Date of Hearing: June 30, 2021

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
SB 8 (Skinner) – As Amended June 1, 2021

SENATE VOTE: 30-2

SUBJECT: Housing Crisis Act of 2019.

SUMMARY: Extends the sunset on the Housing Crisis Act of 2019 (HCA) by five years, clarifies demolition and replacement provisions, and makes other changes. Specifically, **this bill**:

1) Extends the sunset on the HCA by five years, to January 1, 2030.

2) Specifies, and provides as declaratory of existing law, the following:

    a) That the definition of "housing development project" for the purposes of the HCA includes both discretionary and ministerial projects.

    b) That the definition of "housing development project" for the purposes of the HCA includes projects to construct single dwelling units.

    c) That the receipt of a density bonus is not a basis for finding a project out of compliance with local zoning rules.

3) Clarifies that appeals and public meetings related to density bonus law are counted for the purposes of the five hearing limit in the HCA, and specifies that "hearing" does not include an appeal related to a legislative approval required for a proposed housing development project.

4) Adds a definition related to compliance with additional ordinances when a project has not commenced construction within 2.5 years of receiving final approval, specifically that "commenced construction" means that certain preliminary inspections under the building code have been requested.

5) Provides that a jurisdiction cannot reduce a parcel's allowed intensity of land use below what was allowed on January 1, 2018 under either the jurisdiction's land use designation "or" zoning ordinances, rather than both.

6) Provides, regarding the HCA's demolition and replacement provisions, the following:

    a) Replacement requirements must be followed, despite local density requirements that may be in conflict.

    b) Relocation and right of first refusal requirements would no longer apply to:

        i) The occupants of any protected units that are persons or families of above moderate income.

        ii) An occupant of a short-term rental that is rented for a period of fewer than 30 days.

c) The right of first refusal provided to occupants of protected units would not apply when the new development would be any of the following types of housing:

   i) Transitional housing or supportive housing units.

   ii) Units in a nursing home, residential care facility, or assisted living facility.

   iii) Certain affordable housing units where replacing them would violate requirements to provide units to even lower income residents than the existing tenants.

d) For moderate-income households, jurisdictions would no longer have the ability to choose whether the replacement units would be made available at affordable rent or affordable housing cost or would be replaced in compliance with the jurisdiction's rent or price control ordinance.

e) For right of first refusal for a comparable unit, allows a housing developer to offer a unit that is subject to the jurisdiction's rent control ordinance in lieu of offering a unit in the development at affordable cost.

f) That the relocation and right of first refusal requirements do not confer additional legal protections upon an unlawful occupant of a protected unit.

7) Defines, for the purposes of the requirement to upzone concurrently with a downzone, "concurrently" to mean at the same meeting, or within 180 days of the downzoning if the downzoning was requested by an applicant for a housing development project.

8) Provides that no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution. However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

EXISTING LAW: The Housing Crisis Act (HCA) of 2019 codified by SB 330 (Skinner) Chapter 654, Statutes of 2019, places restrictions on certain types of development standards, amends the Housing Accountability Act (HAA), and makes changes to local approval processes and the Permit Streamlining Act. Specifically, the HCA:

1) Prohibits specified cities and counties, with respect to land where housing is an allowable use, from enacting a development policy, standard, or condition that would have the effect of limiting housing development in several ways, including, but not limited to the following effects:

   a) Reducing the development capacity of a parcel below what was allowed under the land use designation and zoning ordinances of the affected county or affected city as in effect

January 1, 2018, unless the city or county concurrently increases development capacity elsewhere in the jurisdiction such that there is no net loss in residential capacity.

b) Imposing or enforcing design review standards established after January 1, 2020, if the standards are not objective.

2) Provides that if a housing development project complies with the applicable objective general plan and zoning standards in effect at the time an application is deemed complete, a city or county must not conduct more than five hearings in connection with the approval of that housing development project, and requires the city or county to consider and either approve or disapprove the application at any of the five hearings.

3) Establishes a procedure for filing a preliminary application for a housing development project, and establishes that a housing development project proponent that has submitted a preliminary application must be subject only to the ordinances, policies, and standards adopted and in effect when the preliminary application was deemed to be complete.

4) Establishes demolition protections and provisions as follows:

a) Prohibits an affected city or county from approving a housing development project that will require the demolition of residential units unless the project will create at least as many units as demolished.

b) Defines "protected units" as any of the following:

i) Units that are or were subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income within the past five years.

ii) Units that are or were subject to any form of rent price control within the past five years.

iii) Units that are or were occupied by lower- or very low- income households within the past five years.

iv) Units that were withdrawn from rent or lease pursuant to the Ellis Act within the past 10 years.

c) Establishes that a project shall not be approved if it will demolish protected units, unless all of the following apply:

i) The project will replace all existing or demolished protected units.

ii) Any existing residents will be allowed to occupy their unit until six months before the start of construction activities with proper notice.

iii) The developer agrees to provide both of the following to the occupants of any protected units:

(1) Relocation benefits, as specified.

(2) A right of first refusal for a comparable unit available in the new housing development affordable to the household at an affordable rent or an affordable cost.

iv) Enables the city or county, for rent- or price-controlled units occupied in the past five years by moderate- or above moderate-income households, to choose either to:

(1) Require that the replacement units be made available at affordable rent or affordable housing cost to, and occupied by, low-income persons or families.

(2) Require that the units be replaced in compliance with the jurisdiction's rent or price control ordinance.

5) Sunsets these provisions on January 1, 2025

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

COMMENTS:

1) **Author's Statement.** According to the author, "California continues to face a severe housing shortage and affordability crisis. Rent and home prices remain too high because we've failed to build enough housing for decades. The good news is SB 330, the Housing Crisis Act of 2019, is working, and more housing is getting built. However, the Act is scheduled to expire in 2025. SB 8 allows the success of SB 330 to continue for five additional years by extending SB 330's provisions until 2030, and adding clarifying language to ensure that the bill's original intent of streamlining the production of housing that meets a local jurisdiction's existing zoning and other rules is met."

2) **Planning for and Approval of Housing.** Planning for and approving new housing is mainly a local responsibility. The California Constitution allows cities and counties to "make and enforce within its limits, all local, police, sanitary and other ordinances and regulations not in conflict with general laws." It is from this fundamental power (commonly called the police power) that cities and counties derive their authority to regulate behavior to preserve the health, safety, and welfare of the public – including land use authority. Cities and counties enforce this land use authority through zoning regulations, as well as through an "entitlement process" for obtaining discretionary as well as ministerial approvals.

The scale of the proposed development, as well as the existing environmental setting determine the degree of local review that occurs. For larger developments, the local entitlement process commonly requires multiple discretionary decisions regarding the subdivision of land, environmental review per the California Environmental Quality Act (CEQA), design review, and project review by the local agency's legislative body (city council or county board) or by a planning commission, the legislative body has delegated to.

Navigating through the various stages of local approval requires developers to invest time and resources early in the development process. This creates a certain degree of risk for developers who must bear any costs associated with navigating the local approval process long before they can realize the profits typically associated with a completed development.

3) **Housing Crisis Act of 2019.** In response to the state's ongoing housing crisis, the Legislature enacted SB 330, which contained several main components, including but not limited to the following:

   a) Maintaining the amount of development capacity in the state, by prohibiting certain local actions that would reduce housing capacity, as specified.

   b) Increasing certainty for developers, by temporarily prohibiting a local agency from applying new rules or standards to a project after a preliminary application containing specified information is submitted.

   c) Facilitating a timely approval process, by establishing a cap of five hearings that can be conducted on a project that complies with objective local standards in place at the time a development application is deemed complete.

   d) Prohibiting certain cities from imposing a moratorium or similar restrictions or limitations on housing development on land where housing is an allowed use, as specified.

   e) Ensuring there is no reduction of housing in the state, especially affordable housing, by establishing anti-demolition and anti-displacement protections. Under the HCA, development projects cannot require the demolition of housing unless the project creates at least as many new homes, and development projects cannot demolish affordable housing units protected by law unless the project replaces the units and allows existing residents to occupy their units until six months before construction starts. The developer must also provide relocation assistance and a right of first refusal to the residents in the new development at affordable rates.

4) **Bill Summary.** This bill proposes several changes to the HCA. The HCA was approved in 2019 with an effective period of five years (January 1, 2020 – January 1, 2025). This bill would double the original effective period of the HCA from five years to ten years by extending the sunset date to January 1, 2030. Other proposed changes to the HCA are in response to challenges that have arisen in implementing the law – including discrepancies in the intent of the author and interpretations of the law by the Department of Housing and Community Development, as well as local agencies. This includes language to specify that the HCA applies to both discretionary and ministerial projects, and to projects to construct single dwelling units.

   A final set of changes are proposed to the HCA's anti-demolition provisions. The HCA imposed new requirements to provide replacement, relocation, and right of first refusal to protect the existing housing stock and the residents who lived in those units. Previously, the state had no requirement that demolished units be replaced, despite our housing crisis. Additionally, the state did not have requirements to provide support for those displaced by these demolitions, including relocation and right of first refusal.

   This bill makes changes to these provisions to limit their application in certain circumstances. First, it would remove the relocation and right of first refusal provisions for higher income residents of demolished units. Additionally, the bill would remove the right of first refusal for residents of demolished units when those residents are unlikely to qualify for the units being built – such as when the new units are supportive housing for the formerly homeless.

5) **The HCA In Effect.** While the HCA has been in effect for less than 18 months, it has already had an impact on housing development in California. A recent trial court decision related to a 585-unit development in the city of Oceanside cited provisions of the HCA in invalidating a referendum that would have prohibited the development. The city council approved the development by a 3-2 vote; however, the development was subject to a local referendum (Measure L) where voters rejected adding new housing units to their community. Following the approval of the referendum, the developer sued the city arguing that the referendum violated the HCA's prohibition on housing moratoria in areas where housing is an allowed use. In rejecting the initiative the court wrote, "While the Referendum did not outright ban housing development, the Referendum has the effect of limiting housing development on a portion of the jurisdiction of the affected city … The Legislature drafted Government Code section 66300 [part of SB 330] so as to prevent novel or creative approaches to avoid or severely limit new housing development within this state."

   There are other examples of litigation where trial courts have ruled against local actions designed to stymie the approval of new housing units; however, to date no appellate decisions have been issued on the provisions of the HCA.

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

   a) **Effective Repeal Date.** The HCA and other provisions of statute added by SB 330 have a sunset date of January 1, 2025, which this bill would extend by several years. Several provisions of law subject to the sunset date include timeframes that extend for several years. It is unclear how these provisions would be treated if they were triggered prior to the sunset date but include a timeframe that extends beyond the operative date of the statute authorizing the provision. For example, if a developer submits a preliminary application for a development project, under current law the developer is entitled to locking in existing local standards for a period of 2.5 years. It is unclear how a preliminary application would be treated if it were submitted in December of 2024. Under the law that applied when the preliminary application was submitted, the preliminary application should be valid for 2.5 year. However, in January of 2025, the provisions authorizing the preliminary application to lock in standards for 2.5 become inoperative. The author may wish to consider retaining the inoperative language in statute for some limited number of years after the law expires to provide guidance to cities on projects whose preliminary applications were accepted prior to the law's expiration.

7) **Committee Amendments**. The Committee may wish to consider the following clarifying amendments:

   a) Amend Section 66300 (i)(2)(A) to read: "For the purposes of this subdivision "concurrently" means *the action is approved* at the same meeting *of the legislative body."*

8) **Arguments in Support**. The California Association of Realtors (CAR) writes in support, "Since its implementation in January of 2020, SB 330 has expedited and facilitated both affordable and market-rate construction by providing early vested rights, limiting ad hoc fee increases on housing projects, barring local governments from reducing the number of homes that can be built, and cutting the time it takes to obtain discretionary project approvals. Additionally, certain urban areas under SB 330 are barred from imposing subjective design standards, downzoning, implementing a housing or population cap, or enacting moratoriums on new housing construction.

"C.A.R. supports both the sunset extension of SB 330 (The Housing Crisis Act), along with other technical changes contained within SB 8, because it increases certainty and accountability to spur housing production in California."

9) **Arguments in Opposition**. The City of Cupertino writes in opposition, "One of our primary concerns is the extension of the sunset date of the Housing Crisis Act and its provisions. We feel that an extension should not be evaluated until closer to the actual sunset date, as to provide additional time to determine if the objectives of the initial legislation are being met. Additionally, the City is concerned about provisions of the Housing Crisis Act that limit a city's ability to levy appropriate fees to mitigate the impacts of proposed projects. Fees help our communities provide essential infrastructure and public services ranging from schools and fire protection to parks and utilities, all of which are affected by increased development and population growth. Especially amid the continued economic recovery from the COVID-19 pandemic, cities cannot afford to lose out on dollars needed to operate, especially when requirements are placed upon them that result in a need for additional infrastructure."

10) **Double-Referral.** This bill is double-referred to the Housing and Community Development Committee, where it passed on an 6-0 vote on June 22, 2021

REGISTERED SUPPORT / OPPOSITION:

Support

Abundant Housing LA
All Home
Bay Area Council
Bridge Housing Corporation
Calchamber
California Apartment Association
California Association of Realtors
California Building Industry Association
California Community Builders
California Hispanic Chamber of Commerce
California Housing Partnership
California YIMBY
Calrha
Chan Zuckerberg Initiative
Circulate San Diego
City of Alameda
Council of Infill Builders
Eden Housing
Facebook
Fieldstead and Company, INC.
Greenbelt Alliance
Greenlining Institute
Greystar Development
Habitat for Humanity California
Housing Action Coalition
League of Women Voters of California

Local Government Commission
Midpen Housing Corporation
Modular Building Institute
Non-profit Housing Association of Northern California
San Diego Regional Chamber of Commerce
San Francisco Bay Area Planning and Research Association (SPUR)
Sand Hill Property Company
Sares Regis Group of Northern California
Schneider Electric
Silicon Valley Leadership Group
Sv@home
Tech Equity Collaborative
The Two Hundred
Tmg Partners
Zillow Group

Support if Amended

Planning and Conservation League

Opposition

Albany Neighbors United
California Cities for Local Control
California Alliance of Local Electeds
Catalysts
Center for Biological Diversity
City of Beverly Hills
City of Camarillo
City of Cupertino
City of Lafayette
City of Newport Beach
City of Pleasanton
City of Thousand Oaks
City of Torrance
Grayburn Avenue Block Club
Latino Alliance for Community Engagement
Los Altos Residents
Mission Street Neighbors
New Livable California Dba Livable California
Riviera Homeowners Association
Save Lafayette
Sustainable Tamalmonte
Tri-valley Cities of Dublin, Livermore, Pleasanton, San Ramon, and Town of Danville
Westwood South of Santa Monica Blvd. Homeowners Association

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