body, the Office of Planning and Research, and HCD by April of each year that includes all of the following:

    a) The status of the general plan and progress in its implementation;

    b) The progress in meeting its share of the RHNA, 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;

    c) 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;

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

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

    f) The degree to which the approved general plan complies with the guidelines developed in existing law for addressing specified matters, including environmental justice matters, collaborative land use planning of adjacent civilian and military lands, consultation with Native American tribes, and road and highway safety;

    g) A listing of sites rezoned to accommodate that portion of the city or county's share of the RHNA 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;

h) 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 (AMI) that each housing unit satisfies;

i) Certain information regarding funding that may have been allocated via the Local Government Planning Support Grants Program;

j) The progress of the city or county in adopting or amending its general plan or local open-space element in compliance with its obligations to consult with California Native American tribes and to identify and protect, preserve, and mitigate impacts to tribal places, features, and objects;

k) Specified information related to density bonus law (DBL) applications, including the number of units in a student housing development for lower income students for which the developer was granted a student housing density bonus; and

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

3) Requires HCD to post APR reports on its website within a reasonable time of receiving the reports. (GC 65400(c))

4) Requires cities and counties to grant a density bonus when an applicant for a housing development of five or more units seeks and agrees to construct a project that will contain at least 20% of the total units for lower income students in a student housing development that meets the following requirements:

a) All units in the student housing development will be used exclusively for undergraduate, graduate, or professional students enrolled full time at an institution of higher education accredited by the Western Association of Schools and Colleges or the Accrediting Commission for Community and Junior Colleges;

b) The applicable 20% units will be used for lower income students, defined as students that have a household income and asset level that does not exceed Cal Grant A or B award recipients. Eligibility is defined as students with a household income and asset level that does not exceed the level for Cal Grant A or B award recipients. Eligibility shall be verified by an affidavit, award letter, or letter of eligibility provided by the institution of higher education at which the student is enrolled or by the California Student Aid Commission that the student receives or is eligible for financial aid from the university, the California Student Aid Commission, or the federal government; and

c) For purposes of calculating density, the term "unit" means one rental bed and it's pro rata share of associated common area facilities. The lower income units shall be subject to a recorded affordability restriction of 55 years. (GC 65915(b)(1)(F))

FISCAL EFFECT: Unknown.

COMMENTS:

Author's Statement: According to the author, "California is facing an extreme student housing crisis. 1 in 5 community college students, 1 in 10 CSU students, and 1 in 20 UC students are experiencing homelessness. One step toward addressing this crisis is to create development incentives for more suite-style housing for students. Colleges and local jurisdictions are not collaborating enough to create more student housing, perhaps because local jurisdictions cannot report it on their Annual Progress Report. Students use housing the same as other members of the community, and locals should be incentivized to plan for them as such. SB 721 allows jurisdictions to count suite-style student housing toward their Annual Progress Report so that local jurisdictions further collaborate to meet our collective housing needs."

Statewide Housing Need: According to 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 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 May 29, 2024, in the 6th RHNA cycle, jurisdictions across the state have permitted the following:

- 2.7% of the very low-income RHNA
- 6.5% of the low-income RHNA
- 5.2% of the moderate-income RHNA
- 16.2% of the above moderate-income RHNA

RHND/RHNA Methodology: The RHND/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. The RHND is assigned at the COG level, while RHNA is suballocated to subregions of the COG or directly to local governments. RHNA is currently 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 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 update. Then, 26 months before the housing element due date for the region, HCD must meet and consult with the COG and share the data

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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

assumptions and methodology that they will use to produce the RHND. The COG provides HCD with its own regional data on several criteria, including:

- Anticipated household growth associated with projected population increases;
- Household size data and trends in household size;
- The percentage of households that are overcrowded, as defined, and the overcrowding rate for a comparable housing market, as defined;
- The rate of household formation, or headship rates, based on age, gender, ethnicity, or other established demographic measures;
- 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;
- Other characteristics of the composition of the projected population;
- The relationship between jobs and housing, including any imbalance between jobs and housing;
- The percentage of households that are cost burdened and the rate of housing cost burden for a healthy housing market, as defined; and
- 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 it agrees with the data the COG produced, or can reject it if there are other factors or data that HCD feels is better or more accurate. Then, after a 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. The 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.

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 RHND, RHNA, and housing element processes over the past several years to strengthen the law and restrict the ability of jurisdictions to evade their housing obligations.

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; and
- The overall progress in meeting its share of regional housing needs.

This bill adds suite-style student housing to the "net new units of housing" in the APR that must be reported by income category, thereby allowing newly constructed suite-style student housing to be counted for purposes of meeting a jurisdiction's RHNA. In HCD's April 2024 report, "California's Housing Future 2040: The Next Regional Housing Needs Allocation (RHNA)," the Department indicated that it plans to implement this change under its existing authority for determining what types of housing units are legally valid for purposes of APR reporting and ultimately housing element compliance.[3] However, HCD noted this change would not take effect until the 7th housing element cycle, as there are modifications that DOF will need to make in the RHND methodology to account for the inclusion of this type of "group quarters" in the assessment of housing need in the region, as these quarters do not currently conform to the Census definition of a "housing unit" and thus are not reflected in the RHND or RHNA.[4]

Student Housing: Student housing, especially "bedspace" or "by-the-bed" housing, is specifically constructed for and marketed toward students, might not be made available over the summer or over school breaks, and is not likely to be appealing to members of the local community who are in need of permanent housing opportunities. However, it is certainly the case that a lack of available student housing means that students must venture out into the community and reside in a portion of the local housing stock that might otherwise be available for the community's full-time residents. These impacts will depend on the type of college in the jurisdiction – with community and vocational colleges the most likely to draw from local residents, and public or private four-year universities likely to attract students from near and far. Some of California's most prestigious and largest universities are located in the state's most unaffordable housing markets, in places like Berkeley, Los Angeles, or Santa Cruz. Numerous research studies and surveys have shown that housing affordability is a significant driver of the overall cost of higher education and many college students in California face housing insecurity or homelessness while attending their institution.

Student housing can be owned and operated by a private developer or building owner, or can be owned and operated by a college or university itself. It may be on-campus or off-campus. Some are operated in a public-private partnership model – for example, a college may lease land to a

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[3] https://www.hcd.ca.gov/planning-and-community-development/regional-housing-needs-allocation#cahf2024
[4] Ibid, page 34-37.

developer or may enter into a master lease for a privately owned off-campus building. When a university owns and operates or master-leases the housing, the cost charged to a student might be folded into "room and board" or tied to their institutional, state, or federal financial aid. Some student housing is restricted to students attending a specific college, while other housing is open and available to anyone in the community but is simply marketed toward students. Student housing is also often charged by bedspace, rather than by unit, as shared or group quarters are common. The Legislature also recently created a student housing density bonus in DBL for developers seeking to build student housing with a percentage reserved for lower income students and students experiencing homelessness.

Some types of student-oriented housing already appear to be eligible to be counted toward fulfilling housing element and RHNA obligations, with the important caveats that occupancy is not restricted only to students, fair housing laws are followed, and the income qualification process follows existing law. See, for example, the following discussion in the City of Davis's 2021-29 housing element (adopted and approved by HCD) regarding the city's ability to count an approved student-oriented apartment complex utilizing bedspace rents toward the city's low-income and very low-income sites inventory obligations:

> The Nishi Housing project is intended to provide housing to help address the City's longstanding low vacancy rates by providing by-the-bed rentals primarily marketed to UC Davis students, due to its proximity to UC Davis. However, consistent with federal fair housing laws, all units will be available for rent by anyone, with no preference given to students over members of the general public and the development agreement for the Nishi project includes clarifying language to explicitly state that the project may not restrict leases to students only. The rental model would be unlikely to appeal to families, but it could provide for some workforce housing, which, in addition to student-oriented housing, is also a great need in Davis.
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> The project intends to use a by-the-bed leasing model that would provide approximately 2,200 beds to house as many people within approximately 700 separate apartment units. The project currently falls into a gray area within the Census definitions for housing units versus noninstitutionalized group quarters for college/university student housing. Each apartment would be a fully-contained housing unit with living and eating facilities and direct access to the outside of the building that is separate from other units, which aligns with the Census definition of a housing unit. However, the newly revised Census definition for noninstitutionalized group quarters also includes "apartment-style student housing" where "residents typically enter into 'by the bed' leases." According to the California Department of Finance (DOF), the key factor providing differentiation between the two Census definitions is whether the unit is affiliated with an educational institution and/or reserved for use by students only (or if it provides a preference for students in the applications process), versus simply being student-oriented (i.e., designed to appeal to student as a segment of the market, but equally available for occupancy by the general public). The Nishi project is not affiliated with an educational institution, the units would not be reserved for students, nor would students be afforded any kind of preference in the application process compared to members of the general public. The by-the-bed leasing structure, in this context, is similar to the common practice of roommates sharing an apartment, where occupants would live together in a single unit under a single lease, but under this rental model each individual would have a separate lease. The by-the-bed leasing structure provides greater flexibility and improves housing security in

that if one occupant leaves the remaining occupants cannot be held liable for the share of rent previously paid by the departing occupant.

The approved Development Agreement commits the project developer to providing a minimum of 15 percent of the beds to low income individuals: this equates to a total of 330 beds, 220 at the Very Low Income and 110 at the Extremely Low Income levels, or the equivalent of 105 units (70 Very Low Income and 35 Extremely Low Income). The Development Agreement is a legally binding agreement between the developer and the City, which has been approved by both the City Council and the developer, so the City is confident that this condition of affordability will be met, and that 105 units can be used to contribute toward the City's lower income RHNA obligations. The income qualification process for the Very Low Income and Extremely Low Income beds/units would be no different than for any other income-restricted housing product.[5]

Policy Considerations: This bill proposes to allow suite-style student housing, as determined by HCD, to be reported on a jurisdiction's APR for a specific income category. It is unclear how HCD will evaluate the jurisdiction's income categorization of such a housing type, when the cost of the housing is not necessarily set in a traditional monthly rent schedule but rather as a per-semester "room and board" charge or bedspace charge, and with actual out-of-pocket costs that may vary from one student (even within the same suite, or room within a suite) to another. From one class of students with one distribution of income levels to the next, these levels may not match what was reported as being charged at the time the suite housing came online and was reported in the APR. While projects seeking to utilize the student housing density bonus are obligated to record a 55-year deed restriction for the lower income units – like traditional affordable housing developments – other newly constructed student housing is not likely to have deed restrictions or enforceable covenants that provide certainty the units will remain at an affordable rent.

In addition, per the discussion in the City of Davis's housing element regarding the Nishi Housing project, the inclusion of student-oriented housing (charging bedspace rent) was permitted on the condition that the housing not be restricted solely to students or provide an application preference to students. But it is not clear from HCD's report – or this bill – whether that stipulation will be applied to suite-style student housing being reported on future APRs. HCD indicated in its "California's Housing Future 2040" report that it will release guidance on how to count group quarters in the APR, "including how their affordability levels should be determined," but this guidance is not yet available.[6]

An example of the varieties of possible income category reporting for a newly constructed two-bedroom "double" (two students per bedroom) suite at UC Davis may be instructive. 2023-24 room fees at UC Davis for a double bedroom are $12,498 per student.[7] When calculating based off the per-student fees, this amounts to a monthly "bedspace" rent of roughly $1,249/mo for 10 months (September-June, the academic term). But when calculating based on the per-bedroom fees, this would amount to a monthly rent of double that, $2,498/mo for 10 months. And when

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[5] https://documents.cityofdavis.org/Media/Default/Documents/PDF/CDD/Advance-Planning/2021-2029%20HE%20Update-Version%203/Final%20Documents/City-of-Davis-2021-2029-Housing-Element-V-3-December-2023.pdf
[6] https://www.hcd.ca.gov/planning-and-community-development/regional-housing-needs-allocation#cahf2024
[7] https://housing.ucdavis.edu/_pdf/s/2023-residence-hall-fee-schedule.pdf

calculating for the entire two-bedroom double suite, the "unit rent" is actually four times the monthly bedspace rent, or $4,996. Which formula is appropriate for a jurisdiction to use when calculating the income category of the unit for APR purposes, which is based on the monthly rent and number of bedrooms? And should this calculation take into account whether a student is receiving financial aid or qualifies for a certain income category?

Using HCD's APR affordability calculator tool,[8] a two-bedroom unit in Yolo County with a monthly rent of $1,249 in 2023 would have been reportable as a low-income unit (serving households between 50-80% of AMI); however, a monthly rent of $2,498 bumps that unit to a moderate-income unit (80-120% of AMI), and rent of $4,996 yields an above moderate-income unit serving households in excess of 120% of AMI.

Most jurisdictions do not struggle to meet their above moderate-income RHNA, as reflected in past and current APR completion numbers. However, many jurisdictions struggle to permit sufficient housing to meet their lower income housing obligations, and even moderate-income housing needs. In addition, the trigger for when state law mandating ministerial review for affordable multifamily infill developments applies to a jurisdiction is based on its progress in meeting its lower income RHNA. Thus, it is not implausible to assume there will be a greater incentive for jurisdictions to seek to report these units as very low- or low-income units. The committee may wish to consider whether it is appropriate to place a cap on the percentage of any RHNA income category that may be "credited" to suite-style student housing units, to ensure that desperately needed multifamily and affordable housing units available to the general public are not deprioritized.

Arguments in Support: According to the Town of Moraga, "Even in the face of this [student housing] crisis, jurisdictions have little incentive to encourage colleges to create housing for students. Currently, jurisdictions cannot include suite-style housing on their APR because HCD does not consider suite-style housing a 'housing unit'. This in turn does not count towards their Regional Housing Needs Allocation. Without such incentives, suite-style housing construction is delayed and students must turn to off-campus housing or occupy homes for potential families and community members. Those who are unable to afford off-campus housing are forced to live in RV's, couch surf, or remain unhoused while they attend classes. Students heavily rely on housing just as much as other members of the community. SB 721 helps address the student housing crisis by clarifying that jurisdictions can report suite-style housing on their APR to incentivize the construction of student housing."

Arguments in Opposition: None on file.

Committee Amendments: Staff recommends the following amendments:

1) Clarify that suite-style student housing may be reported on APRs for the seventh and subsequent housing element cycles (not the current 6th cycle), to ensure DOF and HCD are able to incorporate the corresponding units into the RHND at the beginning of the next cycle; and

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[8] https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/affordability-calculator.xlsm

2) Limit the percentage of any RHNA income category that may be "credited" to suite-style student housing units at 25%, to ensure that desperately needed multifamily and affordable housing units available to the general public are not deprioritized.

Related Legislation:

AB 3093 (Ward) of the current legislative session would add ELI (15-30% of AMI) and Acutely Low Income (0-15% of AMI) to the distribution of income categories for purposes of RHNA and housing elements. This bill is currently pending before the Senate Housing Committee.

AB 3116 (Garcia) of the current legislative session would revise the student housing density bonus program. This bill is currently pending before the Senate Housing Committee.

SB 1227 (Skinner), Chapter 937, Statutes of 2018: Created a density bonus for developers that include housing for lower income students in a development.

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

Town of Moraga

Opposition

None on file.

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