

Date of Hearing: April 27, 2022

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 2339 (Bloom) – As Introduced February 16, 2022

**SUBJECT:** Housing element: emergency shelters: regional housing need.

**SUMMARY:** Adds additional specificity to where emergency shelters must be zoned in a jurisdiction's housing element and amends the "no net loss" policy in housing element law to factor in the share of the regional housing need that the local government failed to accommodate through rezoning in the prior planning period. Specifically, **this bill:**

- 1) Changes the requirements regarding identification of zones and sites for emergency shelters in housing elements, as follows:
  - a) Expands the definition of "emergency shelters" to include other interim interventions, including but not limited to, navigation centers, bridge housing, and respite or recuperative care.
  - b) Requires that zoning designations identified to allow emergency shelters ministerially must allow residential uses.
  - c) Requires the zoning designations that allow emergency shelters to have sufficient sites to accommodate the need for shelters.
  - d) Specifies that the zoning designations where emergency shelters are allowed must include sites that meet at least one of the following standards:
    - i) Vacant sites zoned for residential use.
    - ii) Vacant sites zoned for nonresidential use that allow residential development, if the local government can demonstrate how the sites are connected to amenities and services that serve people experiencing homelessness. Defines "connected to amenities and services" to include, but not be limited to, offering free transportation to services or offering services onsite.
    - iii) Nonvacant sites zoned for residential use or for nonresidential use that allow residential development that are suitable for redevelopment, provided the sites are adequate and available for use as a shelter in the current planning period. A nonvacant site with an existing use is presumed to impede emergency shelter development unless the local agency finds that the use is likely to be discontinued during the planning period, as specified.
  - e) Specifies that the requirement to identify zoning designations that allow emergency shelters ministerially cannot be satisfied through an overlay zone.

- f) Narrows the potential development and management standards that a local government can apply to emergency shelters to those written, objective standards already contained in existing law.
- 2) Amends the “no net loss” policy in housing element law to factor in sites that the local government rezoned in the current planning period because they failed to rezone them in the prior planning period.
- 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) Requires each city and county to draft and adopt a general plan, which must include a housing element, to shape the future growth of its community.
- 2) Requires a city or county to adopt the housing element at the beginning of each planning period. Defines “planning period” to mean the time period between the due date for one housing element and the due date for the next housing element. This planning period is eight years for most jurisdictions, and five years for a few rural communities.
- 3) Provides that each city or county must prove in its housing element how it would accommodate its fair share of the regional housing need. This proof includes:
  - a) Requiring that the housing element contain an inventory of land suitable and available for residential development, including vacant sites and non-vacant sites that have a realistic and demonstrated potential for redevelopment during the planning period.
  - b) Requiring, where the inventory of sites does not identify adequate sites to accommodate the need for groups of all household income levels, that the city or county must show how it would rezone additional sites to accommodate the regional housing need.
- 4) Specifies that each community’s fair share of housing is determined through the regional housing needs assessment (RHNA) process, which involves three main stages: (1) the Department of Finance and the Department of Housing and Community Development (HCD) develop regional housing needs estimates at four income levels: very low-income, low-income, moderate-income, and above moderate-income; (2) 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 (3) cities and counties incorporate their allocations into their housing elements.
- 5) Requires that, if the city or county failed to zone for its full share of regional housing in the prior planning period, then within the first year of the planning period of the new housing element, it must rezone adequate sites to accommodate the amount it failed to zone for in the prior planning period.
- 6) Requires, in the housing element, that cities and counties plan to accommodate emergency shelters, as follows:

- a) The city or county must determine in their housing element the need for emergency shelter. That determination must be based on the capacity necessary to accommodate the most recent homeless point-in-time count conducted before the start of the planning period, the need for emergency shelter based on number of beds available on a year-round and seasonal basis, the number of shelter beds that go unused on an average monthly basis within a one-year period, and the percentage of those in emergency shelters that move to permanent housing solutions, as specified.
  - b) The housing element must contain the identification of a zone or zones where emergency shelters are allowed as a permitted use without a conditional use or discretionary permit. However, if a local government can demonstrate the existence of one or more emergency shelters either within its jurisdiction, or pursuant to a multijurisdictional agreement, that can accommodate that jurisdiction's need for emergency shelter, it may require a conditional use permit for new emergency shelters.
  - c) If the local government cannot identify a zone or zones with sufficient capacity to accommodate the need for emergency shelter, the local government must include a program to amend its zoning ordinance to accommodate the demand within one year of the adoption of the housing element.
  - d) Shelters may be subject to development and management standards that apply to residential and commercial development within the same zone except that a local government may apply written, objective standards, as specified.
- 7) 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.
- 8) Establishes that statutes that alter the required content of a housing element apply:
- a) To housing elements where the draft element is due to HCD more than 90 days after the effective date of the changes to Housing Element Law.
  - b) To any housing element where the jurisdiction failed to submit a draft to HCD prior to the date by which the jurisdiction is required to adopt its housing element.
- 9) Establishes "no net loss" law, which requires cities and counties to ensure that, at all times, the sites identified in its housing element's site inventory and rezoning programs can accommodate the unmet share of its regional housing need for the current planning period.

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

**COMMENTS:**

- 1) **Author's Statement.** According to the author, "AB 2339 strengthens the requirements for the identification of sites for homeless shelters and ensures cities are properly rezoning for their fair share of housing. Every day, more people are falling into homelessness than we are able to house. Tackling this humanitarian crisis will take all cities doing their part in helping build emergency shelters and removing the barriers that have delayed the production of much needed housing."
- 2) **Planning for New Housing.** California is in the midst of a housing crisis. 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 rural areas with smaller populations.

In their housing element, cities and counties must demonstrate how they plan to accommodate their share of its region's housing needs. 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. If the city or county failed to zone for its full share of regional housing in the prior planning period, then within the first year of the planning period of the new housing element, it must rezone adequate sites to accommodate the amount it failed to zone for in the prior planning period.

- 3) **Homelessness and Planning for Emergency Shelters.** More than two-thirds of California's homeless are unsheltered – representing half of the unsheltered population of the United States. SB 2 (Cedillo) Chapter 633, Statutes of 2007, requires a local government, through its housing element, to ensure that there is land available to shelter its homeless population. Specifically, the city or county must identify existing zones with sufficient capacity to accommodate its homeless population in emergency shelters, or show how it will rezone land to provide such capacity. Within these zones, the city or county must allow those shelters by right, without a discretionary or conditional use permit. Local governments are allowed to apply the same development and management standards to emergency shelters that apply to residential or commercial development within the same zone.

SB 2 facilitated the planning for and development of emergency shelters around the state. However, the current law provides broad discretion to jurisdictions. For example, the zones identified for emergency shelters in a housing element might be located in industrial areas or other areas disconnected from vital services and amenities.

- 4) **No Net Loss.** Housing element law requires local governments to plan to accommodate their share of the regional housing need. Throughout the housing element planning period, as housing gets developed, local governments must ensure that there is still capacity to accommodate their share of the regional housing need on sites that have not yet been developed. This requirement is referred to as "no net loss" law.

In housing element law, if the city or county failed to zone for its full share of regional housing in the prior planning period, then within the first year of the planning period of the new housing element, the local government must rezone adequate sites to accommodate the amount it failed to zone for in the prior planning period. In housing element law, it is clear that this “carryover portion” that makes up for failure to rezone in the prior housing element is part of what HCD considers the city or county’s share of the regional housing. However, no net loss law is ambiguous as to whether local governments need to account for the carryover portion when determining remaining capacity to accommodate growth.

- 5) **Bill Summary.** This bill will make substantive changes to how cities and counties plan for emergency shelters in their housing element, and will clarify the scope of “no net loss” provisions in current law.

With respect to emergency shelter standards, the bill will require that:

- a) The local government must identify zones for emergency shelters that allow residential uses.
- b) The local government must prove that the sites identified to accommodate emergency shelters are viable, in that they are vacant or that they are non-vacant but are likely to be converted to an emergency shelter during the housing element’s planning period.
- c) The local government can only apply the objective standards already specified in law, and not additional standards.
- d) The term “emergency shelter” can include other non-permanent housing interventions, such as a navigation center, bridge housing, and respite or recuperative care.

With respect to “no net loss” law, this bill requires that local governments must account for the carryover portion when calculating both the amount of housing they must plan for and the amount of capacity that must be available at any given time.

This bill is sponsored by the California Rural Legal Assistance Foundation, the Public Interest Law Project, and the Western Center on Law and Poverty.

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

- a) **Prospective Amendments to Housing Element Standards.** Housing Element Law establishes housing element update cycles for each jurisdiction. The state is currently transitioning from the fifth housing element cycle to the sixth cycle. In order to manage workload of consulting and reviewing housing elements, the cycles are staggered. Some jurisdictions are still completing the 5<sup>th</sup> cycle while other jurisdictions are already implementing the sixth cycle requirements. The sixth cycle commenced in 2019, and by 2024, every jurisdiction will be in the 6<sup>th</sup> cycle. Outside of the short window between cycles, a constant flow of jurisdictions are continually updating their housing elements to comply with state law. Legislation altering the housing element standards that is adopted mid-cycle inevitably raises two issues:
  - i) Late cycle jurisdictions are subject to a standard that diverges from early cycle jurisdictions.

- ii) Altering the housing element standards in the middle of the adoption process creates challenges for jurisdictions preparing their housing element according to the existing standard.

To address these issues, Housing Element Law includes provisions that delay the implementation of legislation that changes housing element standards. Specifically, Housing Element law states that legislative changes to housing element standards only apply to jurisdictions that have a draft housing element due to HCD more than 90 days after the effective date of the new standard. However, the law provides that the delayed effective date only applies to jurisdictions that submit their draft element to HCD for review on time (90 days prior to adoption). Jurisdictions that submit their draft to HCD late are subject to the new standards, even if they are within the delayed implementation window. Housing Element Law also provides that legislative changes that alter housing element standards apply to *any* jurisdiction that fails to submit a draft element to HCD prior to their required date to adopt their housing element.

These implementation provisions offer relief to local jurisdictions that are in the middle of their housing element adoption process when new standards are added, and they serve as an incentive for local agencies to submit draft elements to HCD on time. While incentivizing local agencies to adopt their housing elements on time is sound, the specter of applying new standards retroactively is troubling. Generally, changes to the law, especially changes that can have a punitive effect on individuals or entities subject to the change, only apply prospectively. This prevents parties subject to changes in law from being penalized for complying with a standard that was lawful at the time they took an action that will be subject to a new standard. Currently, the two largest Metropolitan Planning Organizations (MPOs) in the state are in the midst of adopting their housing elements and could be uniquely impacted by the changes proposed by this bill.

- b) **Association of Bay Area Governments (ABAG) and Southern California Association of Governments (SCAG).** 109 jurisdictions and 197 jurisdictions comprise ABAG and SCAG respectively, constituting the two largest MPOs in California by a large margin.
  - i) **ABAG.** Jurisdictions that are located in ABAG are currently preparing to submit their draft housing elements to HCD in advance of a January 31, 2023 due date for their 6<sup>th</sup> cycle housing element. Preparing and adopting a substantially compliant housing element is iterative and time consuming. The process requires consultation between a jurisdiction and its MPO, is subject to public participation, revisions, and ultimately HCD review and approval. Jurisdictions require regulatory certainty in order to prepare and update their housing element. Constantly shifting standards would compromise the ability of local agencies to comply with the law.

This bill will change housing element standards one month prior to the due date for housing elements from ABAG jurisdictions. However, by operation of current law, ABAG jurisdictions that submit a timely draft element to HCD will be subject to the housing element standards that currently exist. If ABAG jurisdictions fail to submit a timely draft to HCD, they will be subject to the new standards created by this bill. While altering the housing element standards in the middle of the adoption process could create challenges for ABAG jurisdictions that were preparing their housing

element according to the existing standard, ABAG jurisdictions will only be subject to the new standards if they fail to submit a timely draft element to HCD.

- ii) **SCAG.** Housing elements for jurisdictions located in SCAG were due in October of 2021. According to HCD, as of April 22, 2022, only 10 out of 197 SCAG jurisdictions had adopted a substantially compliant housing element. In addition to the high rates of noncompliance, a significant number of SCAG jurisdictions failed to submit a timely draft to HCD and 50 SCAG jurisdictions have a housing element that is currently under review by HCD.

Due to legislative changes codified by AB 1398 (Bloom), Chapter 358, Statutes of 2021, that took effect in the middle of the SCAGs adoption cycle, noncompliant SCAG jurisdictions are required to complete their housing element rezoning within one year rather than the three years normally afforded jurisdictions. SCAG jurisdictions are attempting to remedy their housing elements and bring them into compliance with the *current* housing element standards. This is a significant undertaking for the state's largest MPO and requires substantial consultation with HCD.

Existing law appears to authorize HCD to apply newly added housing element standards, such as those created by this bill, to any jurisdiction that submitted their draft housing element after their prescribed due date. 159 SCAG jurisdictions submitted their draft element after October 15, 2021, the statutory due date for SCAG. These jurisdictions should act quickly to remedy deficiencies in their housing element, and the state should prioritize bringing these jurisdictions into compliance. However, *the Committee may wish to consider* whether the state should again alter the standards these cities and counties are required to meet while these jurisdictions are engaged in the process of coming into compliance. This creates a scenario where jurisdictions seeking to come into compliance do not know what version of compliance they will be subject to. Should the state change the definition of compliance for these jurisdictions as a punishment for noncompliance?

- iii) **Overlay Zones.** The legislation proposes to prohibit local agencies from using an overlay zone to demonstrating compliance with the emergency shelter standards in Housing Element Law. Overlay zones are commonly used zoning instruments and there does not appear to be a justification for prohibiting local agencies from using this zoning tool. *The Committee may wish to consider* whether the use of overlay zones should be prohibited.
- 7) **Committee Amendments.** To address some of the issues identified above, the Committee may wish to amend the bill to remove its prohibition on the use of overlay zones to demonstrate compliance with the emergency shelter standards in Housing Element Law.
  - 8) **Arguments in Support.** The Public Interest Law Project writes in support, "AB 2339 clarifies housing element law to ensure that zones identified for shelters and other interim housing include sites that are suitable and available for this use during the housing element planning period. It would also require that jurisdictions demonstrate that there is sufficient capacity on sites within those zones to meet the identified need for interim housing for those experiencing homelessness. Finally, the bill would clarify that No Net Loss law applies to both carryover sites and sites identified to meet the current RHNA."

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

10) **Previous Legislation.** SB 1138 (Wiener) of 2020 would have added additional specificity to where emergency shelters must be zoned, and expedited required rezoning for localities that fail to adopt a legally compliant housing element within 120 days of the statutory deadline. SB 1138 was held in the Committee on Appropriations.

SB 166 (Skinner), Chapter 367, Statutes of 2017, required local agencies to accommodate their RHNA at all times throughout the housing element planning period.

SB 2 (Cedillo), Chapter 633, Statutes of 2007, required local agencies to accommodate their need for emergency shelters on sites by right, or ministerially and without a conditional use permit.

11) **Double-Referral.** This bill is double-referred to the Housing and Community Development Committee, where it passed on a 5-1 vote on April 20, 2022.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

California Rural Legal Assistance Foundation [SPONSOR]  
Public Interest Law Project [SPONSOR]  
Western Center on Law & Poverty [SPONSOR]  
National Association of Social Workers, California Chapter

##### **Support if Amended.**

Monterey County Board of Supervisors

##### **Opposition**

None on file.

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