

Date of Hearing: April 27, 2011

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

Norma Torres, Chair

AB 1103 (Huffman) – As Amended: March 31, 2011

SUBJECT: Land use: housing element.

SUMMARY: Makes a number of changes to housing element law. Specifically, this bill:

- 1) Adds second units and units and foreclosed property to the types of existing units a local government can count towards meeting a portion of its regional housing need if it provides committed assistance to make the units affordable.
- 2) Allows a city or county to request that the council of governments adjust the jurisdiction's "default" density if based on a demonstration by the city or county that the density is not consistent with the city's or county's designation as nonmetropolitan, suburban, or metropolitan.
- 3) Specifies that a city or county may meet the appropriate regional housing needs assessment without using land use controls to set aside the appropriate densities throughout the jurisdiction.
- 4) Allows a local government to count each housing unit that meets the requirements of the jurisdiction's sustainable communities strategy as one and one half units for purposes of meeting the local government's regional housing needs assessment.

EXISTING LAW

- 1) Requires every city and county to prepare and adopt a general plan containing seven mandatory elements, including a housing element (Government Code Sections 65300 and 65302).
- 2) Requires a jurisdiction's housing element to 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 (Government Code Section 65583).
- 3) Requires cities and counties within a metropolitan planning organization in a region classified as nonattainment for one or more pollutants regulated by the federal Clean Air Act to revise their housing elements every eight years based on a staggered statutory schedule (Government Code Section 65588).
- 4) Requires all other local governments to revise their housing elements every five years based on a staggered statutory schedule (Government Code Section 65588).

- 5) Requires, prior to each housing element revision, that each council of governments (COG), in conjunction with the Department of Housing and Community Development (HCD), prepare a regional housing needs assessment (RHNA) and allocate to each jurisdiction in the region its fair share of the housing need for all income categories. Where a COG does not exist, HCD determines the local share of the region's housing need. (Government Code Sections 65584-65584.09)
- 6) Divides the RHNA into the following income categories:
  - a) Very low-income (50% or lower of area median income), including extremely low-income (30% or lower of area median income);
  - b) Low-income (80% or lower of area median income);
  - c) Moderate-income (between 80% and 120% of area median income); and
  - d) Above moderate-income (exceeding 120% area median income).
- 7) Requires housing elements to include an inventory of land suitable for residential development that identifies enough sites that can be developed for housing within the planning period to accommodate the jurisdiction's entire share of the RHNA (Government Code Sections 65583 and 65583.2).
- 8) Allows a jurisdiction to do either of the following in order to show that a site is adequate to accommodate some portion of its share of the RHNA for lower-income households:
  - a) Provide an analysis demonstrating that the site is adequate to support lower-income housing development at its zoned density level, and requires the analysis to include, but not be limited to, factors such as market demand, financial feasibility, or information based on development project experience within a zone or zones that provide housing for lower income households; or
  - b) Zone the site at the jurisdiction's "default" density level.(Government Code Section 65583.2)
- 9) Establishes the following "default" density levels for purposes of establishing a site's adequacy for supporting lower-income housing development:
  - a) 15 units per acre for incorporated cities within nonmetropolitan counties and for nonmetropolitan counties that have micropolitan areas;
  - b) 10 units per acre for unincorporated areas in all nonmetropolitan counties not included in clause (i): sites allowing at least 10 units per acre.
  - c) 20 units per acre for suburban jurisdictions; and
  - d) 30 units per acre jurisdictions in metropolitan.

(Government Code Section 65583.2)

10) Specifies that jurisdictions are classified as follows:

- a) Metropolitan counties, nonmetropolitan counties, and nonmetropolitan counties with micropolitan areas are as determined by the United States Census Bureau;
- b) Nonmetropolitan counties with micropolitan areas include the following counties: Del Norte, Humboldt, Lake, Mendocino, Nevada, Tehama, and Tuolumne and such other counties as may be determined by the United States Census Bureau to be nonmetropolitan counties with micropolitan areas in the future;
- c) Suburban jurisdictions are those located in a Metropolitan Statistical Area (MSA) of less than 2,000,000, unless that jurisdiction's population is greater than 100,000, in which case it is considered metropolitan. Counties, not including the City and County of San Francisco, are considered suburban unless they are in an MSA of 2,000,000 or greater in population in which case they are considered metropolitan; and
- d) Metropolitan jurisdictions are those located in an MSA of 2,000,000 or greater, unless the jurisdiction's population is less than 25,000 in which case it is considered suburban.

(Government Code Section 65583.2)

11) Requires each local government to make sites available during the first three years of the housing element planning period with appropriate zoning and development standards and with services and facilities to accommodate the city's or county's share of the regional housing need (Government Code Section 65583).

12) Allows a city or county to meet up to 25% of its share of the regional housing need through a program committing the local government to make certain existing housing units affordable to low- and very low-income households during the planning period through the provision of committed assistance (Government Code Section 65583.1).

13) Limits the program to the following categories of units:

- a) Units that are to be substantially rehabilitated and that will have long-term affordability covenants and restriction that require them to be available to, and occupied by, a person of low- or very low income at affordable housing costs for at least 20 years;
- b) Units that are located in a multifamily rental housing complex of four or more units, will be converted from nonaffordable to affordable, and will have long-term affordability covenants and restrictions that require the unit to be affordable to persons of low- or very low-income for at least 55 years; and
- c) Units in an assisted housing development at risk of conversion to market rate housing or another use that will be preserved at an affordable housing cost to persons or families of low or very low incomes for at least 40 years.

(Government Code Section 65583.1)

- 14) Defines "committed assistance" to mean that the city or county enters into a legally enforceable agreement during the period from the beginning of the projection period until the end of the second year of the planning period that obligates sufficient available funds to provide the assistance necessary to make the identified units affordable and that requires that the units be made available for occupancy within two years of the execution of the agreement (Government Code Section 65583.1).
- 14) Specifies that if, by July 1 of the third year of the planning period, the city or county has not committed assistance for all of the units specified in its housing element, the city or county must identify adequate sites to accommodate the number of units for which committed assistance was not provided (Government Code Section 65583.1).
- 15) Specifies that if a city or county does not identify adequate sites to address any shortfalls in committed assistance, or fails to complete the rehabilitation, acquisition, purchase of affordability covenants, or preservation of any housing unit within two years after committed assistance was provided to that unit, then it is limited in the next housing element to only the number of units actually provided or preserved due to committed assistance rather than 25% of its share of the regional housing need (Government Code Section 65583.1).
- 16) Requires metropolitan planning organizations to include a sustainable communities strategy (SCS), as defined, in their regional transportation plans, or an alternative planning strategy (APS), for the purpose of reducing greenhouse gas emissions; aligns planning for transportation and housing, and creates; and creates specified incentives for the implementation of the strategies. (SB 375 (Steinberg), Chapter 728, Statutes of 2008).

FISCAL EFFECT: Unknown

COMMENTS:

Background

Every local government is required to prepare a housing element as part of its general plan. The housing element process starts when HCD determines the number of new housing units a region is projected to need at all income levels (very low-, lower-, moderate-, and above-moderate income) over the course of the next housing element planning period to accommodate population growth and overcome existing deficiencies in the housing supply. This number is often referred to as the "RHNA" number (short for regional housing needs assessment). The COG for the region, or HCD for areas with no COG, then assigns a share of the RHNA number to every city and county in the region based on a variety of factors.

In preparing its housing element, a city or county must show how it plans to accommodate its share of the RHNA. The housing element must include an inventory of sites already zoned for housing. If a community does not have enough sites within its existing inventory of residentially zoned land to accommodate its entire RHNA, then the community must adopt a program to rezone land within the first three years of the planning period. With respect to sites rezoned to accommodate the need for very low- and low-income housing, the new zoning must allow

multifamily residential use by right and be zoned at minimum densities of 16 to 50 units per acre depending on the jurisdiction.

Cities and counties are required to demonstrate that sites are adequate to accommodate housing for each income group based on the zoning after taking into consideration individual site factors such as property size, existing uses, environmental constraints, and economic constraints. With respect to the zoning, density can be used as a proxy for affordability. Jurisdictions may establish the adequacy of a site for very low- or low-income housing by showing that it is zoned at the “default” density (also referred to as the Mullin density). These densities range from 10 to 30 units per acre depending on the type of jurisdiction. Jurisdictions may also include sites zoned at lower densities by providing an analysis of how the lower density can accommodate the need for affordable housing.

Existing law allows jurisdictions to meet up to 25% of their zoning obligation by instead adopting a program to make certain existing housing units affordable to low- and very low-income households during the planning period. Eligible units include units that are to be substantially rehabilitated, units in multifamily rental complexes that are to be converted from unaffordable to affordable, and units in an assisted housing development (such as public housing) that are at risk of conversion to market rate or to another use. In all cases, the units must have affordability covenants and restrictions that will keep them affordable to low- and very-low income households for 20 to 55 years depending on the type of unit.

SB 375 (Steinberg, Chapter 728, Statutes of 2008), requires metropolitan planning organizations to include a sustainable communities strategy (SCS) in their regional transportation plans. The SCS will outline the region's plan for combining transportation resources, such as roads and mass transit, with a realistic land use pattern, in order to meet a state target for reducing greenhouse gas emissions. The strategy must take into account the region's housing needs, transportation demands, and protection of resource and farm lands. SB 375 requires that COGs allocate the RHNA in a manner that is consistent with the SCS.

#### Purpose of the Bill

According to the author, the goal of AB 1103 is to provide flexibility for local governments to allow them to meet the housing needs of their residents and workforce. The bill is intended to allow cities and counties to find creative and innovative ways of providing housing, and provides incentives for smart growth development, while ensuring local governments meet their regional housing needs.

#### Housing Element Working Group

A number of the changes proposed by AB 1103, including the changes relating to the default densities, impact reforms to housing element law that came out of the Housing Element Working Group (HEWG). The group, which was convened by HCD in 2003, was a broad-based group that included representatives from local government, councils of government, the for-profit and non-profit development community, and affordable housing advocacy groups. HCD proposed the group after several lengthy and divisive Legislative battles over changes to housing element law, including the fight over SB 910 (Dunn, 2002) that would have imposed severe penalties on local governments for failing to adopt a housing element that HCD found to be in compliance with the law.

The HEWG met from June through November of 2003 and reached consensus on reform proposals in three major areas: the regional housing needs allocation process, increasing housing development certainty, and the identification of adequate sites. The bills that implemented the reform proposals represented a consensus agreement and received broad bi-partisan support throughout the legislative process. No “no” votes were cast against the bills.

HCD recently reconvened a new HEWG to evaluate how effective the changes that came out of the prior HEWG have been and to examine whether further changes to housing element law may be necessary to achieve the goals of SB 375. The group has already met several times and has identified a variety of issues on which to focus its attention.

Given that the HEWG is currently meeting, the Committee may wish to consider whether it makes sense to allow the working group to try to reach consensus around some of the issues raised in AB 1103 before pursuing legislation.

#### Staff Comments

AB 1103 contains language that appears to be intended to make clear that a city or county does not have to zone at its default density. However, this is already the law. In establishing the adequacy of sites for affordable housing, current law allows a city or county to either zone the site at the default density or provide an analysis demonstrating the site’s adequacy. The law is not ambiguous on this point, so it is unclear why any further clarification is necessary.

AB 1103 additionally allows jurisdictions to ask their COG for a lower default density than the one provided in law. It is unclear on what basis a COG would judge whether or not a lower default density is appropriate for a particular jurisdiction. In addition, given that cities and counties have no obligation to zone land at their default density, it is unclear why this language is necessary. If a local government can show that affordable housing can be developed within the jurisdiction at lower densities, then the law allows these lower density sites to count towards meeting a share of the jurisdiction’s RHNA for lower-income households. If local governments feel that HCD’s process for accepting lower-density sites is not working adequately, then the Committee may wish to consider asking the HEWG to discuss this issue to see what, if any, changes may be warranted.

With respect to the language in AB 1103 relating to the extra credit for units that are consistent with a local jurisdiction’s SCS, this language may fundamentally conflict with the goals of SB 375. Part of the goal of SB 375 is to ensure that the right amounts of housing get built in the right locations as part of the overarching strategy of encouraging development patterns that lead to reductions in greenhouse gas emissions. SB 375 requires the regional housing needs allocation plan to be consistent with the region’s SCS. If a local government can get extra credit for housing that is consistent with the SCS, this means that the jurisdiction can provide fewer units than the SCS and the RHNA process determined were necessary. Thus, the right amounts of housing will not end up in the right places as envisioned by the SCS.

#### Committee Amendments

- 1) Delete the portions of the bill having to do with the “default” densities (page 10, lines 28-37) and the language relating to extra credit for housing units that are consistent with a jurisdiction’s sustainable communities strategy (page 12, lines 22-27).

2) Redraft the language allowing jurisdictions to count second units and units on foreclosed property that are converted from nonaffordable to affordable to low- and very low-income households with committed assistance from the jurisdictions as follows:

- On page 4, line 16, strike "(e)"
- On page 5, line 15, after "located" insert: "either on foreclosed property or"
- On page 6, rewrite (D) as follows:

(D) Units that are second units on a property that will be converted with committed assistance from the city or county from nonaffordable to affordable to low- or very low-income households by the purchase of affordability covenants and restrictions that require the unit to be affordable to and reserved for occupancy by low- or very-low income households for a period of at least 40 years.

3) Insert the following uncodified language:

It is the intent of the Legislature to examine whether the densities specified in subparagraph (B) of paragraph (3) of subsection (c) of Section 65583.2 of the Government Code could be adjusted for some jurisdiction without impeding the attainment of the state housing goal as described in Section 65580 of the Government Code.

Double referred: The Assembly Committee on rules referred AB 1103 to the Committee on Housing and Community Development and Local Government. If AB 1103 passes this committee, the bill must be referred to the Committee on Local Government.

REGISTERED SUPPORT / OPPOSITION:

Support

City of Novato  
Fireman's Fund Insurance Companies  
San Marin Compatible Housing Coalition

Opposition

None on file

Analysis Prepared by: Anya Lawler / H. & C.D. / (916) 319-2085