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**SENATE COMMITTEE ON TRANSPORTATION AND HOUSING****Senator Jim Beall, Chair****2017 - 2018 Regular**

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**Bill No:** AB 1771 **Hearing Date:** 6/26/2018  
**Author:** Bloom  
**Version:** 6/20/2018 Amended  
**Urgency:** No **Fiscal:** Yes  
**Consultant:** Erin Riches

**SUBJECT:** Planning and zoning: regional housing needs assessment

**DIGEST:** This bill makes changes to the regional housing needs assessment (RHNA) plan objectives, methodology, and distribution process.

**ANALYSIS:***Existing law:*

- 1) Requires each of California's 18 metropolitan planning organizations (MPOs) and 26 regional transportation planning agencies to prepare a long-range regional transportation plan (RTP). The RTP identifies the region's vision and goals and how they will be implemented, as well as supporting the state's goals for transportation, environmental quality, economic growth, and social equity. An RTP must be adopted every four years (every five years in air quality attainment areas).
- 2) Requires, pursuant to SB 375 (Steinberg, Chapter 728, Statutes of 2008), each MPO to prepare a sustainable communities strategy (SCS) as part of its RTP. The SCS demonstrates how the region will meet its greenhouse gas (GHG) emissions reduction targets through land use, housing, and transportation strategies. The state Air Resources Board must review the adopted SCS to confirm that it will indeed meet the regional GHG targets.
- 3) Requires every city and county to prepare and adopt a general plan, including a housing element, to guide the future growth of a community. The housing element must identify and analyze existing and projected housing needs, identify adequate sites with appropriate zoning to meet the housing needs of all income segments of the community, and ensure that regulatory systems provide opportunities for, and do not unduly constrain, housing development.

- 4) Requires local governments located within the territory of an MPO to revise their housing elements every eight years, following the adoption of every other RTP. Local governments in rural non-MPO regions must revise their housing elements every five years.
- 5) Requires each community's fair share of housing to be determined through the regional housing needs allocation (RHNA) process, which is composed of three main stages:
  - a) The Department of Finance and the Department of Housing and Community Development (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.
- 6) Requires COGs to provide specified data assumptions to HCD from each COG's projections.
- 7) Requires the housing element to contain an assessment of housing needs and an inventory of resources and constraints relevant to meeting those needs.
- 8) Requires a locality's inventory of land suitable for residential development to be used to identify sites that can be developed for housing within the planning period and that are sufficient to provide for the locality's share of the regional housing need for all income levels. Requires the inventory to provide certain information on each site, such as the general plan designation and zoning of each site and available infrastructure.
- 9) Requires the inventory of land to specify the additional development potential for each non-vacant site within the planning period and an explanation of the methodology used to determine the development potential.
- 10) Requires, where the inventory of sites does not identify adequate sites to accommodate the need for groups of all household income levels, rezoning of those sites to be completed in a specified time period. Requires this rezoning to accommodate 100% of the need for housing for very low and low-income households for which site capacity has not been identified in the inventory of sites on sites that shall be zoned to permit rental multifamily residential housing by right during the planning period.

- 11) Prohibits a local jurisdiction from reducing or permitting the reduction of the residential density, or from allowing development at a lower residential density for any parcel, unless the jurisdiction makes specified written findings.

**This bill:**

- 1) Removes the existing law requirement for COGs to seek the advice of HCD when preparing their RHNA allocation plans and instead requires COGs to consult with HCD when developing the methodology for the RHNA allocation.
- 2) Revises the statutory objectives for the RHNA allocation plan as follows:
  - a) Adds, to the existing objective requiring promotion of an improved intraregional jobs-housing relationship, provisions requiring inclusion of an improved balance between the number of low-wage jobs and the number of housing units affordable to low-wage workers in each jurisdiction.
  - b) Adds, to the existing objective requiring allocation of 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, provisions requiring an allocation of a higher proportion of housing need to an income category when a jurisdiction already has a disproportionately low share of households in that income category.
  - c) Adds a new objective to increase access to areas of high opportunity for lower-income residents, avoiding displacement and affirmatively furthering fair housing. Defines these as areas that provide pathways to better lives, including through health, education, and employment.
- 3) Adds to the information that must be distributed publicly, a requirement to explain how the methodology furthers the statutory objectives. Requires the information to be published on the COG's website.
- 4) Adds the following data requirements to the COG methodology:
  - a) Requires the methodology to further the statutory objectives, rather than be consistent with them.
  - b) Adds, to the list of factors used to develop the methodology, a requirement to include data on the number of low-wage jobs within the jurisdiction, how many housing units within the jurisdiction are affordable to workers at those wage levels, and how many jobs were added at what wage levels compared

- to how many housing units were added and at what income levels, in the last planning period.
- c) Revises one of the factors used to develop the methodology to require the percentage of existing households at each income level that are paying more than 30% and more than 50% of their income in rent.
  - d) Adds a new factor, the rate of overcrowding.
  - e) Requires the COG to specify which of the objectives each additional factor is necessary to further, should any other factors be adopted by the COG. The COG may only adopt additional factors if they do not undermine the objectives and the COG makes a finding that the factor is necessary to address specific health and safety concerns.
  - f) Requires the COG to post its explanation of how each of the factors was incorporated into the methodology, and how the methodology furthers the statutory objectives, on its website.
- 5) Requires the COG, after the public comment period on the proposed allocation methodology, and after making any revisions as a result of public comments and consultation with HCD, to post the draft allocation methodology on its website and submit it to HCD. HCD must determine within 60 days whether the methodology furthers, and does not undermine, the statutory objectives.
- 6) Requires the COG, if HCD determines that the methodology is not consistent with the statutory objectives, to take one of the following actions:
- a) Revise the methodology pursuant HCD's findings and adopt a final RHNA methodology.
  - b) Adopt a final RHNA methodology without revisions and include within its resolution of adoption written findings as to why it believes the methodology is consistent with the statutory objectives despite HCD's findings.
- 7) Requires the COG to provide notice of the adoption of the final methodology to HCD and the jurisdictions within the region, and to post notice on its website.
- 8) Allows a local government, within 45 days of the draft RHNA allocation being distributed, to appeal to the COG for a revision of the proposed RHNA

allocation. The appeal must include a statement as to why the revision is necessary to further the statutory objectives. The appeal must be limited to:

- a) Failure to consider the survey information submitted by local governments in the region to inform the methodology.
  - b) Significant and unforeseen changes in circumstances that occurred in the local jurisdiction or jurisdictions that merits a revision of the information submitted by local governments to inform the RHNA.
  - c) Failure to determine the share of RHNA pursuant to the methodology defined in state law and in a manner that furthers and does not undermine the statutory objectives.
- 9) Requires a COG to notify all other local governments in the region, as well as HCD, of all appeals, and to make all materials related to the appeals available on a public website. Provides that local governments and HCD have 45 days to comment on one or more appeals. If no appeals are filed, the draft allocation shall be deemed final.
  - 10) Requires the COG to conduct one public hearing to consider all appeals no later than 30 days after the close of the comment period after providing local governments in the region at least 21 days' notice.
  - 11) Requires the COG to specify how the appeal request does not further the objectives, should the COG indicate that the proposed revision is inconsistent with the RHNA. Specifies that the final action may require the COG, as applicable, to adjust the allocation of one or more (rather than just one) local governments that are not the subject of the appeal.
  - 12) Requires the COG, no later than 45 days after the hearing, to do both of the following:
    - a) Make a final determination that either accepts, rejects, or modifies each appeal for a revised share of the RHNA that includes written findings as to how the determination is necessary to the further statutory objectives.
    - b) Issue a final allocation plan.
  - 13) Deletes the authority of two local governments to agree to an alternative distribution of appealed housing allocations between the affected local governments.

**COMMENTS**

- 1) *Purpose.* The author states that the RHNA process plays a critical role in setting the state for housing production. While the RHNA distribution is supposed to be data-driven, unfortunately it is all too often influenced heavily by regional politics, resulting in low allocations to wealthier and often job-rich jurisdictions that could accommodate far more housing, particularly multifamily housing. The state has a number of laws on the books designed to ensure that housing gets built, but these laws generally only protect projects proposed on sites zoned for housing. When a jurisdiction gets a low RHNA number and thus has to zone very little land for housing, it frustrates the application of these laws and effectively allows that jurisdiction to remain off limits to housing construction. When the RHNA process becomes mired in politics, it can reinforce patterns of exclusion rather than achieving the fair housing and equity goals that are the fundamental underpinning of the statute. The author states that this bill provides for a more equitable, data-driven distribution of the housing need within regions, ensures greater transparency in the distribution process, and provides additional oversight to ensure that the process furthers statutory objectives.
  
- 2) *Consequences of a non-compliant housing element.* Until very recently, communities without an approved housing element have faced limited ramifications. Last year, however, the Legislature passed a comprehensive package of housing bills, which was signed into law by Governor Brown on September 29, 2017. This package included a number of bills aimed at strengthening housing element law. Specific efforts to increase compliance include:
  - a) SB 35 (Wiener, Chapter 366, Statutes of 2017) requires cities and counties to streamline housing developments that include specified percentages of affordable housing, if the city or county has not met all of its RHNA requirements. This new requirement has added additional weight to the RNHA process because the trigger for whether or not a jurisdiction must streamline is based on whether or not they have met their RNHA numbers for above moderate income (120% of AMI or above) or lower income (80% of AMI or below). Most jurisdictions have not met their lower income RNHA, meaning they must streamline projects that set aside at least 50% of units for lower-income.
  
  - b) 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.

- c) AB 72 (Chiu, Chapter 370, Statutes of 2017) authorized HCD to find a locality's housing element out of substantial compliance if it finds the locality has acted, or failed to act, in compliance with its housing element and HCD had previously found it in substantial compliance. AB 72 also authorizes HCD to refer violations of housing element law to the state Attorney General. The primary mechanism to enforce state housing law is through the judicial system. It takes a great deal of resources 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.
- 3) *Identifying realistic housing sites.* In addition to the above cited measures, AB 1397 (Low, Chapter 375, Statutes of 2017) aimed to strengthen housing element law by restricting the types of sites that a local government may identify as suitable for residential development. AB 1397 addressed concerns that the law permitted local governments to designate very small sites that cannot realistically be developed for their intended use, or designate non-vacant sites with an ongoing commercial or residential use, even though the current use is expected to continue indefinitely. Under AB 1397, identified sites must have a sufficient available water, sewer, and dry utilities supply and must be available and accessible to support housing development or be included in an existing general plan program or other mandatory program or plan.
  - 4) *Shining a light.* The author states that this bill aims to address concerns that RHNA distributions are often influenced by regional politics rather than housing need. Some key provisions of this bill that aim to make the RHNA process more data-driven, transparent, and apolitical include:
    - a) *Furthering RHNA objectives.* This bill requires the COG methodology to further the statutory RHNA objectives, rather than to just be consistent with them. It also requires COGs to publicly explain how each of the factors was incorporated into the methodology and how the methodology furthers the statutory objectives.
    - b) *Equity.* This bill adds a new statutory objective to increase access to areas of high opportunity for lower-income residents, avoiding displacement and affirmatively furthering fair housing.

- c) *Transparency.* This bill requires COGs to post all RHNA information on a public website to help ensure it is available to all affected local governments and all interested stakeholders.
  - d) *Housing need, not housing market.* This bill eliminates the existing law requirement to include the market demand for housing as a factor in developing the methodology. The sponsor states that factors such as housing need, housing burden, overcrowding, and jobs/housing fit are more objective and appropriate measures.
  - e) *Justification of RHNA appeals.* This bill requires a locality, if it disagrees with its RHNA allocation, to submit a request for a revision that includes a statement as to why the proposed allocation is not appropriate and why a revision is necessary to further the statutory objectives.
  - f) *Banning RHNA swaps.* This bill deletes the authority of two local governments to agree to an alternative distribution of appealed housing allocations between the affected local governments.
- 5) *HCD's role.* This bill removes the existing law requirements for COGs to consult with HCD when preparing their RHNA plans, and instead requires COGs to consult with HCD when developing the methodology to be used in the allocation. It also requires HCD to determine, within 60 days, whether the methodology furthers the statutory objectives. The author states that requiring COGs to work with HCD in developing the methodology is intended to ensure against HCD finding issues at the end of the process.
- 6) *Local control.* This bill includes a number of provisions intended to help preserve a measure of local control. For example, this bill provides that if HCD finds that a COG's methodology does not further the statutory objectives, the COG may keep the methodology without revisions if it makes written findings justifying its decision. It also allows COGs to apply additional factors unrelated to the statutory objectives if it deems them necessary for health and safety reasons. Additionally, this bill allows a COG to reject an appeal by a locality or to adjust the allocation of one or more localities that are not the subject of an appeal.
- 7) *SB 828.* Earlier this year, this committee heard SB 828 (Wiener), another RHNA reform bill. The primary overlaps between this bill and SB 828 are in the provisions relating to the COG methodology. The committee recommends working out these differences before the bills reach the respective Floor of each house.



8) *Opposition concerns.* The Association of Bay Area Governments states that this bill would weaken COGs and make it more difficult for COGs to craft a regional housing plan that enjoys broad support. The Sacramento Area Council of Governments states that RHNA decisions should be made at the local level, not mandated in statute. The City of Beverly Hills states that it is highly interested in collaborating with neighboring jurisdictions to construct affordable housing where it makes sense for both jurisdictions, but this bill would prevent Beverly Hills from receiving RHNA credit in such a situation.

**RELATED LEGISLATION:**

**SB 828 (Wiener, 2017)**— makes a number of changes to the RHNA process. *This bill passed out of the Assembly Housing Committee on June 20<sup>th</sup> and will be heard in the Assembly Local Government Committee on June 27<sup>th</sup>.*

**AB 686 (Santiago, 2017)**— requires a public agency to administer its programs and activities relating to housing and community development in a manner to affirmatively further fair housing. *This bill passed out of the Transportation and Housing Committee on an 11-1 vote on June 12<sup>th</sup> and is scheduled to be heard in the Judiciary Committee on June 26<sup>th</sup>.*

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

**POSITIONS: (Communicated to the committee before noon on Wednesday, June 20, 2018.)**

**SUPPORT:**

California Rural Legal Assistance Foundation (co-sponsor)  
Western Center on Law and Poverty (co-sponsor)  
Bay Area Council  
California Bicycle Coalition  
California Housing Consortium  
California Housing Partnership Corporation  
City of Santa Monica  
City of West Hollywood  
Disability Rights California  
Housing California  
Non-Profit Housing Association of Northern California

**OPPOSITION:**

Association of Bay Area Governments  
Sacramento Area Council of Governments

**-- END --**