

developed for housing within the planning period and that are sufficient to provide for the jurisdiction's share of the regional housing need for all income levels.

- 3) Requires a planning agency to submit a draft housing element revision to HCD at least 90 days prior to adoption of a revision of its housing element pursuant to statutory deadlines, or at least 60 days prior for a subsequent draft amendment. Requires the local government to make the first draft revision of the housing element available for public comment for at least 30 days and, if any comments are received, requires the local government to take at least 10 business days after the 30-day public comment period to consider and incorporate public comments into the draft revision prior to submitting it to HCD.
- 4) Requires HCD to review the draft and report its written findings to the planning agency within 90 days of its receipt of the first draft submittal for each housing element revision or within 60 days of receipt of a subsequent draft amendment or an adopted revision or adopted amendment to a housing element. Prohibits HCD from reviewing the first draft submitted for each housing element revision until the local government has made the draft available for public comment for at least 30 days and, if comments were received, has taken at least 10 business days to consider and incorporate public comments.
- 5) Requires HCD, in its written findings, to determine whether the draft element or draft amendment substantially complies with housing element law.
- 6) Requires a local government's legislative body to consider HCD's findings prior to the adoption of its draft element or draft amendment, and provides that if HCD's findings are not available within the time limits specified, the legislative body may act without them.
- 7) Requires a legislative body to take one of the following actions, if HCD finds that the draft element or draft amendment does not substantially comply:
 - a) Change the draft element or draft amendment to substantially comply; or
 - b) Adopt the draft element or draft amendment without changes, in which case the legislative body must include in its resolution of adoption written findings that explain the reasons the legislative body believes that the draft element or draft amendment substantially complies with housing element law despite HCD's findings.
- 8) Requires the planning agency to submit a copy of an adopted housing element or amendment promptly to HCD following adoption. Requires HCD to review

adopted housing elements or amendments and report its findings to the planning agency within 60 days.

- 9) Requires HCD to review any action or failure to act by a local government that it determines is inconsistent with an adopted housing element or housing element law, including any failure to implement any program actions included in the housing element. Requires HCD to issue written findings to the local government as to whether the action or failure to act substantially complies with housing element law, and provide a reasonable time no longer than 30 days for the local government to respond to the findings before taking any other action, including revocation of substantial compliance.
- 10) Authorizes HCD, if it finds that an action or failure to act under 9) does not substantially comply with housing element law, and if it has issued findings that an amendment to the housing element substantially complies with this article, to revoke its findings until it determines that the local government has come into compliance.
- 11) Requires HCD to notify the local government and authorizes HCD to notify the office of the Attorney General that the local government is in violation of state law if HCD finds that the housing element or an amendment to the element, or any action or failure to act under 9), does not substantially comply with housing element law or that any local government has taken an action in violation of various specified housing laws.
- 12) Requires local governments on an eight-year housing element cycle with insufficient sites inventories to complete the rezoning of sites, including adoption of minimum density and development standards, no later than three years after either the date the housing element is adopted, as specified, or the date that is 90 days after the receipt of comments from HCD, whichever is earlier, unless the deadline is extended pursuant to existing law.
- 13) Notwithstanding 12), requires a local government that fails to adopt a housing element that HCD has found to be in substantial compliance with the law within 120 days of the statutory deadline for adoption of the housing element to complete the rezoning of sites no later than one year from the statutory deadline for adoption of the housing element.
- 14) Establishes a rebuttable presumption of the validity of a housing element or amendment in any action filed on or after January 1, 1991, taken to challenge the validity of a housing element, if HCD has found that the element or amendment substantially complies with housing element law.

This bill:

- 1) Creates a rebuttable presumption of invalidity in any legal action challenging a local government's action or failure to act if HCD finds that the action or failure to act *does not* substantially comply with the local government's adopted housing element or its housing element obligations.
- 2) Establishes that in any action filed on or after January 1, 1991, taken to challenge the validity of a housing element, there is a rebuttable presumption of the invalidity of the housing element or amendment if HCD has found that the element or amendment *does not* substantially comply with housing element law.
- 3) Requires, for adoption of the seventh and all subsequent revisions of the housing element, rezonings to be completed no later than one year from the statutory deadline for adoption of the housing element.
- 4) Notwithstanding 3), for adoption of the seventh and all subsequent revisions of the housing element, requires rezonings to be completed no later than three years after either the date the housing element is adopted or the date that is 90 days after receipt of comments from HCD, whichever is earlier, unless the deadline is extended pursuant to existing law, if the local government complies with all of the following:
 - a) The local government submits a draft element or draft amendment to HCD for review at least 90 days before the statutory deadline for adoption of the housing element;
 - b) The local government receives from HCD findings that the draft element or draft amendment substantially complies with housing element law on or before the statutory deadline for adoption of the housing element; and
 - c) The local government adopts the draft element or draft amendment that HCD found to substantially comply with housing element law no later than 120 days after the statutory deadline.
- 5) Requires any change to a draft element or draft amendment, made by a legislative body due to a lack of substantial compliance with housing element law, to conform to existing law timelines for public comment, HCD and stakeholder review, and consultation, as specified. Provides that this does not constitute a change in, but is declaratory of, existing law.
- 6) Provides that the existing law requirement for a planning agency to promptly submit a copy of its housing element or amendment to HCD following adoption shall not be construed to excuse a legislative body from complying with the existing law requirement for the legislative body to take certain actions if HCD finds that the draft element or draft amendment does not substantially comply

with housing element law. Provides that this does not constitute a change in, but is declaratory of, existing law.

7) Makes conforming and technical changes.

COMMENTS:

1) *Author's statement.* "California's Housing Element laws were created to ensure all cities and counties are addressing our states housing needs. By establishing equitable standards in the housing review process, we can foster greater adherence to state housing laws, urging even reluctant jurisdictions to fulfill their essential role in addressing our collective housing challenges."

2) *Housing elements.* Every city and county in California is required to develop a general plan that outlines the community's vision of future development through a series of policy statements and goals. A community's general plan lays the foundation for all future land use decisions, as these decisions must be consistent with the plan. General plans are comprised of several elements that address various land use topics. State law mandates seven elements: land use, circulation (*e.g.*, traffic), housing, conservation, open-space, noise, and safety.

Each community's general plan must include a housing element, which outlines a long-term plan for meeting the community's existing and projected housing needs. The housing element demonstrates how the community plans to accommodate its "fair share" of its region's housing needs. Following a staggered schedule, cities and counties located within the territory of a metropolitan planning organization (MPO) must revise their housing elements every eight years, and cities and counties in rural non-MPO regions must revise their housing elements every five years. These five- and eight-year periods are known as the housing element planning period.

In general, a housing element must identify and analyze existing and project housing needs, identify adequate sites with appropriate zoning to meet its share of the regional housing needs assessment (RHNA), and ensure that regulatory systems provide opportunities for, and do not unduly constrain, housing development.

3) *Timely approval of compliant housing elements.* Housing element law requires a locality to adopt a housing element within 120 days of the statutory deadline. It is critical that local jurisdictions adopt legally compliant housing elements on time in order to meet statewide housing goals and create the environment locally for the successful construction of desperately needed housing at all income levels. Unless communities plan for production and preservation of

affordable housing, new housing will not be built. Adequate zoning, removal of regulatory barriers, protection of existing stock and targeting of resources are essential to obtaining a sufficient permanent supply of housing affordable to all economic segments of the community. Although not requiring the community to develop the housing, housing element law requires the community to plan for housing. Recognizing that local governments may lack adequate resources to house all those in need, the law nevertheless mandates that the community do all that it can and that it not engage in exclusionary zoning practices.

- 4) *Rebuttable Presumption.* HCD is the expert agency charged with reviewing local housing elements for compliance with the law and issuing findings as to whether the housing element meets the law's requirements. Once HCD agrees that a local housing element complies with the law, the housing element has a rebuttable presumption of validity in a legal challenge. This means that HCD's finding of compliance receives deference in court and a party challenging the validity of the element has a high bar to meet to prove that HCD was incorrect.

However, the author and sponsors point out there is no comparable provision that establishes a rebuttable presumption of invalidity for a housing element that HCD has found *does not* meet legal requirements or for an action or failure to act that does not substantially comply with a local government's adopted housing element. Under existing law, a finding of noncompliance by HCD is therefore much easier to ignore or overcome than would be a finding entitled to a legal presumption of noncompliance. The absence of a presumption opens the door for cities to ignore HCD's expert findings and sidestep HCD's recommendations to strengthen their housing elements and bring them into compliance.

This is inconsistent with the increasing responsibility and authority delegated to HCD by the Legislature to review and enforce compliance with state housing laws and harms the state's ability to ensure all jurisdictions adopt and implement strong, compliant housing elements. The majority of jurisdictions in California do adopt a housing element that HCD agrees complies with the law, sometimes after significant back and forth with the department. The author and sponsors argue that those that do not should not be held to a lower legal standard than those that do.

This bill creates a rebuttable presumption of invalidity for housing elements deemed noncompliant by HCD, raising the standard for jurisdictions to dispute or dismiss HCD's determination of noncompliance. This change encourages jurisdictions to adopt stronger housing elements that incorporate changes sought

by HCD to achieve compliance, and discourages attempts to resort to the courts to challenge HCD's efforts to enforce the obligations of housing element law.

- 5) *One-Year vs. Three-Year Rezone Allowance.* Before 2022, jurisdictions that failed to adopt a housing element within 120 days of the statutory deadline were required to complete their rezoning program no later than three years and 120 days from that statutory deadline. Jurisdictions that had completed and adopted their housing element within appropriate timelines were afforded three years from either the date the housing element was adopted, or from the date that is 90 days after receipt of comments from HCD, whichever was earlier, to complete their rezones.

In 2021, AB 1398 (Bloom, Chapter 358), significantly modified this provision by instead requiring late adopters to complete their rezones no later than one year after their statutory deadline to adopt a housing element. That bill also clarified a local government had to adopt a housing element that HCD had found to be in substantial compliance with housing element law by the 120-day deadline to still be eligible for the three-year rezone window – not simply a housing element in general, which may or may not have been deemed compliant by HCD.

Despite these changes, the sponsors point out some local governments have sought to rush to adopt draft housing elements very close to the 120-day grace period cutoff – before HCD has provided written findings on their draft – to stay within the three-year rezone allowance rather than the one-year timeline, with the hope that HCD would deem the draft compliant after the fact. This potentially rewards local governments who are not following the letter of the law with regard to timelines that require submittal of a draft element to HCD at least 90 days before the statutory deadline, and other requirements that a local government's legislative body must consider HCD's findings prior to the adoption of its draft element or draft amendment.

This bill proposes to tighten this provision for the seventh and subsequent cycles. This bill places all jurisdictions in a one-year rezoning cycle unless they meet certain benchmarks to qualify for a three-year rezoning cycle. Specifically, for a local government to qualify for the three-year rezone period, the local government must submit a draft element to HCD at least 90 days before the statutory deadline for adoption, receive written findings from HCD by the statutory deadline that the draft substantially complies with housing element law, and have adopted the draft no later than 120 days after the statutory deadline. If any of those conditions are not met, the locality would be subject to the one-year rezone timeframe instead.

- 6) *Technically speaking.* Earlier this year, the governor signed SB 477 (Senate Housing Committee, Chapter 7, Statutes of 2024), which reorganized the statutory provisions related to accessory dwelling units and junior accessory dwelling units into one stand-alone Article. This bill still contains outdated references to ADU/JAU statute that no longer exist. **The author will accept an amendment to correct those cross references.**
- 7) *Opposition.* The League of California Cities is opposed unless amended to remove the provision requiring a draft element to HCD at least 90 days before the deadline. They also ask that “if HCD finds that a city’s housing element does not substantially comply, then those findings should also receive a “presumption of validity” rather than the “presumption of invalidity” given the city’s housing element by AB 2023.” Other cities and neighborhood homeowners groups are opposed to the bill because the bill creates confusion.
- 8) *Double referral.* This bill was also referred to the Judiciary Committee.

RELATED LEGISLATION:

AB 1886 (Alvarez, 2024) — provides that a housing element or amendment is considered to be substantially compliant with housing element law when the local agency has adopted a housing element or amendment and HCD or a court of competent jurisdiction determines the adopted housing element or amendment to be in substantial compliance, as specified. *This bill is currently pending in the Senate Appropriations Committee.*

AB 1398 (Bloom, Chapter 358, Statutes of 2021) — requires a local government that has failed to adopt a substantially compliant housing element within 120 days of the statutory deadline to complete a rezoning program no later than one year from the statutory deadline for adoption of the housing element, among other things.

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

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

SUPPORT:

California Rural Legal Assistance Foundation (Co-Sponsor)
Public Interest Law Project (Co-Sponsor)

YIMBY Action (Co-Sponsor)
YIMBY Law (Co-Sponsor)
California Apartment Association
California Housing Partnership Corporation
LeadingAge California

OPPOSITION:

City of Eastvale
City of Rancho Cucamonga
City of Thousand Oaks
League of California Cities
Livable California
Mission Street Neighbors

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