

Date of Hearing: April 24, 2024

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Juan Carrillo, Chair

AB 2728 (Gabriel) – As Amended April 15, 2024

**SUBJECT:** Planning and zoning: housing development: independent institutions of higher education and religious institutions

**SUMMARY:** Makes changes to housing element and Annual Progress Report (APR) requirements related to the production of housing under the Affordable Housing on Faith and Higher Education Lands Act of 2023 (Act), among other things. Specifically, **this bill**:

- 1) Requires a planning agency to report information on affordable housing developments on land owned by religious institutions and independent institutions of higher education, pursuant to SB 4 (Wiener), Chapter 771, Statutes of 2023, as part of the annual progress report sent to the Department of Housing and Community Development (HCD) in accordance with the housing element. This information includes:
  - a) The number of applications submitted.
  - b) The location and number of developments submitted.
  - c) The total number of building permits issued.
  - d) The total number of units constructed and income category of those units.
- 2) Requires HCD develop and publish both of the following by July 1, 2025:
  - a) A list of existing state grants and financial incentives in connection with the planning, construction, and operation of very low, low-, and moderate-income housing on land owned by independent institutions of higher education and religious institutions, as defined.
  - b) A set of model partnership agreements that can be used by independent institutions of higher education and religious institutions when they partner with an affordable housing builder, pursuant to a) above.
- 3) Provides that no reimbursement is required by this bill pursuant to Section 6 of Article XIII B of the California Constitution 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 bill.

**EXISTING LAW:**

- 1) Establishes the Affordable Housing on Faith and Higher Education Lands Act of 2023 and requires a housing development project to be a “use by right” on land owned by an independent institution of higher education or a religious institution, as specified, until January 1, 2036. [Government Code (GOV) § 65913.16]

- 2) Requires every city and county to adopt a general plan that sets out planned uses for all of the area covered by the plan, and requires the general plan to include seven mandatory elements, including a housing element. (GOV § 65302)
- 3) Requires the housing element to include a review of existing and projected housing needs, determine whether adequate sites with appropriate zoning exist to meet the housing needs of all income levels within the community, and ensure that local regulations provide opportunities for, and do not significantly restrict, the development of housing. (GOV § 65400)
- 4) Requires that each community's fair share of housing be determined through the regional housing needs allocation (RHNA) process, which involves three main stages: (a) the Department of Finance and 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) use these estimates to allocate housing within each region (HCD is to make the determinations where a COG does not exist); and (c) cities and counties incorporate their allocations into their housing elements. (GOV § 65584)
- 5) Establishes HCD oversight of the housing element process, including the following:
  - a) Local governments must submit a draft of their housing element to HCD for review.
  - b) HCD must review the draft housing element, and determine whether it substantially complies with housing element law, in addition to making other findings.
  - c) Local governments must incorporate HCD feedback into their housing element.
  - d) HCD must review any action or failure to act by local governments that it deems to be inconsistent with an adopted housing element. HCD must notify any local government, and at its discretion the office of the Attorney General, if it finds that the jurisdiction has violated state law. (GOV § 65583)
- 6) Requires each city and county to submit an APR to the Governor's Office of Planning and Research (OPR) and HCD by April 1 of each year. The report is to evaluate the general plan's implementation, including how local housing needs have been met (construction of new units, changes to zoning laws, facilitating regulatory hurdles to housing development, etc.). (GOV § 65400)

**FISCAL EFFECT:** This bill is keyed fiscal and contains a state-mandated local program.

**COMMENTS:**

- 1) **General Plans.** State law provides powers and duties for cities and counties regarding land use. Each city and county must prepare and periodically update a comprehensive, long-range general plan to guide future planning decisions. The general plan has seven mandatory elements: land use, circulation, housing, conservation, open-space, noise, and safety. General plans must also either include an eighth element on environmental justice, or incorporate environmental justice concerns throughout the other elements. Cities and counties may adopt optional elements that address issues of their choosing, and once adopted, those elements have the same legal force as the mandatory elements. The general

plan must be “internally consistent,” which means the various elements cannot have conflicting information or assumptions.

Although state law spells out the plans’ minimum contents, it also says local officials can address these topics to the extent to which they exist in their cities and counties, and with a specificity and level of detail reflecting local circumstances. Similarly, state law doesn’t require cities and counties to regularly revise their general plans (except for the housing element, which must generally be revised every eight years).

- 2) **Housing Element.** 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. Cities must adopt a legally valid housing element within 120 days of their statutory deadline for adoption. Failure to do so can result in certain penalties, including exposure to the “builder’s remedy” as well as public or private lawsuits, financial penalties, potential loss of permitting authority, or even court receivership.

Among other things, the housing element must demonstrate how the community plans to accommodate its share of its region’s housing needs allocation (RHNA). To do so, each community establishes an inventory of sites designated for new housing that is sufficient to accommodate its fair share. Where a community does not already contain the existing capacity to accommodate its fair share of housing, it must undertake a rezoning program to accommodate the housing planned for in the housing element. Depending on whether the jurisdiction met its statutory deadline for housing element adoption, it will have either one year (if it failed to meet the deadline) or three years (if it met the deadline) from its adoption deadline to complete that rezoning program.

A key component of a housing element is a program with a schedule of actions (and timelines for implementation) that a local government is taking or plans to undertake to implement the housing element’s goals and objectives. The schedule of actions must include the locality’s rezoning program, its plans to assist in developing affordable housing, activities to address or remove governmental and nongovernmental constraints to housing development and maintenance, plans for how to affirmatively further fair housing opportunities, plans for incentivizing the production of affordable ADUs, and more.

- 3) **Annual Progress Reports:** Current law requires all local jurisdictions to provide housing information annually to HCD via the APR, including the following information from the prior year and/or for the current eight-year housing element cycle:
  - a) The number of housing development applications received, and whether those applications are subject to ministerial or discretionary approval;
  - b) The number of units included in all development applications;
  - c) The number of units approved and disapproved;

- d) For each income category, the number of net new units of housing, including both rental housing and for-sale housing, that have been issued a completed entitlement, a building permit, or a certificate of occupancy;
- e) A unique site identifier (such as assessor's parcel number) for each entitlement, building permit, or certificate of occupancy;
- f) The number of applications submitted under the Affordable Housing and High Road Jobs Act of 2022; and
- g) The overall progress in meeting its share of RHNA.

In August 2023, the UC Berkeley Terner Center, entitled *The Housing Potential for Land Owned by Faith-Based Organizations and Colleges*, released a study of the potential for new housing on sites owned by religious institutions and non-profit colleges. The study identified over 170,000 acres of land owned by these entities across the state – 47,000 by religious institutions and 124,000 by universities. The study did not examine the amount of potentially developable land on each site; however, even if only a small fraction of these 170,000 acres is developable, at a typical density of 30 units per acre, the Act could create thousands of new units of affordable housing.

- 4) **Affordable Housing on Faith and Higher Education Lands Act of 2023.** Last year, the Legislature passed and the Governor signed SB 4 (Wiener), which established the Act. The Act established a streamlined, by-right approval process for housing developments that meet specific criteria until January 1, 2036, including:
  - a) The development must be located on land owned by January 1, 2024, by an independent institution of higher education or a religious institution, as defined;
  - b) One hundred percent of the development project's total units, exclusive of manager units, must be for lower income households, with up to 20% of total units allowed for moderate income households, and up to 5% allowed for staff of the independent institution of higher education or religious institution that owns the land;
  - c) The development project must be on an infill site and not be in an environmentally unsafe or sensitive area;
  - d) The development project must comply with all objective development standards of the local government that are not in conflict with the Act;
  - e) The applicant must certify to the local government that all construction workers employed in the development will be paid at least the general prevailing wage rate, and developments of 50 or more housing units must make worker health care expenditures in specified amounts;
  - f) The development proponent must complete a Phase I or II environmental assessment, if warranted; and
  - g) The development project must follow certain density, height, and parking limitations.

This bill would add information about applications submitted under the Act to the list of information required to be submitted in a local government's APR each year.

- 5) **Bill Summary.** This bill adds information to the Annual Progress Report (APR), required by housing element law, relating to the number of applications, location and number developments submitted, number of building permits issued, and the total number of units constructed and respective income category pursuant to the Affordable Housing on Faith and Higher Education Lands Act of 2023. This bill requires HCD to publish a list of state grants and financial incentives for planning, construction, and operation of affordable housing units land owned faith and higher education institutions. HCD shall also include a set of model partnership agreements that can be used by independent institutions of higher education and religious institutions when they partner with an affordable housing builder.

This bill is sponsored by the Los Angeles County Business Federation.

- 6) **Author's Statement.** According to the author, "AB 2728 supports the production of affordable homes on land owned by faith institutions. This bill adds common sense measures and tools to support the efforts of our faith leaders to house the unhoused and low-income families. This kind of locally driven leadership will help us address our crippling housing crisis."

7) **Related Legislation.**

- a) AB 2144 (Grayson) requires local governments to include evidence of compliance for existing legal internet website requirements, as specified, in their Annual Progress Report (APR) to the Department of Housing and Community Development by April 1 of each year.
- b) AB 2580 (Wicks) of the current legislative session adds information about a local government's historic preservation practices and policies to the constraints analysis required by housing element law, and requires a local government to provide in its APR a list of all historic designations listed on specified registers of historic places in the past year, including an assessment of how those designations affect the ability of the local government to meet its housing needs.

- 8) **Previous Legislation.** SB 4 (Wiener), Chapter 771, Statutes of 2023 enacted the Affordable Housing on Faith and Higher Education Lands Act of 2023.

AB 2653 (Santiago), Chapter 657, Statutes of 2022, authorized HCD to reject the housing element portion of a planning agency's APR if the report is not in substantial compliance with the law.

- 9) **Arguments in Support.** Los Angeles County Biz-Fed writes in support, "As a sponsor, AB 2728 (Gabriel) will build on the success of SB 4 (Wiener, 2023) to require a "Look Back" provision where local governments will provide: the number of applications submitted under SB 4, the location of SB 4 projects, and the total number of building permits and units constructed as a result of SB 4. In addition, AB 2728 (Gabriel) will require the California Department of Housing and Community Development to identify and develop a list of state grants and financial incentives in connection with the planning, construction, and operation of affordable to moderate-income housing.

“As you know, California continues to experience a crippling housing shortage. A 2022 report from the California Department of Housing and Community Development found that we need to build 1.2 million units of housing over the next decade to meet our goals. AB 2728 (Gabriel) capitalize on the estimated 171,000 developable acres of land owned by faith institution or nonprofit colleges identified by the UC Berkeley Terner Center..”

10) **Arguments in Opposition.** None on file.

11) **Double-Referral.** This bill was double-referred to the Assembly Housing and Community Development Committee, where it passed on a 7-0 vote on April 10, 2024.

## REGISTERED SUPPORT / OPPOSITION:

### Support

Buen Vecino  
California Community Builders  
Christian Church Homes (CCH)  
Circulate San Diego  
Civicwell  
Cty Housing, INC.  
Destination: Home  
EAH Housing  
East Bay Housing Organizations  
Firm Foundation Community Housing  
Housing Action Coalition  
Inner City Law Center  
LISC Bay Area  
Los Angeles County Business Federation (BIZ-FED)  
Lutheran Office of Public Policy - California  
Merritt Community Capital Corporation  
Midpen Housing  
Midpen Housing Corporation  
Monterey Bay Economic Partnership  
Move LA  
Nonprofit Housing Association of Northern California  
Peninsula Solidarity Cohort  
People for Housing - Orange County  
Resources for Community Development  
Richmond Community Foundation  
Sacramento Housing Alliance  
Spur  
Yimby Action

### Opposition

None on file.

**Analysis Prepared by:** Linda Rios / L. GOV. / (916) 319-3958