

Date of Hearing: April 20, 2016

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Susan Talamantes Eggman, Chair

AB 2685 (Lopez) – As Amended March 18, 2016

SUBJECT: Housing elements: adoption.

SUMMARY: Requires a local planning agency to make a draft housing element available to the public prior to the submission to the Department of Housing and Community Development (HCD). Specifically, **this bill:**

- 1) Requires a planning agency, at least 30 days prior to the submission of a draft housing element to HCD, to make the draft element available to the public.
- 2) Requires the planning agency to circulate public comments received to the legislative body before it adopts the housing element.
- 3) Makes other minor and technical changes.
- 4) Specifies that no reimbursement is required by this act 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 act.

EXISTING LAW:

- 1) Establishes, pursuant to the Ralph M. Brown Act (Brown Act), standards for local public agencies' open and public meetings. Requires the meetings of local governments' legislative bodies to be "open and public," thereby ensuring the people's access to information so they may retain control over the public agencies that serve them. Prohibits closed meetings, with specified exceptions, and requires local agencies to post hearing notices, provide the public with copies of materials distributed during open meetings, and follow related provisions to ensure public access to the meetings and deliberations of local agencies' legislative bodies.
- 2) Requires every city and county to prepare and adopt a general plan containing seven mandatory elements, including a housing element.
- 3) Requires a jurisdiction's housing element to identify and analyze existing and projected housing needs, identify adequate sites with appropriate zoning to meet the housing needs of all income segments of the community, and ensure that regulatory systems provide opportunities for, and do not unduly constrain, housing development.
- 4) Requires cities and counties located within the territory of a metropolitan planning organization (MPO) to revise their housing elements every eight years following the adoption of every other regional transportation plan. Cities and counties in rural non-MPO regions must revise their housing elements every five years.
- 5) Requires, prior to each housing element revision, that each council of governments (COG), in conjunction with HCD, prepare a regional housing needs assessment (RHNA) and allocate to each jurisdiction in the region its fair share of the housing need for all income categories.

- 6) Requires the housing element to contain a program, which sets forth a schedule of actions during the planning period, each with a timeline for implementation.
- 7) Requires the jurisdiction to submit a draft housing element to HCD at least 90 days prior to adopting the housing element, or 60 days prior to amending the housing element.
- 8) Requires HCD to review the draft and report its written findings to the local jurisdiction within 90 days of its receipt of the draft in the case of an adoption or within 60 days of its receipt in the case of a draft amendment.
- 9) Requires HCD to consider written comments from any public agency, group, or person regarding the draft or adopted element or amendment under review.

FISCAL EFFECT: This bill is keyed fiscal.

COMMENTS:

- 1) **Bill Summary.** This bill requires a local planning agency to make a draft housing element available to the public at least 30 days prior to submission to HCD. The bill also requires the planning agency to circulate public comments received to the legislative body before it adopts the housing element.

This bill is an author-sponsored measure.

- 2) **Author's Statement.** According to the author, "Existing law requires local planning agencies to involve the public during the development of the housing element and allows the public to provide comments during the process as per Government code section 65583 (c)(8), which requires local governments to "...make a diligent effort to achieve public participation...in the development of the housing element..."

"However, nothing is said regarding public participation after the housing element has been developed and ready for submission to HCD. This bill would ensure that community members have another opportunity to engage in public participation with the housing element. This bill further solidifies the importance of public participation by requiring local planning agencies to make the draft housing element documents available to the public 30 days before they are submitted to HCD and ensures that their comments are reviewed by local decision makers before they vote to adopt the element.

"According to local community advocates in the 39th Assembly District, they have experienced being left out of the planning process, specifically as it pertains to housing issues. Advocates state that developers do not finish projects or finish projects and do not offer low income housing (mostly privately or city funded). These developers seem to win every bid at the local level to build city projects and/or build housing projects.

"The community feels very strongly about the need to be engaged in the public participation process at every opportunity and would like more opportunities to voice their views/comments/suggestions/opposition. Advocates feel that when they do make comments about housing issues that the City does not fully take those comments into account. In the case of the housing element update, it is too late to provide comments because the City is taking a vote on the approved housing elements and is not likely to want to amend the

approved housing element. This bill would codify that the community has one more time to comment, that the City has to review public comment before taking vote to adopt the plan.”

- 3) **Background on the Ralph M. Brown Act.** The Brown Act establishes standards for local public agencies’ open and public meetings and requires the meetings of local governments’ legislative bodies to be “open and public,” thereby ensuring the people’s access to information so they may retain control over the public agencies that serve them. The Brown Act prohibits closed meetings, with specified exceptions, and requires local agencies to post hearing notices, provide the public with copies of materials distributed during open meetings, and follow related provisions to ensure public access to the meetings and deliberations of local agencies’ legislative bodies.
- 4) **Background on the Housing Element.** Every local government is required to prepare a housing element as part of its general plan. The housing element process starts when HCD determines the number of new housing units a region is projected to need at all income levels (very low-, low-, moderate-, and above-moderate income) over the course of the next housing element planning period to accommodate population growth and overcome existing deficiencies in the housing supply. This number is known as the regional housing needs assessment (RHNA). The council of governments (COG) for the region, or HCD for areas with no COG, then assigns a share of the RHNA number to every city and county in the region based on a variety of factors.

The housing element must show how the city or county plans to accommodate its share of the RHNA. The housing element must include an inventory of sites already zoned for housing. If a community does not have enough sites within its existing inventory of residentially zoned land to accommodate its entire RHNA, then the community must adopt a program to rezone land within the first three years of the planning period.

During the development of the housing element, local governments are required to make a “diligent” effort to achieve public participation. Regarding public participation, HCD has previously stated: “Most jurisdictions use a variety of approaches such as workshops, surveys, and targeted outreach with community representatives to garner public participation. However, there are not consistent standards on what constitutes “diligent” resulting in a variety of strategies and efforts that may or may not achieve successful public participation. As a result, housing elements may not accurately reflect the housing needs of the community.”

Before a local government can adopt or amend its housing element, it must submit a draft to HCD for review. This is another opportunity for public participation, as HCD must consider any written comments it receives from a public agency, group, or person during the review process. The findings of HCD’s review have to be considered by the local government prior to its adoption of the housing element or amendment to the housing element.

- 5) **Policy Considerations.** The Committee may wish to consider the following:
 - a) **Brown Act.** The express purpose of the Brown Act is to assure that local government agencies conduct the public’s business openly and publicly. Meetings of a planning agency must be held pursuant to provisions of the Brown Act. The Committee may wish to ask the author why the existing process of posting hearing notices, providing the public

with copies of materials distributed during open meetings, and ensuring public access to the meetings and deliberations of local agencies' legislative bodies, does not suffice.

- b) **Format for Availability.** The bill requires the planning agency to make the draft element "available to the public," but does not specify how this can be achieved. Is this through the planning agency's Internet Web site? Is it by posting the draft element on a touch-screen kiosk in city hall? Making paper copies of the draft available at the counter in the planning department?

According to "*Open and Public IV: A Guide to the Ralph M. Brown Act*" the Brown Act requires that an agenda must be posted at least 72 hours before the regular meeting in a location 'freely accessible to members of the public'. The courts have not definitely interpreted the 'freely accessible requirement,' although the California Attorney General has interpreted this provision to require locations accessible to the public 24 hours a day during the 72-hour period, but any of the 72 hours may fall on a weekend. Posting may also be made on a touch screen electronic kiosk accessible without charge to the public 24 hours a day during the 72-hour period. Only posting an agenda on an agency's Web site is inadequate since there is no universal access to the internet.

- c) **Potential for Lawsuits?** The Committee may wish to consider whether the lack of clarity in the bill's requirements on making the draft housing element "available to the public" could potentially open local agencies up to lawsuits about whether the local agency has adequately complied with this requirement to make the draft available to the public.
- d) **HCD Housing Policy and Practices Advisory Group.** HCD currently has a Housing Policy and Practices Advisory Group subcommittee working on public participation issues. The Committee may wish to ask the author to engage in that process so that her efforts to increase the avenues for public participation are aligned with that subcommittee.
- 6) **Committee Amendments.** Given the concerns raised previously, the Committee may wish to ask the author to strike language that requires "at least 30 days prior to the submission of the draft element to the department, the planning agency shall make the draft element available to the public."
- 7) **Arguments in Support.** None on file.
- 8) **Arguments in Opposition.** None on file.
- 9) **Double-Referral.** This bill was heard by the Housing and Community Development Committee on April 13, 2016, where it passed with a 6-0 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Concerns

League of California Cities

Opposition

None on file

Analysis Prepared by: Debbie Michel / L. GOV. / (916) 319-3958