Date of Hearing: April 9, 2025

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
Matt Haney, Chair
AB 36 (Soria) – As Amended March 19, 2025

SUBJECT: Housing elements: prohousing designation

SUMMARY: Requires the Department of Housing and Community Development (HCD) to evaluate materials from a nonentitlement jurisdiction's housing element submission for evidence of prohousing local policies and prohibits HCD from requiring nonentitlement jurisdictions to renew their prohousing designations for at least five years. Specifically, **this bill**:

1) Requires HCD, beginning with the seventh housing element cycle and to the extent feasible, to evaluate materials from a nonentitlement jurisdiction's housing element submission, as specified, for evidence of prohousing local policies in order to minimize the need for jurisdictions to submit supplemental documentation.

2) Requires HCD to conduct the evaluation in 1) above only for nonentitlement jurisdictions that have a compliant housing element.

3) Prohibits HCD from requiring nonentitlement jurisdictions to renew their prohousing designations for at least five years.

4) Clarifies that this bill does not limit the authority of HCD to revoke a jurisdiction's prohousing designation.

5) Defines, for purposes of the prohousing designation program, "nonentitlement jurisdiction" to mean either of the following:

    a) A city with a population of fewer than 50,000 persons; or

    b) A county with a population of fewer than 200,000 persons.

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 with an analysis of the relationship of the sites to the duty to affirmatively further fair housing (AFFH); 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 items;

b) A statement of the community's goals, quantified objectives, and policies relative to AFFH 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 (GOV) Section 65583(a)-(c))

2) For award cycles after July 1, 2021, awards additional points or preference in the scoring of certain housing and infrastructure funding program applications to jurisdictions that have adopted a substantially compliant housing element and that have been designated prohousing based upon their adoption of prohousing local policies. (GOV 65889.9)

3) Defines "prohousing local policies" to mean policies that facilitate the planning, approval, or construction of housing. Specifies that these policies may include, but are not limited to, the following:

a) Local financial incentives for housing, including, but not limited to, establishing a local housing trust fund;

b) Reduced parking requirements for sites that are zoned for residential development;

c) Adoption of zoning allowing for use by right for residential and mixed-use development;

d) Zoning more sites for residential development or zoning sites at higher densities than is required to accommodate the minimum existing regional housing need allocation for the current housing element cycle;

e) Adoption of accessory dwelling unit ordinances or other mechanisms that reduce barriers for property owners to create accessory dwelling units beyond existing law requirements, as determined by HCD;

f) Reduction of permit processing time;

g) Creation of objective development standards;

h) Reduction of development impact fees;

i) Establishment of a Workforce Housing Opportunity Zone or a housing sustainability district;

j) Preservation of affordable housing units through the extension of existing project-based rental assistance contracts to avoid the displacement of affected tenants and a reduction in available affordable housing units; and

k) Facilitation of the conversion or redevelopment of commercial properties into housing, including the adoption of adaptive reuse ordinances or other mechanisms that reduce barriers for these conversions. (GOV 65589.9)

FISCAL EFFECT: Unknown.

COMMENTS:

Author's Statement: According to the author, "In recent years, California has taken a number of steps to ensure cities and counties are doing their part to combat the state's housing crisis, creating penalties to deter bad actors and incentives to reward those doing the right thing and to encourage others to follow their lead. One of the most significant incentives has been the creation of the Prohousing Designation Program (PDP), which recognizes local governments who are going above and beyond to promote housing development and gives them bonuses when applying for state housing funds. Unfortunately, applying to the PDP is extremely complex and burdensome, putting the program out of the reach of many small, rural cities and counties who are doing all the right things to provide housing for their residents.

AB 36 levels the playing field by requiring the Department of Housing and Community Development to use the information cities already provide in their housing elements to determine whether they qualify for the PDP. By minimizing the burden on small cities and counties, AB 36 ensures the PDP rewards those doing the most to house their residents and not only those able to navigate complicated bureaucracy, while incentivizing more small jurisdictions to follow their lead."

***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 court receivership.

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 or perpetuate housing discrimination patterns or impediments to fair housing.

Prohousing Designation*:* In 2019, the Legislature enacted AB 101 (Committee on Budget), Chapter 26, that required HCD to designate cities and counties as pro-housing if their local

policies facilitate the planning, approval, or construction of housing. "Prohousing" jurisdictions receive a competitive advantage – in the form of additional application points or preferences – in applying for certain state funding programs, including the Affordable Housing and Sustainable Communities Program, Transformative Climate Communities Program, and infill infrastructure programs.

Although AB 101 provided examples of prohousing local polices, HCD had discretion over the final designation criteria, which they adopted via emergency regulations in July 2021 and subsequently converted to permanent regulations in April 2022 (California Code of Regulations, Title 25, Sections 6600-6608). Some examples of prohousing local policies that local jurisdictions can identify as evidence in their applications to HCD to be awarded the prohousing designation include reduction of development impact fees, creating new ministerial approval pathways for housing and mixed-use projects, or creating local housing trust funds. According to HCD, as of March 2025, 52 jurisdictions have been awarded the prohousing designation.

Currently, program regulations require a local governing body to adopt a formal resolution directing the jurisdiction to submit a prohousing designation application. This bill would require HCD, beginning in the seventh housing element cycle, to evaluate the materials in a nonentitlement jurisdiction's housing element submission for evidence of prohousing local policies that would otherwise have to be identified by the local government in a formal application for prohousing status. The requirement would only apply to nonentitlement jurisdictions – either cities with a population fewer than 50,000 or counties with a population fewer than 200,000.

The bill would also prohibit HCD from requiring nonentitlement jurisdictions who have been awarded the prohousing designation to renew their designation for at least five years. The program regulations currently specify that a designation expires three years from the first day of the January following the date of designation and allow a jurisdiction to apply for a renewal no earlier than six months before its designation expires.

The author contends these changes will help more rural and smaller jurisdictions qualify for the prohousing designation and reduce the amount of staff time and capacity taken up by submitting a formal application and renewal every three years. HCD would retain the ability to monitor and revoke a prohousing designation if a jurisdiction takes an action that is inconsistent with the program rules or fails to implement policies it previously had committed to implement or enact.

Arguments in Support: According to Habitat for Humanity of the Greater Fresno Area, "Based in the San Joaquin Valley, Habitat Greater Fresno Area serves Fresno and Madera counties providing low-income families, the opportunity to realize the dream of homeownership. Our service territory is comprised of small rural communities which are often competing with larger urban areas of the state for funding that a PDP designation could provide. Habitat Greater Fresno Area's model of partnering with families who demonstrate a need, ability to pay a mortgage, and a willingness to partner in the construction of their home has worked well to serve rural communities of our service territory, however we have found that the limited staffing in these municipalities can often be a challenge when completing the process to secure state level designations and funding."

Arguments in Opposition: None on file.

Related Legislation:

SB 262 (Wahab) of the current legislative session would include in the definition of "prohousing local policies" certain rent stabilization, tenant protection, and homelessness policies. This bill is pending a hearing in the Senate Appropriations Committee.

AB 101 (Committee on Budget), Chapter 26, Statutes of 2019: Required HCD to designate cities and counties as prohousing and award preference or points in certain funding applications if their local policies facilitate the planning, approval, or construction of housing.

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

AARP
City of Firebaugh
City of Madera
City of Mendota
City of Merced
Habitat for Humanity Greater Fresno Area
John Jansons, City Manager, City of Kerman, CA

Opposition

None on file.

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