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

Bill No: AB 816 **Hearing Date:** 7/1/2021
Author: Chiu
Version: 6/23/2021 Amended
Urgency: No **Fiscal:** Yes
Consultant: Erin Riches

SUBJECT: State and local agencies: homelessness plan: Housing Trust Fund: housing projects

DIGEST: This bill establishes a Housing and Homelessness Inspector General (HHIG) to oversee specified state and local actions to address homelessness; creates a public right of action for the HHIG to compel compliance with these actions; and directs National Housing Trust Fund monies to homeless projects, as specified.

ANALYSIS:

Existing law:

- 1) Establishes the Homeless Coordinating and Financing Council (HCFC), with the purpose of coordinating the state’s response to homelessness by utilizing Housing First practices.
- 2) Requires agencies and departments administering state programs created on or after July 1, 2017, to incorporate the core components of Housing First.
- 3) Defines “Housing First” to mean the evidence-based model that uses housing as a tool, rather than a reward, for recovery and that centers on providing or connecting homeless people to permanent housing as quickly as possible. Housing First providers offer services as needed and requested on a voluntary basis and that do not make housing contingent on participation in services.
- 4) Establishes the Homeless Emergency Aid Program (HEAP) to provide one-time grant funds to address the immediate homelessness challenges of local cities and counties. HEAP is administered by the HCFC.
- 5) Establishes the Homeless Housing Assistance and Prevention Program (HHAPP) to build on HEAP and provide funds to help local jurisdictions combat homelessness. HHAPP is also administered by the HCFC.

- 6) Establishes the Housing for a Healthy California (HHC) program under the state Department of Housing and Community Development (HCD) to fund supportive housing for individuals who are recipients of or are eligible for Medi-Cal benefits.

This bill:

- 1) Requires the HCFC, or an entity it contracts with for this purpose, upon appropriation or upon receipt of technical assistance from the US Department of Housing and Urban Development (HUD), to conduct a statewide gaps and needs analysis, as specified.
- 2) Also requires the HCFC to evaluate all available data, as specified, and to seek input from its members on the direction of, design of data collection for, and items to be included in the gaps and needs analysis. Requires the HCFC to report to the Legislature by July 31, 2022 on the final gaps and needs analysis.
- 3) Requires a state department or agency with a member on the HCFC to, within 180 days of a request from the HCFC, provide data including but not limited to the number and rates of individuals exiting state-funded institutional settings into homelessness, as specified.
- 4) Requires each county, on or before July 1, 2023, to submit to HCD an actionable county-level plan for meeting specific annual benchmarks, as specified. Requires each city in the county's jurisdiction to participate in the plan and requires the county to actively seek the participation of all continuums of care (CoCs) in its jurisdiction.
- 5) Requires HCD, based on the gaps and needs analysis required in (1), to set a benchmark goal to reduce homelessness for the state and, based on the county-level plans required in (4), to work with each county and city to identify appropriate benchmark goals to reduce homelessness for local jurisdictions, as specified.
- 6) Requires HCD to review each county-level plan and provide feedback and recommended revisions. Requires each county to submit an annual progress report to HCD detailing progress and implementation of the adopted plan and any amendments proposed to the plan.
- 7) Creates a Housing and Homelessness Inspector General (HHIG) within HCD, to be appointed by the Governor and confirmed by the Senate, to monitor the

implementation and progress of state and county plans and to provide technical assistance to facilitate implementation.

- 8) Requires HCD to monitor the progress of adoption and implementation of state and county plans. Requires HCD, if it determines that the state or a county has not adopted an actionable plan or has failed to make reasonable progress in accordance with the plan, to notify the state or county and the HHIG that it is not in substantial compliance with the requirements of this bill.
- 9) Authorizes the HHIG, on or after January 1, 2023, to bring an action against the state, a county, or a city to compel compliance, as specified. Requires the HHIG, if it finds that court action is warranted, to present findings around responsibility of a city, local agency, or state, and identify requested remedies for the court to consider.
- 10) Provides that if the court finds that the state, county, or city is not in substantial compliance, it may issue an order or judgment directing them to substantially comply, as specified. Provides that if the court issues an order or judgment, it shall retain jurisdiction for no more than 24 months to ensure the order or judgment is carried out.
- 11) Prohibits the state, a county, or city from deliberately and intentionally transporting a homeless individual or households to a different jurisdiction in order to reduce the number of homeless individuals within its jurisdiction, unless those individuals or households choose to move to a different jurisdiction. Requires the HHIG to investigate any complaint it receives of a violation of this prohibition. Requires the HHIG, if it finds that the state or a local jurisdiction is in violation, to impose a civil penalty of up to \$100,000 per individual transported outside the jurisdiction.
- 12) Requires HCD to allocate National Housing Trust Fund monies to projects serving individuals experiencing homelessness, to the extent that a sufficient number of projects exist. Authorizes HCD to alter priority to align eligibility for benefits such as Medi-Cal that are intended to fund services for individuals experiencing homelessness.

COMMENTS:

- 1) *Author's statement.* "Homelessness is the moral crisis of our time. The COVID-19 pandemic has intensified an already intense crisis. 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 816 would proactively establish plans, metrics, accountability and enforcement of progress towards plans. By holding all government levels accountable based on benchmarks, AB 816 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’s (HUD) 2020 Annual Homeless Assessment Report to Congress, in January 2020 California accounted for more than one-fifth of the nation’s homeless population (28%, or 161,548 people). California also contains more than half of the nation’s unsheltered homeless population (51%, or 113,660 people), including people living in vehicles, abandoned buildings, parks, or on the street. California experienced the largest increase in homelessness in the US, a 6.8% increase over 2019 (10,270 individuals). Los Angeles accounts for the highest number of homeless people in the nation, at 51,290 (followed by New York City at 36,394). In five major metropolitan areas, more than 80% of homeless individuals were unsheltered: San Jose (87%), Los Angeles (84%), Fresno (84%), Oakland (82%), and Long Beach (81%).

While these numbers provide a snapshot of the state’s homeless population, they likely underestimate the scope of the crisis because the HUD point-in-time (PIT) count only measures the homeless population on one day of the year. Moreover, the PIT count does not capture everyone experiencing homelessness, as some do not wish to be counted and others cannot be counted because their location is not known to those counting. 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) *State efforts to address homelessness.* Since 2018, the state has allocated over \$3 billion to address homelessness. The state’s recent investments to address homelessness fall into three categories: programs that support the construction of new affordably-priced housing units; programs that help individuals and families afford housing; and health and human services programs aimed at reducing or preventing homelessness. In all three cases, the state generally allocates funds to local governments, who then direct resources to developers, service providers, and counties to either construct housing units or provide

services. This funding does not include other moneys allocated to encourage affordable housing production. The Governor's 2021-22 budget proposal continues these efforts. Three significant proposals include increasing funding for Homekey, support for residential facilities serving vulnerable adults and seniors, and support for behavioral health infrastructure. On June 14, 2021, The Legislature passed a budget proposal that included \$20 billion over five years to address homelessness.

- 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. Judge Carter has taken similar steps in Los Angeles County and recently ordered the City of Los Angeles to offer housing within 90 days to all “unaccompanied women and children living in Skid Row” within 120 days for all families and within 180 days for “the general population.”

This bill would require counties to submit actionable homeless plans to HCD, with specific annual benchmarks. It would also require HCD to work with cities and counties to identify local benchmark goals for reducing homelessness.

- 5) *The HCFC.* The HCFC was created in 2017 (SB 1380, Mitchell, Chapter 847, Statutes of 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. Since the implementation of the Housing First model, chronic homelessness in the U.S. experienced a 27% decrease between 2010 and 2016. Housing First was embraced by California in 2015 through SB 1380, which requires all state housing programs to adopt this model.
- 6) *Addressing the homelessness crisis.* As the state’s homelessness crisis has worsened, the role of the HCFC has significantly increased, as it is charged with administering HEAP and HHAPP. However, the HCFC’s primary role in recent years has been focused on fund allocation and technical assistance. This bill would create a cabinet-level Inspector General who is empowered to take action against either a local government or the state for failing to submit or follow a homeless action plan. It would also establish a framework for the court to order the adoption of a plan; dedicate resources toward reducing the number of people experiencing homelessness; coordinate with other state and local agencies to reduce the number of people experiencing homelessness; require sites to be rezoned for emergency shelters; pool resources across jurisdictions to create a regional response to homelessness; and order a jurisdiction to establish coordinated entry points for individuals experiencing homelessness.

In addition, this bill would require the HCFC to conduct a comprehensive, statewide gaps and needs analysis to determine where and how the state should direct resources to combat homelessness. Although the HCFC recently published an “action plan,” it has not yet produced a statewide strategic plan to address homelessness. As noted above, the Legislature and Governor are currently considering a multibillion allocation of funds to address homelessness

in this year's budget. It is more important now than ever for the state to assess the needs of its homeless population and to ensure that funds are targeted efficiently and effectively.

- 7) *Housing for a Healthy California.* The Housing for a Healthy California program (HHC), established through the 2017 housing package (AB 74, Chiu, 2017), funds supportive housing for individuals who are recipients of or are eligible for Medi-Cal benefits. The goal of the HHC program is to reduce the financial burden on state and local resources due to overutilization of hospital emergency rooms, inpatient care, nursing home stays, and use of corrections systems and law enforcement resources as the point of healthcare provision for individuals who are chronically homeless or are experiencing homelessness and are high-cost health users. Three rounds of funding have been awarded from the HHC program: \$22.4 million for four projects in February 2020; \$60.1 million for six projects in March 2020; and \$39.6 million for eight projects in June 2020. Although the National Housing Trust Fund (NHTF) is the primary funding source for the HHC program, the March 2020 awards were funded through one-time monies generated by SB 2, the Building Homes and Jobs Act (Atkins, Chapter 364, Statutes of 2017).

In order to ensure that NHTF monies can continue to be allocated to HHC, this bill requires HCD to prioritize projects that serve individuals experiencing homelessness and allows HCD to alter funding priority to align eligibility for existing benefits such as Medi-Cal.

- 8) *Opposition concerns.* Cities and counties state concerns that, among other things, this bill could lead to a piecemeal approach; includes no funding; treats the statewide and county-level plans differently; and does not enumerate consequences for cities that do not participate in the planning process, while holding counties accountable.
- 9) *Triple-referral.* Due to the COVID-19 Pandemic and the unprecedented nature of the 2021 Legislative Session, all Senate Policy Committees are working under a compressed timeline. This timeline does not allow this bill to be referred and heard by more than two committees 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 other committees included in the original referral. This bill has also been referred to the Human Services Committee.

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 Housing and Homelessness Inspector General (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 1220 (Luz Rivas, 2021) — renames the HCFC as the Interagency Council on Homelessness, reconstitutes its membership, and requires it to consult with a specified advisory group of stakeholders. *This bill will be heard in the Senate Housing Committee on July 8th.*

AB 2329 (Chiu, 2020) — would have required HCFC to conduct a statewide homelessness gaps and needs assessment by July 31, 2021. *This bill was held on suspense in the Assembly Appropriations Committee, after which its contents were amended into AB 3269.*

AB 3269 (Chiu, 2020) — would have established the Housing and Homelessness Inspector General (HHIG) to oversee state and local actions to address homelessness; would have imposed new requirements on local governments to develop action plans to address homelessness; and would have created a public right of action for the HHIG to compel compliance with the new plans. *This bill was held on suspense in the Senate Appropriations Committee.*

AB 74 (Chiu, Chapter 777, Statutes of 2017) — required HCD to establish the Housing for a Healthy California Program, which funds competitive grants to pay for housing construction or operating costs for chronically homeless Medi-Cal beneficiaries who meet specified criteria, including those who are eligible for Supplemental Security Income.

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

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

SUPPORT:

Corporation for Supportive Housing (Co-Sponsor)
 Housing California (Co-Sponsor)
 Mayor Darrell Steinberg, City of Sacramento (Co-Sponsor)
 Steinberg Institute (Co-Sponsor)
 Autism Deserves Equal Coverage Foundation
 Brilliant Corners
 CA Council of Community Behavioral Health Agencies
 California Access Coalition
 California Apartment Association
 California Association of Marriage and Family Therapists
 California Downtown Association
 City and County of San Francisco
 City of Berkeley
 City of San Diego
 Clifford Beers Housing, INC.
 Enterprise Community Partners, INC.
 Episcopal Community Services of San Francisco

Govern for California

Jewish Family and Children's Services of San Francisco, the Peninsula, Marin and
Sonoma Counties

Los Angeles Business Council

National Association of Social Workers, California Chapter

Public Health Advocates

San Francisco Bay Area Rapid Transit District (BART)

The California Association of Local Behavioral Health Boards and Commissions

OPPOSITION:

California State Association of Counties

City of Thousand Oaks

League of California Cities

Rural County Representatives of California

Urban Counties of California

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