

- c) An assessment of the contributing factors, including the local and regional historical origins and current policies and practices, for the fair housing issues identified under 2)a) and 2)b); and
 - d) An identification of the jurisdiction's fair housing priorities and goals, which may include, but are not limited to, enhancing mobility strategies and encouraging development of new affordable housing in areas of opportunity, as well as placed-based strategies to encourage community revitalization, including preservation of existing affordable housing, and protecting existing residents from displacement.
- 3) Requires each city and county to submit an APR to the Governor's Office of Planning and Research (OPR) and the Department of Housing and Community Development HCD by April 1 of each year. The report is to evaluate the general plan's implementation, including how local housing needs have been met (construction of new units, changes to zoning laws, facilitating regulatory hurdles to housing development, etc.)
 - 4) Declares it unlawful, pursuant to the California Fair Employment and Housing Act (FEHA), for any housing accommodation owner to inquire about, make known any preference or limitation as to, discriminate, or harass a person based on the person's race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, or genetic information.
 - 5) Establishes the state Department of Fair Employment and Housing (DFEH) with the powers and duties to, among other things, receive, investigate, and conciliate complaints relating to housing discrimination.

This bill:

- 1) Requires the number of units approved and disapproved that must be reported by a local government in the APR to also include a subcategory of the number of those units located within each category of "opportunity area," defined in the most recent "CTCAC/HCD Opportunity Map" published by the California Tax Credit Allocation Committee (CTCAC) and HCD.
- 2) Requires the assessment of fair housing in a jurisdiction to be completed before the planning agency makes its first draft revision of a housing element available for public comment, as specified.
- 3) Requires HCD to develop a standardized reporting format for programs and actions taken to AFFH in the housing element, and requires the format to enable the reporting of specified existing AFFH assessment components, and at a minimum include the following fields:

- a) Timelines for implementation;
 - b) Responsible party or parties;
 - c) Resources committed from the local budget to AFFH;
 - d) Action areas; and
 - e) Potential impacts of the program.
- 4) Requires a local government to make a draft of its inventory of sites available to HCD and the public and post the draft inventory on its website at least 90 days prior to the adoption of a revision of its housing element for the seventh and each subsequent revision.

COMMENTS:

- 1) *Author's Statement.* "Californians continue to live through a serious housing crisis, and for our most vulnerable communities, the crisis is even greater. In 2018, I authored AB 686 to ensure local governments develop and implement their housing plans in a manner that affirmatively furthers fair housing. In 2021, I authored AB 1304 to strengthen fair housing law by clarifying enforcement provisions and requiring historical and regional analyses of AFFH issues. Despite these important changes in state law, during the sixth housing element update cycle many cities proposed AFFH programs that, while well-intentioned, were unlikely to enable mobility into higher opportunity neighborhoods or result in meaningful investment in historically disinvested neighborhoods. This bill will further empower the state and members of the public to hold local governments accountable to their obligations and expand housing access in high opportunity communities by providing stakeholders with more tools and timely information to ensure local governments are taking meaningful action to affirmatively further fair housing."
- 2) *Background: the federal AFFH Rule.* Since its enactment in 1968, the federal Fair Housing Act has directed HUD, other federal agencies, and program participants to affirmatively further the Act's goals of promoting fair housing and equal opportunity. In 2015, the Obama Administration issued the AFFH Rule to clarify what it means to "affirmatively further fair housing." The Rule incorporated an "Assessment of Fair Housing" process into broader existing planning processes to help HUD grantees identify issues such as fair housing issues pertaining to patterns of integration and segregation; racially and ethnically concentrated areas of poverty; disparities in access to opportunity; and disproportionate housing needs. HUD grantees were required to submit their Assessments to HUD or potentially lose HUD funding.

On January 5, 2018, under President Trump, HUD largely suspended the obligation to submit an Assessment, effectively postponing implementation of

the AFFH Rule until 2025. In July 2020, the 2015 AFFH Rule was repealed, with Secretary Carson noting that “Washington has no business dictating what is best to meet your local community’s unique needs.”

On January 26, 2021, President Biden issued a memorandum directing HUD to examine the effect of the previous Administration’s actions against the AFFH Rule and the effect that it has had on HUD’s statutory duty to both ensure compliance with the Fair Housing Act and to affirmatively further fair housing. The memo also ordered HUD to take the necessary steps to implement the Fair Housing Act’s AFFH requirements and to prevent practices that have a disparate impact. On June 10, 2021, HUD published an interim final rule, which will go into effect on July 31, to restore implementation of the AFFH Rule.

- 3) *AFFH in California.* California’s FEHA prohibits employment and housing discrimination based on the protected classes. FEHA further provides that it is a civil right to be able to pursue and maintain housing or employment without facing discrimination. If a dispute is not resolved, DFEH may take legal action if evidence supports a finding of discrimination. In housing discrimination cases, an individual also has the right to file a lawsuit on their own behalf. While FEHA does not explicitly include an AFFH obligation, it does prohibit discrimination through public or private land use practices, decisions, and authorizations due to membership in a protected class. Discrimination includes restrictive covenants, zoning laws, details of use permits, and other actions authorized under the Planning and Zoning Law that make housing opportunities unavailable.

After the 2015 AFFH Rule was enacted, concerns arose about whether it would be preserved going forward. To address these concerns, the Legislature passed and the Governor signed AB 686 (Santiago, Chapter 958, Statutes of 2018), which established an AFFH framework at the state level. AB 686 was subsequently amended in 2021 to clarify and strengthen its provisions through the passing of AB 1304 (Santiago, Chapter 357, Statutes of 2021). This framework remained in place when the Trump Administration repealed the AFFH Rule in 2020.

- 4) *California AFFH guidelines.* In April 2021, HCD published AFFH guidance to help public agencies and local governments meet AB 686 requirements. The guidance clarifies, and provides examples to illustrate, components of the housing element assessment of fair housing, including a summary of fair housing enforcement and outreach capacity; integration and segregation patterns and trends related to people with protected characteristics and lower

incomes; racially and ethnically concentrated areas of poverty; disparities in opportunity; and disproportionate housing needs, including displacement.

- 5) *Why AFFH matters.* Multiple studies have shown that life outcomes improve for those living in “high-opportunity areas,” i.e., neighborhoods with high quality public schools, proximity to well-paying jobs, and a clean and safe environment. Such studies have also shown that living in such communities can have a particularly beneficial outcome for low-income people in terms of health, employment, and educational attainment. However, low-income people have historically been excluded from high-opportunity areas through exclusionary zoning policies such as redlining; HCD notes that “Although federal mandates prohibit overt forms of discrimination in housing, forces driving residential segregation have persisted...”¹ For example, race-based zoning was replaced with single-family zoning, which restricts affordable housing options such as apartments or condominiums. Discriminatory practices, coupled with long-term disinvestment, have resulted in neighborhoods with concentrated poverty, poor housing stock, underfunded schools, and deteriorating infrastructure. AFFH analysis and assessment can help California move toward truly integrated neighborhoods and help ensure equal access to opportunity.
- 6) *Opposition.* Several affordable housing equity groups have expressed concern with provisions in the bill that require local agencies to identify the number of units approved and the number of units disapproved in opportunity areas identified by CTCAC/HCD. They express concerns that this requirement will “reinforce the flawed notion that affirmatively furthering fair housing is synonymous with overall housing production in higher-resource parts of the state, regardless of whether that production expands access to fair housing opportunities for members of protected classes.” These groups also contend that this reporting requirement will set a precedent that deprioritizes other aspects of AFFH such as addressing chronic disinvestment in low-income communities.

RELATED LEGISLATION:

AB 1304 (Santiago, Chapter 357, Statutes of 2021) — strengthened and clarified the manner in which local governments must affirmatively further fair housing in their housing elements.

¹ California Department of Housing and Community Development, *Affirmatively Furthering Fair Housing: Guidance for All Public Entities and for Housing Elements* (April 2021), [Affirmatively Furthering Fair Housing \(ca.gov\)](https://www.ca.gov).

AB 686 (Santiago, Chapter 958, Statutes of 2018) — required a public agency to administer its programs and activities relating to housing and community development in a manner to affirmatively further fair housing; also required local housing elements to affirmatively further fair housing.

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

POSITIONS: (Communicated to the committee before noon on Wednesday, June 19, 2024.)

SUPPORT:

Abundant Housing LA (Co-Sponsor)
Inner City Law Center (Co-Sponsor)
California Association of Realtors

OPPOSITION:

California Rural Legal Assistance Foundation
National Housing Law Project
Public Advocates
Public Interest Law Project
Western Center on Law & Poverty

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