

- c) Actions taken by the city or county towards completing programs contained within the housing element and the status of compliance with deadlines in the housing element.
 - d) The number of housing development applications received in the prior year, as well as the number of units included in these applications and the number of units approved and disapproved.
 - e) A list of sites rezoned to accommodate the city's or county's RHNA allocation for each income level that could not be accommodated on sites identified in the housing element's site inventory, and any additional sites that may be necessary to accommodate the city's or county's share of regional housing need.
 - f) The number of net new units of housing, with a unique site identifier including but not limited to the parcel number, including both rental and for-sale housing, that have been issued a completed entitlement, building permit, or certificate of occupancy in the housing element cycle, and the income category that each unit satisfies.
 - g) The number of SB 35 (Wiener, Chapter 366, Statutes of 2017) applications submitted and the total number of developments approved, the number of building permits issued, and the total number of units including both rental and for-sale housing by area median income, constructed through the SB 35 process.
 - h) The number of density bonus applications received, and approved, by the city or county.
- 4) Allows a city or county to meet up to 25% of its RHNA obligation in any income category through "committed assistance" – specifically, the local government commits to providing units at housing costs or rents that are affordable to low- or very low-income households. Establishes a number of conditions on this authority, including that the units constitute a net increase in the community's stock of housing affordable to low- or very low-income households; the units have long-term affordability covenants and restrictions; and the units were not provided with committed assistance in the prior planning period.
- 5) Awards a city, county, or city and county additional points in the scoring of prescribed housing and infrastructure program applications if it has adopted a housing element determined by HCD to be in substantial compliance with housing element law and that has been designated by HCD as prohousing based upon its adoption of prohousing local policies, as specified. Includes the Affordable Housing and Sustainable Communities Program, the Infill Incentive Grant Program of 2007, and other state programs when already allowable under state law, pursuant to regulations adopted by HCD.

- 6) Establishes the Infill Infrastructure Grant Program (IIG) of 2019, which requires HCD, upon appropriation of funds by the Legislature, to establish and administer a grant program to allocate those funds to capital improvement projects that are an integral part of, or necessary to facilitate the development of, a qualifying infill project or qualifying infill area. The program prescribes conditions that the qualifying infill project or qualifying infill area shall meet in order to be awarded, including that the project or area be located in a city, county, or city and county that has submitted its annual progress reports and that has adopted a housing element that has been found to be in substantial compliance with specified law.
- 7) Establishes the Strategic Growth Council (SGC) and sets forth its powers and duties relating to developing and administering the Affordable Housing and Sustainable Communities Program (AHSC) for the purpose of reducing greenhouse gas emissions through projects that implement land use, housing, transportation, and agricultural land preservation practices to support infill and compact development and that support other related and coordinated public policy objectives, including, among others, preserving and developing affordable housing for lower income households. SGC is required to develop guidelines and selection criteria for the implementation of AHSC.

This bill:

- 1) Allows a jurisdiction to utilize the committed assistance program if it meets a portion of the moderate-income RHNA, in addition to low-income and very-low income RHNA, for the prior cycle.
- 2) Allows sites that contain existing interim housing developments to be identified as adequate sites for very low and low-income categories if the housing element demonstrates that interim units will be:
 - a) Available for occupancy by people experiencing homelessness or who are at risk of homelessness during the entire planning period
 - b) Within a residential zone
- 3) Authorizes the planning agency of a jurisdiction to count in its APR single-room occupancy (SRO) units and nontraditional housing units, as defined, that were developed in previous housing element planning periods if those units are subject to authorization by HCD and were not counted in previous reports.
- 4) Authorizes HCD to permit a jurisdiction to substitute up to 25% of its obligation to identify adequate sites for very low or low-income categories in its

housing element if the city or county includes a program that commits the jurisdiction to funding a nonprofit home sharing program, as specified.

- 5) Removes AHSC from the prescribed programs for which HCD may award additional points and would provide that additional points shall be awarded for the qualifying infill area portion of the IIG of 2007. The bill also permits additional bonus points to be awarded under other state programs for which local governments are the sole or primary applicants when already allowable under state law.
- 6) Requires that only a qualifying infill project or area shall be located in a city, county, or city and county that has submitted its annual progress reports and that has adopted a housing element that has been found to be in substantial compliance with specified law.
- 7) Prohibits program guidelines from disqualifying a project applicant that is a nonprofit or for-profit housing developer if the jurisdiction the project is proposed to be located in has not been found by HCD to be in substantial compliance with specified law.

COMMENTS:

- 1) *Author's statement.* According to the author, "SB 1094 will remove barriers to creating more affordable housing in California. This bill eliminates counterproductive penalties against affordable housing developers in jurisdictions that have not complied with housing element law, and provides regional housing credits for innovative solutions to the housing crisis.

There are many penalties on the books right now for places with noncompliant housing elements. One penalty goes too far by preventing affordable housing *developers* from accessing certain state funding when pursuing projects in those noncompliant places. We should not punish affordable housing developers who did nothing wrong. The penalty is counterproductive and makes absolutely no sense when we are short millions of affordable homes in California. Cities should be on the hook for compliance, but affordable homes should not be used as a bargaining chip. My bill corrects this problem.

Additionally, there are innovative non-traditional housing models in use in some areas right now that cannot be counted for RHNA credit – including interim housing for those experiencing homelessness, homeshare programs, and long-term care homes for seniors. These are national best-practice programs that should be incentivized as a creative way for jurisdictions

to create more affordable housing and as a lower cost intervention for homelessness”

- 2) *Housing Elements and Regional Housing Needs Assessment (RHNA)*. 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.

Before each revision, each community is assigned its fair share of the region’s housing need for four separate income categories (very low-, low-, moderate-, and above-moderate income households) through a two-step process known as RHNA. In the first step, HCD determines the aggregate housing need for the region during the planning period the housing element will cover. In the second step, the council of governments (COG) for the region allocates the regional housing need to each city and county within the region.

In general, a housing element must identify and analyze existing and projected housing needs, identify adequate sites with appropriate zoning to meet its share of the RHNA, and ensure that regulatory systems provide opportunities for, and do not unduly constrain, housing development. Among other things, the element specifically must include an analysis of existing subsidized housing developments that are eligible to convert to market-rate rental housing upon the expiration of affordability restrictions, and identify all public resources.

As part of the process to identify adequate sites, a city or county first prepares an inventory of existing sites zoned for housing. When the inventory of existing sites is insufficient to accommodate the need for one or more income

categories, the housing element must contain a program to rezone sites within the first three years of the planning period.

- 3) *Committed assistance.* Existing law allows a city or county that met its RHNA obligation in the prior planning period, to meet up to 25% of its obligation in the next period through “committed assistance” – essentially, rehabilitation and preservation of existing market-rate units into units that are affordable to low- and very low-income households. Since the purpose of RHNA is to identify a locality’s capacity to meet its housing need by identifying development for new housing units, this exception was intentionally written to be used in only narrow circumstances. Specifically, in order to count the units in its inventory of adequate sites, a city or county must enter into a legally enforceable agreement, within three years of the start of its housing element period that obligates funds or in-kind services for the affordable units. The units must have long-term affordability covenants. Once the units are converted, the city or county may count them toward its low- or very low-income RHNA share and report them in its APR. Legislation in 2020 (AB 83, Committee on Budget, 2020) authorizes cities and counties to now count these units even if they did not identify them as part of their adequate sites inventory at the beginning of the housing element period, as long as all other committed assistance requirements are met. If the local government fails to enter into an enforceable agreement for all the units identified in its adequate sites inventory within the three-year period, it must adopt an amended housing element identifying additional adequate sites sufficient to accommodate the number of units for which committed assistance was not provided and complete all necessary rezones. SB 1094 would allow moderate-income RHNA to be counted towards a jurisdiction’s committed assistance.
- 4) *Why can’t we count temporary housing units?* The RHNA is a minimum projection of additional housing units needed to accommodate projected household growth of all income levels by the end of the housing-element’s statutory planning period. Temporary units are just that—not permanent. If a jurisdiction were to allow temporary units to be counted, what happens to those residents when the temporary units are no longer habitable or available? Where will those residents go? Temporary housing is used as an emergency, short-term solution, but California needs permanent housing to have a chance at making a dent in the housing crisis.

The committee may wish to consider removing all references to interim housing and the home-sharing program as these provisions do not meet the intent of the housing element, a long-term plan for meeting the community’s

existing and projected permanent housing needs. Temporary housing does not provide the same permanence or stability as permanent supportive housing.

- 5) *Alternative housing types.* **In order to clarify that the new construction of alternative housing types, such as SROs, house boats, and converted hotels and motels, count towards a local governments' progress in meeting their RHNA targets, as reported in the APR, the committee may wish to consider amending GC Section 65400 as follows:**

(a) (H) (i) The number of ~~net~~ new units of housing, including both rental housing and for-sale housing and any units that the County of Napa or the City of Napa may report pursuant to an agreement entered into pursuant to Section 65584.08, that have been issued a completed entitlement, a building permit, or a certificate of occupancy, thus far in the housing element cycle, and the income category, by area median income category, that each unit of housing satisfies. That production report shall, for each income category described in this subparagraph, distinguish between the number of rental housing units and the number of for-sale units that satisfy each income category. The production report shall include, for each entitlement, building permit, or certificate of occupancy, a unique site identifier that must include the assessor's parcel number, but may include street address, or other identifiers.

(ii) For purposes of the information described in clause (i), the planning agency may count **new** single-room occupancy units, **permanent hotel and motel converted units, house boats, and other** nontraditional housing units ~~that were developed in previous housing element planning periods as long as those units are subject to authorization by the department and have not been counted in previous reports.~~

- 6) *A new way to count converted units.* Last year, AB 787 created an entirely new, parallel, method under which local governments can get credit for converted or rehabilitated units. Unlike the existing committed assistance requirement, this new method would allow credit for units converted to moderate-income levels. Unlike the existing committed assistance requirement, these units could be counted when the local government did not commit local funding toward the conversion.

To address concerns about incentivizing conversions over new construction, AB 787 allows a city or county to count these units toward its RHNA share only if the units are converted between the beginning of the housing element period and the deadline for the adoption of the housing element, and only if the number does not exceed 25% of the need in that income category.

To encourage more targeted conversions towards households with the greatest need, **the committee may wish to consider amending statute to add very-low and low-income categories** to eligible rental housing conversions (i.e., market-rate to deed-restricted) that can be counted toward RHNA in the APR, for up to 25% of the need in that income category, as long as the above-moderate RHNA increases by a 1:1.

- 7) *Bonus points in state housing programs.* HCD offers additional points or preference in scoring of certain program applications if a jurisdiction has an adopted housing element that has been found in compliance and has been designated prohousing. Bonus points are intended to incentivize compliance with state housing law, but may have unintended penalties for housing providers working in cities and counties that do not have an approved housing element or pro-housing designation, and potentially undermine attempts to affirmatively further fair housing. SB 1094 would remove these penalties in state housing programs for housing providers, encouraging more statewide housing production in jurisdictions that have traditionally excluded housing production for multifamily affordable housing.
- 8) *Opposition.* The committee is aware of opposition from groups with varying concerns:
 - a) Affordable housing and equity advocate groups oppose SB 1094 unless amended, as they are concerned with the provisions allowing local governments the ability to reduce their housing element zoning obligations for homesharing programs and interim housing. If those provisions were deleted, these groups would enthusiastically support the remaining provisions of the bill that remove the penalties in state housing programs for housing providers.
 - b) Local organizations and neighborhood groups oppose SB 1094, citing concerns with lack of clarity, pressure to comply with state law, and RHNA methodology.

RELATED LEGISLATION:

AB 787 (Gabriel, Chapter 350, Statutes of 2021) — authorized cities and counties to receive credit toward their RHNA for market rate units that are converted to deed-restricted housing affordable to moderate-income households, in specified circumstances.

AB 83 (Committee on Budget, Chapter 15, Statutes of 2020) — included a provision authorizing cities and counties to count a motel, hotel, or hostel that is converted from nonresidential to residential, as well as spaces in certain mobile home parks, as committed assistance. This bill also extended the length of time for cities and counties to enter into a legally enforceable agreement for committed assistance, from two years to three years; extended the affordability covenant requirement from 20 years to 55 years; and authorized cities and counties to report these units in their APRs even if they had not identified them as part of their adequate sites inventory at the beginning of the housing element period.

AB 1063 (Petrie-Norris, 2020) — would have provided a number of exemptions to housing element law for certain jurisdictions, including a provision allowing a city or county that met its RHNA allocation in the prior planning period to meet up to 50% of its RHNA allocation in the next period through committed assistance, as specified. *This bill died in the Senate Housing Committee.*

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

POSITIONS: (Communicated to the committee before noon on Friday, April 22, 2022.)

SUPPORT:

None received.

OPPOSITION:

California Housing Consortium
California Housing Partnership Corporation
California Rural Legal Assistance Foundation, INC.
Catalysts for Local Control
Hills2000 - Friends of The Hills
Mission Street Neighbors
Public Interest Law Project
Santa Monica Residents Cross-city
Western Center on Law & Poverty, INC.
4 Individuals

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