

AMENDED IN ASSEMBLY AUGUST 20, 2018

AMENDED IN ASSEMBLY JULY 2, 2018

AMENDED IN ASSEMBLY JUNE 21, 2018

AMENDED IN SENATE MAY 25, 2018

AMENDED IN SENATE APRIL 26, 2018

AMENDED IN SENATE APRIL 16, 2018

AMENDED IN SENATE MARCH 14, 2018

**SENATE BILL**

**No. 828**

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**Introduced by Senator Wiener**

January 3, 2018

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An act to amend Sections 65584, 65584.01, and 65584.04 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

SB 828, as amended, Wiener. Land use: housing element.

(1) The Planning and Zoning Law requires a city or county to adopt a general plan for its jurisdiction that contains certain mandatory elements, including a housing element. Existing law requires a planning agency to submit a draft of the housing element to the Department of Housing and Community Development for review, as specified.

Existing law requires the department, in consultation with each council of governments, to determine the existing and projected need for housing for each region in accordance with specified requirements. Existing law requires the appropriate council of governments, or the department for a city and county that does not have a council of governments, to adopt a final regional housing need plan that allocates a share of the regional

housing need to each city, county, or city and county in accordance with certain requirements and procedures, including that a specified type of ordinance or policy that limits the number of residential building permits issued by a city or county may not be used as a justification for a determination or reduction in a jurisdiction's share of the regional housing need.

This bill would prohibit the prior underproduction of housing in a city or county from the previous cycle and stable population numbers in a city or county from the previous cycle from being used as a justification for a determination or a reduction in the jurisdiction's share of the regional housing need. ~~The bill would also require the final regional housing need plan to demonstrate government efforts to reverse racial and wealth disparities throughout a region by assigning additional weight to local governments that meet specified criteria in the distribution of the regional housing needs allocation for all income categories.~~

(2) Existing law requires, at least 26 months prior to the scheduled revision of the housing element and developing the existing and projected housing need for a region, the department to meet and consult with the council of governments regarding the assumptions and methodology to be used by the department to determine the region's housing needs. Existing law requires the council of governments to provide data assumptions from the council's projections, including, if available, specified data factors for the region, including, data relating to the percentage of renter's households that are overcrowded and vacancy rates for healthy housing market functioning and regional mobility. Existing law requires the department, after consulting with the council of governments, to determine, in writing, the data assumptions for each of the data factors provided, as well as the methodology the department will use.

This bill would additionally require the council of governments to provide data on the overcrowding rate for a comparable housing market, and would define the vacancy rate for a healthy *rental* housing market for those purposes to be considered between 5% and ~~8% of both rental and ownership housing.~~ 8%. The bill would also require the council of governments to include data on the percentage of households that are cost burdened, the rate of housing cost for a healthy housing market, and data on the projected household income growth.

This bill would require the methodology approved by the department to grant allowances to adjust for data factors relating to overcrowding,

vacancy rates, and households that are cost burdened, as described above, based on the region’s total projected households, which includes existing households as well as future projected households.

(3) By expanding the duties of local governments relating to the housing element program and the final regional housing need plan, this bill would impose a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 65584 of the Government Code is  
2 amended to read:

3 65584. (a) (1) For the fourth and subsequent revisions of the  
4 housing element pursuant to Section 65588, the department shall  
5 determine the existing and projected need for housing for each  
6 region pursuant to this article. For purposes of subdivision (a) of  
7 Section 65583, the share of a city or county of the regional housing  
8 need shall include that share of the housing need of persons at all  
9 income levels within the area significantly affected by the general  
10 plan of the city or county.

11 (2) It is the intent of the Legislature that cities, counties, and  
12 cities and counties should undertake all necessary actions to  
13 encourage, promote, and facilitate the development of housing to  
14 accommodate the entire regional housing need, and reasonable  
15 actions should be taken by local and regional governments to  
16 ensure that future housing production meet, at a minimum, the  
17 regional housing need established for planning purposes. These  
18 actions shall include applicable reforms and incentives in Section  
19 65582.1.

20 (3) The Legislature finds and declares that insufficient housing  
21 in job centers hinders the state’s environmental quality and runs  
22 counter to the state’s environmental goals. In particular, when  
23 Californians seeking affordable housing are forced to drive longer  
24 distances to work, an increased amount of greenhouse gases and

1 other pollutants is released and puts in jeopardy the achievement  
2 of the state's climate goals, as established pursuant to Section  
3 38566 of the Health and Safety Code, and clean air goals.

4 (b) The department, in consultation with each council of  
5 governments, shall determine each region's existing and projected  
6 housing need pursuant to Section 65584.01 at least two years prior  
7 to the scheduled revision required pursuant to Section 65588. The  
8 appropriate council of governments, or for cities and counties  
9 without a council of governments, the department, shall adopt a  
10 final regional housing need plan that allocates a share of the  
11 regional housing need to each city, county, or city and county at  
12 least one year prior to the scheduled revision for the region required  
13 by Section 65588. The allocation plan prepared by a council of  
14 governments shall be prepared pursuant to Sections 65584.04 and  
15 65584.05 with the advice of the department.

16 (c) Notwithstanding any other provision of law, the due dates  
17 for the determinations of the department or for the council of  
18 governments, respectively, regarding the regional housing need  
19 may be extended by the department by not more than 60 days if  
20 the extension will enable access to more recent critical population  
21 or housing data from a pending or recent release of the United  
22 States Census Bureau or the Department of Finance. If the due  
23 date for the determination of the department or the council of  
24 governments is extended for this reason, the department shall  
25 extend the corresponding housing element revision deadline  
26 pursuant to Section 65588 by not more than 60 days.

27 (d) The regional housing needs allocation plan shall be  
28 consistent with all of the following objectives:

29 (1) Increasing the housing supply and the mix of housing types,  
30 tenure, and affordability in all cities and counties within the region  
31 in an equitable manner, which shall result in each jurisdiction  
32 receiving an allocation of units for low- and very low income  
33 households.

34 (2) Promoting infill development and socioeconomic equity,  
35 the protection of environmental and agricultural resources, and  
36 the encouragement of efficient development patterns.

37 (3) Promoting an improved intraregional relationship between  
38 jobs and housing.

39 (4) Allocating a lower proportion of housing need to an income  
40 category when a jurisdiction already has a disproportionately high

1 share of households in that income category, as compared to the  
2 countywide distribution of households in that category from the  
3 most recent decennial United States census.

4 (e) For purposes of this section, “household income levels” are  
5 as determined by the department as of the most recent decennial  
6 census pursuant to the following code sections:

7 (1) Very low incomes as defined by Section 50105 of the Health  
8 and Safety Code.

9 (2) Lower incomes, as defined by Section 50079.5 of the Health  
10 and Safety Code.

11 (3) Moderate incomes, as defined by Section 50093 of the Health  
12 and Safety Code.

13 (4) Above moderate incomes are those exceeding the  
14 moderate-income level of Section 50093 of the Health and Safety  
15 Code.

16 (f) Notwithstanding any other provision of law, determinations  
17 made by the department, a council of governments, or a city or  
18 county pursuant to this section or Section 65584.01, 65584.02,  
19 65584.03, 65584.04, 65584.05, 65584.06, 65584.07, or 65584.08  
20 are exempt from the California Environmental Quality Act  
21 (Division 13 (commencing with Section 21000) of the Public  
22 Resources Code).

23 SEC. 2. Section 65584.01 of the Government Code is amended  
24 to read:

25 65584.01. For the fourth and subsequent revision of the housing  
26 element pursuant to Section 65588, the department, in consultation  
27 with each council of governments, where applicable, shall  
28 determine the existing and projected need for housing for each  
29 region in the following manner:

30 (a) The department’s determination shall be based upon  
31 population projections produced by the Department of Finance  
32 and regional population forecasts used in preparing regional  
33 transportation plans, in consultation with each council of  
34 governments. If the total regional population forecast for the  
35 projection year, developed by the council of governments and used  
36 for the preparation of the regional transportation plan, is within a  
37 range of 1.5 percent of the total regional population forecast for  
38 the projection year by the Department of Finance, then the  
39 population forecast developed by the council of governments shall  
40 be the basis from which the department determines the existing

1 and projected need for housing in the region. If the difference  
2 between the total population projected by the council of  
3 governments and the total population projected for the region by  
4 the Department of Finance is greater than 1.5 percent, then the  
5 department and the council of governments shall meet to discuss  
6 variances in methodology used for population projections and seek  
7 agreement on a population projection for the region to be used as  
8 a basis for determining the existing and projected housing need  
9 for the region. If no agreement is reached, then the population  
10 projection for the region shall be the population projection for the  
11 region prepared by the Department of Finance as may be modified  
12 by the department as a result of discussions with the council of  
13 governments.

14 (b) (1) At least 26 months prior to the scheduled revision  
15 pursuant to Section 65588 and prior to developing the existing and  
16 projected housing need for a region, the department shall meet and  
17 consult with the council of governments regarding the assumptions  
18 and methodology to be used by the department to determine the  
19 region's housing needs. The council of governments shall provide  
20 data assumptions from the council's projections, including, if  
21 available, the following data for the region:

22 (A) Anticipated household growth associated with projected  
23 population increases.

24 (B) Household size data and trends in household size.

25 (C) The percentage of renters' households that are overcrowded  
26 and the overcrowding rate for a comparable housing market. For  
27 purposes of this subparagraph:

28 (i) The term "overcrowded" means more than one resident per  
29 room in each room in a dwelling.

30 (ii) The term "overcrowded rate for a comparable housing  
31 market" means that the overcrowding rate is no more than the  
32 average overcrowding rate in comparable regions throughout the  
33 nation, as determined by the council of governments.

34 (D) The rate of household formation, or headship rates, based  
35 on age, gender, ethnicity, or other established demographic  
36 measures.

37 (E) The vacancy rates in existing housing stock, and the vacancy  
38 rates for healthy housing market functioning and regional mobility,  
39 as well as housing replacement needs. For purposes of this  
40 subparagraph, the vacancy rate for a healthy *rental* housing market

1 shall be considered between 5 and 8 percent for both rental and  
2 ownership housing. *percent.*

3 (F) Other characteristics of the composition of the projected  
4 population.

5 (G) The relationship between jobs and housing, including any  
6 imbalance between jobs and housing.

7 (H) The percentage of households that are cost burdened and  
8 the rate of housing cost burden for a healthy housing market. For  
9 the purposes of this subparagraph:

10 (i) The term “cost burdened” means the share of very low-,  
11 low-, moderate-, and above moderate-income households that are  
12 paying more than 30 percent of household income on housing  
13 costs.

14 (ii) The term “rate of housing cost burden for a healthy housing  
15 market” means that the rate of households that are cost burdened  
16 is no more than the average rate of households that are cost  
17 burdened in comparable regions throughout the nation, as  
18 determined by the council of governments.

19 (I) Projected household income growth.

20 (2) The department may accept or reject the information  
21 provided by the council of governments or modify its own  
22 assumptions or methodology based on this information. After  
23 consultation with the council of governments, the department shall  
24 make determinations in writing on the assumptions for each of the  
25 factors listed in subparagraphs (A) to (I), inclusive, of paragraph  
26 (1) and the methodology it shall use and shall provide these  
27 determinations to the council of governments. The methodology  
28 submitted by the department shall grant allowances to adjust for  
29 each of the factors listed in subparagraphs (C), (E), and (H) of  
30 paragraph (1) based on the region’s total projected households,  
31 which includes existing households as well as future projected  
32 households.

33 (c) (1) After consultation with the council of governments, the  
34 department shall make a determination of the region’s existing  
35 and projected housing need based upon the assumptions and  
36 methodology determined pursuant to subdivision (b). The region’s  
37 existing and projected housing need shall reflect the achievement  
38 of a feasible balance between jobs and housing within the region  
39 using the regional employment projections in the applicable  
40 regional transportation plan. Within 30 days following notice of

1 the determination from the department, the council of governments  
2 may file an objection to the department's determination of the  
3 region's existing and projected housing need with the department.

4 (2) The objection shall be based on and substantiate either of  
5 the following:

6 (A) The department failed to base its determination on the  
7 population projection for the region established pursuant to  
8 subdivision (a), and shall identify the population projection which  
9 the council of governments believes should instead be used for the  
10 determination and explain the basis for its rationale.

11 (B) The regional housing need determined by the department  
12 is not a reasonable application of the methodology and assumptions  
13 determined pursuant to subdivision (b). The objection shall include  
14 a proposed alternative determination of its regional housing need  
15 based upon the determinations made in subdivision (b), including  
16 analysis of why the proposed alternative would be a more  
17 reasonable application of the methodology and assumptions  
18 determined pursuant to subdivision (b).

19 (3) If a council of governments files an objection pursuant to  
20 this subdivision and includes with the objection a proposed  
21 alternative determination of its regional housing need, it shall also  
22 include documentation of its basis for the alternative determination.  
23 Within 45 days of receiving an objection filed pursuant to this  
24 section, the department shall consider the objection and make a  
25 final written determination of the region's existing and projected  
26 housing need that includes an explanation of the information upon  
27 which the determination was made.

28 SEC. 3. Section 65584.04 of the Government Code is amended  
29 to read:

30 65584.04. (a) At least two years prior to a scheduled revision  
31 required by Section 65588, each council of governments, or  
32 delegate subregion as applicable, shall develop a proposed  
33 methodology for distributing the existing and projected regional  
34 housing need to cities, counties, and cities and counties within the  
35 region or within the subregion, where applicable pursuant to this  
36 section. The methodology shall be consistent with the objectives  
37 listed in subdivision (d) of Section 65584.

38 (b) (1) No more than six months prior to the development of a  
39 proposed methodology for distributing the existing and projected  
40 housing need, each council of governments shall survey each of



1 its member jurisdictions to request, at a minimum, information  
2 regarding the factors listed in subdivision (d) that will allow the  
3 development of a methodology based upon the factors established  
4 in subdivision (d).

5 (2) The council of governments shall seek to obtain the  
6 information in a manner and format that is comparable throughout  
7 the region and utilize readily available data to the extent possible.

8 (3) The information provided by a local government pursuant  
9 to this section shall be used, to the extent possible, by the council  
10 of governments, or delegate subregion as applicable, as source  
11 information for the methodology developed pursuant to this section.  
12 The survey shall state that none of the information received may  
13 be used as a basis for reducing the total housing need established  
14 for the region pursuant to Section 65584.01.

15 (4) If the council of governments fails to conduct a survey  
16 pursuant to this subdivision, a city, county, or city and county may  
17 submit information related to the items listed in subdivision (d)  
18 prior to the public comment period provided for in subdivision  
19 (c).

20 (c) Public participation and access shall be required in the  
21 development of the methodology and in the process of drafting  
22 and adoption of the allocation of the regional housing needs.  
23 Participation by organizations other than local jurisdictions and  
24 councils of governments shall be solicited in a diligent effort to  
25 achieve public participation of all economic segments of the  
26 community. The proposed methodology, along with any relevant  
27 underlying data and assumptions, and an explanation of how  
28 information about local government conditions gathered pursuant  
29 to subdivision (b) has been used to develop the proposed  
30 methodology, and how each of the factors listed in subdivision (d)  
31 is incorporated into the methodology, shall be distributed to all  
32 cities, counties, any subregions, and members of the public who  
33 have made a written request for the proposed methodology. The  
34 council of governments, or delegate subregion, as applicable, shall  
35 conduct at least one public hearing to receive oral and written  
36 comments on the proposed methodology.

37 (d) To the extent that sufficient data is available from local  
38 governments pursuant to subdivision (b) or other sources, each  
39 council of governments, or delegate subregion as applicable, shall

1 include the following factors to develop the methodology that  
2 allocates regional housing needs:

3 (1) Each member jurisdiction's existing and projected jobs and  
4 housing relationship.

5 (2) The opportunities and constraints to development of  
6 additional housing in each member jurisdiction, including all of  
7 the following:

8 (A) Lack of capacity for sewer or water service due to federal  
9 or state laws, regulations or regulatory actions, or supply and  
10 distribution decisions made by a sewer or water service provider  
11 other than the local jurisdiction that preclude the jurisdiction from  
12 providing necessary infrastructure for additional development  
13 during the planning period.

14 (B) The availability of land suitable for urban development or  
15 for conversion to residential use, the availability of underutilized  
16 land, and opportunities for infill development and increased  
17 residential densities. The council of governments may not limit  
18 its consideration of suitable housing sites or land suitable for urban  
19 development to existing zoning ordinances and land use restrictions  
20 of a locality, but shall consider the potential for increased  
21 residential development under alternative zoning ordinances and  
22 land use restrictions. The determination of available land suitable  
23 for urban development may exclude lands where the Federal  
24 Emergency Management Agency (FEMA) or the Department of  
25 Water Resources has determined that the flood management  
26 infrastructure designed to protect that land is not adequate to avoid  
27 the risk of flooding.

28 (C) Lands preserved or protected from urban development under  
29 existing federal or state programs, or both, designed to protect  
30 open space, farmland, environmental habitats, and natural resources  
31 on a long-term basis.

32 (D) County policies to preserve prime agricultural land, as  
33 defined pursuant to Section 56064, within an unincorporated area.

34 (3) The distribution of household growth assumed for purposes  
35 of a comparable period of regional transportation plans and  
36 opportunities to maximize the use of public transportation and  
37 existing transportation infrastructure.

38 (4) The market demand for housing.

39 (5) Agreements between a county and cities in a county to direct  
40 growth toward incorporated areas of the county.

- 1 (6) The loss of units contained in assisted housing developments,  
2 as defined in paragraph (9) of subdivision (a) of Section 65583,  
3 that changed to non-low-income use through mortgage prepayment,  
4 subsidy contract expirations, or termination of use restrictions.
- 5 (7) High-housing cost burdens.
- 6 (8) The housing needs of farmworkers.
- 7 (9) The housing needs generated by the presence of a private  
8 university or a campus of the California State University or the  
9 University of California within any member jurisdiction.
- 10 (10) Any other factors adopted by the council of governments.
- 11 (e) The council of governments, or delegate subregion, as  
12 applicable, shall explain in writing how each of the factors  
13 described in subdivision (d) was incorporated into the methodology  
14 and how the methodology is consistent with subdivision (d) of  
15 Section 65584. The methodology may include numerical weighting.
- 16 (f) The following criteria shall not be a justification for a  
17 determination or a reduction in a jurisdiction's share of the regional  
18 housing need:
- 19 (1) Any ordinance, policy, voter-approved measure, or standard  
20 of a city or county that directly or indirectly limits the number of  
21 residential building permits issued by a city or county.
- 22 (2) Prior underproduction of housing in a city or county from  
23 the previous regional housing need allocation, as determined by  
24 each jurisdiction's annual production report submitted pursuant  
25 to subparagraph (H) of paragraph (2) of subdivision (a) of Section  
26 65400.
- 27 (3) Stable population numbers in a city or county from the  
28 previous regional housing needs cycle.
- 29 (g) In addition to the factors identified pursuant to subdivision  
30 (d), the council of governments, or delegate subregion, as  
31 applicable, shall identify any existing local, regional, or state  
32 incentives, such as a priority for funding or other incentives  
33 available to those local governments that are willing to accept a  
34 higher share than proposed in the draft allocation to those local  
35 governments by the council of governments or delegate subregion  
36 pursuant to Section 65584.05.
- 37 (h) Following the conclusion of the 60-day public comment  
38 period described in subdivision (c) on the proposed allocation  
39 methodology, and after making any revisions deemed appropriate  
40 by the council of governments, or delegate subregion, as applicable,

1 as a result of comments received during the public comment period,  
2 each council of governments, or delegate subregion, as applicable,  
3 shall adopt a final regional, or subregional, housing need allocation  
4 methodology and provide notice of the adoption of the  
5 methodology to the jurisdictions within the region, or delegate  
6 subregion as applicable, and to the department.

7 (i) (1) It is the intent of the Legislature that housing planning  
8 be coordinated and integrated with the regional transportation plan.  
9 To achieve this goal, the allocation plan shall allocate housing  
10 units within the region consistent with the development pattern  
11 included in the sustainable communities strategy.

12 (2) The final allocation plan shall ensure that the total regional  
13 housing need, by income category, as determined under Section  
14 65584, is maintained, and that each jurisdiction in the region  
15 receive an allocation of units for low- and very low income  
16 households.

17 (3) The resolution approving the final housing need allocation  
18 plan shall demonstrate that the plan is consistent with the  
19 sustainable communities strategy in the regional transportation  
20 plan.

21 ~~(j) (1) It is the intent of the Legislature that housing planning~~  
22 ~~reduce racial and wealth disparities throughout a region. To achieve~~  
23 ~~this goal, the allocation plan shall assign additional weight to local~~  
24 ~~governments that meet the following criteria in subparagraphs (A)~~  
25 ~~and (B) in the distribution of the regional housing needs allocation~~  
26 ~~for all income categories, in particular housing needs allocations~~  
27 ~~for low- and very low income households:~~

28 ~~(A) A local government with median employed household~~  
29 ~~incomes above the 50th percentile for the region.~~

30 ~~(B) A local government that either contains a major regional~~  
31 ~~job center, as determined by the council of governments, or~~  
32 ~~contains high-quality public transportation for the region, such as~~  
33 ~~a major transit stop or stops along a high-quality transit corridor,~~  
34 ~~as defined in Section 21155 of the Public Resources Code, that~~  
35 ~~connects to a regional job center.~~

36 ~~(2) The resolution approving the final housing need allocation~~  
37 ~~plan shall demonstrate government efforts to reduce racial and~~  
38 ~~wealth disparities throughout a region by assigning additional~~  
39 ~~weight to local governments that meet the criteria in subparagraphs~~  
40 ~~(A) and (B) of paragraph (1) in the distribution of the regional~~

1 ~~housing needs allocation for all income categories, in particular~~  
2 ~~housing needs allocations for low- and very low income~~  
3 ~~households.~~

4 SEC. 4. No reimbursement is required by this act pursuant to  
5 Section 6 of Article XIII B of the California Constitution because  
6 a local agency or school district has the authority to levy service  
7 charges, fees, or assessments sufficient to pay for the program or  
8 level of service mandated by this act, within the meaning of Section  
9 17556 of the Government Code.

O