Date of Hearing: April 9, 2025

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
Matt Haney, Chair
AB 712 (Wicks) – As Amended March 10, 2025

SUBJECT: Housing reform laws: enforcement actions: fines and penalties

SUMMARY: Establishes additional financial penalties that must be imposed by a court in actions brought by an applicant for a housing development project against a public agency to enforce a "housing reform law," as specified. Specifically, **this bill**:

1) Establishes that, notwithstanding any other law, and in addition to any other available remedies, in any action brought by an applicant for a housing development project against a public agency to enforce a housing reform law, where the applicant is the prevailing party, the following apply:

    a) The applicant shall be entitled to reasonable attorney's fees and costs;

    b) In the case of an action against a public agency that is a local agency:

        i) If the local agency was advised in writing prior to the commencement of the action by either the Attorney General (AG) or the Department of Housing and Community Development (HCD) that the local agency's decision, action, or inaction would represent a violation of law in substantially the same manner as alleged by the applicant in its lawsuit, the court must impose a fine in an amount not less than the minimum fines described in the Housing Accountability Act (HAA); and

        ii) If a court has previously found that the local agency violated the same statute on which the applicant prevailed in its lawsuit, within the same planning period, the court must impose a fine in an amount not less than the minimum fines described in the HAA multiplied by a factor of five.

    c) In the case of an action against a public agency that is a local agency, notwithstanding existing law governing the presentation and consideration of claims against public entities, the applicant is not required to present a claim to seek the fines in 1) b) above.

2) Prohibits a public agency from requiring an applicant for a housing development project to indemnify, defend, or hold harmless the public agency in any manner with respect to an action brought by the applicant, or any other person, alleging that the public agency violated the applicant's rights or deprived the applicant of the benefits or protections provided by a housing reform law.

3) Declares that a requirement, condition of approval, or agreement in violation of 2) above is against public policy and void and unenforceable.

4) Provides that 2) and 3) above shall not be construed to derogate any claim that a requirement in 2) above is or was unlawful under previously existing law.

5) Defines, for purposes of the bill, "housing development project" to mean a use consisting of residential units only, mixed-use developments consisting of residential and nonresidential

uses that meet specified square footage ratios, transitional or supportive housing, or farmworker housing.

6) Defines, for purposes of the bill, "housing reform law" to mean any law or regulation, or provision of any law or regulation, that establishes or facilitates rights, safeguards, streamlining benefits, time limitations, or other protections for the benefit of applicants for housing development projects, or restricts, proscribe, prohibits, or otherwise imposes any procedural or substantive limitation on a public agency for the benefit of a housing development project, including, but not limited to, all of the following:

   a) The requirement for local governments to have a substantially compliant housing element and to not take actions or fail to act in a manner inconsistent with an adopted housing element;

   b) The HAA;

   c) Requirements in housing element law for local governments to maintain adequate sites to accommodate their remaining share of regional housing needs and "no net loss" provisions;

   d) Density bonus law;

   e) Provisions of law that prohibit jurisdictions from discriminating against developments and shelters or imposing more burdensome requirements due to the characteristics of residents or the method of financing;

   f) The Housing Crisis Act (HCA) of 2019;

   g) Requirements for public agencies to affirmatively further fair housing;

   h) The streamlined, ministerial approval process for mixed-income housing established by SB 35 (Wiener, Chapter 366, Statutes of 2017);

   i) The streamlined, ministerial approval process for supportive housing established by AB 2162 (Chiu, Chapter 753, Statutes of 2018);

   j) The streamlined, ministerial approval process for Low Barrier Navigation Centers, as specified;

   k) Minimum standards relating to Floor Area Ratios and lot sizes, as specified;

   l) Annual Progress Report (APR) requirements;

   m) Minimum parking requirements;

   n) The Affordable Housing and High Road Jobs Act of 2022;

   o) The five-hearing maximum rule and reasonable person standard for consistency with local standards under the HCA of 2019;

   p) Accessory dwelling unit and junior accessory dwelling unit law;

q) Provisions allowing duplexes and lot splits established by SB 9 (Atkins), Chapter 162, Statutes of 2021;

r) The Middle Class Housing Act of 2022;

s) The Affordable Housing on Faith and Higher Education Lands Act of 2023;

t) Provisions prohibiting the demolition of housing units under the HCA of 2019;

u) Provisions requiring issuance of building permits for certain projects of 10 units or fewer with tentative subdivision maps established by SB 684 (Caballero), Chapter 783, Statutes of 2023;

v) The streamlined, ministerial approval process for certain subdivided lots established by SB 684 (Caballero);

w) The Starter Home Revitalization Act of 2021;

x) The Homeless Housing, Assistance, and Prevention program;

y) The Encampment Resolution Funding program;

z) The Family Homelessness Challenge Grants and Technical Assistance Program;

aa) The Permit Streamlining Act;

bb) Postentitlement phase permit timelines and standards, as specified;

cc) Postentitlement phase permit and service request standards for special districts, as specified;

dd) Limitations on replacement of religious-use parking spaces in housing development projects, as specified;

ee) Provisions allowing parties to challenge the imposition of fees, dedications, reservations, or exactions on housing development projects, as specified; and

ff) Provisions allowing parties to challenge the imposition of fees, taxes, assessments, dedications, reservations, or other exactions, as specified.

7) Provides that the specific identification of any law, regulation, or provision in the definition of "housing reform law" under 6) above shall not be interpreted to limit the scope of "housing reform law" under the bill.

8) Defines, for purposes of the bill, "local agency" to mean any public agency other than a state agency;

9) Defines, for purposes of the bill, "planning period" to mean the time period between the due date for one housing element and the due date for the next housing element for each revision according to the applicable schedule, as specified;

10) Defines, for purposes of the bill, "public agency" to mean any state agency, any county, city and county, city, regional agency, public district, redevelopment agency, or other political subdivision.

EXISTING LAW:

1) Establishes the HAA, which prohibits a local agency from disapproving a housing development project for very low, low-, or moderate-income households, or an emergency shelter, or conditioning approval in a manner that renders the project or shelter infeasible unless it makes written findings based upon a preponderance of the evidence in the record as to one of several specified justifications for the denial. (Government Code (GOV) Section 65589.5(d))

2) Allows the project applicant, a person who would be eligible to apply for residency in the housing development project or emergency shelter, or a housing organization to bring an action to enforce the HAA. Requires a court to award reasonable attorney's fees and costs of suit to the plaintiff or petitioner if certain conditions are met, unless the court finds, under extraordinary circumstances, that awarding fees would not further the purposes of the HAA, or in certain cases concerning specified disapprovals. (GOV 65589.5(k)(1)(A))

3) Requires a court, upon a determination that a local agency has failed to comply with an order or judgment compelling compliance with the HAA within the time period prescribed by the court, to impose fines on the local agency and require the local agency to deposit any fine levied into a local housing trust fund or the Building Homes and Jobs Trust Fund. Requires the fine to be in a minimum amount of $10,000 per housing unit in the housing development project on the date the application was deemed complete. Requires the court, in determining the amount of the fine to impose, to consider the local agency's progress in attaining its allocation of regional housing need and any prior violations of the HAA. Prohibits fines from being paid out of funds already dedicated to affordable housing, as specified. (GOV 65589.5(k)(1)(B))

4) Requires a court, if it finds that a local agency acted in bad faith when it violated the HAA and failed to carry out the court's order or judgment in the time period prescribed by the court, to multiply the fine in 3) above by a factor of five. If a court has previously found that the local agency violated the HAA within the same planning period, requires the court to multiply the fines by an additional factor for each previous violation. (GOV 65589.5(l))

5) Requires HCD to notify a local government, and allows HCD to notify the office of the AG, if HCD finds that:

   a) A housing element does not substantially comply with state law; and

   b) Any local government has taken an action in violation of specified housing laws. (GOV 65585(j))

6) Requires HCD, prior to the AG bringing any suit for a violation of the provisions of specified housing laws, to offer the jurisdiction the opportunity for two meetings in person or via telephone to discuss the violation, and to provide the jurisdiction written findings regarding the violation, with some exceptions. (GOV 65585(k))

7) Grants HCD and the AG the unconditional right to intervene in any suit brought to enforce specified housing laws, and grants the AG this unconditional right whether intervening in an independent capacity or pursuant to a notice or referral from HCD. (GOV 65585.01)

8) Provides that in any action brought by the AG or HCD to enforce the adoption of housing element revisions or to enforce any state law that requires a city, county, or local agency to ministerially approve, without discretionary review, any planning or permitting application for a housing development project, the city, county, or local agency shall be subject to the following remedies:

    a) A civil penalty of, at minimum, $10,000 per month, and not exceeding $50,000 per month, for each violation, accrued from the date of the violation until the violation is cured;

    b) All costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs, whenever the AG or HCD prevails in a civil action to enforce any state laws under this provision; and

    c) Other relief as the court deems appropriate, including equitable and injunctive relief, provisional or otherwise. (GOV 65009.1)

FISCAL EFFECT: Unknown.

COMMENTS:

Author's Statement: According to the author, "The Legislature has successfully passed a variety of housing laws to make it easier to build in California. However, these laws need to be enforceable, and have real consequences when they are broken. Some of our housing laws (notably the Housing Accountability Act) have strong enforcement provisions, but others do not. AB 712 would extend the enforcement provisions of the Housing Accountability Act to other state laws, thereby encouraging local agencies to act in compliance with existing state housing laws. Additionally, AB 712 would end the practice of public agencies asking housing development applicants to indemnify the local government against lawsuits when the local government violates the applicant's rights. This will result in more certainty for all parties, and more housing in California."

Housing Accountability Act (HAA): In 1982, in response to the housing crisis, which was viewed as threatening the economic, environmental, and social quality of life in California, the Legislature enacted the 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 jurisdiction's share of regional housing need or emergency shelters without a thorough analysis of the economic, social, and environmental effects of the action and without complying with the HAA. The HAA restricts a jurisdiction'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 regional housing need.

The HAA provides a private right of action to parties, including the development proponent, a person who would be eligible to live in the proposed development, or a housing organization,

who wish to challenge a local government that denied approval or imposed severely burdensome conditions for approval on a housing development project.

If a locality denies approval or imposes conditions that have a substantial adverse effect on the viability or affordability of a housing development for very low-, low-, or moderate-income households, and the denial or imposition of conditions is subject to a court challenge, the burden is on the local government to show that its decision is consistent with specified written findings.

If a court finds that a locality violated the HAA, a court must issue an order or judgment compelling compliance with the HAA within 60 days, including, but not limited to, an order that the locality take action on the housing development project or shelter. The plaintiff is entitled to attorney's fees unless the court find that awarding fees would not further the purposes of the HAA. If a locality fails to comply within 60 days, the court must impose fines, a minimum of $10,000 per housing unit in the housing development project, which must be deposited in a local housing trust fund or the state Building Homes and Jobs Trust Fund. The court may also directly approve the housing development project. If the court finds the locality acted in bad faith, in addition to other remedies, the court must multiply the fine by a factor of five.

State Enforcement of Housing Laws: In recent years, the Legislature has implemented many policy changes to address the housing deficit, including streamlined, ministerial approval of housing and requiring local governments to plan and zone for more housing via the housing element process. For many years prior to the enactment of these and other laws, local governments often treated the housing element and other housing requirements as a "paper exercise" because the state lacked strong enforcement tools to ensure compliance.

AB 72 (Santiago), Chapter 370, Statutes of 2017 established a process for HCD to enforce many state housing laws. The law requires HCD to notify a local government, and allows HCD to notify the AG, if HCD finds that a local government's housing element does not substantially comply with state law, or if a local government has taken an action in violation of specified housing laws. HCD must offer verbal and written consultations and technical assistance to the jurisdiction before referring them for enforcement action.

In addition to the expanded authority under AB 72, HCD has created and staffed a Housing Accountability Unit (HAU), which provides education and technical assistance as well as oversight and enforcement of housing element laws to ensure local governments comply with specified housing laws. Violations of these laws may lead to a variety of consequences for local governments, including referral to the AG for further civil action.

Some of these laws, similar to the HAA, also provide a mechanism for private third party actors – for example, developers and project applicants, housing advocacy organizations, and members of the public – to file their own lawsuits to challenge local land use planning and permitting decisions. In 2023, the Legislature passed and the Governor signed AB 1485 (Haney), Chapter 763, which also granted HCD and the AG the unconditional right to intervene in any suit brought to enforce specified housing laws, to ensure that the state's interests are heard as a matter of right in private litigation dealing with the application of those laws.

There have been further efforts to add more "teeth" to state law to deter bad actors from continuing to obstruct housing development, including SB 1037 (Wiener), Chapter 293, Statutes of 2024, which established minimum civil fines and attorney fee awards in cases where the AG or HCD are acting to enforce housing element law or state laws that require ministerial approval

of housing development projects, and AB 1633 (Ting), Chapter 768, Statutes of 2023, which expanded the definition of local agency "disapproval" of projects under the HAA.

Private Enforcement: While the AG and HCD have enforcement authority over and have stepped up efforts to monitor compliance with a number of housing laws, they do not have infinite resources with which to monitor the extremely high volume of regional and local public agency meetings and thousands of different development applications that may be proceeding in any given month or year. This necessarily leads to some targeting of the most egregious or flagrant violations of law, or actions that could be precedent-setting or otherwise resolve a question of law. HCD's accountability unit works to provide technical assistance as much as possible and intakes complaints from members of the public and developers about potential violations of housing laws, but is not in the practice of bringing a full legal case for every single violation or possible violation.

However, housing developers face a difficult set of circumstances at the local or regional level when they are faced with a recalcitrant agency. Because they are often "repeat customers" in a jurisdiction and are reliant on an agency for essential approvals of the project in question and future projects they might wish to bring forward, they are reluctant to sue and possibly damage their relationships with these entities in cases where the agency is not following the law. The author and sponsor also point out that some agencies have begun requiring developers to indemnify them from the lawsuits the developers may end up deciding to bring if those agencies break housing laws, and even requiring developers to pay for the legal fees incurred by the agency. At the same time, only a limited number of housing statutes (like the HAA) allow an applicant who is a prevailing party to recoup attorney's fees, making the prospect of litigation even less appealing to a project proponent.

This bill would require a court to award a housing developer reasonable attorney's fees in cases where they are the prevailing party over a public agency in an action brought to enforce a housing reform law. Importantly, this bill would not create or expand standing for any developer or housing organization where it does not already exist in statute. AB 712 (Wicks) would also prohibit a public agency from requiring an applicant for a housing project to indemnify, defend, or otherwise hold harmless the public agency in any manner with respect to an action brought by the applicant or any other person alleging the public agency violated the applicant's rights or deprived the applicant of benefits or rights established by housing laws.

In order to create a more effective deterrent for recalcitrant local agencies, the bill would also apply HAA fines in cases where the applicant prevails over a local agency and the agency was advised in writing by either the AG or HCD prior to the lawsuit that the agency's decision, action, or inaction would represent a violation of law in the same manner that is alleged in the applicant's lawsuit. If the local agency has violated the same statute more than once in the same housing element cycle, the court must multiply the HAA fine by a factor of five.

Arguments in Support: According to the California Building Industry Association, the bill's sponsor, "With very limited exceptions, enforcement of housing reform laws relies on housing project applicants to sue the offending public agency. However, applicants are reluctant to vindicate these rights because litigation is expensive, and the applicant must maintain cordial relationships with agencies that have permitting authority over current and future housing projects. Moreover, unlike opponents of housing projects who typically are awarded attorney's fees if they successfully sue to block a housing project, project applicants generally do not

recover their attorney's fees when they are the successful party, with the limited exception of suits under the Housing Accountability Act. Further undermining housing law enforcement, there are no effective penalties to deter public agencies from forcing applicants to file lawsuits over the same issue even after the public agency has consistently lost in court and committed violations after having been warned in writing by the Attorney General or [HCD]. […] AB 712 would address these problems and significantly increase the enforcement and effectiveness of housing reform laws…"

Arguments in Opposition: According to the California Special Districts Association, "AB 712 would create a right to attorneys' fees and costs for an applicant in any action brought by the applicant for a housing development project against a public agency, including a special district, to enforce a housing reform law, where the applicant is the prevailing party. This one-sided right, for which indemnification is prohibited by the bill, would place local agencies legitimately defending their decisions in court at a disadvantage, with the burden shifted to taxpayers and ratepayers. AB 712's provisions for fines, which may be sought without regard to requirements of the Government Claims Act, based on an applicant prevailing on claims substantially the same as prior written advisements by the Attorney General (AG) or the Department of Housing and Community Development (HCD) similarly exposes well intentioned local agencies, taxpayers and ratepayers, to significant financial risk while placing local agencies legitimately defending their decisions at a disadvantage."

Committee Amendments: Staff recommends the following amendments:

1) The HAA's fine structure is a minimum of $10,000 per unit in the proposed development. For smaller projects, like an individual ADU or SB 9 duplex, the minimum fine of $10,000 multiplied by one or two units may not provide a significant enough deterrent to dissuade bad actors from disregarding the written advice of HCD or the AG regarding the violation of law. Staff recommend the following amendment in Section 1 of the bill to create a $50,000 minimum fine for violations involving projects of four units or fewer:

GOV 65914.2. (b) (2) (A) (i) If the local agency was advised in writing prior to the commencement of the action by either the Attorney General or the Department of Housing and Community Development that the local agency's decision, action, or inaction would represent a violation of law in substantially the same manner as alleged by the applicant in its lawsuit, the court shall impose a fine in an amount not less than the minimum fines described in subparagraph (B) of paragraph (1) of subdivision (k) of Section 65589.5***, unless the housing development project consists of four units or fewer, in which case the court shall impose a minimum fine of $50,000 per violation***.

(ii) If a court has previously found that the local agency violated the same statute on which the applicant prevailed in its lawsuit, within the same planning period, the court shall impose a fine in an amount not less than the minimum fines described in ***subparagraph (i)*** ~~subparagraph (B) of paragraph (1) of subdivision (k) of Section 65589.5~~ multiplied by a factor of five.

2) The bill's proposed definition of "housing reform law" references the list of statutes in subdivision (j) of GOV 65585 which HCD and the AG have enforcement authority over and which establishes certain practices HCD must undertake in notifying local governments of possible violations of those statutes. However, not all of the statutes identified in that subdivision are statutes that establish or facilitate rights for applicants for housing development projects – for example, the list also includes Annual Progress

Report requirements and certain homelessness funding programs. In addition, enumerating a list of statutes that fall into the proposed "housing reform law" bucket means the Legislature may have to revisit the list of included statutes as additional laws are enacted or sunset, possibly very frequently. Staff recommends striking the listing of statutes from the definition and instead leaving the applicant to identify the specific alleged statutory violations in question in the action itself, as follows:

GOV 65914.2. (d) (2) (A) "Housing reform law" means any law or regulation, or provision of any law or regulation, that establishes or facilitates rights, safeguards, streamlining benefits, time limitations, or other protections for the benefit of applicants for housing development projects, or restricts, proscribe, prohibits, or otherwise imposes any procedural or substantive limitation on a public agency for the benefit of a housing development project**.**~~, including, but not limited to, all of the following:~~

~~(i) The provisions identified in subdivision (j) of Section 65585.~~

~~(ii) The Permit Streamlining Act (Chapter 4.5 (commencing with Section 65920)).~~

~~(iii) Section 65913.3.~~

~~(iv) Section 65913.3.1.~~

~~(v) Section 65913.6.~~

~~(vi) Any provision under which relief is sought pursuant to Section 66020 or 66021.~~

~~(B) The specific identification of any law, regulation, or provision in this paragraph shall not be interpreted to limit the scope of "housing reform law" as used in this section.~~

Related Legislation:

SB 1037 (Wiener), Chapter 293, Statutes of 2024: Created new legal remedies that can be used by the AG to enforce the adoption of housing element revisions or to enforce any state law that requires a local government to ministerially approve any decision or application for a housing development project.

AB 1633 (Ting), Chapter 768, Statutes of 2023: Expanded the definition of a "disapproval" under the HAA, until 2031.

AB 215 (Chiu), Chapter 342, Statutes of 2021: Provided HCD with additional enforcement authority over local agency violations of specified housing laws.

AB 72 (Santiago), Chapter 370, Statutes of 2017: Provided HCD the authority to find a local government's housing element out of substantial compliance if it determines that the local government acts or fails to act in compliance with its housing element, and allows HCD to refer violations of law to the AG.

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

California Building Industry Association (Sponsor)
Abundant Housing LA
BOMA California
California Apartment Association
California Association of Realtors
California Building Industry Association
California Business Properties Association
California YIMBY
Circulate San Diego
Housing Action Coalition
NAIOP California
SPUR
The Two Hundred

Opposition

California Special Districts

Oppose Unless Amended
Livable California

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