

Date of Hearing: June 26, 2024

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Juan Carrillo, Chair

SB 721 (Becker) – As Amended June 20, 2024

SENATE VOTE: Not relevant

SUBJECT: General plan: annual report: suite-style student housing quarters

SUMMARY: Adds to the list of information local governments must provide in their Annual Progress Report (APR) by April 1 of each year the number of new and demolished suite-style student housing quarters by income category thus far in the housing element cycle, as determined by the Department of Housing and Community Development (HCD). Specifically, **this bill:**

- 1) Adds, beginning with the seventh and subsequent revisions of the housing element, to the list of information local governments must provide in their APR by April 1 of each year the number of new and demolished suite-style student housing quarters by income category thus far in the housing element cycle, as determined by HCD.
- 2) Provides that it is the intent of the Legislature, when suite-style student housing quarters are reported by income category, that HCD evaluate the jurisdiction's progress in meeting its share of the regional housing needs determined pursuant to existing law, with particular attention to the housing needs of lower income households. Provides that it is the intent of the Legislature that suite-style student housing quarters shall not satisfy more than 25 percent of any income category in determining a jurisdiction's progress in meeting its share of the regional housing needs.
- 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, as specified.

EXISTING LAW:

- 1) Provides that each community's fair share of housing be determined through the Regional Housing Needs Determination (RHND)/Regional Housing Needs Allocation (RHNA) process. Sets out the process as follows: (a) Department of Finance (DOF) and HCD develop regional housing needs estimates or RHNDs; (b) COGs allocate housing via RHNA within each region based on these determinations, and where a COG does not exist, HCD conducts the allocations; and (c) cities and counties incorporate these allocations into their housing elements. [Government Code (GOV) Section 65584 and 65584.01]
- 2) Requires a planning agency to provide an APR to the legislative body, the Office of Planning and Research, and HCD by April of each year that includes all of the following:
 - a) The status of the general plan and progress in its implementation;
 - b) The progress in meeting its share of the RHNA, including the need for extremely low-income households, and local efforts to remove governmental constraints to the

- maintenance, improvement, and development of housing included in the housing element;
- c) The number of housing development applications received in the prior year, including whether each housing development application is subject to a ministerial or discretionary approval process;
 - d) The number of units included in all development applications in the prior year;
 - e) The number of units approved and disapproved in the prior year;
 - f) The degree to which the approved general plan complies with the guidelines developed in existing law for addressing specified matters, including environmental justice matters, collaborative land use planning of adjacent civilian and military lands, consultation with Native American tribes, and road and highway safety;
 - g) A listing of sites rezoned to accommodate that portion of the city or county's share of the RHNA for each income level that could not be accommodated on sites identified in the housing element's site inventory and any sites that may have been required to be identified under the No Net Loss Zoning law;
 - h) The number of housing units demolished and 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, thus far in the housing element cycle, and the income category by area median income (AMI) that each housing unit satisfies;
 - i) Certain information regarding funding that may have been allocated via the Local Government Planning Support Grants Program;
 - j) The progress of the city or county in adopting or amending its general plan or local open-space element in compliance with its obligations to consult with California Native American tribes and to identify and protect, preserve, and mitigate impacts to tribal places, features, and objects;
 - k) Specified information related to Density Bonus Law (DBL) applications, including the number of units in a student housing development for lower income students for which the developer was granted a student housing density bonus; and
 - l) Specified information related to Affordable Housing and High Road Jobs Act of 2022 applications. [GOV § 65400(a)(2)(A)-(M)]
- 3) Requires HCD to post APR reports on its website within a reasonable time of receiving the reports. [GOV § 65400(c)]
- 4) Requires cities and counties to grant a density bonus when an applicant for a housing development of five or more units seeks and agrees to construct a project that will contain at least 20% of the total units for lower income students in a student housing development that meets the following requirements:

- a) All units in the student housing development will be used exclusively for undergraduate, graduate, or professional students enrolled full time at an institution of higher education accredited by the Western Association of Schools and Colleges or the Accrediting Commission for Community and Junior Colleges;
- b) The applicable 20% units will be used for lower income students, defined as students that have a household income and asset level that does not exceed Cal Grant A or B award recipients. Eligibility is defined as students with a household income and asset level that does not exceed the level for Cal Grant A or B award recipients. Eligibility shall be verified by an affidavit, award letter, or letter of eligibility provided by the institution of higher education at which the student is enrolled or by the California Student Aid Commission that the student receives or is eligible for financial aid from the university, the California Student Aid Commission, or the federal government; and
- c) For purposes of calculating density, the term “unit” means one rental bed and it’s pro rata share of associated common area facilities. The lower income units shall be subject to a recorded affordability restriction of 55 years. [GOV § 65915(b)(1)(F)]

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

COMMENTS:

- 1) **Bill Summary.** This bill adds to the list of information local agencies must include in their APRs the number of new and demolished suite-style student housing quarters by income category thus far in the housing element cycle, as determined by HCD, beginning at the seventh cycle and subsequent revisions of the housing element. When suite-style student housing quarters are reported by income category, the bill provides that it is the intent of the Legislature that that HCD evaluate the jurisdiction’s progress in meeting its share of the regional housing needs determined pursuant to existing law, with particular attention to the housing needs of lower income households. The bill also provides that it is the Legislature’s intent that suite-style student housing quarters shall not satisfy more than 25 percent of any income category in determining a jurisdiction’s progress in meeting its share of the regional housing needs.

This bill is author sponsored.

- 2) **Author’s Statement.** According to the author, “California is facing an extreme student housing crisis. 1 in 5 community college students, 1 in 10 CSU students, and 1 in 20 UC students are experiencing homelessness. One step toward addressing this crisis is to create development incentives for more suite-style housing for students. Colleges and local jurisdictions are not collaborating enough to create more student housing, perhaps because local jurisdictions cannot report it on their Annual Progress Report. Students use housing the same as other members of the community, and locals should be incentivized to plan for them as such. SB 721 allows jurisdictions to count suite-style student housing toward their Annual Progress Report so that local jurisdictions further collaborate to meet our collective housing needs.”
- 3) **Planning and Zoning.** The California Constitution allows cities and counties to “make and enforce within its limits, all local, police, sanitary and other ordinances and regulations not in

conflict with general laws.” It is from this fundamental power (commonly called the police power) that cities and counties derive their authority to regulate behavior to preserve the health, safety, and welfare of the public—including land use authority.

Local governments use their police power to enact zoning ordinances that shape development, such as setting maximum heights and densities for housing units, minimum numbers of required parking spaces, setbacks to preserve privacy, lot coverage ratios to increase open space, and others. These ordinances can also include conditions on development to address aesthetics, community impacts, or other particular site-specific considerations.

- 4) **RHND/RHNA Methodology.** The RHND/RHNA process is used to determine how many new homes, and the affordability level of those homes, each local government must plan for in its housing element to cover the duration of the next eight-year planning cycle. The RHND is assigned at the COG level, while RHNA is suballocated to subregions of the COG or directly to local governments. RHNA is currently assigned via four income categories: very low-income (0-50% of AMI), low-income (50-80% of AMI), moderate income (80-120% of AMI), and above moderate income (120% or more of AMI).

The cycle begins with HCD and DOF projecting new RHND numbers every five or eight years, depending on the region. DOF produces population projections and the COG also develops projections during its Regional Transportation Plan update. Then, 26 months before the housing element due date for the region, HCD must meet and consult with the COG and share the data assumptions and methodology that they will use to produce the RHND. The COG provides HCD with its own regional data on several criteria, including:

- a) Anticipated household growth associated with projected population increases;
- b) Household size data and trends in household size;
- c) The percentage of households that are overcrowded, as defined, and the overcrowding rate for a comparable housing market, as defined;
- d) The rate of household formation, or headship rates, based on age, gender, ethnicity, or other established demographic measures;
- e) The vacancy rates in existing housing stock, and the vacancy rates for healthy housing market functioning and regional mobility, as well as housing replacement needs, as specified;
- f) Other characteristics of the composition of the projected population;
- g) The relationship between jobs and housing, including any imbalance between jobs and housing;
- h) The percentage of households that are cost burdened and the rate of housing cost burden for a healthy housing market, as defined; and

- i) The loss of units during a declared state of emergency during the planning period immediately preceding the relevant housing element cycle that have yet to be rebuilt or replaced at the time of the data request.

HCD can take this information and use it to modify its own methodology, if it agrees with the data the COG produced, or can reject it if there are other factors or data that HCD feels is better or more accurate. Then, after a consultation with the COG, HCD makes written determinations on the data it is using for each of the factors bulleted above, and provides that information in writing to the COG. HCD uses that data to produce the final RHND. The COG must then take the RHND and create an allocation methodology that distributes the housing need equitably amongst all the local governments in its region. The RHNA methodology is statutorily obligated to further all of the following objectives:

- a) Increase the housing supply and mix of housing types, tenure, and affordability in all cities and counties within the regional in an equitable manner, which must result in each jurisdiction receiving an allocation of units for low- and very low-income households;
- b) Promote infill development, socioeconomic equity, the protection of environmental and agricultural resources, and achievement of regional climate change reduction targets;
- c) Promote an improved intraregional relationship between jobs and housing, including an improved balance between the number of low-wage jobs and the number of housing units affordable to low-wage workers in each jurisdiction;
- d) Allocate a lower proportion of housing need to an income category when a jurisdiction already has a disproportionately high share of households in that income category; and
- e) Affirmatively further fair housing.

In past housing element cycles, RHNA had been criticized as being a political rather than a methodologically sound, data-driven process. In the past, jurisdictions with a higher share of wealthier, whiter residents were more likely to have received lower allocations of moderate and lower income housing, while more diverse cities sometimes received higher allocations of those categories. The Legislature made a number of changes to the RHND, RHNA, and housing element processes over the past several years to strengthen the law and restrict the ability of jurisdictions to evade their housing obligations.

- 5) **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; and
- f) The overall progress in meeting its share of regional housing needs.

This bill adds suite-style student housing to the “net new units of housing” in the APR that must be reported by income category, thereby allowing newly constructed suite-style student housing to be counted for purposes of meeting a jurisdiction’s RHNA. In HCD’s April 2024 report, “California’s Housing Future 2040: The Next Regional Housing Needs Allocation (RHNA),” the Department indicated that it plans to implement this change under its existing authority for determining what types of housing units are legally valid for purposes of APR reporting and ultimately housing element compliance. However, HCD noted this change would not take effect until the 7th housing element cycle, as there are modifications that DOF will need to make in the RHND methodology to account for the inclusion of this type of “group quarters” in the assessment of housing need in the region, as these quarters do not currently conform to the Census definition of a “housing unit” and thus are not reflected in the RHND or RHNA

- 6) **Calculating Income for Students.** Unlike traditional affordable housing, identifying lower-income students eligible for student housing is trickier to calculate. Because many students do not work full-time jobs, on paper they appear to be lower-income. SB 1227 (Skinner) provided a student’s eligibility to receive a Cal Grant must be used to verify a student’s eligibility for lower-income housing. The Cal Grant program identifies income ceilings in statute based upon a student’s household income, both for new and renewing participants.

According to studies by the Association of Community College Trustees, California State University, and University of California, it is estimated that 762,585 California college students experience housing insecurity or homelessness, including 693,000 (1-in-3) students in California’s community college system; 57,000 (1-in-10) students in the California State University system, and 12,585 (1-in-20) students in the University of California system. About one-third of community college students experiencing housing or food insecurity were both working and receiving financial aid, but needed additional support. Homeless community college students were more likely to work low-wage, low-quality jobs, and get less sleep.

- 7) **Student Housing.** Student housing, especially “bedspace” or “by-the-bed” housing, is specifically constructed for and marketed toward students, might not be made available over the summer or over school breaks, and is not likely to be appealing to members of the local community who are in need of permanent housing opportunities. However, it is certainly the case that a lack of available student housing means that students must venture out into the community and reside in a portion of the local housing stock that might otherwise be available for the community’s full-time residents. These impacts will depend on the type of college in the jurisdiction – with community and vocational colleges the most likely to draw from local residents, and public or private four-year universities likely to attract students from near and far. Some of California’s most prestigious and largest universities are located

in the state's most unaffordable housing markets, in places like Berkeley, Los Angeles, or Santa Cruz. Numerous research studies and surveys have shown that housing affordability is a significant driver of the overall cost of higher education and many college students in California face housing insecurity or homelessness while attending their institution.

Student housing can be owned and operated by a private developer or building owner, or can be owned and operated by a college or university itself. It may be on-campus or off-campus. Some are operated in a public-private partnership model – for example, a college may lease land to a developer or may enter into a master lease for a privately owned off-campus building. When a university owns and operates or master-leases the housing, the cost charged to a student might be folded into “room and board” or tied to their institutional, state, or federal financial aid. Some student housing is restricted to students attending a specific college, while other housing is open and available to anyone in the community but is simply marketed toward students. Student housing is also often charged by bedspace, rather than by unit, as shared or group quarters are common. The Legislature also recently created a student housing density bonus in DBL for developers seeking to build student housing with a percentage reserved for lower income students and students experiencing homelessness.

Some types of student-oriented housing already appear to be eligible to be counted toward fulfilling housing element and RHNA obligations, with the important caveats that occupancy is not restricted only to students, fair housing laws are followed, and the income qualification process follows existing law. See, for example, the following discussion in the City of Davis's 2021-29 housing element (adopted and approved by HCD) regarding the city's ability to count an approved student-oriented apartment complex utilizing bedspace rents toward the city's low-income and very low-income sites inventory obligations:

“The Nishi Housing project is intended to provide housing to help address the City's longstanding low vacancy rates by providing by-the-bed rentals primarily marketed to UC Davis students, due to its proximity to UC Davis. However, consistent with federal fair housing laws, all units will be available for rent by anyone, with no preference given to students over members of the general public and the development agreement for the Nishi project includes clarifying language to explicitly state that the project may not restrict leases to students only. The rental model would be unlikely to appeal to families, but it could provide for some workforce housing, which, in addition to student-oriented housing, is also a great need in Davis.

“The project intends to use a by-the-bed leasing model that would provide approximately 2,200 beds to house as many people within approximately 700 separate apartment units. The project currently falls into a gray area within the Census definitions for housing units versus noninstitutionalized group quarters for college/university student housing. Each apartment would be a fully-contained housing unit with living and eating facilities and direct access to the outside of the building that is separate from other units, which aligns with the Census definition of a housing unit. However, the newly revised Census definition for noninstitutionalized group quarters also includes “apartment-style student housing” where “residents typically enter into ‘by the bed’ leases.”

“According to the California Department of Finance (DOF), the key factor providing differentiation between the two Census definitions is whether the unit is affiliated with an educational institution and/or reserved for use by students only (or if it provides a

preference for students in the applications process), versus simply being student-oriented (i.e., designed to appeal to student as a segment of the market, but equally available for occupancy by the general public). The Nishi project is not affiliated with an educational institution, the units would not be reserved for students, nor would students be afforded any kind of preference in the application process compared to members of the general public. The by-the-bed leasing structure, in this context, is similar to the common practice of roommates sharing an apartment, where occupants would live together in a single unit under a single lease, but under this rental model each individual would have a separate lease. The by-the-bed leasing structure provides greater flexibility and improves housing security in that if one occupant leaves the remaining occupants cannot be held liable for the share of rent previously paid by the departing occupant.

“The approved Development Agreement commits the project developer to providing a minimum of 15 percent of the beds to low income individuals: this equates to a total of 330 beds, 220 at the Very Low Income and 110 at the Extremely Low Income levels, or the equivalent of 105 units (70 Very Low Income and 35 Extremely Low Income). The Development Agreement is a legally binding agreement between the developer and the City, which has been approved by both the City Council and the developer, so the City is confident that this condition of affordability will be met, and that 105 units can be used to contribute toward the City’s lower income RHNA obligations. The income qualification process for the Very Low Income and Extremely Low Income beds/units would be no different than for any other income-restricted housing product.”

- 8) **Policy Considerations.** The Committee may wish to consider the following:
- a) **Defining “Suite-Style Student Housing Quarters.”** The bill adds to the APR the number of new and demolished suite-style student housing quarters, as determined by HCD. The bill does not include a definition of what suite-style student housing quarters are, and leaves it to HCD to make this determination. What constitutes suite-style housing may differ from school to school. The committee may wish to consider minimum habitability requirements for units being counted toward a local jurisdiction’s RHNA progress.
 - b) **Enforcement.** Recent amendments to the bill establish the Legislature’s intent that HCD pay particular attention to the housing needs of lower income households when evaluating the jurisdiction’s progress in meeting its share of regional housing when suite style housing quarters are reported by income category. The recent amendments also provide the Legislatures intent that suite-style student housing quarters shall not satisfy more than 25 percent of any income category in determining a jurisdiction’s progress in meeting its share of the regional housing needs. While these amendments provide much needed clarification in how student housing may play a role in local jurisdictions meeting their regional needs, intent language may not be sufficient for enforcing the provisions of the bill.
- 9) **Committee Amendments.** To address the policy considerations above, the committee may wish to consider the following amendments:
- a) Make the following changes to (a)(2)(H)(i)(III) “For the seventh and subsequent revisions of the housing element, suite-style student housing quarters. ~~as determined by~~

~~the Department of Housing and Community Development. It is the intent of the Legislature, when suite-style student housing quarters are reported by income category, that the~~ The department shall evaluate the jurisdiction's progress in meeting its share of the regional housing needs determined pursuant to Section 65584, with particular attention to the housing needs of lower income households. ~~It is the intent of the Legislature that~~ Suit-style student housing quarters shall not satisfy more than 25 percent of any income category in determining a jurisdiction's progress in meeting its share of the regional housing needs."

- b) Require that only suite-style student housing quarters that meet all of the following may be counted toward a jurisdiction's progress on meeting the regional housing need:
 - i) The unit includes a fully functioning kitchen with a refrigerator, stove, oven, a sink with hot and cold water, a vent, and an area to prepare to food.
 - ii) The unit has a ratio of beds to toilets, lavatories, and showers not to exceed 4:1.
 - iii) The units meets the requirements of Health and Safety Code Section 17920.3. Any unit or structure not meeting the requirements of Health and Safety Code Section 17920.3 is deemed substandard and shall not be counted toward the local jurisdiction's progress towards meeting its regional housing needs.

10) **Related Legislation.** AB 3116 (E. Garcia) revises and recasts the existing DBL benefits applicable to student housing developments. This bill is pending in the Senate Local Government Committee.

11) **Previous Legislation.** SB 1227 (Skinner), Chapter 937, Statutes of 2018 required cities and counties to grant a density bonus when an applicant for a housing development of five or more units seeks and agrees to construct a project that will contain at least 20% of the total units for lower-income students in a student housing development, as specified.

SB 290 (Skinner), Chapter 340, Statutes of 2021, made various changes to DBL including requiring a city or county to report in the housing element APR, the number of units for lower income students that were included in a student housing development for which a developer received a density bonus.

12) **Arguments in Support.** YIMBY Action writes in support, "California has a severe student housing crisis. According to a 2020 UCLA study, 1 in 5 community college students, 1 in 10 CSU students, and 1 in 20 UC students are experiencing homelessness. Roughly 9,400 students in the UC system alone were denied housing in 2022. Additionally, the UC experienced an enrollment boost of 27,583 students between 2015 and 2021 but only added 22,000 beds – over 5,000 short to match the uptick in enrollment.

"Even in the face of this crisis, jurisdictions have little incentive to encourage colleges to create housing for students. Currently, jurisdictions cannot include suite-style housing on their APR because HCD does not consider suite-style housing a "housing unit". This in turn does not count towards their Regional Housing Needs Allocation. Without such incentives, suite-style housing construction is delayed and students must turn to off-campus housing or occupy homes for potential families and community members.

"Those who are unable to afford off-campus housing are forced to live in RV's, couch surf, or remain unoused while they attend classes. Students heavily rely on housing just as much

as other members of the community. SB 721 helps address the student housing crisis by clarifying that jurisdictions can report suite-style housing on their APR to incentivize the construction of student housing

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

14) **Double-Referral.** This bill was double-referred to the Assembly Housing and Community Development Committee, where it passed on a 8-0 vote on June 19, 2024.

REGISTERED SUPPORT / OPPOSITION:

Support

City of Albany
Stanford University
Town of Moraga
Yimby Action
Yimby Law

Opposition

None on file.

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