

Date of Hearing: April 15, 2021

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

AB 215 (Chiu) – As Amended April 5, 2021

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

SUMMARY: Requires jurisdictions with relatively low progress towards meeting their regional housing needs to have a mid-cycle housing element consultation with the Department of Housing and Community Development (HCD) and adopt pro-housing policies. Specifically, **this bill:**

- 1) Requires HCD to determine the relative progress of councils of government, subregions, and jurisdictions towards meeting their regional housing needs, as follows:
 - a) The determination must occur during the fifth year and after the completion of each region's housing element planning period;
 - b) The determination must be based on the information contained from jurisdictions' annual reports to HCD regarding implementation of the housing element;
 - c) The determination must be made for all housing as well as for housing affordable to very low- and low-income households;
 - d) By July 1 of the year the determinations are made, HCD must publish these determinations on its internet website; and
 - e) This process only applies to jurisdictions with an eight-year housing element planning period.
- 2) Requires jurisdictions to undertake a mid-cycle housing element consultation with HCD as follows:
 - a) A jurisdiction would be required to undertake the consultation if both of the following are determined during the fifth year of the housing element planning period (per the process described above in (1)):
 - i. Its progress towards meeting its share of the regional housing need is less than its prorated share of the regional housing need; and
 - ii. Either its relative progress for all housing or housing affordable to very low- and low-income housing is less than that of the jurisdiction's affiliated council of governments or subregion.
 - b) The consultation must include both of the following for the jurisdiction's housing element:
 - i. Include a review and update, as necessary, of all goals, policies, quantified objectives, financial resources, and scheduled programs;

- ii. Ensure that all programs have enforceable actions and concrete timelines.
 - c) Specifies the timing and process for the consultation process, as following:
 - i. HCD must notify jurisdictions by July 1 of their need to have the consultation;
 - ii. The consultation must occur within six months of the jurisdiction receiving the notice; and that
 - iii. Any revisions to the housing element required by HCD during the consultation must be completed within one year of the consultation.
 - d) Specifies that HCD may require a consultation of any jurisdiction that fails to submit a substantially compliant and timely annual report.
 - e) Requires that, if HCD determines that a jurisdiction has not complied with the requirements of the consultation process, HCD must find that their housing element does not substantially comply with Housing Element law.
- 3) Requires jurisdictions to attain a pro-housing designation from HCD as follows:
- a) A jurisdiction would be required to undertake the consultation if its relative progress for all housing is at least 10 percentage points less than that of the jurisdiction's affiliated council of governments or subregion, as determined during the fifth year of the housing element planning period and upon completion of the housing element planning period (per the process described above in (1)).
 - b) Specifies the timing and process for attaining the pro-housing designation, as follows:
 - i. HCD must notify jurisdictions by July 1 of their need to attain the pro-housing designation;
 - ii. Any jurisdiction receiving this notice must attain the pro-housing designation from HCD by July 1 of the following year.
 - c) Specifies that HCD may require any jurisdiction that fails to submit a substantially compliant and timely annual report to attain the pro-housing designation.
 - d) Requires that, if a jurisdiction does not comply with the timeline for receiving the pro-housing designation, HCD must find that their housing element does not substantially comply with Housing Element law.
- 4) Requires HCD to notify any jurisdiction, 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 Housing Crisis Act of 2019.

- 5) Provides that no reimbursement is required by this act because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.

EXISTING LAW:

- 1) Establishes Housing Element law (Government Code Section 65580 through 65589.11). This law provides that each city and county's fair share of housing is to be determined through the regional housing needs allocation (RHNA) process, which is composed of three main stages: (a) the Department of Finance and the Department of Housing and Community Development (HCD) develop regional housing needs estimates at four income levels: very low-income, low-income, moderate-income, and above moderate-income; (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.
- 2) Establishes a process for HCD oversight of the housing element process (Government Code Section 65585), including the following requirements:
 - a) The local government must submit their draft housing element to HCD for review;
 - b) HCD must review and make findings on the draft housing element, including determining whether it substantially complies with housing element law;
 - c) The local government must adopt their housing element, accounting for HCD's findings; and
 - d) HCD must review any action or failure to act by local governments that it determines is inconsistent with an adopted housing element, and HCD must notify any local government, and at its discretion the office of the Attorney General, if it determines that the jurisdiction is in violation of state law.
- 3) 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 (Government Code Section 65400).
- 4) Requires HCD to establish a pro-housing designation for local jurisdiction (Government Code Section 65589.9) as follows:
 - a) Defines "prohousing local policies" to mean policies that facilitate the planning, approval, or construction of housing;
 - b) Requires HCD to adopt emergency regulations to implement this section by July 1, 2021;
 - c) Requires HCD to designate jurisdictions as pro-housing pursuant to these emergency regulations; and
 - d) 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 for applications for award cycles

commenced after July 1, 2021 for programs identified in the regulations, including but not limited to the Affordable Housing and Sustainable Communities Program, the Transformative Climate Communities Program; and the Infill Incentive Grant Program of 2007.

- 5) Establishes the Housing Crisis Act of 2019 (Government Code Section 66300) which prohibits affected cities and counties, as specified, from the following:
 - a) Enacting a development policy, standard, or condition that would have any of the following effects, as specified:
 - i. Decreasing the development capacity in the jurisdiction, unless a simultaneous action was taken to enable an equal or greater amount of development elsewhere in the jurisdiction;
 - ii. Imposing a moratorium or similar restriction or limitation on housing development;
 - iii. Imposing or enforcing design standards established on or after January 1, 2020, that are not objective design standards; and
 - iv. Limiting the number of project approvals, units developed, or population within the jurisdiction.
 - b) Approving a housing development project that will require the demolition of residential dwelling units unless the project will create at least as many residential dwelling units as will be demolished, including in-kind replacement of units occupied by lower income households, as specified.
- 6) 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:
 - a) The Housing Accountability Act;
 - b) “No Net Loss” provisions requiring adequate sites for housing to be available at all times for each income levels;
 - c) Density Bonus Law; or
 - d) Prohibitions on housing discrimination (Government Code Section 65585).

FISCAL EFFECT: Unknown

COMMENTS:

Author’s Statement: According to the author, “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.”

California Housing Crisis: California is in the midst of a housing crisis. Only 27 percent of households can afford to purchase the median priced single-family home – 50 percent less than the national average. Over half of renters, and 80 percent of low-income renters, are rent-burdened, meaning they pay over 30 percent of their income towards rent. At last count, there were over 160,000 homeless Californians.

A major cause of our housing crisis is the mismatch between the supply and demand for housing. According to the Roadmap Home 2030 (Housing CA and California Housing Partnership Corporation, 2021), to address this mismatch, California needs approximately 2.6 million units of housing. This includes 1.2 million units that are affordable to Californians making less than 80 percent of the Area Median Income.

Local Planning and Approval of Housing: While local governments do not build housing, they have an outsized role in housing production. They must include plans and programs in their General Plan’s housing element to facilitate housing production at all income levels. They are responsible for providing sufficient land to meet the demand for residential development, as determined through the state’s Regional Housing Needs Allocation (RHNA). And they are responsible for reviewing and approving housing projects, while ensuring that any conditions they apply to the approval do not make it economically infeasible to build the housing.

The state’s role in housing production is largely one of oversight and accountability. This role is mainly the responsibility of the Department of Housing and Community Development (HCD), which helps determine the housing needs for each region, oversees the distribution of those housing needs by regional councils of governments to the member cities and counties, and reviews and makes findings on local housing elements. HCD is also responsible for reviewing actions by local governments that it determines are inconsistent with an adopted housing element. If HCD determines that such an action is not in substantial compliance, it has the ability to facilitate compliance, up to and including referring the local government to the office of the Attorney General for potential prosecution.

To facilitate better alignment between state and local goals around housing production, in recent years, the state has made a series of reforms to the RHNA process, housing element law, and the Housing Accountability Act (HAA). These reforms require local governments to plan for more housing units, ensure that their plans and policies reduce segregation and promote fair housing, and make it harder to disapprove compliant housing projects. However, there is currently no requirement for local governments to ensure during the eight-year planning period that their plans and programs are effective in meeting their policy goals, including that they result in meaningful progress towards meeting their share of the regional housing needs.

This bill would require local governments to have a mid-cycle housing element consultation with HCD if the housing production in their jurisdiction is below both their pro-rated regional housing share and below the regional average for all housing or housing affordable to lower income households. During the consultation, the local government and HCD would review and update,

as necessary, all goals, policies, quantified objectives, financial resources, and scheduled programs. Additionally, local governments would need to ensure that all programs have enforceable actions and concrete timelines. This consultation would therefore serve as an opportunity to course-correct local plans and programs if housing production underperforms expectations. Failure by the local government to implement the proposed changes within a year of the consultation with HCD would result in the state finding that their housing element does not substantially comply with Housing Element law.

Pro-housing Local Policies: In 2019, the Legislature enacted legislation (AB 101, Committee on the Budget) that required 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 Affordable Housing and Sustainable Communities Program, Transformative Climate Communities Program, and the Infill Incentive Grant Program. HCD is required to adopt emergency regulations by July 1, 2021 to implement this requirement. As of the writing of this analysis, HCD has not published any preliminary information about their proposed approach to pro-housing regulations.

This bill would require local governments to attain HCD’s pro-housing designation if the housing production in their jurisdiction is below both their pro-rated regional housing share and at least 10 percentage points below the regional average for all housing production. This will result in a greater number of cities having pro-housing policies. Failure by the local government to attain the pro-housing designation by HCD within a year would result in the state finding that their housing element does not substantially comply with Housing Element law.

Enforcement of the Housing Crisis Act of 2019: The Housing Crisis Act of 2019 (SB 330, Skinner, Chapter 654, Statutes of 2019) contained numerous provisions intended to expedite the permitting of housing in regions suffering the worst housing shortages and highest rates of displacement. To expedite housing production, these provisions included, for cities and counties in those regions, a prohibition on enacting rules that would decrease the development capacity in the city, set caps on development, or impose new non-objective design standards. To prevent displacement, the provisions of SB 330 banned these cities and counties from approving a housing development project that will require the demolition of residential dwelling units unless the project will create at least as many residential dwelling units as will be demolished, including in-kind replacement of units occupied by lower income households.

This bill would add the Housing Crisis Act of 2019 to the list of housing laws that the Attorney General is empowered to enforce. The current list was created by AB 72 (Santiago, Chiu, Chapter 370, Statutes of 2017). It already includes enforcement of housing element law, as well as enforcement of the Housing Accountability Act, “No Net Loss” provisions requiring local governments to ensure adequate sites for housing to be available at all times for each income levels, Density Bonus Law, and prohibitions on housing discrimination.

Arguments in Support: Supporters of this bill argue that it would increase the accountability of local governments for complying with existing state law to promote housing production at all income levels. According to the California Housing Consortium (the bill’s sponsor), “this legislation will not only improve the state’s ability to keep tabs on affordable housing production, it will also offer timely, targeted support to jurisdictions falling behind their housing targets — helping every community stay on track to build the affordable housing California needs.”

Arguments in Opposition: Opponents of this bill argue that this bill is an intrusion into local control and self-determination. According to California Cities for Local Control, “AB 215 unnecessarily burdens local planning efforts and fosters an adversarial relationship between local governments and the state.”

Related Legislation:

AB 101 (Committee on the Budget), Chapter 159, Statutes of 2019: This bill, among other things, 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.

AB 1398 (Bloom, 2021): This bill would, among other things, add expedited provision of adequate sites to the list of pro-housing local policies for HCD to consider in its regulations. This bill is currently pending hearing in this committee.

SB 330 (Skinner), Chapter 654, Statutes of 2019: This bill restricts, for a period of five years, actions by cities and counties that would reduce the production of housing, such as downzoning, caps on development or population, or adoption of non-objective design standards.

AB 72 (Santiago, Chiu), Chapter 370, Statutes of 2017: This bill gives HCD authority to find a local government's housing element out of substantial compliance if it determines that the local government acts or fails to act in compliance with its housing element, and allows HCD to refer violations of law to the Attorney General.

Double referred: This bill was also referred to the Assembly Committee on Local Government where it will be heard should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Housing Consortium (Sponsor)
 Abundant Housing LA
 Bay Area Council
 Bridge Housing Corporation
 California Chamber of Commerce
 California Apartment Association
 California Association of Realtors
 California Community Builders
 California YIMBY
 Casita Coalition
 California Building Industry Association
 Chan Zuckerberg Initiative
 Council of Infill Builders
 Greenbelt Alliance
 Habitat for Humanity California

Hello Housing
Housing Action Coalition
LISC San Diego
MidPen Housing
Non-profit Housing Association of Northern California
Sand Hill Property Company
Silicon Valley Community Foundation
Silicon Valley Leadership Group
SPUR
SV@Home
The Two Hundred
TMG Partners
Individuals - 4

Opposition

California Cities for Local Control
Catalysts
Los Altos Residents
Mission Street Neighbors
Livable California
Riviera Homeowners Association
Sustainable TamAlmonte
Individuals - 96

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