Date of Hearing: July 2, 2025

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
Matt Haney, Chair
SB 786 (Arreguín) – As Amended May 1, 2025

SENATE VOTE: 28-10

SUBJECT: Planning and zoning: general plan: judicial challenges

SUMMARY: Makes various changes to existing procedures and remedies for judicial challenges of whether or not a local jurisdiction's general plan, or any element thereof, complies with existing law. Specifically, **this bill**:

1) Provides that, to the extent that a quantified development standard contained in a general plan element is inconsistent with a quantified development standard contained in another element, the provisions of the most recently adopted element supersede inconsistent provisions of the previously adopted element. Defines "quantified development standard" to mean a site's maximum density or requirements for a height limit, setback, maximum or minimum unit size, lot coverage, or floor area ratio.

2) Requires the Department of Housing and Community Development (HCD) to undertake a housing element substantial compliance review if a local agency has established a specific deadline under specified housing element law to amend a local ordinance, development standard, condition, or policy applicable to housing development projects, and the local agency has failed to make that amendment by the specified deadline.

3) Extends an existing timeline by which a local government must bring an action into compliance with its housing element if a court finds that the action does not comply with its housing element, from within 60 days to within 120 days. Deletes the option for the court to extend the time period for compliance by an additional 60 days upon a determination that the 60-day timeline would place an undue hardship on the local government.

4) Allows a court to grant a reasonable extension of time for a local government under 3) above, if review by HCD is required as part of a court order under housing element law, and the review is not timely completed to allow a local government to comply with a court order to bring their housing element into compliance within 120 days.

5) Extends an existing timeline by which a local government must complete its housing element rezoning if a court finds that the local government failed to complete a required rezoning and the court issues an order or judgment compelling the local government to complete the rezoning, from within 60 days to within 120 days or as specified. Requires, rather than authorizes, a court to impose sanctions on a local government if the order or judgment compelling such rezoning is not carried out until the rezoning is complete and in effect.

6) Applies to charter cities the provisions of Article 14, which governs challenges to general plans or elements, and specifies that this provision is declaratory of existing law.

7) Modifies a court's ability to continue for a reasonable time the date of a hearing or trial relating to an action to challenge a general plan or any element thereof on the grounds that the plan or element does not substantially comply with a specified law, by limiting the court to continuing the date for no more than 60 days. Requires a court, if temporary relief has been granted under specified provisions of law for lack of substantial compliance with specified law, to consider ordering additional temporary relief in light of a continuance.

8) Provides that an order or judgment issued in an action brought to challenge the validity of the general plan or any mandatory element of a local government is immediately appealable, regardless of whether any final judgment has been issued.

9) Prohibits remedies ordered by a court under specified law from being stayed during the pendency of an appeal of an order or judgment rendered under an action brought to challenge the validity of the general plan or any mandatory element of a local government.

10) Allows a court to stay remedies ordered under 9) above upon a showing made by the local government that the local government will suffer irreparable harm.

11) Requires, rather than authorizes, a court to grant temporary relief, as specified, during the pendency of an action brought to challenge the validity of the general plan or any mandatory element of a local government, upon a showing of probable success on the merits.

12) Requires a court to set a date for a hearing within 15 days of the filing of a request for temporary relief under 11) above, and requires the court to set the hearing for the earliest possible date that the business of the court permits, but not more than 30 days after the filing of the request for temporary relief under 11) above. Allows a court to continue for no more than 30 days the date of the hearing, and prohibits the court from granting more than one continuance. If the court does not hear the motion by the deadlines specified in this bill, allows the petitioner to file an ex parte application requesting temporary relief on the 61st day after the initial filing of a request for temporary relief.

13) Deletes a provision allowing a court to grant specified exemptions of time in order for a local agency to meet the requirements of 8) and 9) above when preparing specified environmental studies in order to bring its general plan or relevant mandatory elements into compliance with any court order or judgment.

14) Makes conforming and technical changes.

15) Applies the provisions of this bill to all cities, including charter cities.

EXISTING LAW:

1) Requires every county and city to adopt a general plan with seven mandatory elements: land use, circulation, housing, conservation, open space, noise, and safety. General plans must also include an eighth element on environmental justice or, in the alternative, incorporate environmental justice concerns throughout the other elements. (Government Code (GOV) Section 65300 & 65302)

2) States the intent of the Legislature that the general plan and elements and parts thereof comprise an integrated, internally consistent and compatible statement of policies for the adopting agency. (GOV 65300.5)

3) 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;

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

   c) A program that sets forth a schedule of actions during the planning period, and timelines for implementation, that the local government is undertaking to implement the policies and achieve the goals and objectives of the housing element. (GOV 65583(a)-(c))

4) Requires, generally, the housing element to be updated every eight years, except some local jurisdictions are required to do so every five years. (GOV 65588(e)(2)(D) & (e)(3)(A).)

5) Requires HCD to review draft housing element revisions that local jurisdictions are required to submit to HCD and requires HCD to make specified written findings, including whether the element or amendment substantially complies with housing element law. (GOV 65585(c))

6) Requires HCD to notify the local jurisdiction, and authorizes HCD to notify the Attorney General (AG), that the local jurisdiction is in violation of state law if the department finds that the housing element or an amendment to the element, or any action or failure to act, as specified, does not substantially comply with housing element law or other enumerated statutes. (GOV 65585(j)

7) Authorizes any interested party to bring an action to review the conformity of any housing element or portion thereof or revision thereto with the housing element law. If a court finds that an action of a local jurisdiction, which is required to be consistent with its general plan, does not comply with its housing element, the jurisdiction must bring its action into compliance within 60 days. Provides the court shall retain jurisdiction throughout the period for compliance to enforce its decision. If the court finds that the 60-day period for compliance places an undue hardship on the local jurisdiction, the court may extend the period for compliance by an additional 60 days. (GOV 65587(b) and (v))

8) Provides various procedures that must be followed prior to the AG bringing any suit for violation of the housing element law, including that HCD must offer the local jurisdiction the opportunity for two meetings in person or via telephone to discuss the violation. (GOV 65588(k))

9) Authorizes the AG, if a court finds that the local jurisdiction's housing element does not substantially comply with the requirements under the housing element law, to request the court to issue an order or judgment directing the jurisdiction to bring its housing element

into substantial compliance. The court shall retain jurisdiction to ensure that its order or judgment is carried out. Provides for various fines to be assessed if the local jurisdiction does not comply with the court order in specified time frames, and requires the court to conduct status conferences at certain intervals. (GOV 65588(l))

10) Requires any action to challenge a general plan or any element thereof on the grounds that the plan or element does not substantially comply with the general planning law to be brought as a writ pursuant to Section 1085 of the Code of Civil Procedure. (GOV 65751)

11) Requires the court to set a date for a hearing or trial on the action within 30 days of the filing of the request for a hearing or trial. Requires the hearing to be set and heard at the earliest possible date that the business of the court permits, but not more than 120 days after the filing of a request for a hearing or trial. The Court may continue for a reasonable time the date of the hearing or trial. However, if the court grants a continuance to a respondent, the court shall grant the temporary relief, as specified, upon the written motion of the petitioner. (GOV 65753)

12) Requires a local jurisdiction to bring its general plan into compliance within 120 days if the court finds that the local jurisdiction does not substantially comply with the planning law in a final judgment in favor of the plaintiff. (GOV 65754)

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

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

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

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

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

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

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

14) Authorizes the court, in any action challenging the validity of a local jurisdiction's general plan or element thereof, to grant the relief described in 13) above, as temporary relief upon a showing of probable success on the merits. In any order granting temporary relief, the court is not to enjoin during the pendency of the action any housing developments that comply with existing law and which may be developed without having an impact on the ability of the local jurisdiction to properly adopt and implement an adequate housing element. (GOV 65757)

FISCAL EFFECT: Unknown.

COMMENTS:

Author's Statement: According to the author, "Californians need more housing, at more affordable price-points, to be built as soon as possible. The best path to that outcome is for every city and county to plan to meet the community's housing needs by adopting and implementing a valid housing element. In 2017 and 2018, the Legislature strengthened the state's housing element law to ensure that local governments would each do their part to plan to meet their fair share of their region's housing needs. Implementation and enforcement during this first cycle of housing elements under the revised rules have revealed some ambiguities in the law, which has led to administrative friction, litigation, and, most importantly, delays in realizing the goal of facilitating robust home building at all income levels. SB 786 would resolve several ambiguities in housing element law to provide clarity for local governments, project applicants, and courts to ensure that housing is developed as planned for."

Housing Enforcement: Over the past several years the Legislature has passed numerous bills to address the housing crisis, including strengthening the state's housing element law to ensure that local governments plan to meet their fair share of the housing needs in their jurisdiction, and various ministerial approval laws with the goal of streamlining and expediting housing development throughout the state. Existing law allows the AG to enforce state housing laws in the AG's independent capacity and on behalf of other entities, such as HCD. The AG has recently brought several actions against local jurisdictions for violating state housing laws, such as the City of Elk Grove for failure to approve an affordable housing project. Additionally, the Attorney General and HCD have sued the City of Huntington Beach for failure to adopt a housing plan compliant with state law. The AG, the sponsor of the bill, states that the bill is intended to address several ambiguities that have complicated housing element litigation and have led to confusion among courts and parties.

General Plans and Housing Elements: The Planning and Zoning Law sets the general plan at the top of the land use regulation hierarchy – meaning the general plan and the elements comprising it set out high-level policies and objectives. Each level down in the hierarchy has narrower applicability and greater specificity (such as detailed standards that development must meet). Cities and counties must adopt a housing element as part of the general plan every eight years, or every five years for some rural areas. Each city or county receives a total number of housing units to plan for in its housing element, broken down by income category. The housing element must also contain specified information, programs, and objectives, including:

- An assessment of housing needs, and an inventory of resources and constraints relevant to the meeting of these needs;
- A statement of the community's goals, quantified objectives, and policies relative to affirmatively furthering fair housing and to the maintenance, preservation, improvement, and development of housing; and
- A program that sets forth a schedule of actions to implement the goals, objectives, and policies in housing element during the planning period, and timelines for implementation.

Housing elements contain general policies that are intended to further housing development, but are not self-executing because they lack sufficient detail to be implementable on their own. At times, the policies in an adopted housing element conflict with higher-level provisions in the General Plan, which may not have been updated concurrently. To the extent a quantified development standard contained in a general plan element is inconsistent with a quantified

development standard contained in another element, this bill would specify that the provisions of the most recently adopted element supersede inconsistent provisions of the previously adopted element.

Actions to Challenge the Validity of the General Plan or Elements: Existing law requires any action to challenge a general plan, or any element thereof, on the grounds that the plan or element does not substantially comply with the general planning law to be brought as a writ pursuant to Section 1085 of the Code of Civil Procedure. The court is required to set a date for a hearing or trial on the action within 30 days of the filing of the request for a hearing or trial. A hearing is to be set and heard at the earliest possible date that the business of the court permits, but not more than 120 days after the filing of the request. The court may continue, for a reasonable time, the date of the hearing or trial; however, if the court grants a continuance to a respondent, the court is required to grant temporary relief upon the written motion of the petitioner. If the court finds in a final judgement that the local jurisdiction does not substantially comply with the planning law, a local jurisdiction is required to bring its general plan into compliance within 120 days. Additionally, if a court finds that an action of a local jurisdiction, which is required to be consistent with its general plan, does not comply with its housing element, the local jurisdiction is required to bring that action into compliance within 60 days. The court may extend that time for an additional 60 days upon a showing that complying in 60 days places an undue hardship on the local jurisdiction. If a court issues an order of judgment that a local jurisdiction is not in compliance, the court is required to include one or more specified remedies, including suspension of permitting authority and mandating approval of certain housing permits and subdivision maps.

Existing law authorizes the court, upon a showing of probable success on the merits, to grant the relief described above as temporary relief. In any order granting temporary relief, the court is prohibited from enjoining, during the pendency of the action, any housing developments that comply with existing law and which may be developed without having an impact on the ability of the local jurisdiction to properly adopt and implement an adequate housing element.

This bill makes several changes to the procedure above. First, it makes the timelines to comply with an order related to a non-compliant action of a local jurisdiction 120 days. Second, the bill removes the ability of the court to grant a continuance for a reasonable time, and instead allows a continuance for no more than 60 days. If temporary relief has already been granted, the court is required to consider ordering additional temporary relief in light of the continuance. The bill also deletes the authority for the court to grant two extensions of time, not to exceed a total of 240 days, but allows for a reasonable extension if HCD review is necessary. Lastly, the bill would require the court, instead of merely authorizing the court, to grant the temporary relief sought above if a showing is made of probable success on the merits.

Appeals: This bill further states that the remedies ordered by a court under GOV 65755 – i.e. suspension of the authority for a local jurisdiction to grant building permits, zoning changes, or map approval and mandates certain actions, such as approval of specified maps or permits – are not stayed during the pendency of an appeal of an order or judgment issued in an action brought to challenge the validity of a local jurisdiction's general plan, including any mandatory element. The bill provides that the court may stay the granted remedies pending appeal if the local jurisdiction makes a showing that it will suffer irreparable harm.

This bill would provide that any order or judgment in an action challenging the validity of a general plan that resolves whether the general plan, or element thereof, substantially complies with the general plan law is immediately appealable, regardless of whether any final judgment has been issued. The reason for this change stems from the AG's experience in litigation with the City of Huntington Beach. In that case, the superior court held that the housing element law did not apply to charter cities; however, the AG sought an appeal via writ of mandate on that matter. The appellate court eventually decided to take the issue up on appeal and found that the superior court decision was in error and that the housing element law did apply to charter cities. (*People of Cal. v. Superior Court of San Diego County (Cal. Ct. App. 4th Dist. Jan. 1, 2024) No. D083339*.) This change will provide for a quicker resolution of whether or not a local jurisdiction's general plan complies with existing law, which is beneficial to all parties.

Arguments in Support: According to AG Bonta, the bill's sponsor, "SB 786 would resolve several ambiguities in housing element law with sensible, bright line rules. First, when there are conflicting development standards in the housing element and another general plan element, the most recently adopted element would control. Second, when local governments commit to removing constraints on housing development by a specific deadline, this bill would clarify the consequence for failing to meet that deadline by directing the Department of Housing and Community Development to review the housing element for potential decertification. This will encourage local governments to keep their commitments to remove housing constraints that muddy the rules and development standards for builders. Setting clear rules benefits all parties and will facilitate implementation and avoid litigation and project delays. The bill will also address procedural shortcomings in existing law and ensure that court orders deliver fair and effective relief. The bill will clarify when compliance with trial court orders is required, reduce delays in the adoption of compliant housing elements, align the procedural statutes with current practice, and harmonize the timelines in overlapping existing laws. These amendments would address several ambiguities that have complicated housing element litigation and have led to confusion among courts and the parties."

Arguments in Opposition: According to the Judicial Council of California, "The Judicial Council opposes Senate Bill 786, because the bill (1) requires—rather than allows—a judge to grant temporary relief upon a showing of probable success on the merits in a case litigating general plan compliance; (2) requires a court clerk to set a date for a hearing within 15 days and no more than 30 days after the filing of any request; (3) limits the court's ability to grant any continuance for more than 60 days, and; (4) requires a court to further manage an ex parte application, requesting temporary relief after the 60 days, all of which impacts limited court resources. When everything is a priority, nothing is a priority. Placing strict timelines on the judicial branch in this fashion constrains finite staff resources and forces the courts to prioritize some cases over other worthy matters. The branch's judicial officers and court employees are already overwhelmed with managing complicated calendars with myriad cases. As with other legislation that continues to add to the growing list of calendar preferences, SB 786 will likely have an adverse impact on other cases in the courts, including other cases with statutorily mandated calendar preferences, such as juvenile cases, criminal cases, civil cases in which a party is at risk of dying, wage theft cases, and election integrity issues. These equally meritorious case types will likely be pushed to the back of the line and take longer to be adjudicated."

Related Legislation:

SB 1037 (Wiener), Chapter 293, Statutes of 2024: Among other things, increased penalties for not adopting housing element revisions, as specified, or ministerially approving any planning or permitting application related to a housing development project, as required under existing law.

AB 1485 (Haney), Chapter 763, Statutes of 2023: Among other things, granted HCD and the AG the unconditional right to intervene in any suit brought to enforce specified housing laws.

AB 215 (Chiu), Chapter 342, Statutes of 2021: Specified that the AG has the authority to bring a suit to enforce state law in an independent capacity and can seek all remedies available under existing law.

AB 101 (Committee on Budget), Chapter 159, Statutes of 2019: Authorized the AG to bring suit for a violation of specified housing laws related to housing element compliance, authorized the court to issue an order or judgment directing the jurisdiction to bring its housing element into compliance, and authorized the court to assess specified civil penalties as a result of failure to comply with that order or judgment.

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

State of California Attorney General (Sponsor)
Abundant Housing LA
California Housing Partnership
California Rural Legal Assistance Foundation
California YIMBY
Circulate San Diego
Habitat for Humanity California
Housing California
Inner City Law Center
Public Interest Law Project
SPUR
The Two Hundred

Opposition

Judicial Council of California

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