

Date of Hearing: June 28, 2017

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT  
Cecilia Aguiar-Curry, Chair  
SB 166 (Skinner) – As Amended May 2, 2017

**SENATE VOTE:** 28-12

**SUBJECT:** Residential density and affordability.

**SUMMARY:** Requires a city or county to accommodate its remaining unmet housing need at all times through the housing element planning period. Specifically, **this bill:**

- 1) Modifies the No Net Loss Zoning law to require local governments to maintain adequate housing sites at all times through the planning period for all levels of income, as follows:
  - a) Requires each city, county, or city and county (hereafter referred to as “city or county”) to ensure that its housing element inventory or its housing element program to make sites available can accommodate, at all times throughout the planning period, its remaining unmet share of the regional housing need allocated pursuant to existing law, except as provided in e), below.
  - b) Provides, with the exception of e), below, that at no time shall a city or county, by administrative, quasi-judicial, legislative, or other action, permit or cause its inventory of sites identified in the housing element to be insufficient to meet its remaining unmet share of the regional housing need for lower- and moderate-income households.
  - c) Requires, when a city or county makes findings for the reduction of residential density that specify that the remaining sites identified in the housing element are adequate to meet the requirements of existing housing law requiring an inventory of sites, that the findings also include a quantification of the remaining unmet need for the jurisdiction’s share of the regional housing need at each income level and the remaining capacity of sites identified in the housing element to accommodate that need by income level.
  - d) Provides that no city or county shall, by administrative, quasi-judicial, legislative, or other action, allow development of any parcel with fewer units by income category than identified in the jurisdiction’s housing element for that parcel, unless the city or county makes a written finding supported by substantial evidence that remaining sites identified in the housing element are adequate to meet the requirements of existing law and to accommodate the jurisdiction’s share of the regional housing need. Requires the finding to include a quantification of the remaining unmet need for the jurisdiction’s share of the regional housing need at each income level and the remaining capacity of sites identified in the housing element to accommodate that need by income level.
  - e) Requires, if the approval of a development project results in fewer units by income category than identified in the jurisdiction’s housing element for that parcel and the jurisdiction does not find that the remaining sites in the housing element are adequate to accommodate the jurisdiction’s share of the regional housing need by income level, the jurisdiction to, within 180 days, to identify and make available additional adequate sites to accommodate the jurisdiction’s share of the regional housing need by income level.

- f) Clarifies that the definition of “lower residential density,” means either of the following:
    - i) For residentially zoned sites, a density that is lower than 80% of the maximum allowable residential density for that parcel *or 80% of the maximum density required in housing element law*, whichever is greater; or,
    - ii) For sites on which residential and nonresidential uses are permitted, a use that would result in the development of fewer than 80% of the number of residential units that would be allowed under the maximum residential density for the site parcel *or 80% of the maximum density required by existing housing element law, whichever is greater.*
  - g) Provides that an action taken by a jurisdiction that creates an obligation to identify or make available additional adequate sites and the action taken by the jurisdiction to identify or make available the additional adequate sites shall not constitute the same project for the purposes of the California Environmental Quality Act (CEQA).
- 2) States that no reimbursement is necessary because a local agency has the authority to levy service charges, fees, or assessment sufficient to pay for the program or level of service mandated by the bill’s provisions.

**EXISTING LAW:**

- 1) Requires every city and county to prepare and adopt a general plan containing seven mandatory elements, including a housing element.
- 2) Requires a locality'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.
- 3) Requires, prior to each housing element revision, that each council of governments (COG), in conjunction with the Department of Housing and Community Development (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. Where a COG does not exist, HCD determines the local share of the region's housing need.
- 4) Divides the RHNA into the following income categories:
  - a) Very low-income (50% or lower of area median income), including extremely low-income (30% or lower of area median income);
  - b) Low-income (80% or lower of area median income);
  - c) Moderate-income (between 80% and 120% of area median income); and,
  - d) Above moderate-income (exceeding 120% area median income).
- 5) Requires a locality to inventory land suitable for residential development to identify sites that can be developed to meet the locality's RHNA for all income levels. Provides that "land suitable for residential development" includes 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 higher density, including the airspace above sites owned or leased by a city, county, or city and county; and,
- 6) 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.
- 7) Provides that the inventory of land suitable for residential development shall include all of the following:
- a) A listing of properties by parcel number or other unique reference;
  - b) The size of each property, 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.
- 8) Requires, pursuant to the No Net Loss Zoning law, the following:
- a) Requires each city, county, or city and county to ensure that its housing element inventory or its housing element program to make sites available, as specified, to accommodate its share of the regional housing need throughout the planning period.
  - b) Prohibits a city, county, or city and county from, by administrative, quasi-judicial, legislative, or other action, from reducing, or requiring or permitting the reduction of, the residential density for any parcel to, or allowing development of any parcel at, a lower residential density, as defined in g) below, unless the city, county, or city and county makes written findings supported by substantial evidence of both of the following:
    - i) The reduction is consistent with the adopted general plan, including the housing element; and,

- ii) The remaining sites identified in the housing element are adequate to accommodate the jurisdiction's share of the regional housing need, as specified.
- c) Provides that if a reduction in residential density for any parcel would result in the remaining sites in the housing element not being adequate to accommodate the jurisdiction's share of the regional housing need, as specified, the jurisdiction may reduce the density on that parcel if it identifies sufficient additional, adequate, and available sites with an equal or greater residential density in the jurisdiction so that there is no net loss of residential unit capacity.
- d) Provides that the requirements above in 7a) – c), inclusive, shall be in addition to any other law that may restrict or limit the reduction of residential density.
- e) Specifies that this section of law that requires a city, county, or city and county be solely responsible for compliance with this section, unless a project applicant requests in his or her initial application, as submitted, a density that would result in the remaining sites in the housing element not being adequate to accommodate the jurisdiction's share of the regional housing need, as specified. Allows, in that case, the city, county, or city and county to require the project applicant to comply with this section. Specifies that the submission of an application does not depend on the application being deemed complete or being accepted by the city, county, or city and county.
- f) Provides that this section shall not be construed to apply to parcels that, prior to January 1, 2003, were either (1) subject to a development agreement, or (2) parcels for which an application for a subdivision map had been submitted.
- g) Provides that if the local jurisdiction has adopted a housing element for the current planning period that is in substantial compliance with Article 10.6 of Chapter 3, that "lower residential density" means the following:
  - i) For sites on which the zoning designation permits residential use and that are identified in the local jurisdiction's housing element inventory, as specified, fewer units on the site than were projected by the jurisdiction to be accommodated on the site pursuant to subdivision (c) of Section 65583.2; or,
  - ii) For sites that have been or will be rezoned pursuant to the local jurisdiction's housing element program described in c) above, fewer units for the site than were projected to be developed on the site in the housing element program.
- h) Provides that if the local jurisdiction has not adopted a housing element for the current planning period within 90 days of the deadline established in existing law or the adopted housing element is not in substantial compliance, as specified, within 180 days of the deadline established in existing law, "lower residential density" means any of the following:
  - i) For residentially zoned sites, a density that is lower than 80% of the maximum allowable residential density for that parcel; or,

- ii) For sites on which residential and nonresidential uses are permitted, a use that would result in the development of fewer than 80% of the number of residential units that would be allowed under the maximum residential density for the site.
- i) Provides that if the COG fails to complete a final housing need allocation pursuant to the deadlines established in existing law, then for purposes of the No Net Loss Zoning law, the deadline shall be extended by a time period equal to the number of days of delay incurred by the COG in completing the final housing need allocation.

**FISCAL EFFECT:** According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

**COMMENTS:**

- 1) **Background.** 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 RHNA. The 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.

In preparing its housing element, a local government must show how it 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.

Local governments are required to demonstrate that sites are adequate to accommodate housing for each income group based on the zoning after taking into consideration individual site factors such as property size, existing uses, environmental constraints, and economic constraints. With respect to the zoning, density can be used as a proxy for affordability. Jurisdictions may establish the adequacy of a site for very low- or low-income housing by showing that it is zoned at the “default” density (also referred to as the Mullin density). These densities range from 10 to 30 units per acre depending on the type of jurisdiction. Jurisdictions may also include sites zoned at lower densities by providing an analysis of how the lower density can accommodate the need for affordable housing.

Current law, known as “No Net Loss” Zoning law also prohibits a local jurisdiction from reducing or permitting the reduction of the residential density or allowing development at a lower residential density for any parcel, unless the local jurisdiction makes written findings supported by substantial evidence that both:

- The reduction is consistent with the adopted general plan, including the housing element; and,

- The remaining sites identified in the housing element are adequate to accommodate the jurisdictions share of the regional housing need.

A local jurisdiction can also reduce the density on a parcel if it identifies sufficient additional, adequate, and available sites with an equal or greater residential density in the jurisdiction so that there is no net loss of residential unit capacity.

If the local government has a housing element in compliance with state law, “lower residential density” means the density set out in required identification of available sites. If a local jurisdiction has not adopted a housing element for the current planning period or the adopted housing element is not in substantial compliance, “lower residential density” means any of the following:

- For residentially zoned sites, a density that is lower than 80% of the maximum allowable residential density for that parcel; or,
- For sites on which non-residential uses are permitted, a use that would result in the development of fewer than 80% of the number of residential units that would be allowed under the maximum residential density for the site.

- 2) **Bill Summary.** This bill makes a number of changes to the No Net Loss Zoning law. First, the bill requires a city or county to make sites available at all times during its planning period to meet its remaining unmet housing needs for all levels of income. Additionally, the bill requires a city or county, in approving a development on a site identified for housing that results in a development with fewer units than projected in the housing element, to identify additional sites that could accommodate the need not met by the approved development. If the local government does not have enough residentially zoned sites available to accommodate the unmet need, this bill requires the local government to take action to designate a new site or sites that could accommodate that need. The bill states that an action taken by a city or county that creates an obligation to identify or make available additional adequate sites and the action taken by the jurisdiction to identify or make available the additional adequate sites does not constitute the same project for purposes of CEQA.

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

- 3) **Author’s Statement.** According to the author, “As California faces a growing housing affordability crisis, increasing the supply of housing for all income groups has become an important policy objective. This bill focuses on one of the biggest barriers to increasing that supply: a lack of appropriately zoned land for the construction of new housing in many localities. When some localities fail to make sufficient and appropriately zoned land available for housing, the result is a jurisdiction that is effectively off limits to new housing. This constrains the supply of housing and makes it more difficult for affordable developers to site housing where it is needed most. It also increases pressure on cities and counties who are already doing a lot to help produce new housing.”

- 4) **Policy Considerations.** The Committee may wish to consider the following:
- a) **Implementation Issues?** The American Planning Association, California Chapter, writes that the solution in the bill has the potential to backfire, “making it easy for jurisdictions that don’t want housing to avoid housing development....and for those that want housing, it makes them go through difficult rezonings, and face the loss of market rate housing that is also needed.” They note that “the continuous requirement to rezone sites so that 100% of the sites are always available will be very expensive and difficult to implement by cities and counties, and may lead to fewer units, particularly multifamily units, being produced.”
- 5) **Arguments in Support.** Supporters argue that this bill ensures that as development occurs, that local governments assess their ability to accommodate new housing on the remaining sites in their inventory and make adjustments to their zoning if needed.
- 6) **Arguments in Opposition.** Opposition argues that this bill will impose additional costs and burdensome regulatory requirements while restricting local control from local governments who are trying to address their affordable housing needs.
- 7) **Double-referral.** This bill is double-referred to the Housing and Community Development Committee.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Rural Legal Assistance Foundation [CO-SPONSOR]  
Public Advocates [CO-SPONSOR]  
Western Center on Law and Poverty [CO-SPONSOR]  
American Planning Association, California Chapter (if amended)  
California Community Builders  
California State Association of Electrical Workers  
California State Pipe Trades Council  
Non-Profit Housing Association of Northern California  
Service Employees International Union  
Western States Council of Sheet Metal Workers

**Opposition**

Orange County Board of Supervisors

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