

Date of Hearing: May 20, 2020

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

AB 3269 (Chiu) – As Amended May 4, 2020

SUBJECT: State and local agencies: homelessness plan

SUMMARY: Creates the Office of the Housing and Homelessness Inspector General to create greater accountability for state and local actions to address homelessness, imposes new requirements on local governments to develop actionable plans address homelessness, and creates a public right of action for the Inspector General to compel compliance with those new plans, among other things. Specifically, **this bill:**

- 1) Creates the Office of the Housing and Homelessness Inspector General in the Business, Consumer Services, and Housing Agency under the supervision of the Housing and Homelessness Inspector General.
- 2) Gives the Housing and Homelessness Inspector General the following duties:
 - a) Monitor the implementation and progress of the state and local agencies based on adopted plans;
 - b) Offer technical assistance to state and local agencies to comply with actionable plans to address homelessness;
 - c) Audit state and local agencies to determine compliance with adopted plans;
 - d) Bring actions against a state or local agency to compel compliance with their respective adopted plans; and
 - e) Investigate complaints and issue civil penalties.
- 3) Requires the Homelessness Coordinating and Financing Council (Council) conduct a gaps and needs analysis to identify the housing and services needed statewide to address homelessness.
- 4) Requires the Council, based on the gaps and needs analysis, to set a benchmark goal to reduce homelessness for each state and local agency. The benchmark goal will set a minimum percentage reduction of homelessness within the state or local agency's jurisdiction by December 21, 2028, based on the 2019 point-in-time count.
- 5) States that it is the intent of the Legislature that:
 - a) A state and local agency shall aim to reduce homelessness in their jurisdiction by 90 percent by December 31, 2028, based on the 2019 homeless point-in-time count pursuant to Section 578.3 of Title 24 of the Code of Federal Regulations; and
 - b) A state or local agency is only accountable for reducing homelessness to the extent that it has available resources to address homelessness, and that the state or local

- agency should not be required to expend additional funds not contained in its actionable plan in order to meet the benchmark goal set by the Council.
- 6) Requires each state and local agency to develop an actionable plan to achieve the benchmarks that includes the following:
 - a) A description and the amount of funding of all sources that the state or local agency has earmarked or committed to reducing and addressing homelessness in their jurisdiction;
 - b) The estimated amount of additional funding needed to meet the homelessness reduction goals;
 - c) Timelines for the state and local agencies to utilize existing funding identified; and
 - d) Specific actions that the state or local agency will take to meet the goal of reducing homelessness by moving people to permanent housing.
 - 7) Requires a county and city to adopt an actionable plan by resolution.
 - 8) Requires each state and local agency to transmit the plan to the Council by January 1, 2022.
 - 9) Requires each state and local agency to submit an annual progress report to the Council that details the progress and implementation of the adopted plan and any amendments to the plan.
 - 10) Requires the Council, upon receipt of the plan, to review the plan and offer feedback and recommended revisions.
 - 11) Requires a state or local agency to adopt the recommended revisions to their plan received from the Council or make a finding as to why the revisions are not needed.
 - 12) Requires the Council to monitor the progress of each state and local agency to adopt and implement a plan and, if the Council determines that either has failed to adopt a plan or to make progress in accordance with the plan, to notify the state and local agency as well as the Inspector General.
 - 13) Provides that if new resources to address homelessness are identified in a progress report, then the Council shall update the benchmark goal.
 - 14) Provides that, on or after January 1, 2022, the Inspector General may bring an action against a state or local agency to compel compliance with the actionable plan.
 - 15) Requires any action against the state shall be brought in the Superior Court of the County of Sacramento and any action against a local agency shall be brought in the superior court of the county or county within which a city is located.
 - 16) Provides that if the court finds that a state or local agency has not substantially complied with the actionable plan, the Inspector General may request that the court issue an order or judgement directing the state or local agency to substantially comply with the actionable plan by taking the following actions:

- a) If a state or local agency has not adopted an actionable plan within the specified time period, require a plan be adopted;
 - b) Dedicate resources identified in the plan to reduce the number of individuals experiencing homelessness;
 - c) Coordinate with other state or local agencies to reduce the number of individuals experiencing homelessness;
 - d) Pool resources identified in the plan with other resources in other jurisdictions in order to address regional challenges or reducing homelessness;
 - e) Require local agencies to rezone sites to permit the construction of housing and emergency shelters; and
 - f) Order a jurisdiction to establish coordinated entry points for homeless individuals and those at imminent risk of becoming homeless.
- 17) Limits the remedies available to the court to those outlined above in 16).
- 18) Provides that the court shall retain jurisdiction of the case for no more than 12 months to ensure that the order or judgment is carried out.
- 19) Prohibits a state or local agency from deliberately and intentionally transporting a homeless individual to a different jurisdiction in order to reduce the number of homeless individuals in their jurisdiction.
- 20) Provides that any person may file a complaint with the Inspector General that a state or local agency has deliberately and intentionally transported a homeless individual to a different jurisdiction.
- 21) Authorizes the Inspector General to impose a fine on any state or local jurisdiction found to have deliberately and intentionally transported a homeless individual to a different jurisdiction, not to exceed \$10,000 per individual transported.

EXISTING LAW:

FISCAL EFFECT: Unknown.

COMMENTS:

Author's statement: According to the author, "Homelessness is the moral crisis of our time. The COVID-19 pandemic has intensified an already intense crisis. The state and local governments lack a mechanism to hold each other accountable for reducing homelessness and as a result there is no clear strategy for responding. Local homeless advocates have sued and continue to sue cities and counties for what they see as a lack of response and urgency in responding to homelessness. Rather than waiting for coronavirus outbreaks or expensive, time-consuming lawsuits to force the question of how to address homelessness, AB 3269 would proactively establish plans, metrics, accountability and enforcement of progress towards plans. By holding all governments levels accountable based on benchmarks, AB 3269 would move California towards finally addressing the moral crisis of our day.

Background: California is facing a homelessness and affordable housing crisis. In 2019, on a single night in January, 151,278 people experienced homelessness in California. California has 24 percent of the people in the nation experiencing homelessness. Nearly half of all unsheltered people in the country are in California. The number of people experiencing homelessness increased by 17 percent from 2018 to 2019.

The homeless crisis is driven, in part by the lack of affordable rental housing for lower income people. In the current market, 2.2 million extremely low-income and very low-income renter households are competing for 664,000 affordable rental units. Of the six million renter households in the state, 1.7 million are paying more than 50 percent of their income toward rent. The National Low Income Housing Coalition estimates that the state needs an additional 1.5 million housing units affordable to very-low income Californians.

The COVID-19 pandemic has intensified an already intense homelessness crisis. Due to the highly contagious quality of the virus, unsheltered people, living outdoors in close quarters without access to sanitation, face increased risk of exposure and illness. Local governments are working to bring people in doors to reduce the health risk to people experiencing homelessness, as well as others. This requires identifying new housing or reconfiguring existing emergency shelters to accommodate the need for social distancing. This has led to a fresh suite of lawsuits to hold local governments accountable for safely housing the unsheltered during the pandemic. Recently, economists predicted that homelessness could rise by 20 percent as a result of the pandemic as unemployment and high housing cost push more people into homelessness.

Lawsuits against local governments: Local governments are coming under increasing pressure from advocates and the business community to address homelessness. The landmark case of *Martin v. Boise* challenged the City of Boise’s enforcement of its Camping and Disorderly Conduct Ordinances against persons experiencing homelessness—those who need to sleep in public in the absence of adequate housing or shelter. Last year, a panel of the 9th Circuit held that “as long as there is no option of sleeping indoors, the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter.” Following that ruling, the City of Boise petitioned the entire 9th Circuit to rehear the case, which was rejected in April 2019. Boise then asked the Supreme Court to hear the case and the Court rejected that request, thereby affirming that within the 9th Circuit, “the Eighth Amendment preclude[s] the enforcement of a statute prohibiting sleeping outside against homeless individuals with no access to alternative shelter.”

Orange County, along with the cities of Costa Mesa, Anaheim, and Orange, were recently sued by advocates who argued that the people experiencing homelessness in those jurisdictions were effectively criminalized because the lack of shelter beds at the time, coupled with anti-camping ordinances, would result in numerous tickets and eventually jail time for individuals with nowhere else to sleep. The lawsuit was filed as a result of the county clearing out an encampment in the Santa Ana Riverbed. Attorneys have since filed suit against other cities in the county. The suits filed in the Federal Court are under the supervision of Judge David Carter, who has entered into court-enforced agreements to require the municipalities to develop emergency shelters. While the federal court under Judge David Carter successfully held local governments accountable to provide emergency shelters, the process was complex, expensive, and time-consuming for both litigants and local governments. Attorneys have since filed lawsuits in or

sent demand letters to Los Angeles, San Diego, Santa Cruz, Sacramento, San Francisco and other jurisdictions.

Purpose of this bill: This bill would require the state and local governments to assess available resources to address homelessness and provide that analysis to the Council. The Council would review and provide feedback to the entity submitting the analysis. Based on the gaps and needs analysis, the Council will develop benchmarks goals for each state and local agency to reduce homelessness. Based on those goals, the state and local government will develop an actionable plan and submit it to the Council by January 1, 2022. Each year the plan will be updated and resubmitted. State and local governments are only accountable for the resources they have available to them at the time the plan is adopted and submitted.

Public right of action: The Housing and Homelessness Inspector General can take action against a state or local government for failing to submit a plan or for not following a plan. The court can order the adoption of a plan, dedicate the resources in the plan toward reducing the number of people experiencing homelessness, coordinate with other state and local agencies to reduce the number of people who are homelessness, require sites be rezoned for emergency shelter, pool resources for homelessness between jurisdictions to create a regional response, and order a jurisdiction to establish coordinated entry points for people experiencing homelessness.

Governor's Council of Regional Homeless Advisors (Governor's Council) In 2019, the Governor appointed a Council of Regional Homeless Advisors (Governor's Council) made up of local elected officials and leading organizations that work on homelessness in the state. In January of 2020, the Governor's Council issued several recommendations to reduce and prevent homelessness. One of the key recommendations of the Governor's Council was to create an enforceable, results-based accountability mandate to end homelessness. Below is the recommendation:

There are few other areas of important public policy where government efforts to achieve a compelling societal objective are purely voluntary. We have a renewable energy mandate in California that requires public agencies to achieve a quantifiable increase of renewable energy sources according to specific timetables. This requirement is changing California's energy use in dramatic fashion. California mandates free public education for all of its children and subsidized health insurance for its low-income residents. It requires its subdivisions to provide services to people with developmental disabilities and foster children.

Homelessness is a crisis of epic and increasing magnitude. Yet everything that state, county and city governments do to alleviate this crisis is voluntary. There is no mandate to ensure people can live indoors, no legal accountability for failing to do so, no enforceable housing production standard and no requirement to consolidate and coordinate funding streams across jurisdictions. The results speak for themselves.

Advocates, providers, and government have attempted to use moral persuasion and economic incentives to change the current reality. Neither has had the essential impact to bring all of our neighbors inside. It is past time to now REQUIRE what we all know is fair, compassionate, and necessary to save lives.

We propose that both state and local governments be held legally accountable to achieve the aims of dramatically reducing homelessness and creating avenues to rapid resolution. A legally enforceable, results-based, accountability mandate will require state and local governments to provide resources for, and reduce barriers to, the creation of both interim and permanent housing that is high quality, low barrier and complies with fair housing rules.

In order to create genuine accountability, the legal mandate must be enforceable through a public right of action that requires state and local governments to create the capacity to bring unsheltered homeless people under a roof, including both funding and rapid approval and siting of interim housing, permanent housing, supportive services, and targeted prevention to reduce homelessness by the tens of thousands. Sweeps and criminalization have been shown not to work in this effort. Strategies that explicitly or implicitly encourage these actions will be unacceptable.

The mandate must include strict and regular reporting by the state, cities, and counties on the number of homeless people; the jurisdiction's capacity and rapid progress to both house them and address the underlying issues which caused or exacerbated their homelessness; respective efforts to prevent them re-entering or becoming newly homeless; steps taken to ensure that exits from jails, hospitals, and foster care do not result in homelessness; and the steps being taken to close deficits in these areas.

Enacting a legally enforceable, results-based accountability mandate will require a constitutional amendment because of its fiscal impact relating to state mandate laws. The task force recommends the constitutional amendment creating the enforceable mandate be placed on the ballot by the Legislature in 2020.

Here is how the enforceable accountability mandate could work under law: Within one year of establishing the mandate, the responsible governments would be required to develop an enforceable plan to house the vast majority of their homeless populations within an aggressive but reasonable period of time, based on the jurisdiction's last Point-In-Time Count.

To be clear, the obligation lies with government to strategize, plan, and implement. Homeless people will be the beneficiaries of that government action.

These plans would include specific benchmarks and timelines that jurisdictions would have to meet for moving people into permanent housing through both services offered in interim interventions and creation of housing opportunities. One year after enactment, designated public officials as identified by the legislation would have the authority to file a public right of action requesting the Superior Court in any non-compliant jurisdiction to either appropriate existing resources, consolidate resources with neighboring jurisdictions, override any siting restrictions, and/or effectuate any actions that would move the jurisdiction toward compliance. Any appeals would be heard by higher courts on an expedited basis.

While more state resources will undoubtedly be required, the state must first assess the existing funding available for homelessness, housing, mental health and substance abuse treatment, and the extent to which these resources could be reprioritized to end street homelessness. The Governor and Legislature, with the guidance of this task force, should spend the first months of 2020 developing a better integration of existing and additional

funding sources to meet this mandate. The state should reserve the right, and enforce through the courts, the right to require remedial reprioritization of existing resources by cities, counties and the state to ensure a commitment to the mandate.

In order to expand access to mental health and substance abuse treatment for individuals experiencing homelessness, the state should work in tandem with counties to ensure that existing funding, funding proposed in the Governor's budget, and proposed Medi-Cal reforms align with the state's goals to improve access to treatment for the estimated 25% of homeless individuals living with a serious mental illness or substance use disorder while at the same time not reducing the levels of funding directed at core prevention and Medi-Cal behavioral health services.

There is still much work to be done to negotiate the parameters of an enforceable obligation, shared by the state and local governments, including identifying the responsibilities of the respective stakeholders and timelines for action, in addition to how the obligation would be enforced. The task force proposes to work with you, the Legislature and relevant stakeholders over the next months to design the specific elements of the legally enforceable, results-based accountability mandate.

The elected leaders of the task force commit to working with the Administration to establish as many local enforceable mandate pilots in their own jurisdictions as possible prior to the eventual constitutional amendment taking effect.

Committee amendments:

- 1) Move the Housing and Homelessness Inspector General to the Department of Housing and Community Development from the Homelessness Coordinating and Financing Council.
- 2) Require the actionable plan to be developed collaboratively by a county, cities, and Continuum of Care.
- 3) Add additional intent language.

REGISTERED SUPPORT / OPPOSITION:

Support

Mayor Darrell Steinberg, City of Sacramento (Sponsor)
 City of San Diego
 Corporation for Supportive Housing
 Housing California
 Mayor Libby Schaaf, City of Oakland
 National Association of Social Workers, California Chapter
 5 Individuals

Opposition

None on file

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