

conservation element, open space element, noise element, and safety element, to guide the future growth of the community.

- 5) Requires the housing element to identify and analyze existing and projected housing needs and to identify adequate sites with appropriate zoning to meet the housing needs of all income levels in the community.
- 6) Provides that each jurisdiction's fair share of housing be determined through the regional housing needs allocation (RHNA) process, which is composed of three main stages: the Department of Finance and Department of Housing and Community Development (HCD) develop regional housing need estimates; councils of government (COGs) allocate housing within each region based on these estimates; and cities and counties incorporate their allocations into their housing elements.
- 7) Requires the housing element to include an assessment of housing needs and an inventory of resources and constraints relevant to meeting those needs. Requires a locality's inventory of land suitable for residential development to be used to identify sites that can be developed for housing within the planning period and that are sufficient to provide for the locality's share of the regional housing need for all income levels.
- 8) Requires, where the inventory of sites does not identify adequate sites to accommodate the need for all groups at all income levels, for rezoning of those sites to be completed within a specified time.
- 9) Prohibits a local jurisdiction from reducing or allowing the reduction of the residential density, or from allowing development at a lower residential density for any parcel, unless the jurisdiction makes specified written findings.
- 10) Requires each jurisdiction's RHNA plan to further five statutory objectives:
 - a) Increasing the housing supply and the mix of housing types, tenure, and affordability in all cities and counties in the region in an equitable manner.
 - b) Promoting infill development and socioeconomic equity, protecting environmental and agricultural resources, encouraging efficient development patterns, and achieving the state's greenhouse gas reduction targets.
 - c) Promoting an improved intraregional relationship between jobs and housing.
 - d) Allocating a lower proportion of housing need to an income category when a jurisdiction already has a disproportionately high share of households in that income category.
 - e) Affirmatively furthering fair housing.

- 11) Requires HCD, by December 31, 2022, after engaging in a public stakeholder process, to develop and recommend improved RHNA process and methodology that promotes and streamlines housing development and substantially addresses California's housing shortage. HCD shall submit a report to the Legislature.

This bill:

- 1) Prohibits a city or county from approving a discretionary entitlement that would result in a new residential development project located within a VHFHSZ, unless the city or county finds that the residential development project will meet specified standards to reduce wildfire risk. These standards are categorized by the size of the development. Projects containing less than 10 units are required to comply with existing state law. Standards become progressively more stringent for developments of 10-99 units, and developments of 100 or more units (See Comment 9).
- 2) Provides that entitlements that are subject to the bill's requirements include discretionary approvals for a new residential development project for which a new application or preliminary application is submitted after January 1, 2023, for any of the following:
 - a) A general plan amendment.
 - b) A zoning ordinance amendment.
 - c) A development agreement.
 - d) A subdivision tract or parcel map, other than a final map.
 - e) A conditional use permit.
- 3) Requires the SFM to provide financial assistance to fire harden at least 300,000 existing vulnerable homes within the next three years in VHFHSZ, with an emphasis on disadvantaged communities and low-income communities, in the form of grants and low interest loans under the Wildfire Mitigation Program. The SFM must continue to offer financial assistance to fire harden an additional 300,000 existing vulnerable homes in VHFHSZ every three years, with a target of hardening 1 million existing vulnerable homes within the first 10 years. The SFM must report back to the Legislature annually on the pace of fire hardening and what constraints impair the ability to realize the targets established by this bill.
- 4) Specifies that the wildfire risk reduction standards outlined in this bill do not limit or prohibit a city or county from adopting more stringent standards.

- 5) Provides nothing in this bill affects the consideration of a residential development project pursuant to the California Environmental Quality Act (CEQA).

COMMENTS:

- 1) *Author's statement.* According to the author, "As a state, we are far from meeting the need for 'Housing for All.' To address the housing shortage, reduce inequities in home ownership rates, and protect homeowners from climate change, California needs to build more housing across all levels of affordability that are fire-resilient and energy efficient. We need options to build modern, resilient homes, including increasing our affordable housing stock by also making sure those who live and work in our communities are protected and safe."
- 2) *State Housing Crisis.* California faces a severe housing shortage. In its most recent statewide housing assessment, HCD estimated that California needs to build an additional 100,000 units per year over recent averages of 80,000 units per year to meet the projected need for housing in the state. A variety of causes contributed to the lack of housing production. Recent reports by the Legislative Analyst's Office and others point to local approval processes as a major factor. They argue that local agencies control most of the decisions about where, when, and how to build new housing, and those agencies are quick to respond to vocal community members that may not want new neighbors.
- 3) *California Wildfires.* Catastrophic and devastating wildfires have occurred repeatedly in the state in recent years. In 2021 alone, preliminary data show almost 9,000 wildland fires burned almost 2.6 million acres in the state. Slightly fewer wildland fires in 2020 burned almost 4.4 million acres – a modern record. The 2020 August Complex Fire in northern California – the largest fire in California's modern history – burned over 1 million acres by itself. The 2021 Dixie fire also almost reached 1 million acres. Two wildland fires in the last year burned over the crest of the Sierras, which had not been previously observed. Nine of the twenty largest and seven of the twenty most destructive wildland fires in state history occurred in 2020 and 2021.
- 4) *Where can we build?* California is currently experiencing a serious housing crisis and it is essential to expedite construction of critically needed housing units. In order to make this happen, it is important for every jurisdiction to meet its full regional housing obligation and to create an environment where housing is available to all Californians of all income levels. Toward this end, the Legislature has enacted multiple bills over the past several years to provide both funding and incentives to help increase compliance with housing element

law. The state faces a difficult policy question in that it must balance the protection of its residents from wildfires, sea level rise, floods, earthquakes, and other risks, against meeting the need for more housing.

- 5) *Fire hazard severity zones.* Every five years, the Board designates the SRA. Within SRA lands, CalFIRE designates moderate, high, and very high fire hazard severity zones (VHFHSZ). After the 1991 Oakland-Berkeley fires, the Legislature required CalFIRE to also designate VHFHSZ in LRAs. Although these maps are required to be updated every five years, current maps date back to 2007. Landowners in the SRA and in LRA designated VHFHSZ must follow specified fire prevention practices and meet standards developed by the Board. These practices and standards include maintaining defensible space of 100 feet around structures, performing certain activities to reduce the amount of flammable material near and on structures, and meeting specific building standards developed by CalFIRE and HCD that help structures withstand ignition and reduce fire risk.
- 6) *Chapter 7A standards.* In 2005, the CBSC approved the SFM's emergency regulations that amended the California Building Code to establish Chapter 7A, Materials and Construction Methods for Exterior Wildfire Exposure (Chapter 7A standards). These mandatory standards took effect on July 1, 2008, and have been updated periodically since then. Any new building constructed in any level of fire hazard severity zone within the SRA, or in any LRA designated VHFHSZ, must comply with the Chapter 7A standards. In addition, local agencies can choose to require ancillary buildings, ancillary structures, and detached accessory structures to meet the Chapter 7A standards. These standards are intended to ensure that the exterior of the structure is ignition-resistant and can resist the entry of flying embers and fire radiation during a wildfire. Requirements include measures such as fire-retardant-treated wood and shingles; wire mesh coverings on all ventilation openings; exterior glazing on all windows; and non-combustible decking material.

It is clear that the Chapter 7A standards are making a difference. A 2019 *Sacramento Bee* article noted that in the Camp Fire, about 51% of the single-family homes built after 2008 were undamaged; in contrast, only 18% of those built prior to 2008 were undamaged.¹ Data provided to the committee by CalFIRE indicates that of the homes affected by the seven largest 2017 and 2018 wildfires (Atlas, Camp, Carr, Nuns, Thomas, Tubbs, and Woolsey), about

¹ Dale Kasler and Philip Reese, "'The Weakest Link:' Why Your House May Burn While Your Neighbor's Survives the Next Wildfire," *Sacramento Bee* (April 11, 2019), <https://www.sacbee.com/news/california/fires/article227665284.html>.

46% of homes built prior to 2009 were undamaged, compared to about 62% of homes built after 2009.

- 7) *CEQA and Project Approvals*. CEQA provides a process for evaluating the environmental effects of applicable projects undertaken or approved by public agencies. If a project is not exempt from CEQA, an initial study is prepared to determine whether the project may have a significant effect on the environment. If the initial study shows that the project would not have a significant effect on the environment, the lead agency must prepare a negative declaration or a mitigated negative declaration. If the initial study shows that the project may have a significant effect, the lead agency must prepare an Environmental Impact Report (EIR). Generally, an EIR must accurately describe the proposed project, identify and analyze each significant environmental impact expected to result from the proposed project, identify mitigation measures to reduce those impacts to the extent feasible, and evaluate a range of reasonable alternatives to the proposed project.

Each discretionary entitlement described in this bill is generally considered a "project" under CEQA if it will have a significant impact on the environment. There are several statutory exemptions that provide limited environmental review for projects that are consistent with a previously adopted general plan, community plan, specific plan, or zoning ordinance.

- 8) *Development approvals*. This bill prohibits a local agency from approving a discretionary entitlement that would result in a new residential development project located within a VHFHSZ, unless the city or county finds that the residential development project will meet specified standards to reduce wildfire risk, as applicable. "Discretionary entitlement" includes one or more of the following discretionary approvals for a new residential development project for which a new application or preliminary application is submitted after January 1, 2023, for any of the following:

- A general plan amendment;
- A zoning ordinance amendment;
- A development agreement;
- A subdivision tract or parcel map, other than a final map; or
- A conditional use permit.

However, the bill excludes from the above prohibition any modification or amendment to any previously approved development agreement, subdivision tract map, parcel map or final map, conditional use permit, or other discretionary approval for a residential development project.

- 9) *Standards to reduce wildfire risk.* The bill defines three tiers of “wildfire risk reduction standards,” based on the size of the development, specifically: 1 to 9 residential units; 10 to 99 residential units; and 100 or more residential units.
- a) *Developments of any size.* A development of any size must meet existing regulations governing defensible space, vegetation management, fuel modification and building standards promulgated by the SFM, Building Standards Commission, and the Board, unless those standards provide exceptions or alternative means of compliance applicable to the project.
 - b) *Developments of 10 or more units.* Developments of 10 or more residential dwelling units must meet all the standards applicable to smaller developments and a plan reviewed by the local fire authority that implements, at a minimum, the following wildfire risk reduction strategies, including: fire hardening off site structures, access for fire safety personnel, evacuation routes, wildfire buffers, and long-term funding and maintenance of wildfire buffer areas.
 - c) *Developments of 100 or more residential units.* Developments of 100 or more residential units must meet all of the standards applicable to smaller developments and all of the following: undergrounding new power lines, adequate access for firefighting equipment, water supply to support fire suppression, and an evacuation plan approved by the local fire marshal. Developments of 100 or more units must also have a wildfire risk reduction program, approved by the local fire authority, setting forth site-specific safety measures to ensure that the residential development project, as a whole, is planned and constructed to resist the encroachment of wildfire and to mitigate wildfire risks to surrounding areas.
- 10) *Home hardening funding program.* This bill, upon appropriation from the Legislature and consistent with existing law, requires the SFM to provide financial assistance to fire harden at least 300,000 existing vulnerable homes within the next three years in VHFHSZs, with an emphasis on disadvantaged communities and low-income communities, in the form of grants and low interest loans under the wildfire mitigation program. This program shall continue to offer financial assistance to fire harden an additional 300,000 existing vulnerable homes in VHFHSZs every three years thereafter, with a target of hardening 1,000,000 existing vulnerable homes within the first 10 years. Report back to the Legislature annually on the pace of fire hardening and what constraints impair the ability to realize the above targets.
- 11) *Seeing double.* The Legislature has considered several bills related to planning and development in the VHFHSZ in recent years. One significant measure includes SB 12 (McGuire), which the Senate Housing Committee

approved at its April 29, 2021 hearing on a vote of 7-2. That bill had a similar structure to this bill: both bills impose progressively more stringent standards on developments of increasing size in the VHFHSZ. However, there are several key differences between the measures, including that SB 12:

- a) Required more stringent standards than AB 2705 at all tiers of development size. These standards must be developed by the SFM and adopted by local governments. The standards must also be feasible and achievable to the majority of developments in the VHFHSZ. AB 2705 allows local fire authorities to make many of the determinations about the sufficiency of their measures.
- b) Required local governments to update their land use elements to incorporate the standards developed by the SFM. AB 2705 has no planning requirements.
- c) Comprehensively covers new development by applying to projects that have any residential units and certain ministerial approvals, such as building permits. As noted above, AB 2705 contains several exemptions.
- d) Requires COGs to lower the RHNA for jurisdictions that have significant portions of their jurisdiction within the VHFHSZ (and increase the allocation elsewhere so that there is no net loss of housing). AB 2705 has no such provision. (See Comment 12).

Additionally, SB 12 was almost identical to SB 182 (Jackson, 2019). The Senate Housing Committee approved SB 182 at its April 22, 2019, hearing on a vote of 8-3, but the Governor vetoed it, saying:

“I am returning Senate Bill 182 without my signature. This bill would impose certain fire hazard planning responsibilities on local governments and would require cities and counties to make specified findings on fire standards prior to permitting development in the very high fire hazard severity zone. I strongly support strengthening land use planning requirements in order to better protect our communities from wildfire. The importance of reducing the number and impact of fires in our communities cannot be overstated. However, this bill creates inconsistencies, duplicates existing requirements, creates a loophole for regions to not comply with their housing requirements, fails to account for consequences that could increase sprawl and places significant cost burdens on the state. New state laws and policies are already directing housing to communities near transit, jobs and urban centers and away from fire risk areas, including integration into the current housing planning cycle. Additionally, the 2019-20 Budget requires the California Department of Housing and Community Development, in collaboration with the Governor's Office

of Planning and Research, to develop recommendations to improve the regional housing need allocation process to promote and streamline housing development to address California's housing shortage. Wildfire resilience must become a more consistent part of land use and development decisions. However, it must be done while meeting our housing needs. For these reasons, I am returning Senate Bill 182 without my signature.”

- 12) *Piecemeal RHNA reform?* While many stakeholders would like to see a more comprehensive consideration of very high fire hazard risks in the RHNA process and housing planning more generally, it is likely that the requirements for the next RHNA cycle will be considered in a more holistic way in the coming months. HCD is required, pursuant to AB 101 (Committee on Budget and Fiscal Review, Chapter 159, Statutes of 2019) to engage in a stakeholder process to develop and recommend an improved RHNA process and methodology. That report is due to the Legislature by the end of this calendar year. Such a review would provide a more timely opportunity than any additional proposed amendments in this bill to discuss the issue of fire risk as it relates to the entire RHNA and housing element process.
- 13) *A new framework: Governance and Finance Committee amendments.* **The author agreed to amendments with the Senate Governance and Finance Committee. Due to timing, the amendments will be taken in this committee, and include the following framework:**
- **Require CALFIRE to update maps of Fire Hazard Severity Zones and designate areas within the VHFHSZ that pose extreme risk to firefighting personnel and structures and their occupants.**
 - **Require standards that currently only apply to 100+ units to apply to 10-99 units and create enhanced, but specific, standards for 100+ unit developments.**
 - **BOF must establish these standards for categories 10-99 units and 100+ units, regularly update, and then local governments must implement them—or standards that meet or exceed them—and send any decisions to BOF.**
 - **Require locals to integrate BOF standards into land use element, and zoning codes, with approval by BOF.**
 - **Ensure ministerial permits, charter cities, and developments with significant residential components are also covered. Retain 2705’s language about not triggering additional requirements for modifications and exclude final subdivision maps.**

- **Provide that ministerial approvals under the bill are not a project under CEQA.**

14) *Incoming!* The Senate Rules Committee has ordered a triple referral of AB 2705: first to the Senate Governance and Finance Committee to hear issues related to local approvals of development; second to the Senate Housing Committee; and third to the Senate Governmental Organization Committee. However, due to the ongoing COVID-19 pandemic, the referral to Governmental Organization was rescinded. This bill was heard in the Senate Governance and Finance Committee on June 15, 2022 and received a vote of 5-0.

RELATED LEGISLATION:

SB 12 (McGuire, 2021) — imposes additional fire hazard planning responsibilities on local governments, requires counties and cities to make specified findings before taking certain development actions in very high fire risk areas (VHFRA), requires related fire planning and review by multiple state agencies, and creates a grant program for small jurisdictions to implement the bill's requirements. *This bill is pending in the Assembly Housing and Community Development Committee.*

SB 182 (Jackson, 2020) — would have imposed additional fire hazard planning responsibilities on local governments, requires counties and cities to make specified findings before taking certain development actions in very high fire risk areas (VHFRA), requires related fire planning and review by multiple state agencies, and creates a grant program for small jurisdictions to implement the bill's requirements. *This bill was vetoed by the Governor.*

AB 38 (Wood, Chapter 391, Statutes of 2019) — created the Wildfire Mitigation Program by requiring the California Office of Emergency Services to enter into a joint powers agreement with CalFIRE to administer a comprehensive wildfire mitigation and assistance program to encourage cost-effective structure hardening and facilitate vegetation management, contingent upon appropriation by the Legislature.

AB 101 (Committee on Budget and Fiscal Review, Chapter 159, Statutes of 2019) – required HCD to engage in a stakeholder process to develop and recommend an improved RHNA process and methodology and report back to the Legislature by December 31, 2022.

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

POSITIONS: (Communicated to the committee before noon on Wednesday, June 15, 2022.)

SUPPORT:

Building Industry Association of Southern California, INC.
Building Owners and Managers Association of California
California Apartment Association
California Association of Realtors
California Building Industry Association (CBIA)
California Business Properties Association
California Business Roundtable
California Chamber of Commerce
Commercial Real Estate Development Association, Naiop of California
Institute of Real Estate Management (IREM)
International Council of Shopping Centers
Southern California Leadership Council
United Latinos Action

OPPOSITION:

Brentwood Alliance of Canyons & Hillside
Buena Vista Audubon Society
California Native Plant Society
California Native Plant Society - San Diego Chapter
Center for Biological Diversity
Defenders of Wildlife
Endangered Habitats League
Environmental Center of San Diego
Friends of Harbors, Beaches and Parks
Hills for Everyone
Los Angeles Audubon Society
Los Padres Forest Watch
Planning and Conservation League
San Diego Audubon Society
The Urban Wildlands Group

-- END --