

Date of Hearing: April 27, 2022

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
AB 2653 (Santiago and Wicks) – As Amended April 25, 2022

SUBJECT: Planning and Zoning Law: housing elements.

SUMMARY: Enables the Department of Housing and Community Development (HCD) to reject the housing element portion of a planning agency's annual progress report (APR). Specifically, **this bill:**

- 1) Allows HCD to reject the housing element portion of an APR if it is not in substantial compliance with the requirements specified in local planning law.
- 2) Requires, if HCD rejects the housing element portion of an APR, HCD to provide the reasons the report is inconsistent to the planning agency in writing within 30 days after HCD receives the report.

EXISTING LAW:

- 1) Requires every city and county to adopt a general plan that sets out planned uses for all of the area covered by the plan, and requires the general plan to include seven mandatory elements, including a housing element.
- 2) Requires the housing element to include a review of existing and projected housing needs, determine whether adequate sites with appropriate zoning exist to meet the housing needs of all income levels within the community, and ensure that local regulations provide opportunities for, and do not significantly restrict, the development of housing.
- 3) Requires that each community's fair share of housing be determined through the regional housing needs allocation (RHNA) process, which involves three main stages: (a) the Department of Finance and HCD develop regional housing needs estimates at four income levels: very low-income, low-income, moderate-income, and above moderate-income; (b) 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 (c) cities and counties incorporate their allocations into their housing elements.
- 4) 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.

- 5) Requires each city and county to submit an APR to the Governor's Office of Planning and Research (OPR) and HCD by April 1 of each year. The report is to evaluate the general plan's implementation, including how local housing needs have been met (construction of new units, changes to zoning laws, facilitating regulatory hurdles to housing development, etc.).

FISCAL EFFECT: This bill is keyed fiscal.

COMMENTS:

- 1) **Bill Summary and Author's Statement.** This bill enables HCD to reject the housing element portion of a planning agency's APR. If HCD rejects the housing element portion of an APR, HCD must provide the reasons the report is inconsistent to the planning agency in writing within 30 days after HCD receives the report. This bill is sponsored by the author.

According to the author, "Providing HCD the ability to reject non-compliant APRs will improve the caliber of the quantitative and qualitative information included in APRs. This will support better local housing element implementation, help HCD pinpoint where to provide technical assistance to local governments, and ensure robust data sets that facilitate informed statewide policymaking."

- 2) **State Housing Crisis.** California faces a severe housing shortage. In its most recent statewide housing assessment, HCD estimated that California needs to build an additional 100,000 units per year over recent averages of 80,000 units per year to meet the projected need for housing in the state. A variety of causes 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 agencies control most of the decisions about where, when, and how to build new housing, and those agencies are quick to respond to vocal community members that may not want new neighbors. The building industry also points to the review required by the California Environmental Quality Act as an impediment, and housing advocates note a lack of a dedicated source of funds for affordable housing.
- 3) **Planning for Housing and Tracking Outcomes.** Existing law requires each city and county's legislative body to adopt a "general plan" for land use within its jurisdiction. Each general plan must include a "housing element" that details existing housing conditions within the jurisdiction, the need for new housing, and the strategy that the jurisdiction will use to address that need. The need for new housing is determined through the RHNA process, which involves three main stages:

The Department of Finance and HCD develop regional housing needs estimates at four income levels: very low-income, low-income, moderate-income, and above moderate-income; Councils of Governments (COGs) use these estimates to allocate housing within each region (HCD makes the determinations where a COG does not exist); and cities and counties plan for accommodating these allocations in their housing elements.

Local governments must adopt a new housing element every eight years (though some rural jurisdictions must do so every five). These adopted housing elements are approved by HCD and must be in "substantial compliance" with the law.

Each year, the local government’s planning agency must submit an APR to HCD and OPR that documents the jurisdiction’s progress towards meeting its general plan goals, including the implementation of its housing element and progress towards meeting its RHNA target. The APR must include information about all proposed and approved development projects, a list of rezoned sites to accommodate housing for each income level, and information on density bonus applications and approvals, among other provisions.

APRs are an important tool for both local governments and the state, as both parties can rely on them to track progress in implementing the housing policy in their housing element, as well as to track outcomes. They also help highlight implementation challenges that may require technical assistance or other support from HCD. Additionally, APRs are important for informing statewide housing policy. The APRs provide the data that, aggregated across the state’s 539 cities and counties, convey the amount, type, location, and affordability of housing be produced in California.

- 4) **Arguments in Support.** According to the California Rural Legal Assistance Foundation and the Western Center on Law & Poverty, “An accurate APR that meets the requirements of the law is crucial in enabling community members, advocates, and HCD to effectively monitor a jurisdiction’s housing element implementation efforts and ensure that the jurisdiction is complying with the requirements of housing element law throughout the planning period. It is also important in helping HCD to target technical assistance to help jurisdictions to comply with the law and ensure that they are taking the necessary actions to address the housing needs of all economic segments of the community.

“While HCD has existing authority to determine whether a jurisdiction’s housing element complies with the law and the law establishes consequences for jurisdictions that adopt a housing element that HCD does not believe meet legal requirements, there is not a similar enforcement mechanism for APRs. This bill would allow HCD to reject an APR if the department does not believe it meets legal requirements, triggering various existing statutory consequences for not having an APR on file such as ineligibility for certain affordable housing funding programs.”

- 5) **Arguments in Opposition.** None on file.
- 6) **Double-Referral.** This bill is double-referred to the Housing and Community Development Committee, where it passed on a 6-2 vote on April 20, 2022.

REGISTERED SUPPORT / OPPOSITION:

Support

California Rural Legal Assistance Foundation
Western Center on Law & Poverty

Opposition

None on file

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