
SENATE COMMITTEE ON HOUSING
Senator Nancy Skinner, Chair
2023 - 2024 Regular

Bill No: SB 1037 **Hearing Date:** 4/16/2024
Author: Wiener
Version: 3/19/24
Urgency: No **Fiscal:** Yes
Consultant: Alison Hughes

SUBJECT: Planning and zoning: housing element: enforcement

DIGEST: This bill requires specific penalties to be imposed in any action brought by the California Attorney General (AG) on behalf of the California Department of Housing and Community Development (HCD) or in an independent capacity to enforce the adoption of housing element revisions, as specified, or to enforce any state law that requires a local government to ministerially approve, without discretionary review, any land use decision or permitting application for a housing development project.

ANALYSIS:

Existing law:

- 1) Requires the California Department of Housing and Community Development (HCD) to notify a local government, and allows HCD to notify the office of the Attorney General (AG), if HCD finds that:
 - a) A housing element does not substantially comply with state law; and
 - b) Any local government has taken an action in violation of specified laws.
- 2) Authorizes the AG to seek all remedies available under law to enforce state law in an independent capacity.
- 3) Grants HCD and the AG the unconditional right to intervene in any suit brought to enforce any of the following state laws, as specified:
 - a) Housing Element Law;
 - b) The Housing Accountability Act;
 - c) “No net loss” policy for implementing housing elements, as specified;
 - d) Density bonus law;
 - e) Fair housing law, as specified;
 - f) The Housing Crisis Act of 2019;

- g) The obligation to affirmatively further fair housing as specified;
 - h) Housing streamlining laws, as specified;
 - i) Supportive housing streamlining laws;
 - j) Low barrier navigation center streamlining laws;
 - k) Laws related to floor area ratio standards, as specified;
 - l) The requirement to submit an annual progress report regarding implementation of local housing elements;
 - m) Laws related to the enforcement of minimum parking requirements on certain developments; and
 - n) The Affordable Housing and High Road Jobs Act of 2022.
- 4) Grants the AG this unconditional right whether intervening in an independent capacity or pursuant to a notice or referral from HCD.
- 5) Establishes the Building Homes and Jobs Fund, through the Permanent Local Housing Allocation (PLHA) program, which provides funding to local governments in California for housing-related projects and programs that assist in addressing the unmet housing and homelessness needs of their local communities.

This bill:

- 1) Requires specific penalties to be imposed in any action brought by the AG on behalf of HCD or in an independent capacity to enforce any state law that requires a local government to ministerially approve, without discretionary review, any land use decision or permitting application for a housing development project, including all of the following:
- a) A civil penalty of, at a minimum, \$10,000 per month, not exceeding \$50,000 per month, for each violation accrued from the date of the order or judgement finding a violation until the date the violation is cured.
 - b) All costs of investigating and prosecuting this action, including expert fees, reasonable attorney's fees, and costs, whenever the AG prevails.
 - c) Other relief as the court deems appropriate, including equitable and injunctive relief, provisional or otherwise. Any injunction, provisional or otherwise, ordered by the court pursuant to this paragraph shall be deemed to be prohibitory, and not affirmative.
- 2) Provides that this bill is intended to ensure that, where local land use decisions or actions are arbitrary, capricious, entirely lacking in evidentiary support, contrary to established public policy, unlawful, or procedurally unfair, adequate remedies are available to ensure that state laws are followed.

- 3) Provides that any fine levied shall be deposited in the Building Homes and Jobs Fund for the purpose of supporting the development of affordable housing located in the affected jurisdiction. If the funds are not used within five years, the penalty funds shall revert to financing newly constructed affordable housing units in the state without any geographic restrictions.
- 4) Provides that the liability, penalties, and remedies imposed by this bill are in addition to any other liability, penalty, or remedy imposed by any other law.

COMMENTS:

- 1) *Author's statement.* "Senate Bill 1037 will enhance the Attorney General's ability to seek civil penalties against local governments that are found by a court to have violated state housing law. Currently, the Attorney General can bring an action for violation of a ministerial approval law, but even if the Attorney General prevails in court, the local government has sixty days to cure its violation and thus avoid all penalties. As a result, local governments have little incentive to comply with the law. Cities should face immediate consequences after entry of a court judgment for violating state housing laws, and SB 1037 accomplishes this goal. SB 1037 will allow the Attorney General to seek between \$10,000 and \$50,000 in civil penalties per violation each month as a remedy in legal actions against local governments for noncompliance with housing element law or violating state ministerial approval laws."
- 2) *Enforcement of State Housing Laws.* In recent years, the Legislature has implemented many policy changes to address the housing deficit, including creating processes requiring streamlined, ministerial approval of housing and requiring local governments to plan and zone for more housing via the housing element process. For many years prior to the enactment of these and other laws, local governments often treated the housing element and other housing requirements as a "paper exercise" because the state lacked strong enforcement tools to ensure compliance.

AB 72 (Santiago, Chapter 370, Statutes of 2017) established a process for HCD to enforce state housing laws. AB 72 requires HCD to notify a local government, and allows HCD to notify the AG, if HCD finds that a local government's housing element does not substantially comply with state law, or if any local government has taken an action in violation of specified housing laws.

In addition to the expanded authority under AB 72, HCD has created and staffed a Housing Accountability Unit (HAU), which provides education and technical assistance as well as oversight and enforcement of housing element laws to ensure local governments comply with specified state housing laws. Violations of these laws may lead to a variety of consequences for local governments, including referral to the AG for further civil action.

Furthermore, many of the laws referenced above also provide a mechanism for private third party actors – for example, developers, advocacy organizations, and members of the public – to file their own lawsuits to challenge local land use planning and permitting decisions. The Housing Accountability Act, as an example, provides a private right of action to parties, including the development proponent, a person who would be eligible to live in the proposed development, or a housing organization, who wish to challenge a local government that denied approval or imposed severely burdensome conditions for approval on a housing development project.

- 3) *Role of the AG in Enforcement.* Currently, the AG enforces state housing and development laws both in the AG's independent capacity and on behalf of client agencies, including HCD. In 2022, Attorney General Bonta created a Housing Strike Force within the Department of Justice. The Strike Force is a cross-sectoral team of attorneys who work with state agencies and partners to enforce statewide housing laws.

Last year, the legislature passed and the Governor signed AB 1485 (Haney, Chapter 763) which granted HCD and the AG the unconditional right to intervene in any suit brought to enforce specified housing laws. The purpose of the bill was to strengthen the state's ability to enforce housing laws and ensure that the state's interests are heard as a matter of right in private litigation dealing with the application of those laws.

- 4) *Housing Accountability Act (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 Housing Accountability Act (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.

If a court finds that a locality violated the HAA, a court must issue an order or judgment compelling compliance with the HAA within 60 days, including but not limited to, an order that the locality take action on the housing development project or shelter. The plaintiff shall be entitled to attorney's fees unless the court find that awarding fees would not further the purposes of the HAA. If a locality fails to comply within 60 days, the court shall impose fines, a minimum of \$10,000 per housing unit in the housing development project, which shall be deposited in a local housing trust fund. The court may also approve the housing development project. If the court finds the locality acted in bad faith, in addition to other remedies, the court shall multiply the fine by a factor of five.

- 5) *Flagrant flouters of state law.* Despite the recent actions by the state to facilitate housing construction at the local level, some local governments continue to violate state law. For example, some cities have been reluctant to process qualifying applications ministerially and some have even placed obstructionist requirements to stop those developments all together. According to the sponsor, Attorney General Rob Bonta, his office has taken action against some of the most egregious actors, but the remedies available under existing law – which provide off-ramps for curing even after a court finds a state law violation – are not effective at deterring bad behavior.

This bill seeks to impose fines with a finding of a state law violation more quickly to try to deter bad behavior from occurring in the first place. This bill imposes on a local government, in addition to any other liability, fines, or remedies imposed by any other law, specific penalties for a finding of a violation of state housing element law, or violation of state law authorizing the streamlined ministerial approval of a housing development project, in a lawsuit brought by the AG,. Specifically, the local government would be subject to a civil penalty of between \$10,000 and \$50,000 per month from the date of the judgement until the date the violation is cured; all costs associated with investigating and prosecuting the action; and any other relief the court may

deem appropriate. Funds would be deposited in the Building Homes and Jobs fund, specifically to develop affordable housing in the affected jurisdiction. If the affected jurisdiction fails to expend the money in five years, the money would revert to the state for purposes of building affordable housing anywhere in the state.

- 6) *Opposition.* California Contract Cities Association is concerned that this bill will unfairly penalize smaller jurisdictions that are struggling to keep up with all the policy changes occurring at the state level. According to the League of California Cities, they are opposed because the bill “does not provide an opportunity for cities to correct an honest mistake or address a genuine difference in interpreting the law. Even those jurisdictions acting in good faith could be subject to significant fines and be required to pay the Attorney General for all costs investigating and prosecuting the action, including expert witness fees and attorney’s fees.”
- 7) *Double-referral.* This bill was also referred to the Senate Judiciary Committee.

RELATED LEGISLATION:

AB 1485 (Haney, Chapter 763, Statutes of 2023) — granted HCD and the AG the unconditional right to intervene in any suit brought to enforce specified housing laws.

AB 215 (Chiu, Chapter 342, Statutes of 2021) — provided HCD with additional enforcement authority over local agency violations of specified housing laws.

AB 72 (Santiago, Chapter 370, Statutes of 2017) — gave HCD the authority to find a local government’s housing element out of substantial compliance if it determines that the local government acts or fails to act in compliance with its housing element, and allows HCD to refer violations of law to the Attorney General.

SB 167 (Skinner, Chapter 368, Statutes of 2017) — amended the HAA by increasing the burden of proof on localities when denying a housing project and imposing fines on those localities that violate state law.

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

POSITIONS: (Communicated to the committee before noon on Wednesday, April 10, 2024.)

SUPPORT:

State of California Attorney General Rob Bonta (Sponsor)
Housing Action Coalition
LeadingAge California

OPPOSITION:

California Contract Cities Association
Catalyst for Local Control
League of California Cities
Save Lafayette
2 Individuals

-- END --