

Date of Hearing: April 25, 2018

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 1771 (Bloom) – As Amended April 17, 2018

SUBJECT: Planning and zoning: regional housing needs assessment.

SUMMARY: Makes changes to the regional housing needs allocation (RHNA) plan objectives, methodology, distribution, and appeals process. Specifically, **this bill:**

- 1) Revises provisions of law related to the RHNA plan and the objectives that must be met in that plan, as follows:
 - a) Requires the RHNA plan to *further* the objectives, rather than to *be consistent with* the specified objectives;
 - b) Adds, to the existing objective that requires promoting an improved intraregional relationship between jobs and housing, provisions that require inclusion of an improved balance between the number of low-wage jobs and the number of housing units affordable to low-wage workers in each jurisdiction;
 - c) Adds, to the existing objective that requires allocation of 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, provisions that require an allocation of a higher proportion of housing need to an income category when a jurisdiction already has a disproportionately low share of households in that income category, as specified;
 - d) Adds an objective to increase access to areas of high opportunity for lower-income residents, avoiding displacement and affirmatively furthering fair housing; and,
 - e) Defines “areas of high opportunity for lower-income residents” to mean areas that provide pathways to better lives, including through health, education, and employment.
- 2) Revises provisions of RHNA law related to the proposed methodology that each Council of Governments (COG), or delegate subregion as applicable, must develop for distributing the existing and projected regional housing need to cities, counties, and cities and counties within the region or subregion, as follows:
 - a) Requires the methodology to *further* the objectives listed in RHNA law, rather than *be consistent with* the objectives;
 - b) Adds, to the list of factors that are used to develop the methodology, specific to each member jurisdiction’s existing and projected jobs and housing relationship, a requirement that this shall include data on the number of low-wage jobs within the jurisdiction and how many housing units within the jurisdiction are affordable to workers at those wage levels, as well as how many jobs were added and at what wage levels compared to how many housing units were added and at what income levels in the last planning period;

- c) Revises one of the factors used to develop the methodology to require the *existing and projected demand for housing at each of the income levels*, as specified, instead of the *market demand for housing*;
 - d) Revises one of the factors used to develop the methodology to require the *percentage of existing households at each of the income levels listed that are paying more than 30% and more than 50% of their income in rate*, instead of *high cost housing burdens*;
 - e) Adds a new factor in the development of the methodology that would require the rate of overcrowding; and,
 - f) Requires the COG to specify which of the objectives that each additional factor is necessary to further, should any other factors be adopted by the COG.
- 3) Requires the COG, after the public comment period on the proposed allocation methodology, to submit the draft allocation methodology to the Department of Housing and Community Development (HCD).
 - 4) Requires HCD, within 60 days, to determine whether or not the methodology furthers, and does not undermine, the objectives.
 - 5) Requires the COG or delegate subregion to make any necessary changes and adopt a final regional, or subregional, housing need allocation methodology and provide notice of the adoption of the methodology to the jurisdictions within the region, and to HCD, following the receipt of HCD's determination.
 - 6) Provides that the requirement to allocate housing within the region consistent with the development pattern included in the sustainable communities strategy cannot be a basis for limiting development from all suitable housing sites and land suitable for urban development.
 - 7) Requires each COG and delegate subregion, as applicable, to distribute a draft allocation to each local government in the region or subregion, based on the methodology specified above.
 - 8) Allows a housing organization, as defined, to request from the COG or the delegate subregion, as applicable, a revision of the share of the regional housing need allocated to one or more local government. Provides that these requests shall be in accordance with the objectives and factors specified above. Requires the request to include a statement as to how it furthers, and does not undermine the objectives.
 - 9) Requires the COG or delegate subregion to specify how the request does not further the objectives, should the COG or subregion indicate that the proposed revision is inconsistent with the regional housing need.
 - 10) Adds housing organizations to the provisions of laws that allow a local government to appeal the draft allocation to HCD, and revises criteria for the appeal.
 - 11) Requires HCD to conduct public hearings on the appeal, instead of the COG or delegate subregion, as applicable. Requires the local government or housing organization to be notified within 10 days of a public hearing on the appeal.

- 12) Requires HCD to consider all comments, recommendations and available data, submitted by the appellant.
- 13) Requires HCD's final action on an appeal to include written findings, supported by a preponderance of the evidence on the record.
- 14) Specifies that the final action may require the COG or subregion, as applicable, to adjust the allocation of *one or more local governments* that are not the subject of an appeal.
- 15) Requires the COG or subregion, to issue a proposed final allocation that takes into account HCD's actions on all appeals, as specified.
- 16) Requires the final allocation plan adopted by the COG or subregion to take into account HCD's actions on all appeals, as specified.
- 17) Defines "housing organization" to mean a nonprofit organization whose primary mission includes providing or advocating for increased access to housing for low-income households.
- 18) States that no reimbursement is required because a local agency has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by the bill's provisions.

EXISTING LAW:

- 1) Requires HCD, in consultation with each COG, to determine each region's existing and projected housing need at least two years prior to a scheduled housing element revision.
- 2) Requires a COG, or for cities or counties without a COG, HCD to adopt a final regional housing needs plan that allocates a share of the regional housing need to each city or county at least one year prior to a scheduled housing element revision.
- 3) Requires the regional housing needs assessment plan to be consistent with all of the following objectives:
 - a) Increasing the housing supply and the mix of housing types, tenure and affordability in all cities and counties within the region in an equitable manner that results in each jurisdiction receiving an allocation of units for low- and very low-income households;
 - b) Promoting infill development and socioeconomic equity, the protection of environmental and agricultural resources, and encouraging efficient development patterns;
 - c) Promoting an improved intraregional relationship between jobs and housing; and,
 - d) Allocating a lower proportion of housing need to an income category when a jurisdiction already has a high share of households in the income category as compared to the county wide distribution of households in that category for the most recent U.S. census.
- 4) Requires each COG to develop a proposed methodology for distributing the existing and projected regional housing need to cities and counties within the region, two years prior to the scheduled housing element revision.

- 5) Requires, to the extent that data is available, the COG to include the following factors in developing the methodology that allocates the regional housing needs assessment:
 - a) Each member jurisdiction's existing and projected jobs housing relationship;
 - b) Opportunities and constraints to developing additional housing in each jurisdiction including the following:
 - i) Lack of capacity for sewer or water due to federal or state laws, regulations, or regulatory actions or decisions made by a sewer or water service provider other than the jurisdiction that preclude the jurisdiction from providing necessary infrastructure for additional development during the planning period;
 - ii) The availability of land suitable for urban development or for conversion to residential use, the availability of underutilized land, and opportunities for infill development increased residential densities, including the potential for increased residential development under alternative zoning ordinances and land use restrictions;
 - iii) Lands preserved or protected from urban development under existing federal or state programs;
 - iv) County policies to preserve prime agricultural land;
 - v) Distribution of household growth assumed for purposes of a comparable period of regional transportation plans and opportunities to maximize the use of public transportation and the existing transportation infrastructure;
 - vi) Market demand for housing;
 - vii) Agreements between a county and cities to direct growth toward incorporated areas of the county;
 - viii) Loss of low income units in assisted housing developments as a result of mortgage prepayment, expiration of subsidy contracts, and the termination of use restrictions;
 - ix) The housing needs of farmworkers;
 - x) The housing needs of universities; and,
 - xi) Any other factor adopted by the COG.
- 6) Requires each COG to survey each member jurisdiction and request the information necessary to allow for the development of the methodology described in 5) above, six months prior to developing the methodology.
- 7) Requires public participation and access in drafting the methodology, and in the process of drafting and adopting the allocation of the regional housing need, including at least one public hearing to receive oral and written comments.

- 8) Requires each COG to explain in writing how each of the factors required to be incorporated in the methodology are incorporated and how they further the objectives required to be included in the regional housing needs plan.
- 9) Requires each COG, in addition to the factors listed in 5), to identify any existing local, regional or state incentives, such as priority for funding to those local governments willing to accept a higher share of housing than proposed in the draft allocation plan.
- 10) Requires a COG to adopt a final housing needs allocation methodology after the public comment period and make any revisions as a result of the public comments received.

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

COMMENTS:

- 1) **Bill Summary.** This bill makes a number of changes to the regional housing needs plan objectives, methodology, distribution, and appeals process. The bill revises and adds certain objectives to the list of statutory objectives already contained in RHNA law, adds additional data points to the distribution methodology, and restricts a COG's ability to use other factors beyond those listed in statute. The bill also inserts HCD into the RHNA process in several ways: a) the bill requires HCD to determine whether a COG's distribution methodology is consistent with the law; and, b) the bill requires HCD, rather than the COG, to hear appeals if a COG denies an initial challenge to one or more jurisdictions' allocations. Additionally, the bill allows specified housing organizations to challenge the RHNA share, when under current law only the affected city or county can appeal.

This bill is co-sponsored by the California Rural Legal Assistance Foundation and the Western Center on Law and Poverty.

- 2) **Author's Statement.** According to the author, "Our accomplishments from last year (including AB 1397, of which I was a joint author, SB 35, and several other bills in the Housing Package) mean very little if the RHNA allocations are not equitable and date-driven. Fair and Accurate RHNA allocations that ensure every local government is playing a part in addressing the housing crisis is the main goal with AB 1771.

"The existing process too often ignores that data and allows local governments to push back to what they are comfortable with rather [than] what they could actually accommodate with changes in zoning. In an effort to add an independent voice, the bill adds HCD to the process. This allows them to determine whether the distribution methodology is consistent with the law before the numbers are even run so that the COG can make any needed.

"The existing process provides a loophole that can allow politics to override process by including language that allows for a COG to add "any other factors" to their distribution methodology. This bill narrows that definition so that any other factors a COG uses to determine how to distribute the RHNA that are not explicitly spelled out in statute are consistent with the goals of the statute.

"This bill allows organizations to challenge RHNA numbers as well as surrounding jurisdictions. Existing RHNA allocations can only be challenged by the jurisdiction assigned the RHNA number. It's important to remember that RHNA is a floor not a ceiling. RHNA

is a planning tool that is critical to setting the stage for housing production. If the process is flawed, then we don't get housing in the places where it is needed and some cities do not have to contribute to addressing regional housing needs. When job-rich jurisdictions don't have to plan for housing, it frustrates our ability to meet our climate goals."

- 3) **Background.** Housing element law requires local governments to adequately plan to meet their existing and projected housing needs, including their share of the regional housing need. The housing element update process addresses the statewide concern of providing "decent housing and a suitable living environment for every California family," in part by facilitating increases in housing supply to accommodate the needs of the state's population and its growth. The law recognizes the most critical decisions regarding housing development occur at the local level within the context of the general plan. In order for the private sector to adequately address housing needs and demand, local governments must regularly update their general plans, zoning, and development standards to provide opportunities for, and not unduly constrain, housing development for all income groups.

RHNA for each city and county constitutes a fundamental basis for housing element updates. The state projects new RHNA numbers every eight years, or in some rural areas every five years. RHNA for each city and county is a projection of additional housing units needed to accommodate existing households and projected household growth of all income levels by the end of the housing element planning period.

RHNAs establish minimum housing development capacity that cities and counties are to make available via their land use powers to accommodate growth within a planning period. RHNAs are assigned by four income categories as guideposts for each community to develop a mix of housing types for all economic segments of the population. The process is also known as "fair share" planning, as shares of the regional housing need are determined for constituent cities and counties of the affected region of the housing element update cycle. Regions are represented by COGs or counties, which are charged with preparing RHNA plans.

In consultation with each COG, HCD determines the housing needs for each region using a demographic method based on Department of Finance (DOF) population projections. While HCD forwards projections for the region, the distribution of the need within the region to individual cities and counties is subject to determination by the COG. Two years prior to a housing element revision, the COG develops a methodology for distributing the RHNA to jurisdictions within the region. The methodology must consider certain factors spelled out in statute. Local jurisdictions provide data to the COG that is used in the methodology to determine the distribution of housing need within the region. COGs allocate the RHNA to their city and county members in a draft allocation plan and each city and county has an opportunity to request revision of their needs allocation by the COG. The COG may revise the initial allocations, subject to maintaining the total regional need.

The methodology is required to consider the existing and projected jobs housing relationship; the opportunities and constraints to building housing in a jurisdiction; a comparison between household growth and regional transportation plans; market demand for housing; agreements to direct growth to unincorporated areas; the loss of assisted housing units due to expiring covenants or contracts; the housing needs of farmworkers; and housing generated by universities. In addition, the COG can consider any other factors it chooses.

The RNHA process has been criticized as being a political rather than a data driven process. COGs distribute the allocation by both the supporting data but also in some cases based on which jurisdictions are willing to accept housing units. A component of the methodology used to determine the allocation of RNHA is a jurisdiction's willingness to accept a higher share of the proposed share of the RNHA. The Haas Institute at UC Berkeley published a study, "*Unfair Share*" *Racial Disparities and Regional Housing Needs Allocation in the Bay Area*," which found a relationship between the number of units allocated, adjusted for population size, and the racial composition of the city. Local governments with higher percentages of white residents were more likely to have received lower allocations of moderate- and lower-income housing.

- 4) **Policy Considerations.** The Committee may wish to consider the following:
- a) **Timeframe Concerns and Appeals Process.** This bill inserts new players into the RHNA appeals process, including HCD and any housing organization that meets the definition contained in the bill. According to the California Association of Councils of Governments (CALCOG), which has an "oppose unless amended" position, these new challenges from outside organizations may upset the Regional Transportation Plan (RTP) timeline.

Currently, the only entity that can appeal is the city or county that is given the RHNA allocation. The Committee may wish to consider whether it is appropriate to allow housing organizations to also appeal, and if so, whether this change in policy should favor housing organizations solely, or whether there should be other entities or organizations that may also have grounds to appeal. For example, what about a neighboring city or county, or an engaged community group?

American Planning Association, California Chapter, echoes concerns about the addition of so many detailed components of review and additional data collection contained in the bill, and note that "the additional complexity would make meeting the required timeframe for RHNA even more difficult than it is now, with added process, HCD review and appeal, etc."

- b) **New Mandate on COGs.** This bill could potentially require new duties of COGs in order to implement the bill's provisions. CALCOG notes that in 1984, the Commission on State Mandates ruled that COGS are not eligible for reimbursement for the duties imposed by Government Code Section 65584.
- 5) **Arguments in Support.** Supports argue that this bill will provide for a more equitable, data-driven distribution of the housing need within regions, ensure greater transparency in the distribution process, and provide additional oversight to ensure that the process furthers statutory objectives.
- 6) **Arguments in Opposition.** Opponents argue that there is a need for all types of housing projects across the state in order to keep pace with the demand, and that by favoring the production of below market rate housing, this proposal would ultimately result in fewer houses being built overall.
- 7) **Double-referral.** This bill was heard in the Housing and Community Development Committee on April 11, 2018, and passed on a 6-1 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

California Rural Legal Assistance Foundation [CO-SPONSOR]
Western Center on Law and Poverty [CO-SPONSOR]
California Bicycle Coalition
California Housing Consortium
Non-Profit Housing Association of Northern California
American Planning Association (if amended)

Opposition

California Association of Councils of Governments (unless amended)
California Building Industry Association (unless amended)

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