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**SENATE COMMITTEE ON HOUSING**

**Senator Scott Wiener, Chair**

**2019 - 2020 Regular**

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<b>Bill No:</b>	SB 252	<b>Hearing Date:</b>	4/30/2019
<b>Author:</b>	Leyva		
<b>Version:</b>	4/22/2019 Amended		
<b>Urgency:</b>	Yes	<b>Fiscal:</b>	Yes
<b>Consultant:</b>	Alison Hughes		

**SUBJECT:** Income taxation: exclusions: mobilehome park sales

**DIGEST:** This bill provides a capital gains exclusion to a taxpayer that sells a mobile or manufactured home park to a qualified purchaser if the purchaser maintains affordable rent, as specified.

**ANALYSIS:**

*Existing law:*

- 1) Establishes the "Mobilehome Parks Act", governing mobilehome parks, and the "Special Occupancy Parks Act", governing Special Occupancy Parks (such as RV parks), which establish requirements for the permits, fees, and responsibilities of park operators and enforcement agencies, including the Department of Housing and Community Development, and require the HCD to develop and enforce both the regulations and the laws.
- 2) Establishes the Mobilehome Park Rehabilitation and Resident Ownership Program (MPRRP). Authorizes HCD to make MPPROP loans to individual low-income residents of mobilehome parks that have converted to resident ownership, or to resident organizations that have converted or plan to convert a mobilehome park to resident ownership. These loans are intended to reduce the monthly housing costs for low-income residents to an affordable level.
- 3) Requires under Preservation Notice Law that to qualify as a purchaser of an assisted housing development, an entity shall be certified by HCD as capable of operating the housing facilities for its remaining life, as specified. HCD shall establish a process for certifying qualified entities and maintaining a list of entities that are certified.

**This bill:**

- 1) Provides that gross income shall not include gains from the sale or exchange of a qualified mobilehome park to a qualified purchaser as follows:
  - a) 50% of the recognized gain for a qualified mobilehome park sold at market value;
  - b) A percentage between 50% and 100% of the recognized gain for a qualified mobilehome park sold at a transacted price below market value. The percentage of recognized gain to be excluded shall be sufficient to offset the unrealized dollar value of a below market rate sale, as determined by an appraisal acceptable to HCD.
- 2) Defines “qualified purchaser” as the following:
  - a) A local public entity, including a tribally designated housing entity;
  - b) A qualified nonprofit housing sponsor;
  - c) A resident organization;
  - d) A tribally designated housing entity.
- 3) Allows HCD to adopt regulations as necessary and appropriate to implement this section.
- 4) Requires that, for taxable years beginning on or after January 1, 2020 and before January 1, 2025, gains from the sale of a qualified mobilehome park held by a taxpayer for a period of at least 30 years to a qualified purchaser, as defined, shall not be recognized. This exclusion shall only apply to the year for which the taxpayer seeks the exclusion and is confirmed by HCD.
- 5) Requires the exclusion provided by (4) above to only be allowed by a taxpayer that provides proof of an independent appraisal of the qualified mobilehome park to HCD.
- 6) Requires a qualified purchaser to comply with the following requirements: a) the purchaser agrees to own and operate a qualified mobilehome park and records a deed restriction to maintain affordable rents for at least 30 years, and b) the purchaser applies to and is approved by HCD, as specified.
- 7) Requires HCD to do the following:

- a) Develop and administer an application for organizations seeking to become a qualified purchaser.
  - b) Confirm the information provided in an application for approval as a qualified purchaser.
  - c) Designate any applicant as a qualified purchaser, as specified.
  - d) Confirm the amount of exclusion to a taxpayer based on the independent appraisal and the information provided in the application for the qualified purchaser to which the taxpayer sold the qualified mobilehome park.
- 8) Requires the Legislative Analyst's Office to submit a report to the Legislature, as specified, on the effects of the exclusion provided on the sales of qualified mobilehome parks in the state.

## COMMENTS

- 1) *Purpose of the bill.* According to the author, this bill “would create an incentive for private mobilehome park owners to sell their park to their residents, a non-profit, an affordable housing entity, or a local government. California is experiencing a severe housing crisis due to the lack of affordable housing. Since mobilehomes and manufactured homes are an important housing option in California, we must preserve the available mobilehome stock. Some non-profit and affordable housing partners are interested in maintaining affordable housing and purchasing parks from long standing business owners. There may be situations when park owners decide to retire, leave the industry and sell their parks. When this occurs, residents face steep rent increases or displacement, with few options of where to move. This bill would provide a deduction of capital gains tax to the park owner who may wish to leave the business and not want to displace the residents. This is a voluntary program for the park owners and not a forced sale. If the park owner sells their property at market rate, they would be eligible for 50% of their capital gains exclusion. If the park owner sells below market rate, they could be eligible up to 100% of capital gains exclusion. [This bill] helps protect this limited stock of affordable housing and keeps low-income families and our seniors off the streets.”
- 2) *Mobilehome parks.* According to the 2017 Manufactured Housing Opportunity Profile: Data Snapshot, there are nearly 520,000 mobilehomes and manufactured homes in California, which accounts for nearly 4% of the total housing stock in the state. Nearly half of mobilehomes and manufactured homes are affordable to very-low income households, compared to just 18% of the state's overall housing stock. Mobilehomes and manufactured homes are a significant source of affordable housing in a state with a desperate need for housing affordable in this affordability range.

A majority of the mobilehomes and manufactured homes in California are located in one of the nearly 4,900 mobilehome parks. Residents of these parks lease a site, or land, for their mobilehome or manufactured home and pay a monthly rent associated with their lease. Most of these parks are privately owned and residents are subject to cost increases and operating standards at the owner's discretion. When a park owner decides to sell the park or convert it to another use, residents usually face rent hikes or displacement with few, if any, options to move.

- 3) *Reward for selling parks and maintaining affordability.* A capital gains tax is a tax levied on the sale of capital assets. For individuals, capital assets are generally anything a taxpayer owns for personal or investment purposes such as a home, stocks, even collectibles or art. For businesses, a capital asset is generally any item of value a business owns that is not resold in the ordinary course of business such as land, and buildings, among other things. Taxpayers incur a capital gain when a capital asset is sold for a profit. This bill provides a capital gains exclusion to a taxpayer that sells a mobile or manufactured home park to a qualified purchaser. If the taxpayer sells the park for fair market value, then the taxpayer does not recognize 50% of the gain. If the taxpayer sells the park for less than fair market value, the taxpayer does not recognize a percentage of the gain — between 50 and 100% — as determined by HCD. The purchaser must maintain affordable rents for at least 30 years. According to the sponsors, this tax benefit can be used in tandem with other state programs funding mobilehome parks and manufactured housing to encourage these housing units to remain affordable to the lowest-income earners in California.
- 4) *Double referral.* This bill is also referred to the Governance and Finance Committee.

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

**POSITIONS:** (Communicated to the committee before noon on Wednesday, April 24, 2019.)

**SUPPORT:**

California Coalition for Rural Housing (co-sponsor)  
 California Rural Legal Assistance Foundation (co-sponsor)  
 Community Housing Opportunities Corp  
 County of Tuolumne Board of Supervisors Housing Policy Committee  
 Mountain Housing Council of Tahoe-Truckee

Mutual Housing California  
Peoples' Self Help Housing  
Public Law Center  
Rural Community Assistance Corporation  
Western Center On Law & Poverty, Inc.

**OPPOSITION:**

None received.

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**SENATE COMMITTEE ON HOUSING**

**Senator Scott Wiener, Chair**

**2019 - 2020 Regular**

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<b>Bill No:</b>	SB 323	<b>Hearing Date:</b>	4/30/2019
<b>Author:</b>	Wieckowski		
<b>Version:</b>	4/9/2019		
<b>Urgency:</b>	No	<b>Fiscal:</b>	No
<b>Consultant:</b>	Erin Riches		

**SUBJECT:** Common interest developments: elections

**DIGEST:** This bill makes several changes to the elections process held in common interest developments (CIDs). It also makes changes to the process for handling disputes between a member and a homeowner's association (HOA).

**ANALYSIS:**

*Existing law, under the Davis-Stirling Act:*

- 1) Provides that an HOA in a CID shall adopt rules relating to board elections that do all of the following:
  - a) Ensure that if any candidate or member advocating a point of view is provided access to association media, newsletters, or Internet Web sites during a campaign, for purposes that are reasonably related to that election, equal access shall be provided to all candidates and members advocating a point of view, including those not endorsed by the board, for purposes that are reasonably related to the election.
  - b) Ensure access to the common area meeting space, if any exists, during a campaign, at no cost, to all candidates, including those who are not incumbents, and to all members advocating a point of view, including those not endorsed by the board, for purposes reasonably related to the election.
  - c) Specify the procedures for the nomination of candidates, consistent with the governing documents. A nomination or election procedure shall not be deemed reasonable if it disallows any member from nominating himself or herself for election to the board.
  - d) Specify the qualifications for voting, the voting power of each membership, the authenticity, validity, and effect of proxies, and the voting period for elections, including the times at which polls will open and close, consistent with the governing documents.

- e) Specify a method of selecting one or three independent third parties as inspector or inspectors of elections, as specified.
  - f) Allow the inspector or inspectors to appoint and oversee additional persons to verify signatures and to count and tabulate votes as the inspector or inspectors deem appropriate, provided that the persons are independent third parties.
- 2) Requires, at all times, the sealed ballots to be in the custody of the inspector or inspectors of elections or at a location designated by the inspector or inspectors until after the tabulation of the vote, and until the time allowed for challenging the election has expired, at which time custody shall be transferred to the HOA.
  - 3) Requires the HOA to select an independent third party or parties as an inspector of elections. An independent third party may not be a person, business entity, or subdivision of a business entity who is currently employed or under contract to the HOA for any compensable services unless expressly authorized by the HOA.
  - 4) Permits a member of an HOA to bring a civil action against an HOA for declaratory or equitable relief for a violation of the member elections provisions under the Davis-Sterling Act including but not limited to injunctive relief, restitution, or a combination, within one year of the date the cause of action accrues. Upon a finding that the election procedures were not followed, a court may void the results of the election.
  - 5) Permits a prevailing party in a civil action described in 4) above, to be entitled to reasonable attorney's fees and court costs, and the court may impose a penalty of up to \$500 for each violation.
  - 6) Provides that a cause of action with respect to access to association resources by a candidate or member advocating a point of view, the receipt of a ballot by a member, or the counting, tabulation or reporting of, or access to, ballots for inspection and review after tabulation may be brought in small claims court.
  - 7) Requires an HOA to provide a fair, reasonable, and expeditious procedure for resolving a dispute between an HOA and a member and shall make maximum, reasonable use of available local dispute resolution programs involving a neutral third party, including low-cost mediation programs. The HOA's internal dispute resolution (IDR) procedure, invoked by either party to the dispute, shall, at a minimum, satisfy specified requirements.
  - 8) Prohibits an HOA or a member from filing an enforcement action in the superior court unless the parties have endeavored to submit their dispute to

alternative dispute resolution (ADR). This prohibition only applies to an enforcement action that is solely for declaratory, injunctive, or writ relief, or for that relief in conjunction with a claim for monetary damages not in excess of the jurisdictional limits and does not apply to small claims actions or assessment disputes.

**This bill:**

*Access to ballot counting*

- 1) Requires the HOA election rules to ensure that the meeting at which the ballots are counted meets both of the following criteria:
  - a) The meeting is accessible to all members and their representatives who want to witness the tabulation.
  - b) The meeting is held at a common area meeting space of HOA property, or if no common area meeting space exists, at a location within a reasonable distance of the property.

*Voter eligibility*

- 2) Requires the elections rules to do all of the following:
  - a) Prohibit the denial of a ballot to a member for any reason other than not being a member at the time when ballots are distributed.
  - b) Prohibit the denial of a ballot to a person with general power of attorney for a member.
  - c) Require the ballot of a person with general power of attorney for a member to be counted if returned in a timely manner.

*Candidate eligibility*

- 3) Requires an HOA to disqualify an individual from nomination if either:
  - a) The individual is not a member of the HOA at the time of the nomination.
  - b) The individual has been convicted within the last 20 years of a felony related to embezzlement, extortion, theft, perjury, or conspiracy to commit any of these crimes, as specified.
- 4) Allows an HOA to disqualify a member from nomination if any of the following occur:
  - a) The individual is not current in payment of regular assessments, as specified.



- b) The person has a joint ownership interest with another member of the board.
  - c) The individual has been a member of the HOA for less than one year.
- 5) Defines disqualifying debt and outlines the circumstances under which a nominee may be disqualified for disqualifying debt.
  - 6) Requires an HOA, prior to disqualifying a nominee for nonpayment of regular assessments, to provide the nominee, in a timely manner, the opportunity to engage in the internal dispute resolution process pursuant to the Davis-Stirling Act, as specified.
  - 7) Removes references in the rules that permit the identification of qualifications for candidacy or voting.

#### *Elections process*

- 8) Requires an HOA to hold an election at the end of each board member's expiring term and at minimum every four years.
- 9) Requires an HOA to adopt election rules at least 90 days before any election.
- 10) Requires the HOA, unless individual notice has been requested, to provide general notice at least 30 days prior to ballots being distributed that includes, among other things, the date and time for ballots to be returned, the date and time of the meeting at which the ballots will be counted, the procedure and deadline for submitting a nomination, the list of names that will appear on the ballot, and the list of voters, as specified.
- 11) Requires the HOA to require any errors or omissions to the candidate or voter list to be immediately reported to the inspector or inspectors of elections and requires the latter to make the corrections within two business days.
- 12) Require the inspector or inspectors of elections to deliver, or cause to be delivered, at least 30 days before an election, to each member, the ballot or ballots and a copy of the election rules. Delivery of the election rules must be either posted on an Internet Web site as specified or by individual delivery.
- 13) Adds that the ballots, signed voter envelopes, voter list, proxies, and a candidate registration list shall be in the custody of the inspector or inspectors of elections or at a location designated by the inspector or inspectors until after the tabulation of the vote and until the time allowed for challenging the election has expired.

*Eligibility of elections inspectors*

- 14) Prohibits an HOA's rules from permitting any person, business, or subdivision of a business entity currently employed or under contract with the HOA for any compensable services from serving as an inspector of elections.

*Elections disputes*

- 15) Provides that a cause of action for a violation of member elections may be brought in either the Superior Court or, if the demand does not exceed the jurisdictional amount of small claims court, in small claims court.
- 16) Requires a court to void the results of an election upon a finding that the election procedures were not followed, unless the HOA establishes by a preponderance of the evidence that the failure of the HOA to follow this article or the election operating rules were unintentional and did not affect the results of the election.
- 17) Requires a member to be awarded court costs and reasonable attorney's fees incurred for consulting an attorney in connection with this civil action if the member prevails in a civil action in small claims court.
- 18) Prohibits an HOA from filing a civil action regarding a dispute in which a member has requested internal dispute resolution unless the HOA has participated in the specified internal dispute resolution procedure.

**COMMENTS**

- 1) *Purpose of the bill.* The author states that this bill is needed to ensure that voting rights of members living in HOAs are preserved and not treated as a mere privilege and available for use as an enforcement tool. If HOA boards can strip away voting rights of perceived "problem residents," who may be seeking to unseat them from their position of power, board members can act with frivolity and impunity in silencing dissent. Just as we defend voting rights in local, state, and national elections, we must also do the same in these HOA elections, whose outcomes ultimately control the day-to-day personal lives of the nearly one in five people living in a CID.
- 2) *CID background.* A CID is a form of real estate in which each homeowner has an exclusive interest in a unit or lot and a shared or undivided interest in common-area property. Condominiums, planned unit developments, stock cooperatives, community apartments, and many resident-owned mobilehome parks all fall under the umbrella of CIDs. There are more than 50,000 CIDs in California comprising over 4.8 million housing units, or approximately one-

quarter of the state's housing stock. CIDs are governed by HOAs. The Davis-Stirling Common Interest Development Act provides the legal framework under which CIDs are established and operate. In addition to the requirements of the Act, each CID is governed according to the recorded declarations, bylaws, and operating rules of the HOA, collectively referred to as the governing documents.

- 3) *Access to ballot counting and voting.* Under existing law, HOAs conduct elections through a paper and mail based balloting system that resembles California's vote by mail process. The sponsor of this bill, the Center for California Homeowner Association Law (Center), points to examples where homeowners were barred or otherwise discouraged from being near the ballot counting location. Excluding homeowners from the process leads to further distrust between homeowners and the board.

This bill requires notice of the time and location of ballot counting, as well as access to all members or their representatives who want to witness the tabulation.

- 4) *Voter eligibility.* Existing law requires HOAs to adopt rules that specify the qualifications for voting. However, existing law does not provide parameters around what qualifications an HOA may impose. As a result, some HOAs place restrictions such as requiring a member to be "in good standing" in order to be eligible to vote. While "good standing" generally refers to being current on payments, an HOA has latitude to define this term more specifically.

This bill prohibits the denial of a ballot to a member, or person with power of attorney, for any reason other than not being a member at the time when ballots are distributed.

- 5) *Candidate eligibility.* According to the sponsor, HOAs use the election rules as a means to prohibit a resident member from running in an election. These rules can be used as a means of punishment for members who may have a dispute with the management, or the management finds the resident to be in violation of HOA rules. This tactic can be used to keep specific board members in power and avoid would-be challengers. For example, the sponsor points to a court case involving an HOA that prohibited members from running for the board if they were presently involved in a legal action against the HOA. Other examples include age requirements, living in the HOA for a minimum specified period, being current in assessments, and passing a background check. Existing law allows an HOA to enforce HOA rules in several ways, such as placing a lien on property when a member fails to pay his or her assessment fees. HOAs

may also fine, impose disciplinary actions, and sue members for violating HOA rules and governing documents.

This bill prohibits an HOA from disallowing a member from being nominated for any reason other than not being a member, unless that member has been convicted of specified financial crimes. It requires the election rules to provide notice of the procedure and deadline for submitting a nomination, at least 30 days before the deadline. Additionally, this bill requires the notice to include a list of all the candidates' names that will appear on the ballot.

- 6) *Elections process.* While existing law requires HOA boards to adopt election rules, it does not expressly require HOAs to actively notify their members that an election will take place, how members can nominate candidates, and what the election procedures will be. The sponsor points to numerous incidents in which HOA members were left unaware that an election was taking place, and were therefore unable to run for the board or voice an opinion in the governance of the board.

This bill requires HOAs to adopt elections rules at least 90 days prior to an election, to provide general notice of nomination procedures at least 30 days prior to the nominations deadline, and to provide a series of additional notices regarding elections procedures and eligibility at least 30 days before ballots go out.

- 7) *Frequency of elections.* Existing law does not directly dictate a timeline for HOA elections. Many HOAs are incorporated as non-profit mutual benefit corporations and thus are covered by existing law that sets the maximum length for a corporate board member's term at four years. However, some HOAs are not incorporated. The sponsor states that HOA failure to hold elections is one of the biggest complaints it receives.

This bill explicitly requires HOAs to hold an election at the end of each board member's expiring term, and at minimum every four years.

- 8) *Eligibility of elections inspectors.* Existing law requires the HOA to select an independent third party or parties as an inspector of elections. An independent third party may not be a person, business entity, or subdivision of a business entity who is currently employed or under contract to the HOA for any compensable services unless expressly authorized by the HOA. According to the sponsor, HOAs often allow third parties with a vested financial interest in the outcome of an election – such as a vendor with a pending request before the

board for a contract with the HOA – to manage the election process, distribute and receive ballots, and count votes.

This bill prohibits third parties from serving as inspectors if they are currently employed or under contract with the HOA for any compensable services.

- 9) *Elections disputes.* Existing law requires an HOA to provide a “fair, reasonable, and expeditious procedure for resolving a dispute” between the HOA and a member involving the rights, duties or liabilities under the Davis-Stirling Act or the HOAs governing documents. This procedure is referred to as internal dispute resolution, the purpose of which is to provide a non-judicial forum to resolve disputes between a member and the HOA that will not result in a fee or a charge to the member. Existing law requires parties to attempt to participate in such a process before filing an enforcement action in court. If a member initiates internal dispute resolution, the HOA under existing law must participate in the procedure. According to the sponsor, some HOAs are either not meaningfully participating in this process or are not waiting for its completion before seeking legal action.

This bill requires participation in the internal dispute resolution process before filing any action in court, thus potentially reducing the need to resolve disputes in court.

- 10) *Opposition concerns.* The California Association of Community Managers (CACM) and Community Associations Institute (CAI), who represent CIDs, oppose the bill. They state that this bill severely limits an HOA’s ability to impose qualifications on candidates running for an HOA board. This bill would enable directors to serve even if they are delinquent on assessments – an inherent conflict of interest with the responsibilities of the office for which they are running. And while this bill allows an HOA to require a candidate to be current on regular assessments, it requires this qualification be done through bylaw amendments, which can be extremely costly. Opponents also cite a number of privacy concerns with this bill, and disagree with the provision shifting the burden of proof in a civil action to the HOA to prove that an election violation did not occur. Note that some of these concerns are addressed in proposed author’s amendments (see #12 below).

- 11) *Trying again.* This bill is almost identical to SB 1265 (Wieckowski, 2018), which was vetoed. (This bill includes an additional provision requiring board elections to be set at the end of each board member’s expiring term and at minimum every four years.) In his veto message, Governor Brown stated that “This bill takes a one-size-fits-all approach, but not all homeowner associations

are alike. If changes to an election process are needed, they should be resolved by the members of that specific community.”

12) *Author’s amendments.* The author proposes a number of amendments to this bill to address opposition concerns but was unable to finalize them prior to the committee deadline. Therefore, the committee will consider them as committee amendments. The amendments:

a) *Delete the access to ballot counting provisions (#1 under “This bill”).* This bill requires the HOA election rules to ensure that the meeting at which the ballots are counted is accessible to all members who want to witness the tabulation, and is held at a common area meeting space of HOA property or a location within reasonable distance of the property.

The author proposes to eliminate this entire provision because existing law already requires the inspector of elections to count and tabulate the votes in public at a properly noticed public meeting and requires the tabulated results to be available for review by members. In addition, opponents expressed concerns about the “location within a reasonable distance” provision.

b) *Reorder elections process provisions (#19-20 under “This bill”).* This bill requires the HOA, unless individual notice has been requested, to provide general notice at least 30 days prior to ballots being distributed that includes, among other things, the date and time for ballots to be returned; the date and time of the meeting at which the ballots will be counted; the procedure and deadline for submitting a nomination; the list of names that will appear on the ballot; and the list of voters by name, parcel number, and voting power. It also requires the inspector of elections to correct any errors or omissions to the candidate or voter list within two business days and to convey to each member the ballot and a copy of the election rules, as specified.

The author proposes to reorder and recast these provisions, with one major change: deleting the voter list provisions in the notice requirement and instead requiring the HOA to retain this information in its elections materials, to address opposition concerns about member privacy.

c) *Revise candidate eligibility provisions (#19-23 under “This bill”).* This bill requires or allows an HOA to disqualify an individual from nomination, as specified.

The author proposes to reorder and recast these provisions, with the following changes:

- (i) Delete the requirement for an HOA to perform these actions through the bylaws, to address opposition concerns regarding a need for flexibility.
  - (ii) Replace references to “incumbent board director” with “director” because the latter is adequately defined in existing law.
  - (iii) Delete the provision prohibiting an HOA from barring a nominee if the nominee has requested the internal dispute resolution process and the HOA has failed to convene a timely session; they are engaged in the process at the time of the nomination deadline; or the process concludes with a determination that the nominee does not owe a disqualifying debt. According to opponents, this language is duplicative of existing law, which provides comprehensive requirements for “fair, reasonable, and expeditious” internal dispute resolution.
- d) *Revises an elections dispute provision (#16 under “This bill”).* This bill requires a court to void the results of an election upon a finding that election procedures were not followed, unless the HOA establishes by a preponderance of the evidence that this failure was unintentional and did not affect the results of the election.

The author proposes to amend this provision to instead require the court to void the results if it finds, by a preponderance of the evidence, that the HOA’s noncompliance affected the results of the election. The amendments retain the requirement for the court to void the results, but remove the burden from the HOA as well as the requirement for the court to find that the violation was unintentional. Opponents expressed concern that shifting the burden of proof in a civil action was unreasonable since the homeowner is bringing the lawsuit.

- e) *Revise the definition of “association election materials.”* This bill defines association election materials as returned ballots, signed voter envelopes, a list of parcel numbers and voters to whom ballots were to be sent, proxies, and the candidate registration list. It provides that except for the purposes of this bill, signed voter envelopes may be inspected but shall not be copied.

The author proposes to revise this definition to include the voter list of names (as noted in (b) above). The amendments also remove the exception.

- 13) *Double-referral.* This bill was passed by the Judiciary Committee on a 7-0 vote on April 2nd.

**RELATED LEGISLATION:**

**SB 754 (Moorlach, 2019)** — provides that nominees to an HOA board in a CID shall be considered elected by acclamation if the number of nominees does not exceed the number of vacancies on the board. *This bill was passed by the Housing Committee on a 10-2 vote on April 22nd and will be heard in Judiciary Committee on April 30th.*

**SB 1265 (Wieckowski, 2018)** – would have made several changes to the elections process held in CIDs, as well as changes to the process for handling disputes between a member and an HOA. *This bill was vetoed.*

**SB 1128 (Roth, 2018)** – would have provided that an HOA in a CID may provide a document by electronic means if the recipient has consented by email; reduced the notice requirement of a proposed rule change by the HOA board from 30 days to 28 days; and provided that the nominees to a board shall be considered elected by acclamation if the number of nominees does not exceed the number of vacancies on the board, as specified. *The bill was vetoed.*

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

**POSITIONS:** (Communicated to the committee before noon on Wednesday, April 24, 2019.)

**SUPPORT:**

Center For California Homeowner Association Law (Sponsor)  
American Civil Liberties Union Of California  
Greater Sacramento Urban League  
Non-Profit Housing Association Of Northern California

**OPPOSITION:**

California Association of Community Managers  
Community Associations Institute - California Legislative Action Committee  
28 Individuals

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**SENATE COMMITTEE ON HOUSING**  
**Senator Scott Wiener, Chair**  
**2019 - 2020 Regular**

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**Bill No:** SB 326   **Hearing Date:** 4/30/2019  
**Author:** Hill  
**Version:** 3/27/2019  
**Urgency:** No   **Fiscal:** No  
**Consultant:** Erin Riches

**SUBJECT:** Common interest developments

**DIGEST:** This bill establishes specified mandatory inspections for exterior elevated elements such as balconies, decks, walkways, stairways, and railings in common interest developments (CIDs) and prohibits a homeowner association's (HOA's) governing documents from limiting the ability of an HOA to bring construction defect litigation against the founder, developer, or builder of the HOA.

**ANALYSIS:**

*Existing law:*

- 1) Requires, pursuant to SB 721 (Hill, Chapter 445, Statutes of 2018), regular inspection of elevated decks, balconies, stairways, walkways, and their railings, together with the associated waterproofing system, on all buildings with three or more multifamily dwelling units, excluding buildings in CIDs.
  
- 2) Establishes, through the Davis-Stirling Common Interest Development Act, the rules and regulations governing the operation of a residential CID and the respective rights and duties of an HOA and its members.
  
- 3) Provides that, unless otherwise provided in the declaration of a CID, the HOA is responsible for repairing, replacing, and maintaining the common area, as defined, while the individual members are responsible for repairing, replacing, and maintaining their separate interest (e.g., their individual unit).
  
- 4) Requires an HOA board to cause to be conducted, at least once every three years, a reasonably competent and diligent visual inspection of the accessible areas of all the major components the HOA is obligated to repair, replace, restore, or maintain as part of a study of the triannual inspection reserve study requirements of the CID, when the current replacement value of the major components meets a specified threshold.

- 5) Requires an HOA board, at least 30 days prior to filing a civil against a developer or other declarant for damage to a property that the HOA is obligated to maintain or repair, to notify its members in writing of the time and place of a meeting to discuss the problems leading to the filing and options available to address the problems. An HOA board may give this notice within 30 days of filing a civil action if it has reason to believe the applicable statute of limitations will imminently expire.

**This bill, as proposed to be amended (see “Judiciary Committee Amendments” in comment #8 below):**

#### *Definitions*

- 1) Defines “exterior elevated elements” (EEEs) as the components of a building that extend beyond the exterior walls to deliver structural loads to the building from decks, balconies, stairways, walkways, and their railings, that have a walking surface elevated more than six feet above ground level, are designed for human occupancy or use, and that are supported in whole or in substantial part by wood or wood-based products, together with the associated waterproofing system.
- 2) Defines “statistically significant sample” as a sufficient number of units inspected to provide 95% confidence that the results from the sample are reflective of the whole, with a margin of error no greater than plus or minus 5%.

#### *Inspection requirement*

- 3) Requires an HOA board, at least once every nine years, to have a licensed structural engineer or architect (hereafter referred to as the inspector) conduct a reasonably competent and diligent visual inspection of a random and statistically significant sample of the EEEs for which the HOA has maintenance or repair responsibility. Requires this inspection to determine whether the EEEs are in a generally safe condition and performing in accordance to specified standards.

#### *Inspection process*

- 4) Requires the inspector, prior to conducting the first visual inspection, to generate a random list of the locations of each type of EEE, including all EEEs for which the HOA has maintenance or repair responsibility. Requires the list to be provided to the HOA for future use.

- 5) Allows the inspector, if they observe building conditions during the visual inspection indicating that unintended water or water vapor has passed into the associated waterproofing system, thereby creating the potential for damage to the load-bearing components, to conduct a further inspection of a scope determined by the inspector's best judgment.
- 6) Requires the inspector, based on their visual inspections, further inspection, and construction and materials expertise, to issue a written report including the following information for each EEE inspected:
  - a) Its current physical condition, including whether the condition presents an immediate threat to the health and safety of the residents.
  - b) Its expected future performance and remaining useful life.
  - c) Recommendations of any necessary repair or replacement.
- 7) Requires the inspector's report to be stamped or signed by the inspector, presented to the HOA board, and incorporated into the HOA's triannual inspection reserve study, and maintained for two inspection cycles as part of the HOA's records.

*Inspection follow-up*

- 8) Requires the inspector, upon finding that an EEE poses an immediate threat to the safety of the occupants, to provide a copy of the inspection report to the HOA immediately, and to the local code enforcement agency within 15 days. Requires the HOA to take preventive measures immediately upon receipt of the report, including preventing occupant access to the EEE until repairs have been inspected and approved by the local enforcement agency. Provides that local enforcement agencies shall have the ability to recover enforcement costs associated with the requirements of this bill.
- 9) Requires the first inspection to be completed by January 1, 2025 for existing buildings, and every nine years thereafter in coordination with the HOA's triannual inspection reserve study. Requires inspections of buildings for which a building permit application has been submitted on or after January 1, 2020, for buildings with three or more multifamily units, to occur no later than six years following the issuance of a certificate of occupancy.

*HOA governing documents*

- 10) Allows an HOA board to enact rules or bylaws imposing inspection and follow-up requirements greater than those imposed by this bill.

*Litigation*

- 11) Requires an HOA board to make the determination of whether and when an HOA may commence a legal proceeding against the developer or builder of the CID. Provides that if the board includes members appointed by, or affiliated with, the declarant, developer, or builder, the decision and authority to commence and pursue legal proceedings shall be vested solely in the non-affiliated board members.
- 12) Prohibits an HOA's governing documents from imposing preconditions or limits on the HOA board's authority to commence and pursue any legal proceeding against the developer or builder for construction defects. Provides that any such provision shall be unenforceable, null, and void, except as specified. Applies this provision retroactively to all governing documents, whether recorded before or after the effective date of this bill, and applies retroactively to claims initiated before the effective date of this bill, except if those claims have been resolved through an executed settlement, a final arbitration decision, or a final judicial decision on the merits.

**COMMENTS**

- 1) *Purpose of the bill.* The author states that this bill builds upon SB 721 from last year, which addressed balcony inspections and repairs for existing multifamily, landlord-owned dwellings, following the deadly 2015 Berkeley balcony collapse that killed six and injured seven. Balcony collapses have killed people throughout the state in recent years. In addition to the Berkeley balcony collapse, a stairwell at an apartment building in Folsom collapsed in 2015, killing a Cal Poly student who was visiting a friend. Both the Berkeley and Folsom incidents were found to be a result of poor initial construction and a lack of proper follow-up inspections. This bill requires existing apartment and condominium buildings governed by HOAs to be inspected at least once every nine years to ensure that balconies, stairwells, and other exterior elevated elements are safe. It also prevents builders from placing language in an HOA's covenants, conditions, and restrictions (CC&Rs) that would limit the ability of the HOA board of directors to sue the developer if there are defects in the initial construction.

- 2) *CID background.* A CID is a form of real estate in which each homeowner has an exclusive interest in a unit or lot and a shared or undivided interest in common-area property. Condominiums, planned unit developments, stock cooperatives, community apartments, and many resident-owned mobilehome parks all fall under the umbrella of CIDs. There are more than 50,000 CIDs in California comprising over 4.8 million housing units, or approximately one-quarter of the state's housing stock. CIDs are governed by HOAs. The Davis-Stirling Common Interest Development Act provides the legal framework under which CIDs are established and operate. In addition to the requirements of the Act, each CID is governed according to the recorded declarations, bylaws, and operating rules of the HOA, collectively referred to as the governing documents.
- 3) *Legislative history: balcony bills.* In 2015, during an event at an apartment in the Library Gardens apartment complex, located near the University of California, Berkeley campus, a balcony collapsed, killing six young adults and injuring seven others. Ultimately, the Contractors State License Board (CSLB) revoked the license of the general contractor responsible for building the apartment complex. In response to the collapse, SB 465 (Hill, 2016) established additional oversight for contractors and required the CSLB to establish a working group to study EEE failures and report to the Legislature on its findings and possible recommendations for statutory or other changes to the California Building Standards Code. In 2017, the California Building Standards Commission approved emergency regulations to accelerate the adoption of higher construction standards.

SB 721 (Hill, 2018) requires existing EEEs in buildings with three or more multifamily units, excluding CIDs, to be inspected at least every nine years by licensed individuals in order to determine that EEEs and their associated waterproofing elements are in a general safe condition, adequate working order, and free from any hazardous conditions. SB 721 also requires repairs to be made within a designated timeframe and provides penalties for building owners who fail to complete required repairs.

- 4) *Next steps: CIDs.* Although SB 721 originally included CIDs, these provisions were removed in the Assembly late in the bill's two-year process. Existing law requires HOAs to conduct "a reasonably competent and diligent visual inspection" of common areas at least once every three years, and to fund repair, replacement, restoration, or maintenance as specified. The Community Associations Institute (CAI), which represents HOAs, states that it opposed SB 721 because it would have resulted in significant costs to CIDs but that it committed to work with the author to find a process CIDs could incorporate

into existing requirements. This bill does so by providing for inspections that coincide with CID's existing cycle for triannual inspection reserve study. CAI supports this bill.

- 5) *Comparison to SB 721.* This bill is similar to, though not exactly the same as, last year's bill. Differences include:
- a) *Inspection scope.* While SB 721 requires each inspection cycle to include 15% of each type of EEE in a building, this bill calls for a "statistically significant sample" each cycle. This bill defines "statistically significant sample" as a sufficient number of units inspected to provide 95% confidence that the results from the sample are reflective of the whole, with a margin of error no greater than plus or minus 5%. According to the author, this definition is intended to address concerns that a fixed percentage could lead to oversampling or undersampling.
  - b) *Inspection process and follow-up.* This bill is generally modeled on SB 721 in imposing a mandatory, post-occupancy inspection regime for EEEs. Both bills require the hiring of a qualified outside inspector (though this is defined differently in each bill) to conduct visual inspections and to produce reports that must be submitted to the building owner or HOA board, as appropriate. However, while SB 721 imposes fines on building owners who do not get repairs completed in a timely manner, this bill requires HOAs to immediately take preventive measures, such as preventing occupant access to the EEE in question, until repairs have been inspected and approved by the local enforcement agency.
  - c) *HOA governing documents in relation to litigation.* As noted earlier, SB 721 excludes CIDs, while this bill establishes an inspection regime specifically for CIDs. As part of the creation of an HOA, a developer typically establishes the initial governing documents and often serves, or appoints people to serve, on the HOA board. This involvement can create conflicts of interest because the interests of the HOA and the developer are not always aligned. To address this concern, this bill nullifies any provisions in an HOA's governing documents that limit or condition the HOA's ability to commence litigation against the founder, developer, or builder of an HOA.
- 6) *Aren't HOAs already required to do regular inspections?* Existing law requires HOAs to conduct, at least once every three years, "a reasonably competent and diligent visual inspection" of accessible areas that the HOA is responsible for maintaining as part of its triannual inspection reserve study. However, there is no requirement for the inspector to have particular expertise in structural or

architectural engineering. This bill aims to address that concern by imposing a more specific inspection regime.

- 7) *Opposition concerns.* The California Building Industry Association (CBIA) states that this bill imposes obstacles on constructing high density, multifamily housing by prohibiting those who purchase a unit in a CID from being informed of the burdens and costs placed on homeowners and from voting on decisions made by the HOA board to enter into litigation. Note that some of CBIA's concerns are addressed in the amendments approved in Judiciary Committee (see #8 below).
- 8) *Judiciary Committee Amendments.* The Judiciary Committee approved a number of amendments on April 23rd, which will be taken in this committee due to timing issues. **The amendments, which are included in the "This bill" description above, in summary do the following:**
- a) **Delete the first section of the bill, which required the developer of an HOA to provide a complete set of architectural and structural plans and specifications to the HOA for each building containing EEEs.**
  - b) **Provide a definition of "statistically significant."**
  - c) **Require notification of the local code enforcement agency when the inspection reveals conditions that constitute an immediate safety threat to HOA occupants.**
  - d) **Clarify that the bill's provisions regarding nullification of specified provisions within an HOA's governing documents do not apply to claims that are time-barred or that have reached final resolution on their merits.**
- 9) *Double referral.* This bill was passed by the Senate Judiciary Committee on a 7-2 vote on April 23rd.

#### **RELATED LEGISLATION:**

**SB 721 (Hill, Chapter 445, Statutes of 2018)** — established inspection and repair requirements for EEEs, including decks and balconies for buildings with three or more multifamily units; established reporting and repair requirements if repairs are needed, including specific timelines for carrying out the repairs; specified who can complete the inspections and repairs; and provides for civil penalties for building owner violations.

**SB 465 (Hill and Hancock, Chapter 372, Statutes of 2016)** — among other things, required the CSLB to convene a working group to study recent EEE

failures in California. Required the working group to report to the Legislature by January 1, 2018 on its findings and any recommendations for statutory changes or changes to the state building code.

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

**POSITIONS:** (Communicated to the committee before noon on Wednesday, April 24, 2019.)

**SUPPORT:**

Community Associations Institute - California Legislative Action Committee

**OPPOSITION:**

California Building Industry Association

**-- END --**





- 2) Provides that this bill does not prohibit, to the extent permitted by the California Constitution and the US Constitution, the enforcement or adoption of a restrictive covenant or any other restriction prohibiting the display or affixing of a religious item on any entry door or door frame to a dwelling that:
  - a) Threatens public health or safety.
  - b) Hinders the opening or closing of any entry door.
  - c) Violates any federal, state, or local law.
  - d) Contains graphics, language, or any display that is obscene or otherwise illegal.
  - e) Individually or in combination with any other religious item displayed or affixed on any entry door or door frame that has a total size greater than 36 by 12 square inches.
- 3) Prohibits CID governing documents from limiting or prohibiting the display of one or more religious items on the entry door of the member's separate interest.
- 4) Requires a member to remove a religious item from the door of their separate interest when an HOA is performing maintenance, repair, or replacement of the door or door frame. Requires the HOA to serve notice to the member regarding the work and allows the member to display or affix the religious item upon completion of the work.

## COMMENTS

- 1) *Purpose of the bill.* The author states that many religions require or encourage members of their faith to display religious items in or outside their homes. For example, observant Jews hang a mezuzah on their entry doorpost. For millennia, Jews have posted mezuzahs on the entry doorframes of their homes in fulfillment of a religious obligation rooted in the Bible. Sometimes, this religious requirement conflicts with HOA and rental agreements with aesthetic or other rules that bar hanging anything on an entry doorframe. There have been several incidents where observant members of the Jewish community have been prevented from placing a mezuzah on an entry doorframe of their home. Such decisions taken by HOAs leave the affected people unable to freely practice their religious obligations and in some instances they must resort to leaving their residence altogether. This measure would protect Jewish and other households against such incidents, while making clear that the displayed item cannot pose a threat to the health or safety of others, hinder the opening or closing of an entry door, violate federal, state, or local laws, or contain obscene graphics or language that is otherwise illegal.

- 2) *CID background.* A CID is a form of real estate in which each homeowner has an exclusive interest in a unit or lot and a shared or undivided interest in common-area property. Condominiums, planned unit developments, stock cooperatives, community apartments, and many resident-owned mobilehome parks all fall under the umbrella of CIDs. There are more than 50,000 CIDs in California comprising over 4.8 million housing units, or approximately one-quarter of the state's housing stock. CIDs are governed by HOAs. The Davis-Stirling Common Interest Development Act provides the legal framework under which CIDs are established and operate. In addition to the requirements of the Act, each CID is governed according to the recorded declarations, bylaws, and operating rules of the association, collectively referred to as the governing documents.
- 3) *What is a mezuzah?* This bill is specifically intended to protect the right of a Jewish household to display a mezuzah on its front door or doorpost. A mezuzah, which is often only about six inches long and about an inch wide, comprises a piece of parchment contained in a decorative case and inscribed with specific Hebrew verses from the Torah. Some interpret Jewish law to require a mezuzah in every doorway of the home that leads to living space (e.g., not bathrooms or closets). Jewish law requires that for homes outside Israel, the mezuzah shall be affixed to doors within 30 days of moving into a rented house or apartment. For a purchased home or apartment in Israel, the mezuzah is permanently affixed immediately upon moving in, as it is assumed that when a Jew lives in Israel, it shall remain their permanent residence. Mezuzahs are special objects and must be treated with care and according to Jewish laws and traditions.
- 4) *Don't protections already exist?* Both the federal Fair Housing Act (FHA) and the state Fair Employment and Housing Act (FEHA) broadly prohibit discrimination based on religion. The FHA prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, because of race, color, religion, sex, familial status, national origin, and disability. The FEHA protects against discrimination based on "religious creed," "religion," "religious observance," "religious belief," and "creed," defined as all aspects of religious belief, observance, and practice, including religious dress and grooming practices. Neither, however, specifically addresses religious items on doors.
- 5) *Other states.* The author notes that five states (Connecticut, Florida, Illinois, Rhode Island, and Texas) have adopted laws that specifically prohibit the

adoption or enforcement of policies barring the placement of religious items within a certain size limit on residents' entry doors or doorframes.

- 6) *Double referral.* This bill was passed by the Judiciary Committee on an 8-0 vote on April 2nd. This committee will focus on the CID provisions of this bill.

**RELATED LEGISLATION:**

**SB 329 (Mitchell, 2019)** — makes all forms of housing subsidy voucher a “source of income,” on the basis of which a landlord may not discriminate against a tenant. *This bill will be heard in the Senate Judiciary Committee on April 30th.*

**SB 222 (Hill, 2019)** — includes “military or veteran status” among the categories protected against housing discrimination under the FEHA. Also makes a Veterans Assistance Supportive Housing (VASH) voucher a “source of income,” on the basis of which a landlord may not discriminate against a tenant. *This bill will be hearing in the Senate Appropriations Committee on April 29th.*

**AB 446 (Choi, 2019)** — adds “victim of abuse” as a protected housing status under the FEHA. *This bill passed the Assembly Housing Committee on a 8-0 vote and will be heard in the Assembly Judiciary Committee on April 24th.*

**AB 53 (Jones-Sawyer, 2019)** — prohibits a landlord from denying the rental or lease of a housing accommodation without first satisfying specified requirements related to the application process. *This bill will be heard in Assembly Housing Committee on April 24th.*

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

**POSITIONS:** (Communicated to the committee before noon on Wednesday, April 24, 2019.)

**SUPPORT:**

Anti-Defamation League (Co-Sponsor)  
 Jewish Public Affairs Committee (Co-Sponsor)  
 American Jewish Committee  
 Bend The Arc: Jewish Action  
 Hindu American Foundation, Inc.  
 Jewish Federation Of Silicon Valley  
 National Association Of Social Workers, California Chapter

**OPPOSITION:**

None received.

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**SENATE COMMITTEE ON HOUSING**  
**Senator Scott Wiener, Chair**  
**2019 - 2020 Regular**

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**Bill No:** SB 751 **Hearing Date:** 4/30/2019  
**Author:** Rubio  
**Version:** 3/27/2019  
**Urgency:** No **Fiscal:** No  
**Consultant:** Lizeth Perez

**SUBJECT:** Joint powers authorities: San Gabriel Valley Regional Housing Trust

**DIGEST:** This bill authorizes cities within the San Gabriel Valley Council of Governments to enter into a joint powers agreement (JPA) to fund for housing.

**ANALYSIS:**

*Existing law:*

- 1) Authorizes, under the Joint Exercise of Powers Act, two or more public agencies to use their powers in common if they sign a joint powers agreement. Such an agreement may create a new, separate government called a joint powers agency or joint powers authority (JPA). Agencies that may exercise joint powers include federal agencies, state departments, counties, cities, special districts, school districts, federally recognized Indian tribes, and even other JPAs.
- 2) Authorizes public agencies to use the JPA law and the related Marks-Roos Local Bond Pooling Act to form bond pools to finance public works, working capital, insurance needs, and other public benefit projects. Bond pooling saves money on interest rates and finance charges, and allows smaller local agencies to enter the bond market. Because a JPA is an entity separate from its members, bonds issued by JPAs do not have to be approved by voters.
- 3) Establishes the Local Housing Trust Fund (LHTF) Program under the state Department of Housing and Community Development (HCD). The LHTF program provides matching grants (dollar for dollar) to local housing trust funds that are funded on an ongoing basis from private or public sources. Cities and counties with adopted, compliant housing elements, as well as charitable non-profit organizations, are eligible to apply for LHTF program funding. Eligible activities include loans for construction of rental housing projects with units restricted for at least 55 years to households earning less

than 60% AMI and down payment assistance to qualified first-time homebuyers.

**This bill:**

- 1) Authorizes any city within the San Gabriel Valley Council of Governments to enter into a JPA to create and operate the San Gabriel Valley Regional Housing Trust (Housing Trust) with the objective of funding housing for the homeless and persons and families of extremely low, very low and low income.
- 2) Requires the Housing Trust to be governed by a board of directors made up of elected officials representing the cities that are party to the JPA.
- 3) Authorizes the Housing Trust to:
  - a) Receive public and private financing and funds.
  - b) Fund the planning and construction of housing of all types and tenures for the homeless population and persons and families of extremely low, very low and low income.
  - c) Authorize and issue bonds, certificates of participation or any other debt instrument repayable from funds and financing received by and pledged by the Housing Trust.
- 4) Requires the Housing Trust to include annual financial reporting and auditing requirements into its joint powers agreement.
- 5) Requires the Housing Trust to comply with the regulatory guidelines of each state funding source received.

**COMMENTS**

- 1) *Purpose of the bill.* According to the Author, "SB 751 will address the growing homelessness crisis in the San Gabriel Valley by establishing a San Gabriel Valley Regional Housing Trust to finance affordable housing projects for homeless and low-income populations. California has an affordable housing crisis, particularly in the San Gabriel Valley where the number of homeless people has continued to increase despite decreases in the overall homeless population of Los Angeles County. Permanent supportive housing and other services provided to those within that form of housing is a nationally recognized model for ending chronic homelessness, and can assist the San Gabriel Valley in its response to the homelessness crisis. SB 751 will enable the creation of a regional housing trust to receive public and private financing and funds to plan and construct housing for the homeless and families of extremely low, very low,

and low income. The bill will also ensure that this funding is used responsibly to address the homelessness crisis by requiring the regional housing trust to incorporate annual financial reporting and auditing requirements.”

- 2) *Homelessness in the San Gabriel Valley.* The author points to various newspaper articles reporting on the homeless crisis in the San Gabriel Valley. The San Gabriel Valley is composed of over 40 incorporated cities and unincorporated neighborhoods and has a population of about two million people. The homeless population in the San Gabriel Valley has increased over the last several years, with the Greater Los Angeles Homeless Count reporting 2,790 homeless individuals who were unsheltered and only 815 who were sheltered in 2018. Supporters of this bill state that the Housing Trust will aid in convening stakeholders and collaborators to produce supportive housing.
- 3) *The Orange County Housing and Finance Trust (OCHFT).* This bill is nearly identical to AB 448 (Daly, Chaptered 336, Statutes of 2018), which created the OCHFT. The OCHFT has existed for less than a year and its efficiency in funding housing for homeless individuals and families of extremely low, very low, and low income has not been assessed yet.
- 4) *Local housing trust funds.* Housing trust funds are distinct funds established by city, county, or state governments that receive ongoing dedicated sources of public funding to support the preservation and production of affordable housing, as well as increasing opportunities for families and individuals to access decent affordable homes. Housing trust funds shift affordable housing funds from budget allocations to the commitment of dedicated public revenue. While housing trust funds can also accept private donations, they are not public/private partnerships, nor are they endowed funds operating from interest and other earnings. According to the Center for Community Change, there are more than 700 state and local housing trust funds in 47 states and the District of Columbia, including 40 in California (29 city and 11 county trust funds). Housing trust funds dedicate over \$1 billion each year to help address critical housing needs throughout the country.
- 5) *LHTF program.* In November 2006, California voters approved Proposition 1C, the Housing and Emergency Shelter Trust Fund of 2006. Proposition 1C authorized \$2.85 billion in general obligation bonds for various housing programs, including \$100 million for the Affordable Housing Innovation Fund. Subsequently, SB 586 (Dutton, 2007) allocated this \$100 million to four separate programs, including \$35 million for the LHTF program.



Under existing law, the LHTF program matches contributions to local housing trust funds. If an awardee fails to continue funding and operating the local housing trust fund for at least five years, then it must repay HCD's award to the extent that the funds have not yet been legally encumbered to specific projects. Under SB 586, half of the \$35 million allocated to the LHTF program from Proposition 1C is reserved for newly established housing trust funds. Within this set-aside is an additional 36-month set-aside for trust funds in counties with a population of less than 425,000 persons.

The most recent Notice of Funding Availability (NOFA) for the LHTF program, issued in 2014, resulted in \$8.8 million in awards to seven local housing trust funds, cities and counties. The NOFA was significantly oversubscribed, with requests totaling \$19.3 million. The LHTF program has not been funded in recent years. However, Proposition 1, approved by the voters in November 2018 with 56% approval, allocates \$300 million to the LHTF program. According to HCD, draft guidelines are due out in July 2019 and the first NOFA of \$57 million is due out in September 2019.

- 6) *Can't they form a JPA on their own?* Local agencies do not need legislative authority to form a JPA unless it requires powers not common to all its members, or when statutory certainty and specificity is preferable to the agreement's details. The power the local agencies lack, in this case, is the ability to issue bonds repayable from public and private financing and funds received by the Housing Trust.
- 7) *Double referral.* This bill passed out of the Governance and Finance Committee on April 24th with a 7-0 vote.

#### **RELATED LEGISLATION:**

**AB 448 (Daly, Chapter 336, Statutes of 2018)** — authorized the creation of the Orange County Housing Finance Trust to fund for housing specifically assisting the homeless population and persons and families of extremely low, very low and low income within Orange County.

**SB 3 (Beall, Chapter 365, Statutes of 2017)** — authorized the issuance of \$4 billion in general obligation bonds for affordable housing programs and a veterans' homeownership program, including \$300 million for the LHTF program.

**AB 532 (Gordon, Chapter 769, Statutes of 2013)** — deleted the requirement for funds in the LHTF program to revert to the Self-Help Housing Fund; made a number of changes to the LHTF program; specified that LHTF funds will be

continuously available for encumbrance and disbursement to housing trust funds; and required HCD to issue a NOFA for new housing trust funds by June 30, 2014.

**SB 586 (Dutton, Chapter 652, Statutes of 2007)** — programmed the \$100 million available from the Proposition 1C Affordable Housing Innovation Fund as follows: \$50 million for the Affordable Housing Revolving Development and Acquisition Program, \$35 million for the LHTF program, \$5 million for the Construction Liability Insurance Reform Pilot Program, and \$10 million to the Innovative Homeownership Program.

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

**POSITIONS:** (Communicated to the committee before noon on Wednesday, April 24, 2019.)

**SUPPORT:**

San Gabriel Valley Council of Governments (Sponsor)  
California Apartment Association  
Compassionate Pomona  
Corporation for Supportive Housing  
First Presbyterian Church of Monrovia  
Foothills Kitchen  
Forward Progress  
Interior Services  
Irwindale; City Of  
Los Angeles; County Of  
Monrovia; City Of  
Rosemead; City Of  
Mountainside Communion  
NAACP  
Pomona Fellowship Church of the Brethren  
Santa Fe Computer Science Magnet School  
Tri-City Mental Health Authority  
Union Station Homeless Services  
United Way of Greater Los Angeles  
Unity Church of Pomona  
1 Individual

**OPPOSITION:**

None received.