

**(Without Reference to File)**

## CONCURRENCE IN SENATE AMENDMENTS

AB 215 (Chiu)

As Amended August 30, 2021

Majority vote

**SUMMARY**

Provides the Department of Housing and Community Development (HCD) with additional enforcement authority for local agency violations of specified housing laws, and increases public review for housing elements.

**Senate Amendments**

- 1) Delete the provision requiring cities and counties to attain the state's pro-housing designation if housing production in their jurisdiction falls substantially behind their regional peers;
- 2) Delete the provision requiring cities and counties to have a mid-cycle housing element consultation with HCD if housing production in their jurisdiction substantially behind their regional peers;
- 3) Require HCD to notify a local agency, and authorize the department to notify the Attorney General (AG), if the local agency has taken an action in violation of any of the following:
  - a) Affirmatively Furthering Fair Housing, as specified.
  - b) SB 35 (Wiener), Chapter 366, Statutes of 2017. (streamlined ministerial approval for specified housing projects).
  - c) AB 2162 (Chiu), Chapter 753, Statutes of 2018. (streamlining for permanent supportive housing).
  - d) AB 101 (Budget Committee), Chapter 159, Statutes of 2019. (streamlining for low-barrier navigation centers).
- 4) Specify that this bill does not limit the AG's authority to bring a suit to enforce state law in an independent capacity.
- 5) Authorize HCD to appoint or contract with other counsel if the AG declines to represent the department in specified actions related to the department's enforcement authority.
- 6) Specify that existing statutes of limitation of three years apply to any action or proceeding brought by the AG or HCD.
- 7) Specify housing element review provisions by requiring HCD to report findings to a jurisdiction within 90 days of reviewing the first draft of a housing element (rather than 60 days), or within 60 days for each revision or subsequent draft amendment (rather than 90 days).
- 8) Require local governments to make the first draft revision of a housing element available for public comment, as specified, prior to submitting it to HCD. For any subsequent draft

revision, the local government must post the draft revision on the internet and notice its availability at least seven days before submitting the draft revision to HCD.

## COMMENTS

*Enforcement of Housing Laws:* California has a multi-million unit deficit of housing. This mismatch of supply and demand has resulted in our longstanding housing crisis: home prices that are double the national average, a majority of renters sacrificing basic needs like food and health care to pay for housing, and an astonishing level of homelessness that exceeds 160,000 unhoused Californians.

In recent years, the state has made a series of important reforms to address this housing deficit, including:

- 1) Facilitating streamlined and ministerial development of market-rate and affordable housing (SB 35 (Wiener) of 2017, AB 2162 (Chiu) of 2018, and AB 101 (Committee on the Budget, of 2019).
- 2) Preventing cities from reducing their overall development capacity and from approving the demolition of housing without in-kind replacement (SB 330 (Skinner), Chapter 654, Statutes of 2019).
- 3) Affirmatively furthering fair housing (AB 686 (Santiago, 2018)).
- 4) Improving the efficacy and rigor of the housing element process (including via SB 828 (Wiener), Chapter 974, Statutes of 2018, AB 1771 (Bloom), Chapter 989, Statutes of 2018, AB 1397 (Low), Chapter 375, Statutes of 2017, and SB 166 (Skinner), Chapter 367, Statutes of 2017).

The state has also established a process for HCD to enforce housing laws, with support from the Attorney General (AB 72 (Santiago and Chiu), Chapter 370, Statutes of 2017). However, AB 72 did not explicitly empower HCD to enforce the laws mentioned above. In addition, several years of implementation of AB 72 have revealed some ambiguities and gaps that bear addressing.

This bill would enhance the state's capacity to enforce housing law in several ways. Foremost, it would add the provisions of the aforementioned bills to the list of housing laws that HCD and the Attorney General can enforce. Additionally, it would clarify three provisions of the existing law regarding enforcement:

- 1) That there is a three-year statute of limitations for the state to enforce potential violations of housing laws.
- 2) That HCD may seek outside counsel should the Attorney General not choose to enforce a violation of state housing law.
- 3) That nothing in the provisions of the law elucidating HCD's role limits the ability of the Attorney General to independently enforce the law.

*Housing Element Process:* One important tool in addressing the state's housing crisis is to ensure that all of the state's 539 cities and counties appropriately plan for new housing. Such planning is

required through the housing element of each community's General Plan, which outlines a long-term plan for meeting the community's existing and projected housing needs. Cities and counties are required to update their housing elements every eight years in most of the high population parts of the state, and five years in areas with smaller populations.

This bill would change the review process for housing elements in two ways:

- 1) By requiring cities and counties to solicit public input before submitting their first draft of their housing element to HCD.
- 2) Providing HCD an additional 30 days to review the initial draft of the housing element, while simultaneously reducing the final review by 30 days.

### **According to the Author**

"AB 215 would enhance the state's capacity to enforce housing law in several ways. It would add the list of important state laws that HCD and the Attorney General can enforce. It would clarify provisions of the existing law regarding enforcement. And it would improve the review process for housing elements. Cumulatively, these changes will enable the state to better and more comprehensively implement all of its recent reforms. Such enforcement, accountability, and public input is necessary to help facilitate the housing development needed to address our housing crisis."

### **Arguments in Support**

Supporters of the bill include social equity advocates, business interests, real estate professionals, housing developers, and the Attorney General. They argue that this bill will help ensure better public participation and transparency in the housing element adoption process and strengthen the ability of HCD to enforce state housing laws. According to Attorney General Rob Bonta, "The Legislature has done its part, passing several laws that address the housing crisis. Now it is time for state regulators and local governments to work together and abate this crisis."

### **Arguments in Opposition**

Opponents of the bill are mostly comprised of local governments and their state associations. They argue that the provisions of the bill give too much enforcement authority to the state, and that these provisions should have been considered by the legislature's policy committees. According to the City of Agoura Hills, "We feel that these new provisions allowing for additional prosecution avenues and additional time for an action to be taken against a City will be costly and actually delay the production of housing, not expedite it."

## **FISCAL COMMENTS**

According to the Senate Appropriations Committee:

- 1) HCD estimates costs of approximately \$96,000 annually for 0.3 personnel years of in-house attorney staff time to complete investigations of alleged violations of specified housing laws and refer cases to the Attorney General (AG). (General Fund)
- 2) The AG estimates costs in the low tens of thousands annually related to an increase in workload to handle additional HCD referrals of alleged violations of specified housing laws. (General Fund, in the form of reimbursements from HCD)

**VOTES:****ASM HOUSING AND COMMUNITY DEVELOPMENT: 5-0-3****YES:** Chiu, Gabriel, Kalra, Quirk-Silva, Wicks**ABS, ABST OR NV:** Seyarto, Kiley, Maienschein**ASM LOCAL GOVERNMENT: 7-0-1****YES:** Aguiar-Curry, Lackey, Bloom, Ramos, Luz Rivas, Robert Rivas, Voepel**ABS, ABST OR NV:** Boerner Horvath**ASM APPROPRIATIONS: 12-4-0****YES:** Lorena Gonzalez, Calderon, Carrillo, Chau, Fong, Gabriel, Eduardo Garcia, Quirk, Robert Rivas, Akilah Weber, Holden, Luz Rivas**NO:** Bigelow, Megan Dahle, Davies, Levine**ASSEMBLY FLOOR: 58-11-10****YES:** Aguiar-Curry, Arambula, Berman, Bloom, Bryan, Burke, Calderon, Carrillo, Cervantes, Chau, Chiu, Cooley, Cooper, Daly, Fong, Frazier, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Lackey, Lee, Low, McCarty, Medina, Mullin, Nazarian, O'Donnell, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Stone, Ting, Valladares, Villapudua, Ward, Akilah Weber, Wicks, Wood, Rendon**NO:** Bigelow, Boerner Horvath, Cunningham, Megan Dahle, Davies, Levine, Nguyen, Seyarto, Smith, Voepel, Waldron**ABS, ABST OR NV:** Bauer-Kahan, Bennett, Chen, Choi, Flora, Kiley, Maienschein, Mathis, Mayes, Muratsuchi**UPDATED**

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