
SENATE COMMITTEE ON HOUSING

Senator Scott Wiener, Chair

2021 - 2022 Regular

Bill No: AB 215

Hearing Date: 7/1/2021

Author: Chiu

Version: 6/23/2021 Amended

Urgency: No

Fiscal: Yes

Consultant: Erin Riches

SUBJECT: Housing element: regional housing need: relative progress determination

DIGEST: This bill establishes a process for a mid-cycle housing element consultation between the state Department of Housing and Community Development (HCD) and any jurisdiction it deems to have not made sufficient progress toward its regional housing needs allocation (RHNA), including a requirement for the jurisdiction to obtain a pro-housing designation.

ANALYSIS:

Existing law:

Housing elements

- 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; and (c) cities and counties incorporate their allocations into their housing elements.
- 3) Requires local governments to submit their draft housing elements to HCD for review. Requires local governments to adopt their housing elements, accounting for any findings by HCD as to whether or not it is compliant with state housing element law. Requires HCD to review any action or failure to act

by local governments that it determines is inconsistent with an adopted housing element.

- 4) Requires HCD to notify any local government, and allows HCD to notice the office of the Attorney General, that the jurisdiction is in violation of state law if HCD finds that the local government has taken an action in violation of the following: the Housing Accountability Act; “No Net Loss” provisions requiring adequate sites for housing to be available at all times for each income levels; Density Bonus Law; or prohibitions on housing discrimination.
- 5) Requires each city and county to provide, by April 1 of each year, an annual report to HCD that includes the status of their general plan and progress in its implementation, including the progress in meeting its share of regional housing needs.

Housing Crisis Act (HCA)

- 1) Establishes the HCA (SB 330, Skinner, Chapter 654, Statutes of 2019), which:
 - a) Prohibits certain local actions that would reduce housing capacity. The HCA prohibits downzoning unless the city or county concurrently upzones an equal amount elsewhere so that there is no net loss in residential capacity. It also voids certain local policies that limit growth, including building moratoria, caps on the numbers of units that can be approved, and population limits.
 - b) Prohibits a local agency from applying new rules or standards to a project after a preliminary application containing specified information is submitted.
 - c) Requires local agencies to exhaustively list all information needed to make a development application complete under the Permit Streamlining Act, limits that list to only those items on the checklist for application required by state law, and prohibits the local agency from requiring additional information. The checklist information must also be posted online.
 - d) Establishes a cap of five hearings that can be conducted on a project, as specified.
 - e) Establishes specified anti-displacement protections.

Pro-housing policies

- 1) Requires HCD to establish a pro-housing designation for local jurisdictions. Defines “pro-housing local policies” to mean policies that facilitate the

planning, approval, or construction of housing. These policies may include, but are not limited to, the following:

- a) Local financial incentives for housing, including, but not limited to, establishing a local housing trust fund;
 - b) Reduced parking requirements;
 - c) Adoption of zoning allowing for use by right for residential and mixed-use development and reduction of permit processing time;
 - d) Zoning more sites for residential development or zoning sites at higher densities than is required to accommodate the minimum existing regional housing need allocation for the current housing element cycle;
 - e) Adoption of accessory dwelling unit ordinances, as specified;
 - f) Creation of objective development standards; and
 - g) Reduction of development impact fees.
- 2) Requires HCD to adopt emergency regulations to implement this section by July 1, 2021 and to designate jurisdictions as pro-housing pursuant to these emergency regulations.
 - 3) Requires that jurisdictions that have been designated pro-housing by HCD, and that have an adopted housing element that has been found by HCD to be in substantial compliance, must be awarded additional points or preference in the scoring of program applications, for the Affordable Housing and Sustainable Communities (AHSC) Program, the Transformative Climate Communities (TCC) Program, and the Infill Incentive Grant (IIG) Program of 2007.

This bill:

- 1) Requires HCD, beginning with the sixth housing element cycle, to determine the progress of each city, county, COG, and sub-region toward meeting its RHNA allocation, and to post these determinations on its website by July 1 of each year, as follows:
 - a) In the fifth year of the planning period: progress toward meeting its total RHNA allocation and its lower income RHNA allocation.

- b) In the year after the planning period ends: progress toward meeting its total RHNA allocation.
- 2) Requires a jurisdiction, if its progress is less than that of the COG as a whole, to undertake a mid-cycle housing element consultation with HCD. Progress shall be calculated by dividing the jurisdiction's progress toward its RHNA share by its pro-rated share of the regional housing need. Requires the jurisdiction, in coordination with HCD, for any of the categories for which the consultation is required, to review and update, as necessary, all scheduled programs to ensure they include enforceable actions and concrete timelines.
- 3) Requires HCD, if it determines that the jurisdiction has not made sufficient progress, to notify the jurisdiction by July 1 of the year it makes the determination, and to commence the consultation within six months. Requires a jurisdiction to complete any housing element revisions, as directed by HCD, within one year of the consultation. Requires HCD, if it determines that a jurisdiction has not complied with the mid-cycle consultation requirements, to find its housing element out of compliance.
- 4) Requires a jurisdiction that has attained at least 10 percentage points less progress than its COG, to obtain a pro-housing designation from HCD. Requires HCD to determine whether a jurisdiction is required to obtain the designation by July 1 of the year in which it makes the determination and by July 1 of the year after the jurisdiction's housing element planning period ends. Requires the jurisdiction that receives notice to attain the pro-housing designation by July 1 of the year after the notice. Requires HCD, if the jurisdiction fails to attain a pro-housing designation by the required date, to find its housing element out of compliance.
- 5) Provides, that if a jurisdiction fails to submit a substantially compliant APR:
 - a) HCD may require a mid-cycle consultation.
 - b) HCD must find its housing element out of compliance.
- 6) Provides that this bill shall in no way be construed to diminish or undermine HCD's enforcement authority granted elsewhere in statute or regulation.
- 7) Requires HCD, if a jurisdiction violates the HCA, to notify the jurisdiction and authorizes HCD to provide notice to the state Attorney General.

COMMENTS:

- 1) *Author's statement.* “At the end of the day, the only way to solve the housing crisis is to put more roofs over people’s heads. The housing element is one of the state’s most critical tools to ensure that such housing production occurs. AB 215 is designed to make sure the process works and everyone is accountable to the plans they create. It would ensure that cities with underperforming housing production have the opportunity to review their plans and policies every four years, instead of every eight. Where production substantially lags behind peer cities, local governments would be required to ensure that they have adopted pro-housing policies, for which they will receive preferences for state funding programs. By increasing accountability at the local level, the state and cities can continue to work together to facilitate the necessary production of homes for Californians of all income levels.”
- 2) *Housing element reforms.* Recent legislation has made a number of changes aimed at increasing the transparency and accountability of the RHNA process and strengthening enforcement of housing element requirements. For example, the 2017 package included legislation requiring local governments to maintain adequate sites for housing developments at all times throughout the planning cycle (SB 166, Skinner, Chapter 367, Statutes of 2017), as well as legislation authorizing HCD to refer violations of housing element law to the state Attorney General (AB 72, Santiago, Chapter 370, Statutes of 2017). In addition, pursuant to SB 35 (Wiener, Chapter 366, Statutes of 2017), cities and counties that have not met all of their RHNA requirements must streamline housing developments that include specified percentages of affordable housing.

Subsequent legislation (SB 828, Wiener, 2018 and AB 1771, Bloom, 2018) further tightened housing element law by adding requirements to regions’ RHNA methodology. The 2019-20 budget agreement provided additional accountability measures through AB 101 (Committee on Budget, Chapter 159, Statutes of 2019), which builds on AB 72 of 2017. AB 101 provides that, following an opportunity for a local government to discuss housing element violations with HCD, the Attorney General may seek certain remedies if a court finds that a local government is not substantially compliant with housing element law.

- 3) *Pro-housing local policies.* In addition to the “stick” of potential action by the Attorney General, AB 101 of 2019 also provides an incentive for housing compliance. AB 101 requires HCD to designate cities and counties as “pro-housing” if their local policies facilitate the planning, approval, or construction of housing. “Pro-housing” jurisdictions will receive a competitive advantage in applying for certain state programs, including but not limited to the AHSC,

TCC, and IIG programs. HCD is required to adopt emergency regulations by July 1, 2021 to implement this requirement. Although AB 101 provided examples of pro-housing local policies, HCD has discretion over the final policies. This bill would add, to the list of examples of pro-housing policies, having identified adequate sites for housing within one year of the statutory deadline for adoption of the housing element.

HCD released the text of the emergency regulations for the Pro-housing Designation Program on June 7, 2021. Over the next year, a formal rulemaking process, including a public comment period, will take place to adopt permanent regulations. If signed, this bill would likely be enacted after the adoption of HCD's emergency regulations, and the policies would need to be updated, as necessary, to reflect this legislation in the final adopted regulations.

- 4) *HCA.* To build on recent housing legislation intended to streamline development, the Legislature enacted SB 330 (Skinner, 2019). The HCA has several main components, including a prohibition on downzoning unless the city or county concurrently upzones an equal amount elsewhere so there is no net loss in residential capacity. It also prohibits a local agency from applying new rules or standards to a project after a preliminary application has been submitted. It limits the number of hearings that may be conducted on a project that complies with objective local standards in place at the time the development application is deemed complete. SB 330 also establishes certain anti-displacement protections, to ensure that any demolition includes relocation assistance to existing residents. This bill would add violations of the HCA to the list of housing law violations for which HCD may report a jurisdiction to the state Attorney General.
- 5) *Sixth cycle RHNA.* Each city must revise its housing element every eight years (every five years for some rural areas). Most jurisdictions across the state are entering, or have entered, the sixth RHNA cycle. To ease HCD workload, regions have staggered start dates for RHNA cycles. For example, the sixth cycle for the Southern California Association of Governments (SCAG), the Sacramento Area Council of Governments (SACOG), and the San Diego Association of Governments (SANDAG) is 2021-2029, while the San Luis Obispo Council of Governments' (SLOCOG) sixth cycle is 2020-2028 and the Association of Bay Area Governments' (ABAG) sixth cycle is 2023-2031. Due to the combination of recent RHNA reforms and the fact most areas of the state are suffering from a severe shortage of housing due to decades of underbuilding, most regions are receiving a sixth cycle RHNA allocation that is vastly larger than their fifth cycle allocation.

Existing law requires cities and counties to submit annual progress reports to HCD regarding the status and progress in implementing their housing elements. In addition, the 2021 budget proposes significant additional resources for HCD's technical assistance efforts to help jurisdictions comply with RHNA and housing element requirements. This bill aims to further help ensure that jurisdictions remain on track to maintain compliant housing elements.

- 6) *Opposition concerns.* Cities, counties, and equity organizations state a number of concerns, including:
 - a) *Pro-housing designation:* Opponents state that it is inappropriate to use the pro-housing designation, which was established as incentive just two years ago, as a penalty for non-compliance with housing element requirements, particularly since the pro-housing regulations are not yet final.
 - b) *Relative progress toward RHNA.* Opponents state that the “relative progress” metric could hurt unincorporated areas, which tend to have less urban infrastructure, fewer employment options, and other economic limitations that can cause housing production to lag in comparison to cities.
 - c) *Existing authority is sufficient.* Opponents state that HCD’s existing enforcement authority enables it to identify and remedy violations of the law well before the midpoint of the housing element cycle.
 - d) *New authority does more harm than good.* The mid-cycle consultation process created by the bill potentially undermines existing authority and does not allow for public input.

RELATED LEGISLATION:

AB 1029 (Mullin, 2021) — adds preservation of affordable housing units as a pro-housing, local policy that the Department of Housing and Community Development (HCD) can consider in developing a pro-housing designation. *This bill will be heard in the Senate Housing Committee on July 1st.*

AB 1398 (Bloom, 2021) — requires expedited rezoning for local jurisdictions that fail to adopt a legally compliant housing element within 120 days of the statutory deadline, and makes expedited rezoning a pro-housing policy. *This bill will be heard in the Senate Housing Committee on July 1st.*

AB 101 (Committee on the Budget, Chapter 159, Statutes of 2019) — among other provisions, required HCD to designate cities and counties as pro-housing if

their local policies facilitate the planning, approval, or construction of housing, and enabled HCD to implement these through emergency regulations.

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

POSITIONS: (**Communicated to the committee before noon on Friday, June 25, 2021.**)

SUPPORT:

California Housing Consortium (Sponsor)

Abundant Housing LA

Bay Area Council

Bridge Housing Corporation

CalChamber

California Apartment Association

California Association of Realtors

California Building Industry Association

California Community Builders

California Council for Affordable Housing

California YIMBY

Casita Coalition

Chan Zuckerberg Initiative

Council of Infill Builders

Eden Housing

Greenbelt Alliance

Habitat for Humanity California

Hello Housing

Housing Action Coalition

LISC San Diego

MidPen Housing

Modular Building Institute

Non-profit Housing Association of Northern California

San Francisco Bay Area Planning and Research Association (SPUR)

Sand Hill Property Company

Silicon Valley @ Home

Silicon Valley Community Foundation

Silicon Valley Leadership Group

The Two Hundred

TMG Partners

OPPOSITION:

California Cities for Local Control
California Rural Legal Assistance Foundation
California State Association of Counties
City of Beaumont
City of Carlsbad
City of Corona
City of El Segundo
City of Fortuna
City of Foster City
City of Garden Grove
City of Goleta
City of Gustine
City of La Habra
City of Lathrop
City of Menifee
City of Norwalk
City of Rancho Palos Verdes
City of San Bernardino
City of San Jacinto
City of Thousand Oaks
Leadership Counsel for Justice and Accountability
League of California Cities
Public Advocates
Public Interest Law Project
Rural County Representatives of California
Sustainable Tamalpais
Urban Counties of California
Ventura Council of Governments
Western Center on Law & Poverty

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