
THIRD READING

Bill No: AB 215
Author: Chiu (D)
Amended: 8/30/21 in Senate
Vote: 21

SENATE HOUSING COMMITTEE: 5-2, 7/1/21
AYES: Wiener, Cortese, Skinner, Umberg, Wieckowski
NOES: Bates, Ochoa Bogh
NO VOTE RECORDED: Caballero, McGuire

SENATE APPROPRIATIONS COMMITTEE: 4-2, 8/26/21
AYES: Portantino, Bradford, Kamlager, Laird
NOES: Bates, Jones
NO VOTE RECORDED: McGuire

ASSEMBLY FLOOR: 58-11, 6/1/21 - See last page for vote

SUBJECT: Planning and Zoning Law: housing element: violations

SOURCE: California Housing Consortium

DIGEST: This bill increases the enforcement authority of the state Department of Housing and Community Development (HCD) in relation to violations of state housing law.

Senate Floor Amendments of 8/30/21 require a city or county to make any draft revision to a housing element available for public comment for at least 30 days, as specified; require HCD to post draft revisions on its website; and address chaptering issues.

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.

- 2) 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.
- 3) Requires each city and county to provide, by April 1 of each year, an annual progress 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.

HCD enforcement authority (pursuant to AB 72 (Santiago and Chiu, Chapter 370, Statutes of 2017))

- 4) Requires HCD to review any action or failure to act by a city or county that it determines is inconsistent with an adopted housing element.
- 5) Requires HCD to notify the city or county, and authorizes HCD to notify the state Attorney General, that the locality is in violation of state housing element law or has taken an action in violation of the following:
 - a) The Housing Accountability Act;
 - b) No-net-loss-in zoning density law, which limits downzoning and density reductions;
 - c) Density Bonus Law; and
 - d) Prohibiting discrimination against affordable housing.

Housing Crisis Act (HCA)

- 6) 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.
 - 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.

- d) Establishes specified anti-displacement protections.

Affirmatively Furthering Fair Housing (AFFH)

- 7) Requires each jurisdiction's regional housing needs allocation (RHNA) plan to further five statutory objectives, including AFFH. AFFH is defined as taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics.

CEQA streamlining

- 8) Establishes the California Environmental Quality Act (CEQA), which generally requires state and local government agencies to inform decision makers and the public about the potential environmental impacts of proposed projects, and to reduce those impacts to the extent feasible. CEQA applies when a development project requires discretionary approval from a local government. Existing law includes, among others, the following CEQA exemptions and streamlining:
 - a) *Streamlined ministerial approval for certain housing projects.* SB 35 (Wiener, Chapter 366, Statutes of 2017) established a ministerial approval process, not subject to CEQA, for certain multifamily affordable housing projects proposed in local jurisdictions that have not met their RHNA allocation.
 - b) *Streamlining for permanent supportive housing.* AB 2162 (Chiu, Chapter 753, Statutes of 2018) streamlined affordable housing projects that include supportive housing and onsite supportive services, as specified.
 - c) *Streamlining for high quality homeless shelters.* AB 101 (Committee on Budget, Chapter 159, Statutes of 2019) required, until January 1, 2027, low-barrier and high quality navigation centers, as defined, to be a use by right in areas zoned for mixed uses and non-residential zones permitting multifamily uses if the development meets certain requirements.

This bill:

- 1) Clarifies and revises existing law provisions requiring HCD to review each jurisdiction's draft housing element and any subsequent amendments.
Specifically, this bill:
 - a) Requires 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).

- b) Requires the city or county to make the first draft revision of a housing element available for public comment for at least 30 days; if comments are received, the city or county must take at least 10 days beyond the 30-day comment period to consider and incorporate public comment.
 - c) Requires HCD, for any subsequent draft revision, to post the draft on its website and to email it to individuals upon request, as specified.
- 2) Adds the following to the list of housing law violations for which HCD is required to notify the jurisdiction and is authorized to provide notice to the state Attorney General:
- a) HCA.
 - b) AFFH.
 - c) SB 35 (streamlined ministerial approval for certain housing projects).
 - d) AB 2162 (streamlining for permanent supportive housing).
 - e) AB 101 (streamlining for low-barrier navigation centers).
- 3) Clarifies that the existing law authorization for HCD to provide notice to the Attorney General for specified housing law violations does not limit the authority of the Attorney General to bring a suit in an independent capacity to enforce state law.
- 4) Provides that if the Attorney General declines to represent HCD in any action or special proceeding brought pursuant to a notice or referral under HCD's enforcement authority, HCD may appoint or contract with other counsel.
- 5) Provides that notwithstanding any other provision of law, the statute of limitations set forth in existing law shall apply to any action or special proceeding brought by the Attorney General or HCD.

Background

Each city and county 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 regional housing needs allocation (RHNA) cycle. Due to the combination of recent RHNA reforms enacted by the Legislature, 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 also 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 directs significant additional resources for HCD's technical assistance efforts to help jurisdictions comply with RHNA and housing element requirements.

Comments

- 1) *Housing element review.* Existing law requires HCD to review the first draft of a city's or county's housing element within 60 days, and any subsequent amendments or revisions within 90 days. This bill flips those time periods, instead giving HCD 90 days to review the initial draft and 60 days to review revisions and amendments, since the first draft is generally the source of the most extensive discussions between HCD and the jurisdiction.
- 2) *HCD enforcement authority.* Existing law (AB 72 of 2017) requires HCD to notify the jurisdiction, and authorizes HCD to notify the Attorney General, of specified violations of state housing law. This bill adds to that list, violations of the Housing Crisis Act (HCA), violations of affirmatively furthering fair housing (AFFH) requirements, violations of SB 35 requirements (streamlined ministerial approval for certain housing projects), violations of AB 2162 requirements (streamlining for permanent supportive housing), and violations of AB 101 requirements (streamlining for low-barrier navigation centers).
- 3) *HCD relationship with Attorney General.* As noted above, existing law authorizes HCD to notify the Attorney General of specified violations of state housing law. This bill clarifies that this authorization does not limit the Attorney General's authority to bring a suit in an independent capacity. It also specifies that if the Attorney General declines to represent HCD, HCD can appoint or contract with other counsel.
- 4) *Statute of limitations.* This bill clarifies existing law regarding the statute of limitations as it applies to HCD's enforcement authority. Although both HCD and the Attorney General consider the statute of limitations to be three years, existing law is not entirely clear as to whether the limitation period applies outside of housing element compliance. This bill specifies that the statute of limitations in which the Attorney General or HCD may initiate proceedings using their AB 72 authority is three years.
- 5) *Appropriations amendments.* To address opposition concerns, the author amended this bill twice in the Senate Appropriations Committee. The July 16th amendments removed provisions requiring certain jurisdictions to obtain a pro-housing designation from HCD. The August 16th amendments removed the

process established by this bill for a mid-cycle housing element consultation between HCD and specified jurisdictions it deems to have made insufficient progress toward their RHNA.

The author's amendments in Appropriations also added the HCA, AFFH, SB 35 streamlining, AB 2162 streamlining (permanent supportive housing), and AB 101 streamlining (low-barrier navigation centers), to the list of housing law violations for which HCD must notify the jurisdiction and is authorized to notify the Attorney General. In addition, the amendments clarify HCD authority in reviewing draft housing elements and housing element amendments; authorize HCD to appoint or contract counsel other than the Attorney General, as specified; and clarify a provision regarding the statute of limitations as it applies to AB 72 enforcement.

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

According to the Senate Appropriations Committee:

- HCD estimates costs of approximately \$96,000 annually for 0.3 PY of in-house attorney staff time to complete investigations of alleged violations of specified housing laws and refer cases to the Attorney General. (General Fund)
- The Attorney General 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)

SUPPORT: (Verified 9/1/21)

California Housing Consortium (source)
Abundant Housing LA
Attorney General Rob Bonta
Bay Area Council
Bridge Housing Corporation
California Apartment Association
California Association of Realtors
California Building Industry Association
California Chamber of Commerce
California Community Builders
California Council for Affordable Housing
California Rural Legal Assistance Foundation

California YIMBY
Casita Coalition
Chan Zuckerberg Initiative
Council of Infill Builders
Eden Housing
Greenbelt Alliance
Habitat for Humanity California
Hello Housing
Housing Action Coalition
Leadership Counsel for Justice and Accountability
LISC San Diego
Midpen Housing
Modular Building Institute
Non-Profit Housing Association of Northern California
Public Advocates
Public Interest Law Project
San Francisco Bay Area Planning and Research Association
Sand Hill Property Company
Silicon Valley @ Home
Silicon Valley Community Foundation
Silicon Valley Leadership Group
The Two Hundred
Western Center on Law & Poverty

OPPOSITION: (Verified 9/1/21)

California Cities for Local Control
California State Association of Counties
Cities of Barstow, Beaumont, Bellflower, Brentwood, Buellton, Carlsbad, Cerritos, Citrus Heights, Corona, Downey, El Segundo, Fortuna, Foster City, Garden Grove, Goleta, Gustine, Hidden Hills, La Habra, Laguna Niguel, Lake Forest, Lathrop, Lawndale, Los Banos, Manhattan Beach, Menifee, Newport Beach, Norwalk, Novato, Perris, Rancho Palos Verdes, Rancho Santa Margarita, San Bernardino, San Jacinto, San Rafael, Saratoga, Signal Hill, Stockton, Thousand Oaks, Torrance, Ventura, Vista
League of California Cities
Marin County Council of Mayors and Councilmembers
Rural County Representatives of California
South Bay Cities Council of Governments
Sustainable Tamalmonite
Town of Apple Valley

Town of Fairfax
Town of San Anselmo
Urban Counties of California
Ventura Council of Governments

ARGUMENTS IN SUPPORT: The California Housing Consortium, California Homebuilding Alliance, and others state that this bill will increase local accountability to stay on track with implementing their housing elements and will help facilitate much needed housing production.

ARGUMENTS IN OPPOSITION: Cities, counties, and equity organizations state strong opposition to the pro-housing designation requirement, which was removed from the bill in the July 14 amendments. Opponents also state that the “relative progress” metric could hurt unincorporated areas, that HCD’s existing enforcement authority is sufficient, and that the mid-cycle consultation requirement created by this bill potentially undermines existing authority. These provisions were removed from this bill in the August 16 amendments.

ASSEMBLY FLOOR: 58-11, 6/1/21

AYES: 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

NOES: Bigelow, Boerner Horvath, Cunningham, Megan Dahle, Davies, Levine, Nguyen, Seyarto, Smith, Voepel, Waldron

NO VOTE RECORDED: Bauer-Kahan, Bennett, Chen, Choi, Flora, Kiley, Maienschein, Mathis, Mayes, Muratsuchi

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9/1/21 9:26:48

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