



- i) Votes on a proposed housing development project application and the application is disapproved, including any required land use approvals or entitlements necessary for the issuance of a building project.
  - ii) Fails to comply with specified time periods for approving or disapproving development projects.
  - iii) Fails to make a determination of whether a project is exempt from the California Environmental Quality Act, or commits an abuse of discretion, as specified.
- b) Prohibits a local agency, from disapproving a housing project containing units affordable to very low-, low- or moderate-income households, or conditioning the approval in a manner that renders the housing project infeasible, unless it makes one of the following findings, based upon substantial evidence in the record:
  - i) The jurisdiction has adopted an updated housing element in substantial compliance with the law, and the jurisdiction has met its share of the regional housing need for that income category.
  - ii) The project will have a specific, adverse impact on public health or safety and there is no feasible method to mitigate or avoid the impact without rendering the housing development unaffordable to very low-, low- or moderate-income households.
  - iii) The denial or imposition of conditions is required to comply with state or federal law.
  - iv) The project is located on agricultural or resource preservation land that does not have adequate water or wastewater facilities.
  - v) The jurisdiction has identified sufficient and adequate sites to accommodate its share of the regional housing need and the project is inconsistent with both the general plan land use designation and the zoning ordinance.
- 3) Provides that (b)(v) above cannot be utilized to disapprove or conditionally approve a housing development project if the housing development project is proposed on a site that is identified as suitable or available for lower- or moderate-income households in the jurisdiction's housing element, and consistent with the density specified in the housing element, even though it is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation. This provision is referred to as the "Builder's Remedy."
- 4) Establishes, pursuant to SB 35 (Weiner, Chapter 366, Statutes of 2017), and SB 423 (Weiner, Chapter 778 Statutes of 2023), until January 1, 2036 a

streamlined, ministerial review process for housing development projects that meet strict objective standards and are sites that are zoned for residential use or residential mixed-use development (hereinafter “SB 35” Developments).

**This bill:**

- 1) Clarifies that a local government may not disapprove a “Builder’s Remedy project” if the local government’s housing element was not in substantial compliance with the HAA on the date the Builder’s Remedy project application was deemed complete.
- 2) Defines “Builder’s Remedy project,” as a project that meets the following criteria:
  - a) The project will comply with one of the applicable affordability or project size criteria, specifically:
    - i) The project includes a percentage of units that are set aside for affordable housing for a period of 55 years for rental units, and 45 years for ownership. Specifically a project must meet any of the following:
      - (1) 100% of the units, excluding the managers unit are affordable to lower income households, as specified.
      - (2) 7% of the units are affordable to extremely low-income households, as specified.
      - (3) 10% of the units are affordable to very low-income households, as specified.
      - (4) 13% of the total units are affordable to lower income households, as specified.
      - (5) 100% of the total units are affordable to moderate income households, as specified.
    - ii) A local government that adopted more stringent affordability criteria prior to January 1, 2024 may require a project to meet a deeper level of affordability if it makes written findings, as specified, that the housing development is economically feasible if subject to the local affordable requirement.
    - iii) In lieu of meeting the state or local affordability criteria noted above, a project meets the following:
      - (1) The project contains 10 or fewer units.
      - (2) The project is located on a site that is smaller than one acre.

- (3) *The* project density exceeds 10 units per acre (4,356 square feet per unit or less).
- b) The project density does not exceed the following:
- i) 50% more than the minimum density deemed appropriate to accommodate housing for that jurisdiction, specifically this equates to:
    - (1) 15-23 units per acre for jurisdictions in nonmetropolitan counties, as specified.
    - (2) 30 units per acre for suburban jurisdictions.
    - (3) 45 units per acre for jurisdictions in metropolitan counties.
  - ii) Three times the density allowed by the general plan, zoning ordinance, or state law, whichever is greater.
  - iii) The density that is consistent with the density specified in the housing element.
  - iv) For sites located in a high resource census tract, a low vehicle travel area, or within one-half mile of a major transit stop the density shall be the greatest of (1)-(3) above, whichever is applicable, plus an additional 35 units per acre.
- c) If the project is located on a site with a minimum density requirement, the project density shall exceed the following minimums:
- i) The minimum density established by the local government that applies to the site, or half the applicable density specified in (b)(i)(1)-(3) above.
  - ii) For sites that are located within one-half mile of a commuter rail or heavy rail station, the density of the project shall not be less than the minimum density required on the site.
- d) The project does not abut a site where more than one-third of the square footage on the site has been used by a heavy industrial use in the past three years.
- 3) Provides that the following apply to the approval of Builder's Remedy projects.
- a) Local governments may only require a project proposed by an applicant to comply with written objective standards and policies that would have applied to the project if it was proposed on a site that allowed the density and unit type proposed by the applicant. If the local agency does not have applicable standards for the project, the development proponent may identify

- and apply written objective standards and policies associated with a general plan designation and zoning that facilitates the project's density and unit type, as specified.
- b) Local governments are precluded from imposing standards, conditions, or policies that render the project infeasible, as specified.
  - c) Builder's Remedy projects are eligible for enhanced incentives under density bonus law, as specified.
  - d) Builder's Remedy projects are not required to receive any additional approval or permit, or be subject to additional requirements including increased fees, as specified, solely because the project is a Builder's Remedy project.
  - e) Builder's Remedy projects shall be deemed consistent, compliant, and in conformity with an applicable local plans and standard, as specified.
  - f) Declares that for the purposes of Affordable Housing and High Road Jobs Act of 2022, AB 2011 (Wicks, Chapter 647, Statutes of 2022). A Builder's Remedy project shall be deemed to comply with the residential density standards necessary to qualify for by right approval under that statute.
  - g) Declares that for the purposes of qualifying as an SB 35 development, a Builder's Remedy project shall be deemed to be in compliance with the objective design review standards necessary for a project to qualify for by right approval under that statute.
- 4) Expands the scope of local government activities that constitute a local government taking action to "disapprove the housing development project," to include when a local government does the following:
- a) Takes a final administrative action, other than a vote of the legislative body, on a project.
  - b) Undertakes a course of conduct, including sustained inaction or the imposition of burdensome processing requirements, from which a reasonable person would conclude that the local agency intends to effectively disapprove the housing development project.
- 5) Clarifies that nothing in the HAA shall limit a project's eligibility for a density bonus, incentives, or concession and waivers pursuant to Density Bonus Law.
- a) Extends the HAAs protections for housing development projects to cover mixed-used housing development projects that include projects where only 50 percent of the square footage is designated for residential use if the project will include at least 500 net new residential units, as specified.

- b) Clarifies that nothing in the HAA limits the authority of courts to make orders to compel the immediate enforcement of any writ brought under the HAA, as specified.
  - c) Enhances court issued penalties for jurisdictions that act in bad faith more than once in the same housing cycle.
- 6) Authorizes housing development projects applications that were submitted prior to January 1, 2025 that meet the definition of “Builder’s Remedy project” under this bill to proceed under the current provisions of the HAA, or the provisions of the HAA as proposed to be revised by this bill, as specified.

### COMMENTS:

- 1) *Author’s Statement.* “It is going to take all of us to solve our housing crisis, and AB 1893 will require all cities and counties to be a part of the solution. It does so by modernizing the builder’s remedy to make it clear, objective, and easily usable. A functional builder’s remedy will help local governments to become complaint with housing element law. Where they do not, it will directly facilitate the development of housing at all affordability levels. The message to local jurisdictions is clear — when it comes to housing policy, the days of shirking your responsibility to your neighbors are over.”
- 2) *HAA.* In 1982, in response to the housing crisis, which was viewed as threatening the economic, environmental, and social quality of life in California, the Legislature enacted the HAA, commonly referred to as the Anti-NIMBY Law. The purpose of the HAA is to help ensure that a city does not reject or make infeasible housing development projects that contribute to meeting the housing need determined pursuant to the Housing Element Law without a thorough analysis of the economic, social, and environmental effects of the action and without complying with the HAA. The HAA restricts a city’s ability to disapprove, or require density reductions in, certain types of residential projects. The HAA does not preclude a locality from imposing developer fees necessary to provide public services or requiring a housing development project to comply with objective standards, conditions, and policies appropriate to the localities share of the regional housing needs assessment.

If a locality denies approval or imposes conditions that have a substantial adverse effect on the viability or affordability of a housing development for very low-, low-, or moderate-income households, and the denial or imposition of conditions is subject to a court challenge, the burden is on the local

government to show that its decision is consistent with specified written findings.

- 3) *The Builder's Remedy*. One constraint within the HAA on local governments' authority to disapprove housing, which has gained recent attention, is the "Builder's Remedy." The Builder's Remedy was added to the HAA in 1990 and it generally prohibits a local government that has failed to adopt a compliant housing element from denying a housing development that includes 20% lower-income housing or 100% moderate-income housing even if the development does not conform to the local government's underlying zoning.

The Builder's Remedy is intended to push local governments to adopt timely compliant housing elements to avoid the threat of a developer putting forward a project that is untethered to local standards. Short of that, the Builder's Remedy is intended as a mechanism to facilitate the development of much needed housing in California by allowing developers to design projects at nearly any density or size they like provided that they set aside a portion of the units for affordable housing.

While the Builder's Remedy is a powerful tool in theory, thirty years after its enactment there is no record of any housing units being developed as a direct result of its provisions. This may be due to substantial ambiguity in the law regarding how, and when it applies, as well as developer reluctance to employ an antagonistic tool against local jurisdictions they frequently work with. Additionally, in the sixth housing element cycle the minimum housing element standards local governments were required to comply with increased substantially. For example, in the fifth cycle the Southern California Association of Governments (SCAG) received a Regional Housing Needs Allocation (RHNA) of **409,000 – 438,000** units. By contrast, in the sixth cycle, SCAG received a RHNA of **1,341,827** units. The less rigorous housing element standards and housing allocations in previous cycles resulted in high levels of housing element compliance, and therefore few areas where the Builder's Remedy was applicable.

The Builder's Remedy prevents noncompliant cities from using their zoning code or general plan to deny an affordable housing project; however, another provision in the HAA states that nothing in the HAA shall be construed to prohibit a local agency from requiring a housing development project to comply with objective, quantifiable, written development standards... appropriate to and consistent with meeting the jurisdiction's share of the regional housing need..." Such standards shall be applied to facilitate and accommodate development at the density permitted on the site and proposed by the

development.” This and other ambiguities in the HAA remained essentially untested until recently as developers began proposing substantial Builder’s Remedy projects following the sixth housing element cycle.<sup>1</sup>

For example, in Santa Monica a developer proposed several projects with a total of 4,500 units, including 800 affordable units, during a relatively short window of opportunity. These “Builder’s Remedy” projects ultimately did not move forward as proposed, rather the developer used the threat of development and legal uncertainty surrounding the Builder’s Remedy to reach a settlement agreement with the city to reduce the number of projects. The Settlement required the city to consider lowering the affordability requirement from 20% to 15% for the projects, allowing the affordable units to be placed in a single development offsite, and extending the density bonus credit earned by the development of affordable units to the market rate projects.<sup>2</sup>

This bill aims to address some of the legal uncertainty noted above by clearly outlining the limited parameters that a local government can apply to a Builder’s Remedy project. This bill also seeks to make these projects more attractive to developers by relaxing the affordability standards projects must meet in order to qualify as a Builder’s Remedy project.

- 4) *Affordability Requirements.* Several affordable housing equity groups have expressed concern with lowering the affordability requirements that developers must meet in order to qualify for the Builder’s Remedy. This bill will reduce from 20% to 13% the amount of housing affordable to lower-income households that a development must include to qualify as a Builder’s Remedy project. This bill will also allow projects that provide deeper levels of affordability that are more critically needed to provide a lower percentage of these units. Finally, this bill will allow projects on small sites that include less than 10 units to qualify for the Builder’s Remedy without providing affordable units. Equity groups are concerned that lowering the affordability threshold that Builder’s Remedy projects must comply with will hinder a tool to help the state achieve fair housing goals, and they argue that affordability requirements do not need to be reduced to encourage more development.

According to the author, the intent of these changes are to strike a balance on affordability standards and allow more projects to move forward. While lowering affordability standards requires careful examination, it is notable that

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<sup>1</sup> Elmendorf, Christopher *A Primer on California’s “Builder’s Remedy” for Housing Element Noncompliance* (UCLA Lewis Center for Regional Policy Studies, April 4, 2022) <https://escholarship.org/uc/item/38x5760j>

<sup>2</sup> City Attorney’s Office, *Santa Monica Enters into Settlement Agreement with WS Communities, LLC and its Affiliates* (City of Santa Monica, May 11<sup>th</sup>, 2023): [santamonica.gov](http://santamonica.gov) - [Santa Monica Enters into Settlement Agreement with WS Communities, LLC and its Affiliates](#), and [PP Presentation \(santamonica.gov\)](#)



over three decades with the existing affordability standard in place no projects have been developed. These affordable housing equity groups note that dozens of Builder's Remedy projects were recently proposed across the state with the existing affordability standards in place as evidence that lowering the threshold is unnecessary.

- 5) *HAA Limitations on Disapproving Projects.* The HAA requires that a local government cannot disapprove a housing development project that is consistent with the jurisdiction's zoning ordinance and general plan designation, unless the preponderance of evidence shows that certain conditions are met. This provision defines what would constitute denial of a Builder's Remedy project, as well as other HAA protected developments, and thus a violation of the HAA subject to enforcement. The HAA currently specifies certain actions by a local government that individually or collectively constitute a local government "disapproving" a project. The existing lists of actions that constitute disapproval include affirmative such as taking a vote to deny a project, failure to comply with statutorily mandated project approval timelines, and failure to make a determination under the California Environmental Quality Act (CEQA), as specified.

This bill expands the scope of local government actions that constitute disapproval of a project to include instances where a local government "*undertakes a course of conduct, including sustained inaction or the imposition of burdensome processing requirements, from which a reasonable person would conclude that the local agency intends to effectively disapprove the housing development project.*" (Emphasis added). Essentially this provision would capture instances where a local government does not formally deny a project but effectively denies a project through delays and obfuscation. This provision could serve as a powerful tool to discourage recalcitrant local governments from including unnecessary hurdles in the project approval process. However, certain projects subject to HAA approval are, by definition, eligible for approval outside of a local government's normal housing development approval process. Local governments will need to navigate an alternative novel approval process for these projects which could lead to delays in approving these projects. Ultimately whether a local government's inaction on a project is a willful attempt to silently deny a project, or a legitimate aspect of a deliberative approval process is a case-by-case issue. It is likely that the ultimate scope of this provision would be litigated by developers and local governments.

- 6) *Get Out of Jail Free.* Setting aside all the changes made in this bill, local governments can avoid being subject to the most complicated aspects of the

HAA and the Builder's Remedy by adopting a timely and compliant housing element.

- 7) *Opposition.* In addition to the concerns raised by affordable housing equity groups noted above, YIMBY Action and other opponents of the bill argue that the Builder's Remedy is working well and that the status quo is preferable to the changes this bill would make. They point to several examples of Builder's Remedy projects that were recently proposed as evidence of the Builder's Remedy working well. They also question the wisdom of placing any density limitations on Builder's Remedy projects or limiting its application by excluding parcels adjacent to industrial sites. This bill is also opposed by local governments that express concerns that the proposed changes to the Builder's Remedy are too punitive.
- 8) *Technical Amendments.* The author will accept the following technical amendments:
- a) Proposed 65589.5(f)(6) Enumerates a list of factors (A) - (H) that apply to Builder's Remedy projects, as proposed to be defined in the bill. Proposed (f)(6)(D) outlines how a housing development project may qualify as a Builder's Remedy project, rather than a condition that applies to Builder's Remedy projects. This is more appropriately recast as a new paragraph outside of (f)(6). **The author will accept amendments to renumber this list.**
  - b) Proposed 65589.5(h)(6)(A) - (F) defines actions that "disapprove [a] housing development project." 65589.5(h)(6)(D) defines actions that constitute disapproval of a project if a local government takes actions in the CEQA process. The factors in (h)(6)(A) - (C) constitutes 10 lines of text in the bill, however (D) extends from page 24 of the bill to page 31, creating an unruly separation between (F) and the other factors (A) - (C). For general readability (h)(6)(D) and (h)(6)(F) should be swapped so the full extent of (h)(6) may be more easily understood. **The author will accept amendments to renumber this list.**
  - c) Proposed 65589.5(h)(11)(D)(i) defines density requirements for Builder's Remedy Projects located within one-half mile of a commuter rail station. A drafting error omitted the word "than" from the provision. **The author will accept amendments to correct the drafting error. Specifically the revised text will read, "On sites that have a minimum density requirement and are located within one-half mile of a commuter rail station or a heavy rail station, the density of the project shall not be less than the minimum density required on the site."**

9) *Double referral.* This bill was also referred to the Local Government Committee.

**RELATED LEGISLATION:**

**AB 1886 (Alvarez, 2024)** — clarifies that a housing element is substantially compliant with Housing Element Law, when both a local agency adopts the housing element and Department of Housing and Community Development (HCD) or a court finds it in compliance. *This bill is being heard in this same hearing.*

**AB 1413 (Ting, 2023)** — requires local agencies to post specified information and consider certain objections for a period of at least 60 days related to a disapproval under the HAA related to an abuse of discretion pursuant to CEQA. *This bill is pending in this Committee.*

**AB 1633 (Ting, Chapter 768, Statutes of 2023)** — provided, until January 1, 2031, that a disapproval under the HAA includes a local agency's failure to make a determination of whether a project is exempt from CEQA, abuse of discretion, or failure to adopt certain environmental documents under specified circumstances.

**SB 167 (Skinner, Chapter 368, Statutes of 2017)** — made a number of changes to the HAA to ensure local agency compliance during the approval process for proposed housing developments. The measure also clarified existing provisions of the HAA and imposed added penalties on agencies that violate the HAA without proper findings.

**FISCAL EFFECT:** Appropriation: No    Fiscal Com.: Yes    Local: Yes

**POSITIONS:** (Communicated to the committee before noon on Wednesday, June 12, 2024.)

**SUPPORT:**

State of California Attorney General Rob Bonta (Sponsor)  
Abundant Housing LA  
BuildCasa  
California Apartment Association  
California Building Industry Association  
California Community Builders  
California YIMBY  
Chamber of Progress  
Circulate San Diego

CivicWell  
Fieldstead and Company, INC.  
Habitat for Humanity California  
Housing Action Coalition  
Housing Trust Silicon Valley  
Inner City Law Center  
LeadingAge California  
League of Women Voters of California  
Sand Hill Property Company  
SPUR  
The Two Hundred

**OPPOSITION:**

ACT-LA  
California Coalition for Rural Housing  
California Contract Cities Association  
California Rural Legal Assistance Foundation, INC.  
Catalysts for Local Control  
The Children's Partnership  
City of Norwalk  
City of Rancho Palos Verdes  
Communities for a Better Environment  
Corporation for Supportive Housing  
Council of Infill Builders  
Disability Rights California  
East Bay Housing Organizations  
East Bay YIMBY  
Esperanza Community Housing Corp  
Grow the Richmond  
Housing California  
Leadership Counsel for Justice & Accountability  
Mission Economic Development Agency  
Movement Legal  
National Housing Law Project  
Northern Neighbors  
Pico California  
Peninsula for Everyone  
Public Advocates INC.  
Public Counsel  
Public Interest Law Project  
The Race Equity in All Planning Coalition (REP-SF)

Santa Cruz YIMBY  
Santa Rosa YIMBY  
Save Lafayette  
Southern California Association of Nonprofit Housing  
Southside Forward  
Streets for People  
SV@Home Action Fund  
Town of Apple Valley  
Urban Environmentalists  
Urban Habitat  
Ventura County YIMBY  
Western Center on Law & Poverty, INC.  
YIMBY Action  
YIMBY Law  
Young Community Developers

**-- END --**