

Date of Hearing: June 22, 2021

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

SB 8 (Skinner) – As Amended June 1, 2021

SENATE VOTE: 30-2

SUBJECT: Housing Crisis Act of 2019

SUMMARY: Extends the sunset on the Housing Crisis Act of 2019 (HCA) by five years, clarifies demolition and replacement provisions, and makes other changes. Specifically, **this bill:**

- 1) Extends the sunset on the HCA by five years, to January 1, 2030.
- 2) Specifies, and provides as declaratory of existing law, the following:
 - a) That the definition of “housing development project” for the purposes of the HCA includes both discretionary and ministerial projects;
 - b) That the definition of “housing development project” for the purposes of the HCA includes projects to construct single dwelling units; and
 - c) That the receipt of a density bonus is not a basis for finding a project out of compliance with local zoning rules.
- 3) Clarifies that appeals and public meetings related to density bonus law are counted for the purposes of the five hearing limit in the HCA, and specifies “hearing” does not include an appeal related to a legislative approval required for a proposed housing development project.
- 4) Adds a definition related to compliance with additional ordinances when a project has not commenced construction within 2.5 years of receiving final approval, specifically that “commenced construction” means that certain preliminary inspections under the building code have been requested.
- 5) Provides that a jurisdiction cannot reduce a parcel’s allowed intensity of land use below what was allowed on January 1, 2018 under either the jurisdiction’s land use designation “or” zoning ordinances, rather than both.
- 6) Provides, regarding the HCA’s demolition and replacement provisions, the following:
 - a) Replacement requirements must be followed, despite local density requirements that may be in conflict;
 - b) Relocation and right of first refusal requirements would no longer apply to:
 - i) The occupants of any protected units that are persons or families of above moderate income; or
 - ii) An occupant of a short-term rental that is rented for a period of fewer than 30 days.

- c) The right of first refusal provided to occupants of protected units would not apply when the new development would be any of the following types of housing:
 - i) Transitional housing or supportive housing units;
 - ii) Units in a nursing home, residential care facility, or assisted living facility; and
 - iii) Certain affordable housing units where replacing them would violate requirements to provide units to even lower income residents than the existing tenants.
 - d) For moderate-income households, jurisdictions would no longer have the ability to choose whether the replacement units would be made available at affordable rent or affordable housing cost or would be replaced in compliance with the jurisdiction's rent or price control ordinance;
 - e) For right of first refusal for a comparable unit, allows a housing developer to offer a unit that is subject to the jurisdiction's rent control ordinance in lieu of offering a unit in the development at affordable cost; and
 - f) That the relocation and right of first refusal requirements do not confer additional legal protections upon an unlawful occupant of a protected unit.
- 7) Defines, for the purposes of the requirement to upzone concurrently with a downzone, "concurrently" to mean at the same meeting, or within 180 days of the downzoning if the downzoning was requested by an applicant for a housing development project.
- 8) Provides that no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution. However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

EXISTING LAW: The Housing Crisis Act (HCA) of 2019 (SB 330, Skinner, Chapter 654, Statutes of 2019), places restrictions on certain types of development standards, amends the Housing Accountability Act (HAA), and makes changes to local approval processes and the Permit Streamlining Act. Specifically, the HCA:

- 1) Prohibits specified cities and counties, with respect to land where housing is an allowable use, from enacting a development policy, standard, or condition that would have the effect of limiting housing development in several ways, including, but not limited to the following effects:
 - a) Reducing the development capacity of a parcel below what was allowed under the land use designation and zoning ordinances of the affected county or affected city as in effect

January 1, 2018, unless the city or county concurrently increases development capacity elsewhere in the jurisdiction such that there is no net loss in residential capacity.

- b) Imposing or enforcing design review standards established after January 1, 2020, if the standards are not objective.
- 2) Provides that if a housing development project complies with the applicable objective general plan and zoning standards in effect at the time an application is deemed complete, a city or county must not conduct more than five hearings in connection with the approval of that housing development project, and requires the city or county to consider and either approve or disapprove the application at any of the five hearings.
 - 3) Establishes a procedure for filing a preliminary application for a housing development project, and establishes that a housing development project that has submitted a preliminary application must be subject only to the ordinances, policies, and standards adopted and in effect when the preliminary application was deemed to be complete.
 - 4) Establishes demolition protections and provisions as follows:
 - a) Prohibits an affected city or county from approving a housing development project that will require the demolition of residential units unless the project will create at least as many units as demolished.
 - b) Defines “protected units” as any of the following:
 - i) Units that are or were subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income within the past five years;
 - ii) Units that are or were subject to any form of rent price control within the past five years;
 - iii) Units that are or were occupied by lower- or very low- income households within the past five years; and
 - iv) Units that were withdrawn from rent or lease pursuant to the Ellis Act within the past 10 years.
 - c) Establishes that a project shall not be approved if it will demolish protected units, unless all of the following apply:
 - i) The project will replace all existing or demolished protected units;
 - ii) Any existing residents will be allowed to occupy their unit until six months before the start of construction activities with proper notice;
 - iii) The developer agrees to provide both of the following to the occupants of any protected units:

- I. Relocation benefits, as specified; and
 - II. A right of first refusal for a comparable unit available in the new housing development affordable to the household at an affordable rent or an affordable cost.
- iv) Enables the city or county, for rent- or price-controlled units occupied in the past five years by moderate- or above moderate-income households, to choose either to:
- I. Require that the replacement units be made available at affordable rent or affordable housing cost to, and occupied by, low-income persons or families; or
 - II. Require that the units be replaced in compliance with the jurisdiction’s rent or price control ordinance.
- 5) Sunsets these provisions on January 1, 2025.

FISCAL EFFECT: Unknown.

COMMENTS:

Author’s Statement: According to the author, “California continues to face a severe housing shortage and affordability crisis. Rent and home prices remain too high because we’ve failed to build enough housing for decades. The good news is SB 330, the Housing Crisis Act of 2019, is working, and more housing is getting built. However, the Act is scheduled to expire in 2025. SB 8 allows the success of SB 330 to continue for five additional years by extending SB 330’s provisions until 2030, and adding clarifying language to ensure that the bill’s original intent of streamlining the production of housing that meets a local jurisdiction’s existing zoning and other rules is met.”

Planning for and Approval of Housing: Planning for and approving new housing is mainly a local responsibility. The California Constitution allows cities and counties to “make and enforce within its limits, all local, police, sanitary and other ordinances and regulations not in conflict with general laws.” It is from this fundamental power (commonly called the police power) that cities and counties derive their authority to regulate behavior to preserve the health, safety, and welfare of the public – including land use authority. Cities and counties enforce this land use authority through zoning regulations, as well as through an “entitlement process” for obtaining a building permit. In most cities, the entitlement process requires multiple discretionary decisions regarding the subdivision of land, environmental review per the California Environmental Quality Act (CEQA), design review, and project review through such bodies as a planning commission and city council. These processes are often time consuming, redundant, and risky. Additionally, they vary greatly between jurisdictions. Both of these factors make it very difficult for smaller, less well-resourced developers to feasibly develop medium-density housing.

Housing Crisis Act of 2019 (HCA): In response to the state’s ongoing housing crisis, the Legislature enacted SB 330 (Skinner, Chapter 654, Statutes of 2019). The HCA had several main components, including but not limited to the following:

- Maintaining the amount of development capacity in the state, by prohibiting certain local actions that would reduce housing capacity;
- Increasing certainty for developers, by prohibiting a local agency from applying new rules or standards to a project after a preliminary application containing specified information is submitted;
- Facilitating a timely approval process, by establishing a cap of five hearings that can be conducted on a project that complies with objective local standards in place at the time a development application is deemed complete; and
- Ensuring there is no reduction of housing in the state, especially affordable housing, by establishing anti-demolition and anti-displacement protections. Under the HCA, projects cannot require the demolition of housing unless the project creates at least as many new homes, and cannot demolish affordable housing units protected by law unless the project replaces the units and allows existing residents to occupy their units until six months before construction starts. The developer must also provide relocation assistance and a right of first refusal to the residents in the new development at affordable rates.

This bill proposes several changes to the HCA. The most substantial change is the proposed extension of the HCA's sunset by five years, to January 1, 2030. The HCA has only been effective for 18 months – 15 of which have been during a global pandemic. As such, it is very difficult to determine its effectiveness and need for extension. Conversely, the original five-year sunset is likely too short to produce the systematic change envisioned by the bill, which merits its extension. Either way, given the substantial mismatch between supply and demand for housing, it is unlikely that the state's housing crisis will be resolved by 2025 – or even 2030.

Other proposed changes to the HAC are in response to challenges that have arisen in implementing the bill – including discrepancies in the intent of the author and interpretations of the law by the Department of Housing and Community Development, as well as local agencies. This includes language to specify that the HCA applies to both discretionary and ministerial projects, and to projects to construct single dwelling units.

A final set of changes are proposed to the HCA's anti-demolition provisions, as described above. HCA imposed new requirements to provide replacement, relocation, and right of first refusal to protect the existing housing stock and the residents who lived in those units. Previously, the state had no requirement that demolished units be replaced, despite our housing crisis. Additionally, the state did not have requirements to provide support for those displaced by these demolitions, including relocation and right of first refusal.

This bill makes changes to these provisions to limit their application in certain circumstances. First, it would remove the relocation and right of first refusal provisions for higher income residents of demolished units. Additionally, the bill would remove the right of first refusal for residents of demolished units when those residents are unlikely to qualify for the units being built – such as when the new units are supportive housing for the formerly homeless. The author may wish to consider strategies to further support lower income residents that are displaced and that would not be offered a right of first refusal due to the provisions of this bill.

Arguments in Support: Supporters of the bill include groups that support housing production as part of the solution to the housing crisis. They argue that the HCA is an important tool to address the state's housing crisis, and that extending the sunset is therefore justified. They also support the clarifying changes made. For example, according to the League of Women Voters, this bill is

“an important step toward preventing local jurisdictions from reducing housing capacity and ameliorating California’s housing crisis.”

Arguments in Opposition: Opponents of the bill are largely local jurisdictions and groups that do not support the development of housing in existing residential communities. They argue that it is too soon to extend the sunset date for the HCA, and that the HCA itself is detrimental, particularly to cities recovering financially from the pandemic. For example, according to the City of Newport Beach, “SB 330 is under two years old. Accounting for COVID-19 related impacts over the past year, it is far too early to evaluate necessary changes to enhance SB 330’s effectiveness, let alone extend its sunset to 2030.”

Related Legislation:

SB 330 (Skinner), Chapter 654, Statutes of 2019. This bill restricts, for a period of five years, actions by cities and counties that would reduce the production of housing.

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

REGISTERED SUPPORT / OPPOSITION:

Support

Abundant Housing LA
Bay Area Council
Bridge Housing Corporation
CalChamber
California Apartment Association
California Association of Realtors
California Community Builders
California Hispanic Chamber of Commerce
California YIMBY
Casita Coalition
CBIA
Circulate San Diego
City of Alameda
Council of Infill Builders
Eden Housing
Facebook
Fieldstead and Company
Greenbelt Alliance
Greenlining Institute
Habitat for Humanity California
Housing Action Coalition
League of Women Voters of California
MidPen Housing
Modular Building Institute
Sand Hill Property Company

Silicon Valley Leadership Group
Spur
SV@Home
The Two Hundred
TMG Partners

Opposition

Albany Neighbors United
California Cities for Local Control
Catalysts
Center for Biological Diversity
City of Cupertino
Grayburn Avenue Block Club
Latino Alliance for Community Engagement
Livable California
Riviera Homeowners Association
Sustainable TamAlmonte

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