

Date of Hearing: June 20, 2018

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

SB 828 (Wiener) – As Amended May 25, 2018

SENATE VOTE: 23-10

SUBJECT: Land use: housing element

SUMMARY: Makes a number of changes to housing element law and to the regional housing needs allocation (RHNA) process. Specifically, **this bill:**

- 1) Requires a city's or county's inventory of land suitable for residential development to meet 125% of its RHNA requirement for all income levels.
- 2) Requires a city or county, if its inventory is not sufficient to meet its RHNA to identify zoning and other actions it will take to accommodate 100% of the unmet portion of its RHNA at all income levels, which must be made available for multifamily housing within the jurisdiction's existing urban service boundary.
- 3) Revises the data that council of governments (COGs) must provide to the Department of Housing and Community Development (HCD) to inform the methodology for determining the RHNA allocation:
 - a) The overcrowding rate for a healthy housing market; and
 - b) The percentage of households that are cost burdened and the rate of housing cost burden for healthy housing market.
- 4) Defines "cost burdened" to mean the share of very low-, low-, moderate- and above moderate-income households that are paying more than 30% of household income on housing costs.
- 5) Defines the term "rate of housing cost burden for a healthy housing market" to mean the rate of households that are cost burdened is no more than the average rate of households that are cost burdened in comparable regions throughout the nation, as determined by the COG.
- 6) Defines "healthy housing market" to be between 5% and 8% for both rental and ownership housing.
- 7) Defines "overcrowding rate" to mean that the overcrowding rate is no more than the average overcrowding rate in comparable regions throughout the nation as determined by the COG.
- 8) Requires HCD, in determining RHNA, to grant allowances to adjust for the rate of overcrowding, if the vacancy rate is between 5% and 8% indicating a healthy housing market, and the percentage of households that are cost burdened in comparable regions throughout the state, based on the region's total projected household growth, which includes existing households as well as future projected households.

- 9) Provides that the following shall not be a justification for a determination or a reduction in a jurisdiction's share of the RHNA:
 - a) Prior underproduction of housing in a city or county from the previous RHNA based on a jurisdiction's annual housing element production report; and
 - b) A stable population number in a city or county from the previous RHNA cycle.
- 10) States the intent of the Legislature that housing planning reduce racial and wealth disparities throughout the region.
- 11) Provides that the RHNA allocation plan shall assign additional weight to local governments that meet the following criteria in the distribution of RHNA for all income categories and in particular housing needs for low-and very low income households:
 - a) A local government with median employed household income above the 50th percentile for the region; and
 - b) A local government that either contains a major regional job center, as determined by the COG, or contains high-quality public transportation for the region, such as a major transit stop or stops along a high-quality transit corridor that connects to a regional job center.
- 12) Provides that the resolution approving the final housing need allocation plan shall demonstrate government efforts to reduce racial and wealth disparities throughout a region by assigning additional weight to local governments that meet the criteria in 11, a) and b), above in the distribution of the RHNA for all income categories and in particular for low-and very low-income households.
- 13) Revises existing intent language that previously recognized that although cities and counties should undertake all necessary actions to encourage, promote, and facilitate housing to accommodate the entire RHNA the Legislature recognizes that future housing production may not equal the RHNA established in the planning process to state that cities and counties should take reasonable actions to ensure that future housing production meet at a minimum the RHNA for planning purposes

EXISTING LAW:

- 1) Requires each of California's 18 metropolitan planning organizations (MPOs) and 26 regional transportation planning agencies to prepare a long-range regional transportation plan (RTP). The RTP identifies the region's vision and goals and how they will be implemented, as well as supporting the state's goals for transportation, environmental quality, economic growth, and social equity. An RTP must be adopted every four years (every five years in air quality attainment areas).
- 2) Requires, pursuant to SB 375 (Steinberg, Chapter 728, Statutes of 2008), for each MPO to prepare a sustainable communities strategy (SCS) as part of its RTP. The SCS demonstrates how the region will meet its greenhouse gas (GHG) emissions reduction targets through land use, housing, and transportation strategies. The state Air Resources Board must review the adopted SCS to confirm that it will indeed meet the regional GHG targets.

- 3) Requires every city and county to prepare and adopt a general plan, including a housing element, to guide the future growth of a community. The housing element must identify and analyze existing and projected housing needs, identify adequate sites with appropriate zoning to meet the housing needs of all income segments of the community, and ensure that regulatory systems provide opportunities for, and do not unduly constrain, housing development.
- 4) Requires local governments located within the territory of an MPO to revise their housing elements every eight years, following the adoption of every other RTP. Local governments in rural non-MPO regions must revise their housing elements every five years.
- 5) Provides that each community's fair share of housing to be determined through the regional housing needs allocation (RHNA) process, which is composed of three main stages: (a) the Department of Finance and the Department of Housing and Community Development (HCD) develop regional housing needs estimates; (b) councils of government (COGs) allocate housing within each region based on these estimates (where a COG does not exist, HCD makes the determinations); and (c) cities and counties incorporate their allocations into their housing elements.
- 6) Requires COGs to provide specified data assumptions to HCD from each COG's projections.
- 7) Requires the housing element to contain an assessment of housing needs and an inventory of resources and constraints relevant to meeting those needs.
- 8) Requires a locality's inventory of land suitable for residential development to be used to identify sites that can be developed for housing within the planning period and that are sufficient to provide for the locality's share of the regional housing need for all income levels. Requires the inventory to provide certain information on each site, such as the general plan designation and zoning of each site and available infrastructure.
- 9) Requires the inventory of land to specify the additional development potential for each non-vacant site within the planning period and an explanation of the methodology used to determine the development potential.
- 10) Requires, where the inventory of sites does not identify adequate sites to accommodate the need for groups of all household income levels, rezoning of those sites to be completed in a specified time period. Requires this rezoning to accommodate 100% of the need for housing for very low and low-income households for which site capacity has not been identified in the inventory of sites on sites that shall be zoned to permit rental multifamily residential housing by right during the planning period.
- 11) Prohibits a local jurisdiction from reducing or permitting the reduction of the residential density, or from allowing development at a lower residential density for any parcel, unless the jurisdiction makes specified written findings.

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 RHNA. 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.

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 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 allocations.

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 RHNA 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 RHNA 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 RHNA 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 RHNA is a jurisdiction's willingness to accept a higher share of the proposed share of the RHNA. 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.

Recent housing element changes: Last year's housing package included several bills that strengthened housing element law. AB 1397 (Low), Chapter 375 further tightens the site selection criteria in housing elements by raising the standards for sites that can be included in a city's or county's housing element. AB 1397 addressed concerns that the law permitted local governments to designate very small sites that cannot realistically be developed for their intended use, or designate non-vacant sites with an ongoing commercial or residential use, even though the current use is expected to continue indefinitely. Under AB 1397, identified sites must have a sufficient available water, sewer, and dry utilities supply and must be available and accessible to support housing development or be included in an existing general plan program or other mandatory program or plan. These changes should ensure that the sites identified in a city's or county's housing element are suitable for development and result in more housing at all income levels.

SB 166 (Skinner) Chapter 367 strengthened housing element law to require local governments maintain adequate housing sites at all times throughout the planning period for all levels of income. If a high-density market rate housing development is approved on a site that is identified as available for low- or very-low income housing and other sites in the housing element cannot make up for the lost capacity then additional land must be rezoned.

AB 72 (Santiago) Chapter 370, authorized HCD to find a locality's housing element out of substantial compliance if it determines that the locality has acted, or failed to act, in compliance with its housing element and HCD had previously found the housing element in substantial compliance. Additionally, it permits HCD to refer violations of housing element law to the state Office of Attorney General (AG). The primary mechanism to enforce state housing law is through the judicial system. It takes a great deal of resources to pursue judicial remedies; moreover, developers are hesitant to antagonize localities where they intend to have future development. AB 72 instead places this judicial enforcement burden on the state. Local governments without a certified housing element cannot access state funding for affordable housing construction.

Increasing the number of adequate sites: Existing law requires local governments to identify enough sites in their housing element inventory to accommodate 100% of their assigned RHNA. SB 828 would require local governments to identify sites available to meet 125% of their RHNA allocation for all income levels. According to the author, requiring local governments to zone for only 100% of the RHNA sets local governments up for failure as not every newly zoned parcel will have the development approved and the project constructed within several years. Because of the requirement to have enough sites zoned to accommodate the RHNA throughout the entire cycle imposed by SB 166 (Skinner) it is possible that local governments may zone more sites than required to meet their RHNA to avoid having to rezone mid-cycle. But it is not clear if that cushion should be twenty-five percent. Local governments have expressed concern that they will find it hard to identify enough sites to meet 100% of their RHNA in light of the changes made through last year's bills. The Committee may wish to consider if the state policy should be prioritizing quality sites that have a real chance of being developed or quantitatively more sites.

Rezoning sites: Existing law requires that if a jurisdiction's inventory is insufficient to meet its RHNA it must rezone sufficiently to meet its RHNA obligation within three years. Currently approximately 10% of cities and counties are subject to the rezoning requirement. If a local government cannot accommodate their RHNA on existing sites, this bill would require them to rezone 100% of the sites within the city's or county's existing urban service boundary and make those sites available for multifamily housing. It is unclear in the bill if the city and county is required to rezone to accommodate 125% of the RHNA. The purpose of this requirement appears to be to encourage multifamily housing near existing development and to avoid sprawl, however it is important to note that counties do not have urban service boundaries only cities do so it's unclear how this will be implemented.

In addition, this bill amends the section that establishes the general requirements related to rezone programs, Government Code Section 65583(c) (1), rather than the section that sets specific requirements for rezoning Government Code Section 65583.2 (h). To clarify the intent of the bill and to be consistent with statutory construction, this should be corrected.

Changes to RHNA Process: Existing law requires a COG to provide certain data to HCD, including, among other things, the vacancy rates in the jurisdiction's existing housing stock versus the vacancy rates for a healthy housing market. This bill establishes the vacancy rate for a healthy housing market between 5-8% for both rental and ownership housing. Vacancy rates can be an indicator of the balance between housing supply and demand. A high vacancy rate may indicate an excess supply of units, resulting in lower prices; a low vacancy rate may indicate a shortage of units, driving housing prices upward. A high vacancy rate in combination with a growing population may be an indicator of more people moving in together, e.g., overcrowding. By setting the bar at 5-8%, this bill aims to drive housing production up to the point that vacancy rates fall within that range, which could conceivably help stabilize or drive down prices in high-cost areas.

This bill requires HCD, in determining the RHNA, to grant allowances to adjust for overcrowding, vacancy rates, and housing cost burden based on the region's existing and projected households. The author states that in the past, HCD has applied such calculations only to projected households, rather than to existing and projected. The author states that this provision will codify a more sound methodology for calculating existing need.

This bill prohibits COGs from using prior underproduction of housing, or stable population numbers, as justification for a determination or reduction in a city's or county's share of the RHNA. The author states that HCD has very little oversight authority regarding COGs' methodology for allocating housing obligations to local jurisdictions. The author notes that more often than not, this results in heavily politicized housing allocations, in particular for affordable housing, divorced from the data about true housing demand and fair share principles. For example, in the last RHNA cycle, Redondo Beach was allocated 1,397 units of housing for an eight-year period, while Hermosa Beach and Manhattan Beach – adjacent and demographically similar coastal communities – were allocated 2 and 37 units, respectively. This bill aims to help address such inequities.

This bill requires the final allocation plan to assign additional weight, particularly for low- and very low-income categories, to jurisdictions that meet specified criteria relating to job centers and transit availability. The author states that this provision is intended to provide parity

between the equity goals of the RHNA, and sustainable communities strategies' goals to concentrate housing in high-opportunity and high-transit areas.

Arguments in support: Supporters argue that the requirement to identify 125% of RHNA will create a built in cushion to ensure enough developable sites. In addition, they argue that RHNA does not take into consideration historic underproduction of housing and this bill would revise the methodology for determining RHNA to take that into consideration.

Arguments in opposition: Opponents representing cities and counties oppose the requirement in this bill to zone 25% more sites than current law when SB 166 Chapter 367, Statutes of 2017 already requires each jurisdiction to identify enough sites to accommodate, its remaining unmet share of the RHNA, at all times during the planning period. They argue that bill as well as AB 1397 (Low) Chapter 375, Statutes of 2017 will result in more adequately zoned capacity is maintained throughout the planning period and that only those sites readily developable can be included in the inventory of land suitable for develop of lower-income housing.

Staff comments: This bill requires HCD to consider the "overcrowding rate in a healthy housing market" when determining the RHNA numbers for a region. The overcrowding rate for a healthy housing market means that the overcrowding rate is no more than the average overcrowding rate in comparable regions throughout the nation. The committee may wish to consider if overcrowding should be a sign of a healthy housing market. The intent of RHNA is to reduce overcrowding through adequately addressing the supply of housing, it is unclear why state policy should support or assume a level of overcrowding is in fact acceptable.

Committee amendments:

- 1) Replace the term "overcrowding rate in a healthy housing market" with "overcrowding rate in a comparable housing market" when determining RHNA allocation.

Related legislation: AB 1771 (Bloom) also makes change to the COGs methodology for assigning RHNA and provides for a process for HCD to appeal and allocation. That bill passed out of this committee 6-1 and is currently pending hearing in the Senate Transportation and Housing Committee.

Double-referred: This bill was also referred to the Committee on Local Government where it will be heard should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Building Industry Association
 California Business Properties Association
 California Chamber of Commerce
 Non-profit Housing Association of Northern California
 Silicon Valley Community Foundation

Opposition

California State Association of Counties

City of Beverly Hills
City of Long Beach
City of San Marcos
Marin County Council of Mayors and Councilmembers
Rural County Representatives of California
Santa Barbara County Board of Supervisors
Urban Counties of California
Individuals (2)

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