
SENATE COMMITTEE ON HOUSING
Senator Scott Wiener, Chair
2021 - 2022 Regular

Bill No:	SB 581	Hearing Date:	4/15/2021
Author:	Atkins		
Version:	2/18/2021		
Urgency:	No	Fiscal:	Yes
Consultant:	Erin Riches		

SUBJECT: General plan

DIGEST: This bill adds to the reporting requirements for the annual progress report (APR) that local governments are required to submit to the state Department of Housing and Community Development (HCD) each year in relation to their housing elements, whether the city or county is party to a court action related to a violation of state housing law.

ANALYSIS:

Existing law:

- 1) 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.
- 2) Provides that each community's fair share of housing be determined through the regional housing needs allocation (RHNA) process, which is composed of three main stages: (a) the Department of Finance and HCD develop regional housing needs estimates; (b) councils of government (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.
- 3) Requires each city and county to submit an annual progress report (APR) to HCD and the Office of Planning and Research that includes all of the following:
 - a) Progress in meeting its share of regional housing need.

- b) Local efforts to remove governmental constraints to the maintenance, improvement, and development of housing.
 - c) Actions taken by the city or county towards completing programs contained within the housing element and the status of compliance with deadlines in the housing element.
 - d) The number of housing development applications received in the prior year, as well as the number of units included in these applications and the number of units approved and disapproved.
 - e) A list of sites rezoned to accommodate the city's or county's RHNA allocation for each income level that could not be accommodated on sites identified in the housing element's site inventory, and any additional sites that may be necessary to accommodate the city's or county's share of regional housing need.
 - f) The number of net new units of housing, with a unique site identifier including but not limited to the parcel number, including both rental and for-sale housing, that have been issued a completed entitlement, building permit, or certificate of occupancy in the housing element cycle, and the income category that each unit satisfies.
 - g) The number of SB 35 (Wiener, Chapter 366, Statutes of 2017) applications submitted and the total number of developments approved, the number of building permits issued, and the total number of units including both rental and for-sale housing by area median income, constructed through the SB 35 process.
 - h) The number of density bonus applications received, and approved, by the city or county.
- 2) Requires HCD to post APRs on its website within a reasonable time of receiving them.
- 3) Authorizes a court, if it finds that a city or county failed to submit a substantially compliant APR within 60 days of the statutory deadline, to issue an order or judgment to compel compliance within 60 days. Authorizes the court to grant sanctions for further failure to comply, as specified.

This bill:

- 1) Requires a city or county to report in its APR whether it is party to a court action related to a violation of state housing law, and the disposition of that action, including but not limited to:
 - a) Housing element law.
 - b) The Housing Accountability Act.
 - c) Streamlining for permanent supportive housing.
 - d) Streamlined ministerial approval for certain housing projects.
 - e) Density bonus law.
 - f) The Housing Crisis Act.

COMMENTS

- 1) *Author's statement.* "Existing law requires each jurisdiction to submit an APR to HCD in relation to their housing element. Senate Bill 581 requires cities and counties to report in their APR whether they are party to a court action related to a violation of existing state housing laws, and the disposition of that court action. This bill provides a modest expansion to existing reporting requirements. The APR provides an annual look at a locality's progress in meeting its RHNA, information about density bonus applications, and SB 35 (Wiener, 2017) applications. This bill would simply ensure that part of this annual reporting would also include if a jurisdiction was party to a court action related to a violation of housing laws – many of which the APR provides a progress report on."
- 2) *Housing elements and APRs.* Existing law requires every city and county to prepare a housing element as part of its general plan. The housing element must contain an inventory of land suitable for residential development, which is used to identify sites that can be developed for housing within the planning period and are sufficient to provide for the locality's share of the regional housing need for all income levels. Each jurisdiction must submit an APR to HCD by April 1st of each year that documents its progress toward meeting its RHNA allocation and the plans outlined in its housing element.

- 3) *Background.* This bill requires cities and counties to report in their APR whether they have been party to a court action relating to a violation state housing laws, including but not limited to:
- a) *Housing element law.* Until recently, communities without an approved housing element have faced limited ramifications. In recent years, however, the Legislature has enacted a number of reforms aimed at increasing housing element compliance. For example, SB 166 (Skinner, Chapter 367, Statutes of 2017) modified the No Net Loss Zoning Law to require local governments to maintain adequate housing sites at all times throughout the housing element planning period for all levels of income, to ensure that unmet housing need is not simply identified once every eight years. Additionally, AB 1397 (Low, Chapter 375, Statutes of 2017) restricts the types of sites a local government may identify as suitable for residential development, to help ensure that realistic sites are included in the housing inventory. Further legislation in 2018 built on the 2017 reforms with two bills, SB 828 (Wiener, Chapter 974, Statutes of 2018) and AB 1771 (Bloom, Chapter 989, Statutes of 2018), which made a number of changes to increase the transparency and accountability of the RHNA allocation process.¹
 - b) *The Housing Accountability Act (HAA).* The HAA, also known as the “Anti-NIMBY Act,” aims to limit the ability of local agencies to reject housing elements, or make them infeasible, without a thorough analysis of the economic, social, and environmental effects of the action. The HAA provides for a judicial remedy that allows a court to issue an order to compel a city to take action on a development project.
 - c) *Streamlining for permanent supportive housing.* AB 2162 (Chiu, Chapter 753, Statutes of 2018) provides for streamlining of affordable housing projects that include supportive housing and onsite supportive services, by providing that supportive housing shall be a use by right in all zones where multifamily and mixed uses are allowed.
 - d) *Streamlined ministerial approval for certain housing projects.* SB 35 (Wiener, Chapter 366, Statutes of 2017) established a ministerial approval process, not subject to CEQA, for certain multifamily affordable housing projects proposed in local jurisdictions that have not met their RHNA allocation.

¹ For more information, please see the Housing Committee’s fact sheet, “Housing Element and RHNA Law: Recent Reforms” at <https://shou.senate.ca.gov/node/17>.

- e) *Density bonus law*. Existing law requires cities and counties to grant a “density bonus” when an applicant for a housing development of five or more units seeks and agrees to construct a project that will contain a specified percentage of units for specified populations. The “density bonus” means that in exchange for providing the affordable units, the city or county must allow the development to include more total units than would otherwise be allowed by the local zoning ordinance (in order to help the developer spread the cost of the affordable units over the entire project). In addition, the city or county must provide specified benefits such as reduced parking standards.
 - f) *Housing Crisis Act*. The Housing Crisis Act of 2019 (SB 330, Skinner, Chapter 654, Statutes of 2019), until January 1, 2025, places restrictions on certain types of development standards, amends the HAA, and makes changes to local approval processes and the Permit Streamlining Act. Among other things, the Housing Crisis Act prohibits certain local actions that would reduce housing capacity; prohibits a local agency from imposing design standards that are not objective if those standards were adopted after January 1, 2020; prohibits a local agency from applying new rules of standards to a project after a preliminary application containing specified information is submitted; requires local agencies to exhaustively list all information needed to make a development application complete under the Permit Streamlining Act; and establishes certain anti-displacement protections.
- 4) *Enforcement of state housing laws*. Despite the creation of multiple new by-right and development streamlining measures, as well as recent efforts to strengthen the HAA, housing element, and density bonus law, if a city chooses not to grant a building permit – in violation of state law – a developer’s only recourse is to sue. Because lower superior court level decisions are not published, information about state housing law violations is not readily available.

In response to this concern, the 2017 housing package included a bill to significantly increase HCD’s enforcement of housing element law. AB 72 (Santiago, Chapter 370, Statutes of 2017) authorizes HCD to find a locality’s housing element out of substantial compliance if it finds that the locality has acted, or failed to act, in compliance with a housing element that HCD had previously found in substantial compliance. AB 72 also authorizes HCD to refer violations of housing element law to the state Attorney General. It takes significant resources and time to pursue judicial remedies; moreover, developers are hesitant to antagonize localities where they intend to have future

development. AB 72 instead places this judicial enforcement burden on the state.

As part of the AB 72 effort, HCD has increased its technical assistance efforts to local jurisdictions. Further, the Governor’s budget includes a proposal to finance the creation of a new Housing Law unit at HCD to assist local jurisdictions in housing element and other state housing law compliance. By adding violations to the APR reporting requirement, this bill would help direct HCD efforts to provide assistance, and if necessary, enforcement.

RELATED LEGISLATION:

SB 477 (Wiener, 2021) — adds a number of requirements to the APR relating to measures such as streamlining of housing development projects. *This bill is on the suspense file in the Senate Appropriations Committee.*

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

POSITIONS: (Communicated to the committee before noon on Friday, April 9, 2021.)

SUPPORT:

None received

OPPOSITION:

None received

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