

This bill:

- 1) Requires the Homeless Coordinating and Financing Council (HCFC), or an entity the HCFC contracts with for this purpose, upon appropriation or upon receiving technical assistance from the US Department of Housing and Urban Development (HUD), to do all of the following:
 - a) Conduct a statewide needs and gaps analysis, as specified.
 - b) Evaluate all data, as specified. To the extent specific data are unavailable, estimates may be calculated based on national or local data, as specified.
 - c) Seek input from HCFC members on the direction of, design of data collection for, and items to be included in, the gaps and needs analysis.
- 2) Authorizes a local government, upon appropriation or upon receiving technical assistance from HUD, to collaborate with the HCFC or the entity conducting the gap analysis, as specified. Requires the HCFC to report on the final gap analysis by July 31, 2021, to the Legislature, as specified.
- 3) Requires HCD, based on the gap analysis, to set a benchmark goal to reduce homelessness in California. Requires HCD to approve or work with local agencies to identify benchmark goals to reduce homelessness for each local agency and cities within each local agency, based on the 2019 homeless point-in-time count, as specified, by December 31, 2028.
- 4) Requires each local agency, on or before January 1, 2022, to submit to HCD an actionable county-level plan for meeting specific annual benchmarks, as specified. Requires each city in the agency's jurisdiction to participate and requires the local agency to actively seek the participation of all Continuums of Care (CoCs) that serve its jurisdiction. Requires the governing body of each agency, city, and CoC to approve the plan. Authorizes a local agency to use or incorporate an existing gaps or needs analysis, as specified.
- 5) Requires the state and each local agency to submit an annual progress report to HCD regarding progress and implementation of the adopted plan, as well as any proposed amendments. Requires HCD to review the plans and provide feedback and recommended revisions. Requires an agency to adopt recommended revisions or adopt findings as to why they are not needed.
- 6) Establishes the position of Housing and Homelessness Inspector General (HHIG) in HCD.

- 7) Requires HCD to monitor the progress of plans and, if it determines that the state or a local agency has not adopted an actionable plan, or has failed within a reasonable timeframe to make progress in accordance with the plan, requires HCD to notify the agency and the HHIG that the agency is not in substantial compliance.
- 8) Authorizes the HHIG, on or after January 1, 2022, to bring an action against the state, a local agency, or a city to compel compliance with this bill, as specified. If a court finds that the state or local agency is not in substantial compliance, it may issue an order or judgement directing the state, local agency, or city to substantially comply, as specified. If the court issues an order or judgment, it shall retain jurisdiction for no more than 24 months to ensure its order or judgment is carried out. Provides that the HHIG and a court shall not pursue any action within 18 months of HCD approving a plan.
- 9) Prohibits the state, a local agency, or a city from deliberately and intentionally transporting a homeless individual or household to a different jurisdiction unless those individuals and households choose to move. Authorizes any person to file a complaint with the HHIG if the state, a local agency, or a city violates this prohibition. Requires the HHIG to investigate such complaints. Requires the HHIG to impose a civil penalty of up to \$100,000 per individual transported outside the jurisdiction.

COMMENTS

- 1) *Author's statement.* "Homelessness is the moral crisis of our time. The COVID-19 pandemic has intensified an already intense challenge. The state and local governments lack a mechanism to hold each other accountable for reducing homelessness and as a result there is no clear strategy for responding. Local homeless advocates have sued and continue to sue cities and counties for what they see as a lack of response and urgency in responding to homelessness. Rather than waiting for coronavirus outbreaks or expensive, time-consuming lawsuits to force the question of how to address homelessness, AB 3269 would proactively establish plans, metrics, accountability and enforcement of progress towards plans. By holding all governments levels accountable based on benchmarks, AB 3269 would move California towards finally addressing the moral crisis of our day."
- 2) *Homelessness in California.* According to the US Department of Housing and Urban Development (HUD) 2019 Annual Homeless Assessment Report to Congress, in January 2019 California had 27% of the nation's homeless population (about 151,278 individuals). California also contains 53% of the

nation's unsheltered homeless population (108,432), including people living in vehicles, abandoned buildings, parks, or on the street. Los Angeles contains the highest number of homeless people in the state, at 56,257, where 76% of those are unsheltered. People experiencing homelessness face a variety of challenges including food and income insecurity, as well as health problems; the homeless population faces a higher risk of exposure to communicable diseases such as COVID-19, influenza, strep throat, sexually transmitted diseases, Hepatitis C, HIV/AIDS, and tuberculosis, among others.

- 3) *The HCFC and Housing First*. The HCFC was created in 2017 (SB 1380, Mitchell, Chapter 847, 2016) to oversee the implementation of "Housing First" policies, guidelines, and regulations to reduce the prevalence and duration of homelessness in California. Housing First is an evidence-based model that focuses on the idea that homeless individuals should be provided shelter and stability before underlying issues can be successfully addressed. Housing First utilizes a tenant screening process that promotes accepting applicants regardless of their sobriety, use of substances or participation in services. This approach contrasts to the "housing readiness" model where people are required to address predetermined goals before obtaining housing. The federal government has shifted its focus to Housing First over the last decade, and housing programs under HUD utilize core components of this strategy. Housing First was embraced by California in 2015 through SB 1380, which requires all state housing programs to adopt this model.
- 4) *Lawsuits against local governments*. The landmark case of *Martin v. Boise* challenged the city of Boise's enforcement of its Camping and Disorderly Conduct Ordinances against individuals experiencing homelessness – those who need to sleep in public in the absence of adequate housing or shelter. Last year, a panel of the 9th Circuit held that "as long as there is no option of sleeping indoors, the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter." Following that ruling, the City of Boise petitioned the entire 9th Circuit to rehear the case, which was rejected in April 2019. The city then asked the Supreme Court to hear the case. The Court rejected that request, affirming that within the 9th Circuit, "the Eighth Amendment preclude[s] the enforcement of a statute prohibiting sleeping outside against homeless individuals with no access to alternative shelter."

Orange County, along with the cities of Costa Mesa, Anaheim, and Orange, were recently sued by advocates who argued that people experiencing homelessness in those jurisdictions were effectively criminalized due to the lack of shelter beds at the time, coupled with anti-camping ordinances, was resulting

in numerous tickets and eventually jail time for individuals with nowhere else to sleep. The lawsuit was filed as a result of the county clearing out an encampment in the Santa Ana Riverbed. Attorneys have since filed suit against other cities in the county. The suits filed in federal court are under the supervision of Judge David Carter, who has entered into court-enforced agreements to require these municipalities to develop emergency shelters. While the federal court under Judge Carter successfully held local governments accountable to provide emergency shelters, the process was complex, expensive, and time-consuming for both litigants and local governments. Attorneys have since filed lawsuits in, or sent demand letters to, Los Angeles, San Diego, Santa Cruz, Sacramento, San Francisco, and other jurisdictions.

- 5) *Governor's Council of Regional Homeless Advisors*. In 2019, the Governor appointed a Council of Regional Homeless Advisors, made up of local elected officials and leading organizations that work on homelessness in the state. In January 2020, the Governor's Council issued a number of recommendations to reduce and prevent homelessness. One of the key recommendations – which this bill aims to address – was to create an enforceable, results-based accountability mandate to end homelessness. Sacramento Mayor Darrell Steinberg, co-chair of the Governor's Council, is a co-sponsor of this bill.
- 6) *2020 homeless bills*. There are four bills currently pending in the Senate Housing Committee and the Senate Human Services Committee that take overlapping approaches to addressing homelessness (see table below).

AB 3269 (Chiu)	AB 1845 (Luz Rivas)	AB 2746 (Gabriel)	AB 2405 (Burke)
<p>Establishes a Housing and Homelessness Inspector General in HCD to monitor implementation and progress of state and local homeless action plans; bring actions against state and local agencies to compel plan compliance; and investigate complaints and issue civil penalties.</p>	<p>Establishes the Office to End Homelessness in the Governor’s Office, headed by a new Secretary on Housing Insecurity and Homelessness. Moves the HCFC into this new office. Requires the new office to coordinate homeless programs and funding.</p>		<p>Declares a state policy that every individual in California has the right to safe, decent, and affordable housing.</p>
<p>Requires the Homeless Council to conduct a gap analysis and requires HCD, based on this analysis, to set a benchmark goal to reduce homelessness in the state.</p>			<p>Requires all relevant state agencies, as well as local jurisdictions, to consider the right to housing policy when revising, adopting, or establishing policies, regulations, and grant criteria. Requires them to commit to preventing homelessness; revise existing programs and services to address homelessness; and ensure state-funded institutions do not discharge individuals without housing options.</p>
<p>Requires each local agency to submit a homelessness action plan to HCD and requires state and local agencies to submit annual progress reports to HCD.</p>		<p>Requires recipients of funds from specified homeless assistance programs to submit an annual report to the agency that allocated the funds.</p>	
<p>Requires HCD to report state or local agency to the HHIG who is not in compliance. Authorizes the HHIG to compel compliance.</p>		<p>Requires state agencies to post all reports within 30 days and to submit an aggregated annual report to Dept. of Finance, who must post a fully aggregated report on its website.</p>	

- 7) *Opposition concerns.* The League of California Cities states that while it agrees with the need for a gap analysis and the need to develop actionable plans to address homelessness, this bill does not provide funding to local governments to cover the costs of developing these plans. Counties (California State Association of Counties, Rural County Representatives of California, and Urban Counties Caucus) state that while they also agree with the need for a gap analysis, the lack of funding for implementation is a significant concern. They express concern that counties will be held responsible if individual cities choose not to participate, or if a city or CoC chooses not to adopt a homeless action plan. They also express concerns about setting a statewide homeless reduction goal before local plans are developed, and request that the January 1, 2022 due date for local plans be extended by six months.
- 8) *Triple referral.* Due to the COVID-19 Pandemic and the unprecedented nature of the 2020 Legislative Session, all Senate Policy Committee are working under a compressed timeline. This timeline does not allow this bill to be referred and heard by more than one committee as a typical timeline would allow. In order to fully vet the contents of this measure for the benefit of Senators and the public, this analysis includes information from the Senate Human Services Committee. Additionally, according to the Senate Judiciary Committee:

“There are two components of this bill that would ordinarily trigger consideration before the Senate Judiciary Committee. First, the bill confers upon the HHIG the authority to involve the California courts in enforcement of the bill’s provisions through use of the writ of mandate process. Under the bill, if the HHIG determines based on specified criteria that the state or a local jurisdiction has failed to carry out its planning obligations or failed to make sufficient progress toward stated goals, the HHIG can seek a court order requiring the state or local jurisdiction to take remedial actions. The bill spells out an expansive but finite set of orders that the court may hand down at the HHIG’s request. They range from forcing the state or local jurisdiction to adopt plans, to requiring re-zoning, or the dedication of resources to addressing homelessness. Finally, the bill specifies that a court order under these provisions may be appealed, and that, if it is the courts shall hear the appeal on an “expedited basis.” Though “expedited basis” is not further defined in the bill, it presumably implies that such appeals would be given some priority over other cases. Historically, the Senate Judiciary Committee has been hesitant about legislation that purports to determine for the judiciary branch how it should prioritize its caseload given that other urgent matters could be inadvertently forced aside as a result.

Second, the bill prohibits local governments from attempting to reduce their homeless population by simply transporting homeless people elsewhere. To enforce this prohibition, the bill establishes civil penalties of \$100,000 for each individual so transported. It also creates an administrative regime under the auspices of the HHIG for receiving and investigating allegations of violations. It is noteworthy that the bill does not spell out any specific process for how these civil penalties would be imposed by the HHIG. In order to satisfy procedural due process requirements, the HHIG would almost certainly have to provide the local jurisdictions with, at a minimum, notice and a hearing before handing down the civil penalty. (*Mathews v. Eldridge* (1976) 424 U.S. 319, 333.)”

RELATED LEGISLATION:

AB 1845 (Luz Rivas, 2020) — establishes the Office to End Homelessness, to be headed by the newly created Secretary on Housing Insecurity and Homelessness, to serve as the lead entity for ending homelessness in California. *This bill is pending in the Senate Human Services Committee.*

AB 2329 (Chiu, 2020) — requires the HCFC to conduct a homelessness statewide gaps and needs assessment by July 31, 2021. *This bill was held on suspense in the Senate Appropriations Committee. Its contents were amended into AB 3269.*

AB 2405 (Burke, 2020) — declares a state policy that every individual in California has the right to safe, decent, and affordable housing. *This bill will be heard today in this committee.*

AB 2746 (Gabriel, 2020) — imposes a number of reporting requirements on recipients of state homeless funding. *This bill is pending in the Senate Human Services Committee.*

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

POSITIONS: (Communicated to the committee before noon on Friday, July 24, 2020.)

SUPPORT:

City of Sacramento Mayor Darrel Steinberg (Sponsor)
 Corporation for Supportive Housing (Co-Sponsor)
 Housing California (Co-Sponsor)

All Home
Brilliant Corners
City of San Jose Mayor Sam Liccardo
Disability Rights California
Downtown Women's Center
San Francisco Bay Area Rapid Transit District (BART)
San Gabriel Valley Consortium on Homelessness
Shelter Partnership
St. Joseph Center
United Way of Greater Los Angeles

OPPOSITION:

California State Association of Counties
City of Beverly Hills
City of Placentia
City of Santa Clarita
League of California Cities
Rural County Representatives of California
Urban Counties Caucus

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