

Date of Hearing: June 27, 2018

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
SB 828 (Wiener) – As Amended June 21, 2018

SENATE VOTE: 23-10

SUBJECT: Land use: housing element.

SUMMARY: Requires a city or county's inventory of land suitable for residential development to meet 125% of its regional housing need allocation for all income levels, and makes a number of changes to the regional housing needs assessment (RHNA) methodology and process. Specifically, **this bill:**

- 1) Requires a city's or county's inventory of land suitable for residential development to meet 125% of its RHNA requirement for all income levels.
- 2) Requires a city or county, if its inventory is not sufficient to meet its RHNA to identify zoning and other actions it will take to accommodate 100% of the unmet portion of its RHNA at all income levels, which must be made available for multifamily housing within the jurisdiction's existing urban services boundary.
- 3) Revises the data that councils of governments (COGs) must provide to the Department of Housing and Community Development (HCD) to inform the methodology for determining the RHNA allocation, to include the following:
 - a) The overcrowding rate for a comparable housing market; and,
 - b) The percentage of households that are cost burdened and the rate of housing cost burdened for comparable housing market.
- 4) Defines "cost burdened" to mean the share of very low-, low-, moderate- and above moderate-income households that are paying more than 30% of household income on housing costs.
- 5) Defines the term "rate of housing cost burden for a comparable housing market" to mean the rate of households that are cost burdened is no more than the average rate of households that are cost burdened in comparable regions throughout the nation, as determined by the COG.
- 6) Defines "healthy housing market" to be between 5% and 8% for both rental and ownership housing.
- 7) Defines "overcrowding rate" to mean that the overcrowding rate is no more than the average overcrowding rate for a comparable housing market throughout the nation, as determined by the COG.
- 8) Requires HCD, in determining RHNA, to grant allowances to adjust for the rate of overcrowding, if the vacancy rate is between 5% and 8% indicating a healthy housing market, and the percentage of households that are cost burdened in comparable regions

throughout the state, based on the region's total projected household growth, which includes existing households as well as future projected households.

- 9) Provides that the following shall not be a justification for a determination or a reduction in a jurisdiction's share of the RHNA:
 - a) Prior underproduction of housing in a city or county from the previous RHNA based on a jurisdiction's annual housing element production report; and,
 - b) A stable population number in a city or county from the previous RHNA cycle.
- 10) States the intent of the Legislature that housing planning reduce racial and wealth disparities throughout the region.
- 11) Provides that the RHNA allocation plan shall assign additional weight to local governments that meet the following criteria in the distribution of RHNA for all income categories and in particular housing needs for low- and very low-income households:
 - a) A local government with median employed household income above the 50th percentile for the region; and,
 - b) A local government that either contains a major regional job center, as determined by the COG, or contains high-quality public transportation for the region, such as a major transit stop or stops along a high-quality transit corridor that connects to a regional job center.
- 12) Provides that the resolution approving the final housing need allocation plan shall demonstrate government efforts to reduce racial and wealth disparities throughout a region by assigning additional weight to local governments that meet the criteria in 11a) and 11b), above, in the distribution of the RHNA for all income categories and in particular for low- and very low-income households.
- 13) Revises existing intent language that previously recognized that although cities and counties should undertake all necessary actions to encourage, promote, and facilitate housing to accommodate the entire RHNA, the Legislature recognizes that future housing production may not equal the RHNA established in the planning process to state that cities and counties should take reasonable actions to ensure that future housing production meet at a minimum the RHNA for planning purposes.

EXISTING LAW:

- 1) Requires each of California's 18 metropolitan planning organizations (MPOs) and 26 regional transportation planning agencies to prepare a long-range regional transportation plan (RTP). The RTP identifies the region's vision and goals and how they will be implemented, as well as supporting the state's goals for transportation, environmental quality, economic growth, and social equity. An RTP must be adopted every four years (every five years in air quality attainment areas).
- 2) Requires, pursuant to SB 375 (Steinberg), Chapter 728, Statutes of 2008, for each MPO to prepare a sustainable communities strategy (SCS) as part of its RTP. The SCS demonstrates how the region will meet its greenhouse gas (GHG) emissions reduction targets through land

use, housing, and transportation strategies. The California Air Resources Board must review the adopted SCS to confirm that it will indeed meet the regional GHG targets.

- 3) Requires every city and county to prepare and adopt a general plan, including a housing element, to guide the future growth of a community. The housing element must 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 local governments located within the territory of an MPO to revise their housing elements every eight years, following the adoption of every other RTP. Local governments in rural non-MPO regions must revise their housing elements every five years.
- 5) Provides that each community's fair share of housing to be determined through the RHNA process, which is composed of three main stages: a) the Department of Finance and the HCD develop regional housing needs estimates; b) COGs allocate housing within each region based on these estimates (where a COG does not exist, HCD makes the determinations); and, c) cities and counties incorporate their allocations into their housing elements.
- 6) Requires COGs to provide specified data assumptions to HCD from each COG's projections.
- 7) Requires the housing element to contain an assessment of housing needs and an inventory of resources and constraints relevant to meeting those needs.
- 8) Requires a locality's inventory of land suitable for residential development to be used to identify sites that can be developed for housing within the planning period and that are sufficient to provide for the locality's share of the regional housing need for all income levels. Requires the inventory to provide certain information on each site, such as the general plan designation and zoning of each site and available infrastructure.
- 9) Requires the inventory of land to specify the additional development potential for each non-vacant site within the planning period and an explanation of the methodology used to determine the development potential.
- 10) Requires, where the inventory of sites does not identify adequate sites to accommodate the need for groups of all household income levels, rezoning of those sites to be completed in a specified time period. Requires this rezoning to accommodate 100% of the need for housing for very low- and low-income households for which site capacity has not been identified in the inventory of sites on sites that shall be zoned to permit rental multifamily residential housing by right during the planning period.
- 11) Prohibits a local jurisdiction from reducing or permitting the reduction of the residential density, or from allowing development at a lower residential density for any parcel, unless the jurisdiction makes specified written findings.

FISCAL EFFECT: According to the Senate Appropriations Committee, this bill contains:

- 1) HCD estimates ongoing administrative costs of up to \$741,000 annually for additional workload associated with housing element reviews, including confirmation of amended site inventories and technical assistance and consultation with local jurisdictions. (General Fund)
- 2) Unknown significant local costs for cities and counties to identify actions necessary to accommodate 125% of RHNA shares, including identification of additional sites suitable for housing development and any necessary rezoning activities. These costs are not state-reimbursable because local agencies have the authority to levy fees and charges to offset costs associated with local planning requirements. Furthermore, new requirements placed on COGs are not state-reimbursable.

COMMENTS:

- 1) **Bill Summary.** This bill contains two distinct sections: a) Modifications to the RHNA process, described in more detail below; and, b) Additional requirements in housing element law on cities and counties to include 125% of their RHNA for all income levels in their inventories of land suitable for residential development, as well as requirements contained in their rezoning program.

For the RHNA methodology provisions contained in the bill, the biggest changes to existing law include the following:

- a) The bill revises the data COGs must provide to HCD to inform the methodology for determining the RHNA allocation, to include both the overcrowding rate for a comparable housing market, and the percentage of households that are cost burdened and the rate of housing cost burdened for a comparable housing market. The bill also defines a number of new terms;
- b) The bill requires HCD, in determining RHNA, to grant allowances to adjust for the rate of overcrowding, if the vacancy rate is between 5% and 8% indicating a healthy housing market, and the percentage of households that are cost burdened in comparable regions throughout the state, based on the region's total projected household growth, which includes existing households, as well as future projected households;
- c) The bill provides that the following shall not be a justification for a determination or a reduction in a jurisdiction's share of the RHNA:
 - i) Prior underproduction of housing in a city or county from the previous RHNA based on a jurisdiction's annual housing element production report; and,
 - ii) A stable population number in a city or county from the previous RHNA cycle;
- d) The bill states the intent of the Legislature that housing planning reduce racial and wealth disparities throughout the region;
- e) The bill provides that the RHNA allocation plan shall assign additional weight to local governments that meet the following criteria in the distribution of RHNA for all income categories and in particular housing needs for low- and very low-income households:

- i) A local government with median employed household income above the 50th percentile for the region; and,
 - ii) A local government that either contains a major regional job center, as determined by the COG, or contains high-quality public transportation for the region, such as a major transit stop or stops along a high-quality transit corridor that connects to a regional job center;
- f) The bill provides that the resolution approving the final housing need allocation plan shall demonstrate government efforts to reduce racial and wealth disparities throughout a region by assigning additional weight to local governments that meet specified criteria, in the distribution of the RHNA for all income categories and in particular for low- and very low-income households.

The bill is sponsored by the Bay Area Council and the Silicon Valley Leadership Group.

- 2) **Author’s Statement.** According to the author, “There are several key issues with RHNA: First, the state’s population forecasts do not take into account historic underproduction of housing, which has been particularly stark over the past several decades. As communities stifle housing construction locally, their population is limited by how many new homes are built, creating the illusion that population growth is slowing or stagnant. This illusion is prevalent even in areas that have thriving job markets and skyrocketing housing demand and prices. There is also no mechanism to ensure that communities who underperform in housing production in one cycle are held accountable to obligations when the next cycle starts. This creates a perverse incentive for cities to routinely underperform on RHNA. Over time, their population growth will slow, their previous obligations will be forgiven, and their allocations will be reduced.

“Second, each regional government establishes its own unique methodology for allocating housing obligations to local jurisdictions. The state has very little oversight authority over this process, and there are no requirements for transparency in the regional government releasing their methodology to the public or HCD. More often than not, this results in heavily politicized housing allocations, in particular for affordable housing, divorced from the data about true housing demand and fair share principles. For example, in the last RHNA cycle, Redondo Beach was allocated 1,397 units of housing for an eight-year period, while Hermosa Beach and Manhattan Beach – adjacent and demographically similar coastal communities – were allocated 2 and 37 total units, respectively.

“Lastly, after local governments are assigned their housing obligation, they are expected to zone for precisely 100% of that obligation. This underwhelming requirement sets communities up for failure, as not every newly zoned parcel will have development approved and project constructed to full capacity within several years.”

- 3) **Policy Considerations.** The Committee may wish to consider the following:
- a) **2017 Housing Package.** This bill requires cities and counties to zone to accommodate 125% of their allocations of the housing need for each income level (**Sections 2 and 3**). Opponents, including the California State Association of Counties, Rural County Representatives of California and Urban Counties of California, note that the several bills

in last year's Housing Package were intended to ensure that adequate zoned capacity is maintained throughout the planning period and will already promote the same outcome that the corresponding provision of SB 828 seems designed to achieve. Opponents argue that it is premature to add further restrictions contained in this bill before giving the following bills a chance to be implemented:

- i) AB 1397 (Low), Chapter 375, Statutes of 2017. Made a number of changes to housing element law by revising what may be included in a locality's inventory of land suitable for residential development. This bill tightened site selection criteria by adding additional considerations for parcel size, whether a parcel is vacant or has existing uses, the potential for redevelopment, and availability of infrastructure. These new limitations will apply to the sixth cycle of housing elements.
 - ii) SB 166 (Skinner), Chapter 367, Statutes of 2017. This bill requires that a local jurisdiction accommodate its remaining unmet need *at all times* throughout the housing element planning period. The bill additionally requires that if a locality permits a development with fewer units by income category that identified in the locality's housing element, the locality shall make written findings supported by substantial evidence as to whether or not remaining sites identified in the housing element are adequate to meet the requirements Housing Element Law.
- b) **Reference to County Urban Services Boundary (Section 1).** This bill requires a county to accommodate 100% of the unmet portion of its RHNA through multifamily housing within the jurisdiction's urban service boundary, as defined. County advocates note that this limitation is unworkable for counties, which do not have urban services boundaries, as defined in the bill.
- c) **Language to Reduce Racial and Wealth Disparities and Required Weighting.** The California Rural Legal Assistance Foundation and the Western Center on Law and Poverty have expressed concerns about language contained in subdivision (j) of Government Code Section 65584.04, that specifies the intent of the Legislature that housing planning reduce racial and wealth disparities throughout the region, and then describes how the allocation plan must assign additional weight to local governments that meet criteria added by the bill. They write that "this language sets up presumption that in following the prescribed RHNA allocation weighting system, a region will reduce patterns of racial and economic segregation, regardless of whether the data supports that...there is no reason a COG couldn't employ a weighting system such as the one described as part of its allocation methodology, so long as the system is supported by the data and consistent with the overall objectives of the statute....however, a COG should not be required to do so."
- d) **Related Legislation.** AB 1771 (Bloom) also makes changes to the COG methodology for assigning RHNA and provides for a process for HCD to appeal and allocation. The bill passed this Committee on a 6-2 vote, and is currently pending in the Senate. The Committee may wish to ask the author how he plans to reconcile differences with AB 1771.
- 4) **Committee Amendments.** In order to address some of the issues raised above, the Committee may wish to consider striking Sections 1, 2 and 3 from the bill.

- 5) **Arguments in Support.** Supporters argue that the approach in the bill with more focus on data, will require methodologies to be established to better ascertain housing need, and will strengthen the RHNA process to make local jurisdictions more accountable to its mandate.
- 6) **Arguments in Opposition.** Opponents representing cities and counties oppose the requirement in this bill to zone 25% more sites than current law, citing the need to let last year's AB 1397 and SB 166 be given time to work.
- 7) **Double-Referral.** This bill was heard in the Housing and Community Development Committee on June 20, 2018, and passed on a 4-2 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

Bay Area Council [SPONSOR]
 Silicon Valley Leadership Group [SPONSOR]
 Association of Bay Area Governments
 California Association of Realtors
 California Building Industry Association
 California Business Properties Association
 California Chamber of Commerce
 Facebook
 Non-Profit Housing Association of Northern California
 Silicon Valley Community Foundation

Concerns

California Rural Legal Assistance Foundation
 Western Center on Law & Poverty

Opposition

American Planning Association, California Chapter (unless amended)
 California Association of Councils of Governments (unless amended)
 California State Association of Counties (unless amended)
 Cities of Beverly Hills, Long Beach, and Vista
 Rural County Representatives of California (unless amended)
 Urban Counties of California (unless amended)

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