

Date of Hearing: April 26, 2023

**ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT**

Cecilia Aguiar-Curry, Chair

AB 1218 (Lowenthal) – As Amended April 13, 2023

**SUBJECT:** Development projects: demolition of residential dwelling units.

**SUMMARY:** Amends the existing demolition protections for housing applicable to development projects. Specifically, **this bill:**

- 1) Moves the existing demolition protections for housing developments into a separate article under the Housing Crisis Act of 2019 (HCA) and makes the following substantive changes to the protections:
  - a) Applies the demolition protections for protected housing units to all development projects. Further specifies that if the development project is not a housing development project, the proponent must ensure that the required replacement housing is developed prior to or concurrently with the development project.
  - b) Applies the demolition protections to sites where protected housing units were demolished in the previous five years.
  - c) Amends the noticing requirements for existing occupants in units proposed to be demolished, as follows:
    - i) Specifies that notice to the occupants of the proposed demolition project proponent must be written and include the date they must vacate, and their rights under this section of law.
    - ii) Requires that the project proponent must provide the written notice at least six months in advance of the date that existing occupants must vacate.
- 2) Updates cross references in various sections of Housing Element Law to reflect the creation of the new article in the HCA.
- 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 HCA, which includes the following provisions:
  - a) Applies to development projects that are at least two-thirds residential in “affected cities and counties,” which include all but the most rural cities and unincorporated areas in the state.
  - b) Defines “protected unit” to mean residential dwelling units that meet any of the following:

- i) Are or were subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income within the past five years.
  - ii) Are or were subject to any form of rent or price control through a public entity's valid exercise of its police power within the past five years.
  - iii) Are or were rented by lower or very low income households within the past five years.
  - iv) Were withdrawn from rent or lease in accordance with the Ellis Act within the past 10 years.
- c) Includes demolitions protections, including the following:
- i) Prohibits an affected city or county from approving a housing development project that will require the demolition of one or more residential dwelling units, unless the project will create at least as many residential dwelling units as will be demolished.
  - ii) Prohibits an affected city or county from approving a housing development project that will require the demolition of occupied or vacant protected units, unless all of the following apply:
    - (1) The project will replace all existing or demolished protected units, as specified.
    - (2) The project will include at least as many residential dwelling units as the greatest number of residential dwelling units that existed on the project site within the last five years.
    - (3) Any existing occupants will be allowed to occupy their units until six months before the start of construction activities with proper notice, as specified.
    - (4) The developer agrees to provide the existing occupants of any protected units that are lower income households both specified location benefits and a specified right of first refusal in a comparable unit in the new development.
- d) Provides sunset provisions for the demolition protections and other provisions of the HCA, including that:
- i) The Act applies to a housing development project that submits a preliminary application before January 1, 2030.
  - ii) The Act remains in effect only until January 1, 2034, and as of that date is repealed (Government Code (GC) § 66300-66301).
- 2) Requires local governments, for any site identified in their Housing Elements as being suitable for development, to prohibit the demolition of any sites with existing rental housing units or on which rental housing units have been demolished in the past five years, and any of the rental housing units meet the definition of "protected unit" above, unless the proposed housing development replaces those units (GC § 65583.2).

- 3) Prohibits the utilization of the state density bonus on sites where rental housing units have been demolished in the past five years, and any of the rental housing units meet the definition of “protected unit” unless the proposed housing development replaces those units (GC § 65915).

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

**COMMENTS:**

- 1) **Bill Summary and Author’s Statement.** This bill proposes to amend the HCA’s demolition protections in several substantive ways, including:
  - a) Applying the demolition protections for sites with protected units that are proposed to be developed for non-residential purposes (e.g., offices, retail). The non-residential development projects would be responsible to relocate displaced tenants and to replace demolished protected units. This will prevent the loss of units affordable to lower income households in the instance when a proposed development is not a housing development project.
  - b) Applying the demolition protections to sites where protected housing units were demolished in the previous five years. This five-year lookback provision is the same as the demolition protections contained in both housing element law and density bonus law.
  - c) Specifying that the notice to the occupants of a development proposed for demolition must be written and include the date they must vacate, and their rights under this section of law.
  - d) Requiring that the project proponent must provide written notice at least six months in advance of the date that existing occupants must vacate.

According to the author, “AB 1218 provides needed clarity to ensure that the replacement housing and relocation assistance provisions of SB 330 are implementable and can achieve their intended impact. Low-income tenants should be getting the relocation assistance the law promises. In addition, it makes no sense in a housing crisis as severe as California’s to allow affordable housing to be lost to commercial and industrial development. Developers should have a plan to replace affordable units regardless of the type of project they are building, consistent with the rules that apply under Housing Element Law.”

This bill is sponsored by the California Rural Legal Assistance Foundation and the Public Interest Law Project.

- 2) **California’s Housing Crisis.** California faces a severe housing shortage. A variety of causes have contributed to the lack of housing production. Recent reports by the Legislative Analyst’s Office and others point to local approval processes as a major factor. They argue that local governments control most of the decisions about where, when, and how to build new housing, and those governments are quick to respond to vocal community members that may not want new neighbors. The building industry also points to CEQA review as an impediment, and housing advocates note a lack of a dedicated source of funds for affordable housing.

A major cause of our housing crisis is the mismatch between the supply of housing and the need for housing. The Statewide Housing Plan adopted by the Department of Housing and Community Development in 2022 found that California needs approximately 2.5 million units of housing, including one million units affordable to lower income households, in order to address this mismatch over the next eight years. That would require production of over 300,000 units a year, including over 120,000 units a year of housing affordable to lower income households. By contrast, production in the past decade has been under 100,000 units per year – including less than 10,000 units of affordable housing per year.

- 3) **Demolition Protections for Existing Housing.** In response to the mismatch between housing supply and demand, the Legislature enacted the HCA (SB 330, Skinner, Chapter 654, Statutes of 2019). Subsequent amendments to the Act, among other things, extended its sunset to January 1, 2030 (SB 8, Skinner, Chapter 161, Statutes of 2021). The HCA includes provisions that prohibit local governments from reducing the capacity for housing development within their jurisdictions and includes demolition protections designed to ensure that there is no net reduction of housing in the state, especially affordable housing.

Under the HCA, projects cannot require the demolition of housing unless the project creates at least as many new homes, and cannot demolish affordable housing units protected by law unless the project replaces the units and allows existing residents to occupy their units until six months before construction starts. The developer must also provide relocation assistance and a right of first refusal to the residents in the new development at affordable rates.

- 4) **Previous Legislation.** SB 8 (Skinner), Chapter 161, Statutes of 2021, extended the sunset on the HCA by five years and made a number of minor changes to the Act, including clarifying the provisions for demolition and replacement.

SB 330 (Skinner), Chapter 654, Statutes of 2019, enacted the HCA, which among other provisions, restricted actions by cities and counties that would reduce the production of housing, including demolition of housing that would result in less total units and less units affordable to lower income households.

- 5) **Double-Referral.** This bill is double-referred to the Committee on Housing and Community Development where it passed on a 7-1 vote on April 12, 2023.
- 6) **Arguments in Support.** Disability Rights California writes in support of the bill, “AB 1218 would clarify language requiring relocation assistance for low-income households directly displaced by new development to ensure that people receive this assistance. It would additionally apply the same five-year lookback that applies to other replacement housing laws to ensure that developers do not skirt the requirement by demolishing housing units prior to filing a development application. The bill would also apply the replacement housing requirements to any type of development project for consistency with Housing Element Law and to ensure no net loss of affordable housing.”
- 7) **Arguments in Opposition.** None on file.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Rural Legal Assistance Foundation [SPONSOR]

Public Interest Law Project [SPONSOR]

Aids Healthcare Foundation

California Housing Partnership

Disability Rights California

Western Center on Law & Poverty

**Opposition**

None on file

**Analysis Prepared by:** Hank Brady / L. GOV. / (916) 319-3958