

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.

- 5) 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, as specified.
- 6) 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.
- 7) Requires each jurisdiction's RHNA plan to further five statutory objectives, such as increasing the housing supply and the mix of housing types, tenure, and affordability; promoting infill development and socioeconomic equity, protection of environmental and agricultural resources, encouraging efficient development patterns, and achieving the state's greenhouse gas reduction targets; promoting an improved intraregional relationship between jobs and housing; allocating a lower proportion of housing need to an income category when a jurisdiction already has a disproportionately high share of households in that income category; and affirmatively furthering fair housing.
- 8) Requires each jurisdiction to submit an annual progress report to HCD regarding its progress in meeting its RHNA allocation and authorizes HCD to notify the Attorney General if it at any time finds a jurisdiction out of compliance with its housing element.

This bill:

- 1) Imposes new planning requirements on local governments, as follows:
 - a) Defines "very high fire risk areas" to be the very high fire hazard severity zone (VHFHSZ) in both the State Responsibility Area (SRA) and the Local Responsibility Area.
 - b) Requires each city or county, upon the next revision of the housing element or local hazard mitigation plan on or after January 1, 2020, whichever occurs first, to review and update its safety element to include a comprehensive retrofit strategy that includes specified contents.
 - c) Requires a city or county with VHFHSZ within its jurisdiction to amend the land use element of its general plan upon the next revision of the housing element on or after January 1, 2021. This amendment of the land use element must include the locations of all VHFHSZ within the city or county, the data and analysis described in the Office of Planning and

- Research's (OPR's) most recent publication of "Fire Hazard Planning—General Plan Technical Advice Series," and other specified goals, objectives, and implementation measures.
- d) Requires, after that initial amendment to the land use element, a city or county to review upon each revision of the housing element the implementation of the wildfire risk reduction standards, as defined below, within the jurisdiction, and the designation of VHFHSZ.
 - e) Provides for review and comment on draft findings by the Board and local fire agencies on whether the city or county has implemented the standards or made adequate progress, defined to mean the city or county is taking concrete steps reasonably calculated to achieve funding and implementation of the applicable standard by December 31, 2025.
 - f) Requires OPR, on or before January 1, 2023, to develop and post on its Web site a clearinghouse of local ordinances, policies, and best practices relating to land use planning in VHFHSZ, wildfire risk reduction, and wildfire preparedness. OPR must also regularly update the clearinghouse.
- 2) Requires cities and counties, within 12 months after revision of their general plan as described above, to develop wildlife-urban interface (WUI) overlay zones in their zoning ordinances to ensure consistency with the jurisdiction's amended general plan.
 - 3) Prohibits cities and counties from approving any new residential ministerial or discretionary permits, discretionary entitlements, tentative subdivision or parcel maps, or development agreement in VHFHSZ unless the city or county finds that the project and all structures within the project are protected from wildfire risk in accordance with specified "wildfire risk reduction standards" contained in this bill, or standards adopted by a local jurisdiction that exceed those standards.
 - 4) Defines three tiers of "wildfire risk reduction standards," based on the size of the development, specifically:
 - a) For a development of any size:
 - i) Existing regulations governing defensible space, vegetation management, fuel modification and building standards promulgated by the State Fire Marshal, Building Standards Commission, and the Board;
 - ii) Preparation of a wildland fire hazard assessment and mitigation plan, as defined;
 - iii) An enforcement program established, funded, and implemented to verify ongoing compliance within jurisdiction concerning defensible

- space, vegetation management, and local fire plan/wildfire hazard mitigation plans, with specified requirements; and
- iv) Standards for fire suppression, response times and levels, water flows for firefighting, road design for equipment ingress/egress, and for identifying ignition hazards.
- b) For developments of nine or more residential dwelling units:
- i) All the standards applicable to smaller developments;
 - ii) Reasonable site-specific fire protection plans designed to protect against fire encroachment, including defensible structure layout, structure clustering, and use of natural/engineered firebreaks;
 - iii) Identification of potential on-site shelter-in-place locations;
 - iv) Mechanisms to maintain common areas/open spaces to control vegetative fuels;
 - v) A condition on the development that all parcels within the development containing structures are subject to an ongoing, permanent fee, tax, or assessment, an assessment through a homeowners' association, or a similar funding mechanism sufficient to ensure that defensible space maintenance is funded and occurs on a schedule so as to comply with this bill's requirements; and
 - vi) A finding by a city or county that the development can be reasonably accessed and served in the event of wildfire, with adequate ingress, egress, and capacity for evacuation and emergency response at the same time.
- c) For developments of 100 or more residential units, defines wildfire risk reduction standards to include:
- i) All the standards applicable to smaller developments;
 - ii) All applicable aspects of OPR's "Fire Hazard Planning" series or other equivalent standards as adopted State Fire Marshal, or conditions imposed by the city or county that provide the same practical effect; and
 - iii) Additional wildfire risk reduction standards developed by the State Fire Marshal as provided in the bill.
- 5) Deems a development in compliance with the requirements for defensible space enforcement, response time, infrastructure sufficiency, and water supplies if the city or county has made adequate progress towards achieving those standards by December 31, 2025.

- 6) Requires, on or before January 1, 2022, the State Fire Marshal, in consultation with OPR, to do all of the following, subject to the Administrative Procedures Act:
 - a) Adopt wildfire risk reduction standards that meet all of the following requirements:
 - i) Account for differences in the size of proposed developments.
 - ii) Include standards for organization and development of fire suppression operations, fire protection infrastructure, water supplies for fire fighting, and reducing structure ignition hazards from wildland fire.
 - iii) Include any additional requirements for fire hardening or similar building standards applicable to structures located in areas with restricted access or service in the event of wildfire.
 - iv) Establish specified types of community-scale risk reduction measures.
 - v) Are designed to reduce the risk of catastrophic loss due to wildfire a risk model that uses current wildfire hazard severity information known for the very high fire risk areas. The model must be able to quantify the risk for a community or parcel in a very high fire risk area through the input of mitigating factors into the model and must use the best available science and objective scientific methodologies.
 - vi) Are directly applicable to, and account for, California's climate, weather, topography, and development patterns.
 - b) Adopt standards for third-party inspection and certification of defensible space.
- 7) Requires the State Fire Marshal, by January 1, 2023, to update the maps of the VHFHSZ and identify areas where new residential development poses exceptional risk to future occupants of the development and to fire personnel and other public safety personnel that must access the development during a wildfire.
- 8) Requires the standards, regulations, and rules to be reasonable, and to be feasible and achievable for the majority of developments in that size category.
- 9) Requires, on or before January 1, 2023, the Office of Planning and Research, in collaboration with cities and counties, to identify local ordinances, policies, and best practices relating to land use planning in very high fire risk areas, wildfire risk reduction, and wildfire preparedness, and to publish and update these resources as specified.

- 10) Directs CALFIRE to distribute \$3 million annually, upon appropriation by the Legislature, to provide assistance to small jurisdictions in updating planning documents and complying with other provisions of the bill, as specified.
- 11) Directs each regional housing needs allocation plan to include as a factor the amount of land in each member jurisdiction that is within a very high fire risk area by allocating a lower proportion of housing to a jurisdiction if the jurisdiction would otherwise need to identify lands within a very high fire risk area as adequate sites to meet its housing need allocation, as specified.
- 12) Requires the regional housing needs allocation plan to further the objective of reducing development pressure within very high fire risk areas.
- 13) Clarifies that local governments may impose more stringent standards than those set out in the bill, and clarifies that a local government may issue a final subdivision map without making the findings in the bill if the tentative map or parcel map met the required standards when it was deemed complete.
- 14) Makes clarifying changes to state laws governing conservation easements of forestlands, and makes other technical and conforming changes.

COMMENTS

- 1) *Purpose of the bill.* The author states that the 2018 wildfire season eclipsed 2017 as the most destructive and deadliest year for wildfires in California. The Mendocino Complex Fire alone burned 459,123 acres to become the largest fire in California history, and even more devastating, the Camp Fire in November 2018 became California's most destructive and deadliest wildfire, causing the deaths of 86 people and destroying nearly 19,000 structures. Even as climate change worsens the hazard that fires pose to California communities, new development is increasing in fire-prone areas. This bill presents a comprehensive approach to ensuring intelligent, fire-safe development. It requires local governments to do extensive planning to identify fire risks to their communities, consistent with best practices identified by the state. More importantly, it prohibits local agencies from approving developments that aren't adequately protected from the fire hazard, while requiring local agencies to do their part by enforcing defensible space requirements. The author further states that this does not say that locals cannot develop, but it does tell them that they have to do it right. Finally, this bill provides local governments with some regulatory relief and funding to support the new duties that they need to perform under the bill. This is a balanced bill that will ensure that future development in California is fire-safe.

- 2) *Living with wildfires and other hazards.* More than three million Californians (about 7%) currently live in high-risk wildfire areas, and a 2018 study estimates a 77% increase in mean area burned by the end of the century, compared to 1961-1990. Thus, even if the state immediately stops building homes in existing wildfire areas, millions of Californians will remain at risk in existing and expanding wildfire areas. Furthermore, as *California's Fourth Climate Change Assessment: Statewide Summary Report* (OPR, Energy Commission, Natural Resources Agency, August 2018) points out, the state also faces risk from additional events such as sea-level rise. According to the report, "California must continue to evaluate climate impacts as well as to plan for adaptation and resilience."
- 3) *Where can we build?* California is currently experiencing a serious housing crisis and it is essential to expedite construction of critically needed housing units. In order to make this happen, it is important for every jurisdiction to meet its full RHNA obligation and create an environment where housing is available to Californians of all income levels. Toward this end, the 2017 housing package, as well as additional bills last year, provided both increased funding and incentives to help increase compliance with housing element law. One of these measures, AB 1397 (Low, Chapter 375, Statutes of 2017) significantly strengthened the definition of what a local government may designate as an "adequate site" for housing, to address concerns about designation of sites that were not realistic or available for residential development. By the same token, however, AB 1397 made it more difficult for localities to identify adequate sites. While well intentioned, this bill, by additionally requiring local governments to make findings of adequate wildfire prevention and protection measures before approving construction in a WUI, potentially adds to the difficulty of identifying adequate sites for housing. The state faces a difficult policy question in that it must balance protection of its residents from wildfires, sea level rise, floods, earthquakes, and other risks, against meeting the need for more housing.
- 4) *Allocation of RHNA shares.* Existing law requires each city and county in the state to meet its fair share of the total housing need in its region. This bill requires a COG to allocate a lower proportion of housing to localities within its jurisdiction that would otherwise have to identify sites in very high fire hazard areas to meet their allocation, in order to "reduce development pressure" in these areas. This raises a concern that localities in very high fire hazard areas will be granted permission to escape their RHNA obligations, thereby shifting the burden to other localities within the region. To address this concern, this bill was amended in the Senate Housing Committee to reiterate that this bill does not waive or reduce a city's or county's obligation to meet its RHNA share.

- 5) *Fulfilling RHNA obligations.* Existing law (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 planning period for all levels of income. This is intended to help ensure that a locality continues to maintain a supply of available land to accommodate the remaining unmet housing need throughout the eight-year life of the housing element, rather than only identifying adequate sites at the beginning of the cycle. Under this bill, a local government may not approve a development of 11 units or more than is located in a WUI unless it makes a finding that the development can be reasonably accessed and served in the event of a wildfire. This raises a concern that a city or county may use a WUI as an excuse to avoid approving housing permits. To clarify that failure to approve a permit in a WUI does not reduce a locality's RHNA obligation, this bill was amended in the Senate Housing Committee to reiterate that this bill does not waive or reduce a city's or county's obligation to ensure that its housing element inventory
- 6) *Bottom line.* When this bill was heard by the Senate Housing Committee in April, it included a RHNA objective to reduce development pressure in WUIs by allocating a lower proportion of housing to cities and counties in WUIs. In response to committee concerns about providing a blanket RHNA exemption to these areas, given the state's severe housing shortage, the author accepted placeholder language to allow time for further discussion. The bill was amended on the Senate Floor to add a RHNA objective of reducing development pressure in very high fire risk areas by allocating a lower RHNA share to areas if they would otherwise have to identify sites in very high fire risk areas in order to meet their allocation. The bill was further amended in the Assembly to reduce the RHNA objective to reducing development pressure in very high risk areas. It was also amended to require a city's or county's RHNA methodology to allocate a lower proportion of housing to a jurisdiction if it would otherwise have to identify sites in a very high fire risk area in order to meet its allocation.

In sum, when this bill left the Senate, it required cities and counties to *consider*, in furthering a RHNA objective to reduce development pressure in wildfire areas, making lower RHNA allocations to these jurisdictions. It also required COGs to *consider* the amount of land in each member jurisdiction that is within a very high fire risk area, when developing its methodology.

The current version of this bill instead requires cities and counties to further the RHNA objective of reducing development pressure in wildfire areas and additionally *requires* COGs to incorporate into their RHNA methodology, lower RHNA allocations for cities and counties in very high fire risk areas.

By requiring each COG to develop a RHNA methodology that allocates less housing to very high risk fire areas, this bill will effectively shift development out of cities and counties that have wildfire areas, even if the wildfire area only constitutes a small portion of the jurisdiction – likely resulting in significant increases in density in cities and counties outside fire areas.

7) *29.10(d) referral.* This bill was referred to the Housing Committee under Senate Rule 29.10. Under this rule, the Committee can hold the bill or return it to the Senate Floor for consideration.

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

POSITIONS: (Communicated to the committee before noon on Wednesday, September 11, 2019.)

SUPPORT:

American Planning Association, California Chapter
Sierra Club

OPPOSITION:

None received.

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