

Date of Hearing: April 27, 2011

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

Norma Torres, Chair

AB 679 (Allen) – As Introduced: February 11, 2011

SUBJECT: Land use: housing element.

SUMMARY: In cases where a county is providing funding for affordable housing construction within a city, allows a transfer of a portion of the county's share of the regional housing need to the city to reflect the specific affordability of the units being funded rather than having to be proportional across all income categories.

EXISTING LAW

- 1) Allows a county to transfer a portion of its share of the regional housing need to a city or cities within the county that agree to the transfer, but stipulates that county's share of low- and very low-income housing can be reduced only in proportion to the amount by which the county's share of moderate- and above moderate-income housing is reduced (Government Code Section 65584.07).
- 2) From January 1, 1997 through June 30, 2007, allowed the County of Napa to meet up to 15 percent of its existing share of the regional housing need for lower-income households by committing funds for the construction of affordable housing units within one or more cities within the county, if various conditions were met (Government Code 65584.6).

FISCAL EFFECT: None

COMMENTS:

Background

Under current law, counties can transfer a portion of their share of the regional housing need to a city within the county if the city agrees to take on the additional allocation. In implementing such a transfer, a county's share of low- and very low-income housing can be reduced only in proportion to the amount by which the county's share of moderate- and above moderate income housing is reduced. The proportionality requirement is consistent with the overall goal of housing element law to ensure that every jurisdiction plans for housing across all income levels and serves to ensure that a county does not pursue transfers simply as a way to remove its obligation to plan for affordable housing.

In 1996, Napa County successfully pursued legislation (AB 3452, V. Brown, Chapter 1018, Statutes of 1996) to allow the county to transfer a portion of its lower-income RHNA (short for regional housing needs assessment) without having to follow the proportionality requirement if it provided funding to ensure that the units got built within the city that accepted the transfer. Such transfers were limited to 15% of the county's total share of the RHNA for lower-income households and the statutory language include a sunset date of Jun 30, 2004. At the time, the county argued that there were a variety of unique circumstances in Napa County that made

affordable housing development difficult within the unincorporated area, including a voter-approved measure designed to protect the county's valuable agricultural land.

Napa County's special transfer authority was extended in 2000 (AB 2430), Wiggins, Chapter 358, Statutes of 2000, allowing the county pursue non-proportional transfers through June 30, 2007. AB 2430 also placed additional conditions on the transfers, including that the number of units transferred could not exceed 40% of the number of lower-income units built in the unincorporated area during the same planning period. In other words, for every one unit transferred, the county would have to show that 2.5 units were built in the unincorporated area. The extension of the transfer authority expired in June, 2007.

Purpose of the Bill

Napa County's last housing element was due in June of 2009. HCD's review of the draft element found that it was not in compliance with the law, primarily because HCD did not believe that the county had identified adequate sites to support the development of affordable housing. The county had included a number of sites in its housing element at below the default density of 20 units per acre, and HCD did not believe the county's analysis of those sites was enough to establish their adequacy. The county disagrees with HCD's position and believes that it provided all of the analysis that the law requires. The county adopted the housing element despite HCD's finding that it was not in compliance with the law and was subsequently sued by Latinos Unidos, a farmworker advocacy group. That suit is currently being litigated.

The county's next housing element update is due in October, 2014. Prior to that update, the county is seeking legislation that it believes would make it easier for the county to produce a housing element that complies with the law. AB 679 is one of two bills that county is sponsoring to provide more flexibility. The other, AB 542, has also been referred to this committee.

Napa County has a sizable affordable housing trust fund that is capitalized through fees on development in the county. The county has spent over \$21 million from this trust fund since 1989, almost entirely on projects within the City of Napa. For many of these projects, the county was not able to get "credit" towards meeting its RHNA obligations. For example, the county has recently providing funding for two projects within the City of Napa with a total of 104 units of low- and very low-income housing. However, because of the proportionality requirement, Napa County is not able to transfer 104 units worth of its lower-income RHNA share to the city.

Napa County is pursuing AB 679 to allow counties to transfer a portion of their lower-income RHNA without also transferring a portion of the RHNA at the moderate- and above moderate-income levels, if they provide funding for the affordable units that are transferred. They argue that this would provide an incentive for counties to provide funding for affordable housing within cities and would ensure that more affordable housing actually gets built.

Housing Element Working Group

The law that allows RHNA transfers and requires them to be proportional across income categories was passed in 2004. It was one of many reforms to the RHNA process included in AB 2158 (Lowenthal), Chapter 696, Statutes of 2004, was one of the major pieces of legislation 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.

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. AB 2158 was one of the legislative vehicles for implementing these reforms. Because the bill represented a consensus agreement, it received broad bi-partisan support throughout the legislative process. No “no” votes were cast against the bill.

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.

AB 679 proposes changes to what was a carefully crafted compromise around RHNA transfers. Given that the HEWG is currently meeting and there is no rush to make statutory changes (Napa County’s next housing element update is not due until October of 2015), the Committee may wish to consider asking the county to first take this issue to the working group before pursuing legislation. The HEWG was able to reach consensus on the issue of RHNA transfers in the past, and it may be worth seeing if its members can reach consensus on changes to the transfer process before pursuing legislation.

Arguments in Support

Napa County argues that AB 679 creates incentives for counties to fund low-income housing in the location that is most beneficial to the persons who will occupy them. The county notes that this flexibility will also stimulate local job growth as it will increase the number of units being built.

Arguments in Opposition

Opponents, including the California Rural Legal Assistance Foundation and the Western Center on Law and Poverty, argue that AB 679 would undo protections that ensure that a county cannot simply shift its obligations to plan for low-income households to another jurisdiction. They argue that requirements in current law exist to ensure that the fair share provisions of RHNA are maintained and that every jurisdiction is planning for the housing needs of all income groups.

Committee Amendments

Remove the broad language in the current bill allowing unlimited transfers that are not proportional across income categories and replace it with the expired Napa-specific transfer statute that allows the county to transfer 15% of its lower-income RHNA to cities within the county without having to transfer at the higher income levels if it provides funds to build the units. This statute contains a variety of checks and balances to ensure that Napa County is also pursuing affordable housing development in the unincorporated area at the same time that it is funding affordable housing development within cities.

In reactivating the Napa-specific statute, make the following changes to the existing language:

- 1) Delete the June 30, 2007, sunset date and replace with October 31, 2022.

- 2) Delete the requirement that the receiving city demonstrates that it has met, in the current or previous housing element cycle, at least 20 percent of its share of the regional need for housing for very low-income households allocated to the city.

Double-Referred

This bill was also referred to the Local Government Committee, where it is scheduled to be heard on May 11 should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

County of Napa

Opposition

California Rural Legal Assistance Foundation
Western Center on Law and Poverty

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