
SENATE COMMITTEE ON HOUSING
Senator Scott Wiener, Chair
2021 - 2022 Regular

Bill No: AB 787
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Version: 5/3/2021
Urgency: No
Consultant: Erin Riches

Hearing Date: 7/8/2021
Fiscal: Yes

SUBJECT: Planning and zoning: housing element: converted affordable housing units

DIGEST: This bill authorizes cities and counties to receive credit toward their lower income regional housing need allocation for market rate units that are converted to deed-restricted housing affordable very low-, low-, or moderate income households, in specified circumstances.

ANALYSIS:

Existing law:

- 1) Requires every city and county to prepare and adopt a general plan, including a housing element, to guide the future growth of a community. The housing element must identify and analyze existing and projected housing needs, identify adequate sites with appropriate zoning to meet the housing needs of all income segments of the community, and ensure that regulatory systems provide opportunities for, and do not unduly constrain, housing development.
- 2) Provides that each community's fair share of housing be determined through the regional housing needs allocation (RHNA) process, which is composed of three main stages: (a) the Department of Finance and HCD develop regional housing needs estimates; (b) councils of government (COGs) allocate housing within each region based on these estimates (where a COG does not exist, HCD makes the determinations); and (c) cities and counties incorporate their allocations into their housing elements.
- 3) Requires each city and county to submit an annual progress report (APR) to HCD and the Office of Planning and Research that includes all of the following:
 - a) Progress in meeting its share of regional housing need.

- b) Local efforts to remove governmental constraints to the maintenance, improvement, and development of housing.
 - 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.
- 2) Requires HCD to post APRs on its website within a reasonable time of receiving them. Authorizes a court, if it finds that a city or county failed to submit a substantially compliant APR within 60 days of the statutory deadline, to issue an order or judgment to compel compliance within 60 days. Authorizes the court to grant sanctions for further failure to comply, as specified.
- 3) 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.

This bill:

- 1) Authorizes a city or county, in its APR, to include the number of units in an existing multifamily building that were converted to deed-restricted housing for very low-, low-, or moderate income households through affordability covenants and restrictions on the units. Requires the APR to clearly indicate that these units were not newly constructed.
- 2) Authorizes a unit to be reported as a converted unit only if all of the following apply:
 - a) The rent for the unit prior to conversion was not affordable to low-, very low-, or moderate income households.
 - b) The unit is subject to a long-term recorded regulatory agreement with a public entity that requires the unit to be affordable to, and occupied by, individuals of very low-, low-, or moderate income for a term of 55 years.
 - c) The initial post-conversion rent for the unit is at least 10% less than the average monthly rent charged over the 12 months prior to conversions.
 - d) The unit is in decent, safe, and sanitary condition at the time of occupancy following the conversion.
 - e) The unit was not acquired by eminent domain as part of the conversion.
 - f) The units is subject to a governmental monitoring program to ensure continued affordability and occupancy by qualified households.
 - g) Unless the development is subject to a regulatory agreement with the California Tax Credit Allocation Committee, a public entity shall hold an assignable right to purchase the development, or any interest in a partnership that owns the development, for a price not exceeding the principal amount of outstanding indebtedness secured by the building and all federal, state, and local taxes attributable to the sale.
- 3) Requires a city or county, if it reports converted units in its APR, to do both of the following:
 - a) Subtract the same number of newly constructed, above-moderate-income units that it would otherwise include.
 - b) Identify and make available within 180 days, adequate and available sites to accommodate the commensurate number of above-moderate-income units if the subtraction in (a) causes this number to drop below zero.
- 4) Authorizes a city or county to reduce its RHNA share for the income category on a unit-for-unit basis for any units converted between the beginning of the housing element period and the deadline for adoption of the housing element.

Specifies that this authorization only applies if the reduction, when combined with any substitution allowed pursuant to existing law, does not exceed 25% of need in the relevant category.

COMMENTS:

- 1) *Author's statement.* "The preservation of affordable housing is a key policy tool to address California's housing crisis. Housing preservation helps promote and sustain communities by ensuring the ongoing availability of quality, affordable homes. AB 787 will create new flexible tools that can be used to support California's workforce, including teachers, firefighters, and nurses."
- 2) *Background: housing elements and APRs.* Existing law requires every city and county to prepare a housing element as part of its general plan. This is done every eight years by local governments located within the territory of an MPO and every five years by local governments in rural non-MPO regions. Each community's fair share of housing is determined through the regional housing needs allocation (RHNA) process, which is composed of three main stages: (1) the Department of Finance and HCD develop regional housing needs estimates; (b) councils of government (COGs) allocate housing within each region based on the estimates; and (c) cities and counties incorporate their allocations into their housing elements. The housing element must contain an inventory of land suitable for residential development, which is used to identify sites that can be developed for housing within the planning period and are sufficient to provide for the locality's share of the regional housing need for all income levels. Each jurisdiction must submit an APR to HCD by April 1st of each year that documents its progress toward meeting its RHNA allocation and the plans outlined in its housing element.
- 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 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 last year (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.

- 4) *A new way to count converted units.* This bill creates an entirely new, parallel, method under which cities and counties could 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, in addition to low- and very low-income levels. In addition, 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, this bill 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. However, this bill does not cap the number of converted units that may be reported in the APR. The author states that allowing jurisdictions to report additional converted units in their APRs will help incentivize them to facilitate more conversions, thereby creating more low-, very low-, and moderate income units to help address the state's housing crisis. The lack of a cap, however, raises a concern that jurisdictions will favor conversions over production.

In addition, this bill requires a city or county, when reporting conversions in its APR, to subtract the equivalent number of units from the number of above-moderate units it would otherwise be required to report. This adjustment to above-moderate units, in addition to the lack of a cap on the share of converted units that may be reported, could make it difficult for HCD to determine whether the numbers reported for each income category in a jurisdiction's APR actually meet the jurisdiction's RHNA share.

RELATED LEGISLATION:

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 Thursday, July 1, 2021.)

SUPPORT:

California Community Housing Agency (Sponsor)
American Planning Association, California Chapter
Association of Regional Center Agencies
California Cities for Local Control
California Housing Consortium
City of Lafayette
Eden Housing
Orange County Council of Governments
Silicon Valley Leadership Group

OPPOSITION:

None received

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