

Date of Hearing: April 19, 2017

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 1350 (Friedman) – As Amended March 27, 2017

**SUBJECT:** Land use: housing element: regional housing need: noncompliant cities and counties: penalty.

**SUMMARY:** Places a financial penalty on noncompliant cities and counties who do not meet specified regional housing needs assessment (RHNA) obligations, and creates a program to fund grants to compliant cities and counties with those penalties. Specifically, **this bill:**

- 1) Defines the following terms, for purposes of the bill:
  - a) “Annual tax increment” has the same meaning as that term is described in the Revenue and Taxation Code related to the formula to calculate tax increment as a basic revenue allocation.
  - b) “Compliant city or county” means a city or county that has met at least one-third of its share of the regional housing need for low-income and very low income housing during its current housing element planning period on or before January 1, 2021.
  - c) “Department” means the Department of Housing and Community Development.
  - d) “Noncompliant city or county” means a city or county that has not met at least one-third of its share of the regional housing need for low-income and very low-income housing during its current housing element planning period on or before January 1, 2021.
- 2) Requires a noncompliant city or county to pay a penalty to the Department, which shall be an amount equal to either of the following amounts, whichever is less:
  - a) One-third of the annual property tax increment allocated to the city or county for the 2018-19 fiscal year (FY) to the 2020-2021 FY, inclusive; or,
  - b) One-third of the annual sales price for a single-family home in the noncompliant city or county multiplied by the number of low-income and very low-income units that would have met at least one-third of the noncompliant city’s or county’s share of the regional housing need during its current housing element planning period.
- 3) Requires the penalty imposed pursuant to 2), above, to be deposited in the RHNA Compliance Fund. Creates the RHNA Compliance Fund in the General Fund.
- 4) Specifies that all money deposited in the RHNA Compliance Fund to be continuously appropriated to the Department without regard to fiscal years for distribution of grants in accordance with 5), below, to compliant cities and counties.
- 5) Requires the Department to do all of the following:
  - a) Be responsible for overseeing the grant program;

- b) Award grants to compliant cities and counties with priority given to projects within compliant cities and counties that are closest in proximity to cities and counties that have paid the penalty required pursuant to 2), above; and,
  - c) Publish deadlines and written procedures for compliant cities and counties to apply for the grants.
- 6) Requires grants to be used by compliant cities and counties for one or more of the following purposes:
- a) To construct low-income and very low-income housing;
  - b) To convert market-rate housing to low-income and very low income housing;
  - c) Very low-, low-, and moderate-income first-time home buyer programs;
  - d) Workforce housing; and,
  - e) To subsidize the creation of low-income and very low-income housing units within other market rate housing projects.
- 7) Specifies that upon payment of the penalty required pursuant to 2), above, the noncompliant city or county shall be deemed to be a compliant city or county.
- 8) Specifies that a noncompliant city or county that has not received an allocation of annual property tax increment for the 2018-19 FY to the 2020-21 FY, inclusive, shall not be required to pay the penalty required pursuant to 2), above.
- 9) Prohibits, on or after January 1, 2021, a noncompliant city or county from doing either of the following for low-income and very low-income housing projects:
- a) Collect established fees, or impose new fees, as a condition of approval of a development project that is greater than 20% of the fee imposed as a condition of approval for market rate projects; or,
  - b) Require the payment of building permit fees.
- 10) Specifies that the limitations on fees contained in 9), above, shall cease to apply to a noncompliant city or county when either of the following occur:
- a) A noncompliant city or county pays the penalty required pursuant to 2), above; or,
  - b) A noncompliant city or county described in 8), above, becomes a compliant city or county.

**EXISTING LAW:**

- 1) Requires each city and county to adopt a general plan with seven mandatory elements, including a housing element.

- 2) Requires the housing element to consist of an identification and analysis of existing and projected housing needs and a statement of goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing. Requires the housing element to identify adequate sites for housing, including rental housing, factory-built housing, mobilehomes, and emergency shelters, and to make adequate provision for the existing and projected needs of all economic segments of the community.
- 3) Requires the housing element to include an inventory of land suitable for residential development, including vacant sites and sites having potential for redevelopment, and an analysis of the relationship of zoning and public facilities and services to these sites.
- 4) Requires a city's or county's inventory of land suitable for residential development to be used to identify sites that can be developed for housing within the planning period and that are sufficient to provide for the jurisdiction's share of the regional housing need for all income levels pursuant to existing law. Defines "land suitable for residential development" to include all of the following:
  - a) Vacant sites zoned for residential use;
  - b) Vacant sites zoned for nonresidential use that allows residential development;
  - c) Residentially zoned sites that are capable of being developed at a higher density, including the airspace above sites owned or leased by a city, county, or city and county; and,
  - d) Sites zoned for nonresidential use that can be redeveloped for, and as necessary, rezoned for, residential use, including above sites owned or leased by a city, county, or city and county.
- 5) Requires the inventory of land to include all of the following:
  - a) A listing of properties by parcel number or other unique reference;
  - b) The size of each property listed pursuant to paragraph (1), and the general plan designation and zoning of each property;
  - c) For nonvacant sites, a description of the existing use of each property;
  - d) A general description of any environmental constraints to the development of housing within the jurisdiction, the documentation for which has been made available to the jurisdiction. This information need not be identified on a site-specific basis;
  - e) A general description of existing or planned water, sewer, and other dry utilities supply, including the availability and access to distribution facilities. This information need not be identified on a site-specific basis;
  - f) Sites identified as available for housing for above moderate-income households in areas not served by public sewer systems. This information need not be identified on a site-specific basis; and,

- g) A map that shows the location of the sites included in the inventory, such as the land use map from the jurisdiction's general plan, for reference purposes only.
- 6) Requires, based on the information provided in 3), above, a city or county to determine whether each site in the inventory can accommodate some portion of its share of the regional housing need by income level during the planning period. Requires the analysis to determine whether the inventory can provide for a variety of types of housing, including multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, emergency shelters, and transitional housing. Requires the city or county to determine the number of housing units that can be accommodated on each site as follows:
- a) If local law or regulations require the development of a site at a minimum density, the department shall accept the planning agency's calculation of the total housing unit capacity on that site based on the established minimum density. If the city or county does not adopt a law or regulations requiring the development of a site at a minimum density, then it shall demonstrate how the number of units determined for that site pursuant to this subdivision will be accommodated.
  - b) The number of units calculated pursuant to paragraph (1) shall be adjusted as necessary, based on the land use controls and site improvements requirement identified in paragraph (5) of subdivision (a) of Section 65583.
  - c) For the number of units calculated to accommodate its share of the regional housing need for lower-income households, a city or county shall do either of the following:
    - i) Provide an analysis demonstrating how the adopted densities accommodate this need. The analysis shall include, but is not limited to, factors such as market demand, financial feasibility, or information based on development project experience within a zone or zones that provide housing for lower-income households.
    - ii) The following densities shall be deemed appropriate to accommodate housing for lower-income households:
      - (1) For an incorporated city within a nonmetropolitan county and for a nonmetropolitan county that has a micropolitan area: sites allowing at least 15 units per acre.
      - (2) For an unincorporated area in a nonmetropolitan county not included in clause (i): sites allowing at least 10 units per acre.
      - (3) For a suburban jurisdiction: sites allowing at least 20 units per acre.
      - (4) For a jurisdiction in a metropolitan county: sites allowing at least 30 units per acre.
- 7) Requires, for the fourth and subsequent revisions of the housing element, the Department to determine the existing and projected need for housing for each region, which shall include that share of the housing need of persons at all income levels within the area significantly affected by the general plan of the city or county.

- 8) Requires the Department, in consultation with each council of governments (COG), to determine each region's existing and projected housing need, as specified, at least two years prior to the scheduled revision. Requires the appropriate COG, or for cities and counties without a COG, the Department, to adopt a final regional housing need plan that allocates a share of the regional housing need to each city, county, or city and county at least one year prior to the scheduled revision for the region as required by law. Requires the allocation plan prepared by a COG to be prepared, as specified, with the advice of the Department.
- 9) Requires the regional housing needs allocation plan to be consistent with specified objectives.

**FISCAL EFFECT:** This bill is keyed fiscal and contains an appropriation.

**COMMENTS:**

- 1) **Bill Summary.** This bill would designate a city or county as "noncompliant" if that local agency has not met 1/3 of its share of the RHNA need for low-income and very low-income housing during its current housing element period on or before January 1, 2021. The noncompliant city or county would be required to pay a penalty to the state, which would then allow that jurisdiction to be deemed "compliant." Penalty revenue would be used by HCD to create a grant program to fund compliant cities and counties, with a priority given to projects within compliant cities and counties that are closest in proximity to cities and counties that have paid the penalty. Additionally, the bill provides what the funds can be used for, and prohibits the imposition of certain types of fees by a noncompliant city, on or after January 1, 2021, for low-income and very low-income housing projects.

This bill is an author-sponsored measure.

- 2) **Author's Statement.** According to the author, "Local agencies initially used redevelopment funds and other federal and state funding sources to subsidize affordable housing. The amount of available funding has generally decreased, while the cost of producing a housing unit has increased substantially, creating a significant funding gap for those cities and counties who have and remain willing to approve affordable housing. Other local agencies have consistently declined to approve deed-restricted affordable housing, both before and after the elimination of redevelopment funding, based on political or policy resistance to higher density, lower-cost housing and to lower-income residents.

"The refusal of some communities to house their fair share of the region's low-income residents has caused other nearby communities to assume a disproportionate share of the needs of such residents. In addition, communities which have not created affordable housing or housing density often have rising property values, as low density housing and housing further from affordable housing is viewed as more desirable and commands a higher selling price.

"The intent of this bill is to require those communities which are benefitting from not building affordable or high density housing help offset the cost and impacts to communities willing to bear the burden of approving and developing that housing."

3) **Policy Considerations.** The Committee may wish to consider the following:

- a) **Who builds housing?** According to the American Planning Association, California Chapter (APA), “the apparent intention of this bill is to ensure that all local governments are building their fair share of affordable housing. The main problem with this idea is that cities and counties do not build housing. And, the RHNA is not a production number but a requirement to plan for/zone adequate sites to accommodate the affordable housing portion of the RHNA.”

Additionally, APA notes that “there are a number of reasons [why] affordable housing is not build that have nothing to do with planning or good intentions. Certainly, there are examples of local agencies that do not welcome affordable housing. However, there are many more examples of affordable housing not being built because of the lack of subsidies that meet that need.....there are also many cities and counties that have done everything right from a zoning and incentives perspective but are still struggling to attract development – this bill would penalize those jurisdictions when instead they could really use the help.”

- b) **Undermines RHNA process.** According to the Western Center on Law & Poverty and the California Rural Legal Assistance Foundation, this bill would “allow local governments to pay their way out of accommodating critically needed affordable housing.” Additionally, they note that they agree that it is “unfair to neighboring jurisdictions that some cities and counties continue to resist their fair share obligations, but [Western Center and CRLAF] strongly disagree that the solution is to allow them to write a check rather than doing the work necessary to attract affordable multifamily development.”
- c) **Implementation issues.** The Committee may wish to consider that the bill references the housing element planning period on or before January 1, 2021. However, there are differences in planning periods from around the state. For instance, ABAG’s planning period ends in 2023; some other smaller non-COG jurisdictions have planning periods that end in 2019.
- d) **Removes fee authority.** The bill also removes the ability of noncompliant cities to charge certain fees like building permit fees, which may only serve to exacerbate the lack of housing being built if a local agency cannot recoup its administrative permit issuance costs.

4) **Arguments in Support.** None on file.

5) **Arguments in Opposition.** Opponents write that the approach in the bill may actually be counterproductive to the goal of increasing housing production in California.

6) **Double-Referral.** This bill will be heard in the Housing and Community Development Committee next, should the bill pass out of this Committee.

7) **2/3 vote.** This bill requires a 2/3 vote on the Floor.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

None on file

**Opposition**

American Planning Association, California Chapter  
California Rural Legal Assistance Foundation  
California State Association of Counties  
League of California Cities  
Rural County Representatives of California  
Western Center on Law & Poverty  
Urban Counties Caucus

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