

Date of Hearing: April 11, 2018

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

AB 1771 (Bloom) – As Amended March 19, 2018

**SUBJECT:** Planning and zoning: regional housing needs assessment

**SUMMARY:** Makes changes to the regional housing needs allocation plan objectives, methodology, and distribution process. Specifically, **this bill:**

- 1) Changes the requirement that the regional housing needs allocation plan "be consistent" with specified objectives to the regional housing needs plan "shall further and not undermine the intent of" the specified objectives.
- 2) Revises the objectives a regional housing needs allocation plan is required to further to include:
  - a) Promote improved intraregional relationships between jobs 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;
  - b) Allocate a higher portion of housing needs to an income category when a jurisdiction already has a disproportionately low share of households in that income category; and
  - c) Increase access to areas of high opportunity for lower-income residents, avoiding displacement, and affirmatively furthering fair housing.
- 3) Adds the following to the list of factors a local government shall include when developing the methodology for allocating regional housing needs:
  - a) Data on the number of low-wage jobs within the jurisdiction and how many housing units within the jurisdiction are affordable to workers at those wage levels;
  - b) Data on how many jobs were added and at what wage levels compared to how many housing units were added and at what income levels in the last planning period;
  - c) The existing and projected demand for housing for very low-, lower, moderate, and above moderate- income households;
  - d) The percentage of existing very low-, lower, moderate, and above-moderate income households that are paying more than 30% and more than 50% of their income in rent; and,
  - e) The rate of overcrowding.
- 4) Requires a council of governments (COG) to specify how any additional factors they adopt as part of the methodology further and do not undermine the objectives of the regional housing needs assessment.

- 5) Increases the number of public hearings a COG is required to hold on the methodology for distributing regional housing needs from one to two hearings.
- 6) Deletes the requirement that COGs identify any existing local, regional, or state incentives such as a priority for funding or other incentives available to local governments willing to accept a higher share of the regional housing need.
- 7) Provides that the requirement to allocate housing within the region consistent with the development pattern included in the sustainable community strategy, cannot be a basis for limiting development from all suitable housing sites and land suitable for urban development.
- 8) Requires a COG to submit a draft regional housing needs allocation to Department of Housing and Community Development (HCD) after receiving public comment and making revisions.
- 9) Requires HCD to determine within 60 days whether or not the methodology furthers and does not undermine the objectives that are required to be included in the regional housing needs allocation plan.
- 10) Requires a COG to make any necessary changes based on HCD's determination prior to adopting a final housing need allocation methodology.
- 11) Allows a housing organization to request a COG revise the share of regional housing needs to one or more local governments in accordance with the objectives for allocating a regional housing needs allocation plan.
- 12) Requires a housing organization or local government that requests revision in their share of regional housing need to include a statement as to how the revision does not undermine the intent of the objectives required for the regional housing need allocation plan.
- 13) Allows a housing organization or local government to appeal a decision by the COG to reject a revision or modification of the regional housing needs plan, to HCD.
- 14) Requires HCD, rather than the COG, to conduct a public hearing to hear all appeals within 60 days of the date established to file appeals.
- 15) Requires the final action by HCD on an appeal to be in writing and include written findings supported by a preponderance of the evidence on the record as to how the action is consistent with the requirements of the regional housing need methodology and allocation requirements.
- 16) Requires the COG to take HCD's action on all appeals into consideration in issuing a final regional housing needs allocation.
- 17) Defines "housing organization" to mean a nonprofit organization whose mission includes providing or advocating for increased access to housing for low-income households.

**EXISTING LAW:**

- 1) Requires HCD, in consultation with each COG, to determine each region's existing and projected housing need at least two years prior to a scheduled housing element revision.

- 2) Requires a COG, or for cities or counties without a COG, HCD to adopt a final regional housing needs plan that allocates a share of the regional housing need to each city or county at least one year prior to a scheduled housing element revision.
- 3) Requires the regional housing needs assessment plan to be consistent with all of the following objectives:
  - a) Increasing the housing supply and the mix of housing types, tenure and affordability in all cities and counties within the region in an equitable manner that results in each jurisdiction receiving an allocation of units for low- and very low-income households;
  - b) Promoting infill development and socioeconomic equity, the protection of environmental and agricultural resources, and encouraging efficient development patterns;
  - c) Promoting an improved intraregional relationship between jobs and housing; and
  - d) Allocating a lower proportion of housing need to an income category when a jurisdiction already has a high share of households in the income category as compared to the county wide distribution of households in that category for the most recent U.S. census.
- 4) Requires each COG to develop a proposed methodology for distributing the existing and projected regional housing need to cities and counties within the region, two years prior to the scheduled housing element revision.
- 5) Requires, to the extent that data is available, the COG to include the following factors in developing the methodology that allocates the regional housing needs assessment:
  - a) Each member jurisdiction's existing and projected jobs housing relationship;
  - b) Opportunities and constraints to developing additional housing in each jurisdiction including the following:
    - c) Lack of capacity for sewer or water due to federal or state laws, regulations, or regulatory actions or decisions made by a sewer or water service provider other than the jurisdiction that preclude the jurisdiction from providing necessary infrastructure for additional development during the planning period;
    - d) The availability of land suitable for urban development or for conversion to residential use, the availability of underutilized land, and opportunities for infill development increased residential densities, including the potential for increased residential development under alternative zoning ordinances and land use restrictions;
    - e) Lands preserved or protected from urban development under existing federal or state programs;
    - f) County policies to preserve prime agricultural land;
    - g) Distribution of household growth assumed for purposes of a comparable period of regional transportation plans and opportunities to maximize the use of public transportation and the existing transportation infrastructure;

- h) Market demand for housing;
  - i) Agreements between a county and cities to direct growth toward incorporated areas of the county;
  - j) Loss of low income units in assisted housing developments as a result of mortgage prepayment, expiration of subsidy contracts, and the termination of use restrictions;
  - k) The housing needs of farmworkers;
  - l) The housing needs of universities; and
  - m) Any other factor adopted by the COG.
- 6) Requires each COG to survey each member jurisdiction and request the information necessary to allow for the development of the methodology described in 5) above, six months prior to developing the methodology.
- 7) Requires public participation and access in drafting the methodology and in the process of drafting and adopting the allocation of the regional housing need, including at least one public hearing to receive oral and written comments.
- 8) Requires each COG to explain in writing how each of the factors required to be incorporated in the methodology are incorporated and how they further the objectives required to be included in the regional housing needs plan.
- 9) Requires each COG in addition to the factors listed in 5), to identify any existing local, regional or state incentives such as priority for funding to those local governments willing to accept a higher share of housing than proposed in the draft allocation plan.
- 10) Requires a COG to adopt a final housing needs allocation methodology after the public comment period and make any revisions as a result of the public comments received.

**FISCAL EFFECT:** Unknown.

**COMMENTS:**

Background: Housing element law requires local governments to adequately plan to meet their existing and projected housing needs including their share of the regional housing need. The housing element update process addresses the statewide concern of providing "decent housing and a suitable living environment for every California family," in part by facilitating increases in housing supply to accommodate the needs of the state's population and its growth. The law recognizes the most critical decisions regarding housing development occur at the local level within the context of the general plan. In order for the private sector to adequately address housing needs and demand, local governments must regularly update their general plans, zoning, and development standards to provide opportunities for, and not unduly constrain, housing development for all income groups.

Regional housing needs assessment (RHNA) for each city and county constitute a fundamental basis for housing element updates. The state projects new RHNA numbers every eight years, or in some rural areas every five years. RHNA for each city and county is a projection of additional

housing units needed to accommodate existing households and projected household growth of all income levels by the end of the housing element planning period.

RHNAs establish minimum housing development capacity that cities and counties are to make available via their land use powers to accommodate growth within a planning period. RHNAs are assigned by four income categories as guideposts for each community to develop a mix of housing types for all economic segments of the population. The process is also known as "fair share" planning, as shares of the regional housing need are determined for constituent cities and counties of the affected region of the housing element update cycle. Regions are represented by COGs or counties, which are charged with preparing RHNA plans.

In consultation with each COG, HCD determines the housing needs for each region using a demographic method based on Department of Financing (DOF) population projections. While HCD forwards projections for the region, the distribution of the need within the region to individual cities and counties is subject to determination by the COG. Two years prior to a housing element revision, the COG develops a methodology for distributing the RNHA to jurisdictions within the region. The methodology must consider certain factors spelled out in statute. Local jurisdictions provide data to the COG that is used in the methodology to determine the distribution of housing need within the region. COGs allocate the RNHA to their city and county members in a draft allocation plan and each city and county has an opportunity to request revision of their needs allocation by the COG. The COG may revise the initial allocations, subject to maintaining the total regional need.

The methodology is required to consider the existing and projected jobs housing relationship; the opportunities and constraints to building housing in a jurisdiction; a comparison between household growth and regional transportation plans; market demand for housing; agreements to direct growth to unincorporated areas; the loss of assisted housing units due to expiring covenants or contracts; the housing needs of farmworkers; and housing generated by universities. In addition, the COG can consider any other factors it chooses.

The RNHA process has been criticized as being a political rather than a data driven process. COGs distribute the allocation by both the supporting data but also in some cases based on which jurisdictions are willing accept housing units. A component of the methodology used to determine the allocation of RNHA is a jurisdiction's willingness to accept a higher share of the proposed share of the RNHA. The Haas Institute at UC Berkeley published a study, "*Unfair Share*" *Racial Disparities and Regional Housing Needs Allocation in the Bay Area*," which found a relationship between the number of units allocated, adjusted for population size, and the racial composition of the city. Local governments with higher percentages of white residents were more likely to have received lower allocations of moderate and lower income housing.

SB 35 (Wiener), Chapter 366, Statutes of 2017, required that cities and counties streamline housing developments that include either 10% of units at or below 80% of AMI or 50% units at or below 80% of AMI. This new requirement has added additional weight to the RNHA process because the trigger for whether or not a jurisdiction must streamline is based on whether or not they have met their RNHA numbers for above moderate income (120% of AMI or above) or lower income (80% of AMI or below). Most jurisdictions have not met their lower income RNHA and are subject to streamlining if the developer meets the requirements of the bill, including that 50% of the units are restricted to lower income households. To staff's knowledge,

two developments have requested streamlining in the state since the law went into effect on January 1, 2018.

Additional objectives: The regional housing needs plan is required to be consistent with several objectives including that each jurisdiction takes a share of the housing need for all income levels or their "fair share;" that the distribution promotes infill development and social equity; the promotion of an interregional relationship between jobs and housing; and where a jurisdiction has a high percentage of existing housing in an income level allocating a smaller amount in that income category. This bill would add additional objectives to the list including, increasing access to high opportunity for lower-income residents, avoiding displacement and affirmatively furthering fair housing.

In 2017, the Tax Credit Allocation Committee (TCAC) and HCD convened a group of independent organizations and research centers with the purpose of establishing a state fair housing taskforce. The first task for the task force was to assist TCAC and HCD in creating evidence-based approaches to increase access to opportunity for families with children living in housing subsidized by the Low-Income Housing Tax credit (LIHTC) program. TCAC and HCD asked the taskforce to create a statewide opportunity mapping tool that could be adopted to accompany the regulations to incentive development of large-family, new construction of developments with 9% LIHTC in neighborhoods whose characteristics have been shown by research to support childhood development and economic mobility for low-income families. The intent is to use this new mapping tool to direct and inform state policies to increase access for low-income families to high-resource neighborhoods. The committee may wish to consider whether there are other opportunities to integrate the data developed through the opportunity-maps into the RNHA methodology to achieve this goal and further the existing goal for social equity.

Additional transparency and state oversight: Public participation and access is required in developing the methodology and drafting and adopting the RNHA allocation. COGs are required to distribute the methodology and any underlying data and assumptions to cities, counties, and members of the public who request it. COGs are also required to hold at least one public hearing to receive comments on the proposed methodology. This bill would increase that to at least two public hearings.

Once the methodology is complete, COGs distribute a draft allocation to cities and counties in the region. Within 60 days of receiving the draft allocation, local governments may request a revision to the allocation based on comparable data. If the COG does not accept the proposed change, the local government can appeal the COG's decision; the COG then must review the appeal and explain how the allocation is consistent with the objectives and methodology for the RNHA. This bill would allow a housing organization, which is a non-profit whose mission is serving low-income households to also challenge the RNHA allocation. The bill also creates a process for local government, or housing organizations to appeal a COG's decision to HCD.

Purpose of this bill: According to the author, "AB 1771 provides for a more equitable, data-driven distribution of the housing need within regions, ensures greater transparency in the distribution process, and provides additional oversight to ensure that the process furthers statutory objectives. The bill would improve the RNHA distribution process by:

- Adding avoiding displacement, increasing access to opportunity, and affirmatively furthering fair housing to the list of statutory objectives.
- Adding additional data points to the distribution methodology, including overcrowding rates.
- Restricting a COG's ability to use other factors beyond those listed in statute.
- Requiring HCD to determine whether a COG's distribution methodology is consistent with the law.
- Allowing non-profit housing organizations to challenge the RHNA share assigned to one or more jurisdictions.
- Requiring HCD, rather than the COG, to hear appeals if a COG denies an initial challenge to one or more jurisdictions' RHNA allocations. "

Arguments in support: According to the sponsors, California Rural Legal Assistance Foundation and Western Center on Law and Poverty, "while the RHNA distribution is supposed to be data-driven and founded in principals of fair housing and equity, unfortunately it can be influenced heavily by politics, resulting in low allocations to wealthier and often job-rich jurisdictions that could accommodate far more housing, particularly multifamily housing. The state has a number of laws on the books designed to ensure that housing gets built, but these laws generally only protect projects proposed on sites zoned for housing. When a jurisdiction gets a low RHNA number and thus has to zone very little land for housing, it frustrates the application of these laws and effectively allows that jurisdiction to remain off limits to housing construction."

Arguments in opposition: According to the California Building Industry Association, "while we appreciate the intent of this bill, and agree that the process of RNHA should be updated, the bill as currently drafted could result in a distinctively unbalanced approach to housing. There is a need for all types of housing projects across the state in order to keep pace with the demand. By favoring the production of below market rate housing, this proposal would ultimately result in fewer houses being built overall."

Committee amendments:

- Add a definition for "areas of high opportunity for lower-income residents" to mean areas that provide pathways to better lives, including through health, education, and employment.
- Revise the definition of housing organization as follows: (j) For purposes of this section, "housing organization" means a ~~nonproject~~ nonprofit organization whose primary mission includes providing or advocating for increased access to housing for low-income households.
- Delete the requirement that the regional housing allocation plan "not undermine the intent of" the objectives and methodology.

Technical amendment:

On page 6, line 11, delete "and not undermine the intent of"

On page 12, line 29 delete reference to subsection (d) of Section 65594 and change to subsection (d) of Section 65584.

*Double-Referred:* If AB 1771 passes out of this committee, the bill will be referred to the Committee on Local Government.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Rural Legal Assistance Foundation (co-sponsor)  
Western Center on Law and Poverty (co-sponsor)  
California Bicycle Coalition  
California Housing Consortium  
Disability Rights California  
American Planning Association (support if amended)

**Opposition**

California Association of Councils of Government  
California Building Industry Association

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