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

Bill No:	SB 12	Hearing Date:	4/29/2021
Author:	McGuire		
Version:	12/7/2020		
Urgency:	No	Fiscal:	Yes
Consultant:	Erin Riches		

SUBJECT: Local government: planning and zoning: wildfires

DIGEST: This bill imposes certain fire hazard planning responsibilities on local governments; requires cities and counties to make specified findings on fire standards prior to permitting development in very high fire hazard severity zones (VHFHSZ); and incorporates fire hazard planning into regional housing needs allocation (RHNA) objectives and methodology.

ANALYSIS:

Existing law:

Fire hazard severity zones

- 1) Requires the Board of Fire and Forestry Protection (Board) to identify lands for which the state is responsible for the prevention and suppression of fires. These lands are known as the State Responsibility Area (SRA).
- 2) Requires local agencies to designate, upon CalFIRE recommendation, areas not in the SRA where a local agency, city, county, or district is responsible for fire protection. These areas are known as Local Responsibility Areas (LRAs).
- 3) Requires CalFIRE to identify moderate, high, and very high fire hazard severity zones in the SRA, as well as very high fire hazard severity zones (VHFHSZ) in LRAs.

Housing elements and regional housing need allocations

- 4) Requires every city and county to prepare and adopt a general plan, including at minimum a land use element, circulation element, housing element, conservation element, open space element, noise element, and safety element, to guide the future growth of the community.

- 5) Requires the housing element to identify and analyze existing and projected housing needs and to identify adequate sites with appropriate zoning to meet the housing needs of all income levels in the community.
- 6) Provides that each jurisdiction's fair share of housing be determined through the regional housing needs allocation (RHNA) process, which is composed of three main stages: the Department of Finance and Department of Housing and Community Development (HCD) develop regional housing need estimates; councils of government (COGs) allocate housing within each region based on these estimates; and cities and counties incorporate their allocations into their housing elements.
- 7) Requires the housing element to include an assessment of housing needs and an inventory of resources and constraints relevant to meeting those needs. 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.
- 8) Requires, where the inventory of sites does not identify adequate sites to accommodate the need for all groups at all income levels, for rezoning of those sites to be completed within a specified time.
- 9) Prohibits a local jurisdiction from reducing or allowing 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.
- 10) Requires each jurisdiction's RHNA plan to further five statutory objectives:
 - a) Increasing the housing supply and the mix of housing types, tenure, and affordability in all cities and counties in the region in an equitable manner.
 - b) Promoting infill development and socioeconomic equity, protecting environmental and agricultural resources, encouraging efficient development patterns, and achieving the state's greenhouse gas reduction targets.
 - c) Promoting an improved intraregional relationship between jobs and housing.
 - d) 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.
 - e) Affirmatively furthering fair housing.

This bill:

RHNA and housing elements

- 1) Revises the RHNA methodology, beginning in the seventh housing element cycle, to require each region to allocate a lower proportion of housing to a city or county if it would otherwise need to identify lands within VHFHSZ as adequate sites in order to meet its RHNA, as specified.
- 2) Requires each RHNA plan, beginning in the seventh housing element cycle, to further the objective of promoting resilient communities, including reducing development pressure within VHFHSZ.

Local planning requirements

- 3) Imposes new planning requirements on local governments, as follows:
 - a) Defines “very high fire risk areas” to be the VHFHSZ in both the SRA and in LRAs.
 - b) Requires each city or county, upon the next revision of its housing element or local hazard mitigation plan, to update its safety element to include a comprehensive retrofit strategy to reduce the risk of property loss and damage during wildfires, as specified.
 - c) Requires a city or county with a VHFHSZ within its jurisdiction to amend its land use element, upon the next revision of its housing element, to 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 a city or county, after the initial amendment to the land use element, to review and make written findings, upon each revision of its housing element, regarding the implementation of the wildfire risk reduction standards within the jurisdiction and the designation of VHFHSZ.
 - e) Provides for review and comment on the draft findings in (d) by the Board Board and local fire agencies regarding whether the city or county has implemented the standards or made adequate progress, as specified. Requires the Board and CalFIRE to notify the city or county if it is not in compliance, and authorizes the Board to notify the Attorney General.
 - f) Requires OPR to develop and post on its Web site a clearinghouse of local ordinances, policies, and best practices relating to land use planning in the VHFHSZ, wildfire risk reduction, and wildfire preparedness, as specified.

- 4) Requires each city and county, within 12 months of revising its general plan pursuant to this bill, to develop very high fire risk overlay zones in its zoning ordinances to be consistent with its amended general plan.
- 5) Prohibits a city or county from approving any new residential ministerial or discretionary permits, discretionary entitlements, tentative subdivision or parcel maps, or development agreement in VHFHSZ unless it finds that the project and all structures within the project are protected from wildfire risk in accordance with the “wildfire risk reduction standards” adopted pursuant to this bill, or standards adopted by a local jurisdiction that exceed those standards. Provides that this prohibition shall not be interpreted to waive or reduce a city’s or county’s obligations relating to its housing element inventory of adequate sites for housing.

Wildfire risk reduction standards

- 6) 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 (SFM), the California Building Standards Commission (CBSC), and the Board;
 - ii) Preparation of a wildland fire hazard assessment and mitigation plan, as specified;
 - iii) An enforcement program to verify ongoing compliance within the jurisdiction concerning defensible space, vegetation management, and fuel modification requirements, as well as local fire or wildfire hazard mitigation plans, as specified; and
 - iv) Standards for fire suppression, response times and levels, water flows for firefighting, road design for equipment ingress and egress, and identification of ignition hazards.
 - b) For a development of nine or more residential dwelling units:
 - i) All the standards applicable to smaller developments;
 - ii) A reasonable, site-specific, fire protection plan 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 and open spaces to control vegetative fuels;

- v) A condition on the development that all parcels within it that contain 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, based on substantial evidence, 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 a development of 100 or more residential units:
- 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 by the SFM, or conditions imposed by the city or county that provide the same practical effect; and
 - iii) Additional wildfire risk reduction standards developed by the SFM pursuant to this bill.

State Fire Marshal

- 7) Requires the SFM, on or before January 1, 2023, 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 (see #6 above). For developments of 100+ units, the SFM shall incorporate all applicable recommendations of OPR's "Fire Hazard Planning" series.
 - ii) Include standards for organization and development of fire suppression operations, fire protection infrastructure, water supplies for firefighting, 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 community-scale risk reduction measures, as specified.
 - v) Are designed to reduce the risk of catastrophic loss due to wildfire based upon a risk model that uses current wildfire hazard severity information known for the very high fire risk areas, as specified.
 - 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.
- 8) Requires the SFM, by January 1, 2024, to update the maps of 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.
- 9) Requires the standards, regulations, and rules to be reasonable, and to be feasible and achievable for the majority of developments in that size category.

Other

- 10) Requires OPR, on or before January 1, 2023, 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.
- 11) Establishes a Wildfire Risk Reduction Planning Supports Program under CalFIRE, upon appropriation by the Legislature, to provide assistance in the form of grants to small jurisdictions in updating planning documents and complying with other provisions of the bill, as specified.
- 12) Specifies that the Board's fire safety regulations shall apply to the perimeters and access from the perimeters, rather than including the roads. Also requires the Board regulations to conform as nearly as practicable to the SFM's wildfire risk reduction standards adopted pursuant to this bill.

COMMENTS

- 1) *Author's statement.* "California's largest, most destructive, and deadly wildland fires have all taken place in the last decade – with over 38,000 homes and structures destroyed by California wildfires since 2015. As climate change deepens and the hots grow hotter, the hazard wildfire poses to California communities is greater than ever before. We must take decisive action now to save lives. SB 12 presents a comprehensive approach to ensuring data driven, fire-safe development. It does not say that communities cannot develop, but does tell them that they have to do it safely using the new and aggressive wildfire risk reduction standards. SB 12 requires local governments to do extensive planning to identify fire risks to their communities. To ensure that local governments have the information they need to do this planning, it requires OPR and the State Fire Marshal to develop best practices and update maps relating to wildfire risk reduction and preparedness. Importantly, SB 12 prohibits local agencies from approving developments that are not adequately

protected from fire hazards and do not meet the new standards established in this bill. Finally, SB 12 creates the Wildfire Risk Reduction Planning Support Grants Program to assist jurisdictions to implement the planning activities the bill requires.”

- 2) *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 regional housing obligation and to create an environment where housing is available to all Californians of all income levels. Toward this end, the Legislature has enacted multiple bills over the past several years to provide both funding and incentives to help increase compliance with housing element law. The state faces a difficult policy question in that it must balance the protection of its residents from wildfires, sea level rise, floods, earthquakes, and other risks, against meeting the need for more housing.
- 3) *Fire hazard severity zones.* Every five years, the Board designates the SRA. Within SRA lands, CalFIRE designates moderate, high, and very high fire hazard severity zones (VHFHSZ). After the 1991 Oakland-Berkeley fires, the Legislature required CalFIRE to also designate VHFHSZ in LRAs. Although these maps are required to be updated every five years, current maps date back to 2007. Landowners in the SRA and in LRA designated VHFHSZ must follow specified fire prevention practices and meet standards developed by the Board. These practices and standards include maintaining defensible space of 100 feet around structures, performing certain activities to reduce the amount of flammable material near and on structures, and meeting specific building standards developed by CalFIRE and HCD that help structures withstand ignition and reduce fire risk (see Comment #4 below). This bill imposes new planning requirements on localities in LRA designated VHFHSZ.
- 4) *Chapter 7A standards.* In 2005, the CBSC approved the SFM’s emergency regulations that amended the California Building Code to establish Chapter 7A, Materials and Construction Methods for Exterior Wildfire Exposure (Chapter 7A standards). These mandatory standards took effect on July 1, 2008, and have been updated periodically since then. Any new building constructed in any level of fire hazard severity zone within the SRA, or in any LRA designated VHFHSZ, must comply with the Chapter 7A standards. In addition, local agencies can choose to require ancillary buildings, ancillary structures, and detached accessory structures to meet the Chapter 7A standards. These standards are intended to ensure that the exterior of the structure is ignition-resistant and can resist the entry of flying embers and fire radiation during a wildfire. Requirements include measures such as fire-retardant-treated wood

and shingles; wire mesh coverings on all ventilation openings; exterior glazing on all windows; and non-combustible decking material.

It is clear that the Chapter 7A standards are making a difference. A 2019 *Sacramento Bee* article noted that in the Camp Fire, about 51% of the single-family homes built after 2008 were undamaged; in contrast, only 18% of those built prior to 2008 were undamaged.¹ Data provided to the committee by CalFIRE indicates that of the homes affected by the seven largest 2017 and 2018 wildfires (Atlas, Camp, Carr, Nuns, Thomas, Tubbs, and Woolsey), about 46% of homes built prior to 2009 were undamaged, compared to about 62% of homes built after 2009.

- 5) *RHNA and housing element provisions.* This bill is largely identical to SB 182 (Jackson, 2020), which was vetoed (see Comment #9 below). This bill includes several provisions relating to cities' and counties' obligations to meet their RHNA obligations. First, it adds a new objective, beginning with the seventh housing element cycle, to the five statutory objectives that a RHNA plan must further. (See "Existing Law, #10 above). SB 182 included a RHNA objective of "reducing development pressure within very high fire risk areas." To address concerns raised by this committee that this objective could be used by a jurisdiction that is partially or fully located in a fire area to avoid its RHNA obligation, the language was broadened in the final version of SB 182 to "Promoting resilient communities. Furthering this objective shall include reducing development pressure within very high fire risk areas." That final language is included in this bill.

Second, this bill requires a COG to allocate a lower proportion of housing to cities and counties within its jurisdiction if they would otherwise have to identify sites in very high fire hazard areas in order to meet their RHNA obligation, with the intent to "reduce development pressure" in these areas. This committee expressed concern during SB 182 discussions that this could lead localities in VHFHSZ to use this bill to escape their RHNA obligations altogether, thereby shifting the burden to other cities and counties within the region. To address this concern, the final version of SB 182 included language clarifying that the requirements do not waive or reduce a city's or county's obligation to meet its RHNA obligation. That final language is included in this bill.

¹ Dale Kasler and Philip Reese, "'The Weakest Link:' Why Your House May Burn While Your Neighbor's Survives the Next Wildfire," *Sacramento Bee* (April 11, 2019), <https://www.sacbee.com/news/california/fires/article227665284.html>.

Finally, this bill prohibits a city or county from approving a development of nine units or more located in VHFHZ unless, among other things, it makes a finding that the development can be reasonably accessed and served in the event of a wildfire. This committee expressed concern during SB 182 discussions that this provision might be used as an excuse by a city or county to avoid approving housing permits. To address these concerns, the final version of SB 182 included language clarifying that the requirements do not waive or reduce a city's or county's obligation to ensure that its housing element inventory accommodates, at all times throughout the housing planning period, its remaining share of its regional housing need. That final language is included in this bill.

- 6) *Board of Forestry and Fire Protection regulations.* Recent legislation (SB 901, Dodd, Chapter 626, Statutes of 2018) required the Board to update its State Fire Safe Regulations. In addition, as of July 1, 2021, the regulations will expand beyond the SRA to also apply to LRA designated VHFHSZ. The March 15, 2021 draft Board regulations propose to apply a set of stringent road standards to all new roads, as well as existing public and private roads when approval is sought for the creation of three or more new parcels, zoning changes that increase the intensity of land use, or application for a change in use permit that proposes to increase use intensity or density. The draft regulations also entirely prohibit construction where access is provided by a road that does not meet the minimum standards for a 14-foot width or does not have turnouts every 400 feet, among other conditions. Many local agencies are deeply concerned that the final Fire Safe Regulations will require prohibitively expensive upgrades to many miles of existing roads. They are also concerned that, lacking information on how many roads qualify as substandard, the BOF may adopt regulations that effectively render large swaths of the state off-limits to construction, including wildfire rebuilds.

This bill would limit the Board regulations to the buildings on a parcel, instead of additionally regulating access along public roads to the parcel. The Committee on Governance & Finance analysis notes that this interpretation is consistent with how the Board historically interpreted its authority; until 2020, the Board approved local ordinances that included exemptions for existing roads. This bill would move the Board regulations back to the pre-2020 interpretation.

This bill also requires the Board regulations to conform as nearly as practicable to the wildfire risk reduction standards established pursuant to this bill, in order to ensure consistency and prevent conflict between the Board regulations and the SFM regulations. This could result in the Board regulations needing to be

amended to match the tiers of development size in this bill (e.g., 1-8 units, 9-99 units, and 100+ units). Some stakeholders have expressed concern that such an amendment would result in weakened requirements for smaller projects.

- 7) *Large residential developments.* This bill defines three tiers of “wildfire risk reduction standards,” based on the size of the development: 1-8 residential units, 9-99 residential units, and 100+ residential units. Developments of 100+ units must meet all the standards applicable to smaller developments, plus additional wildfire risk reduction standards developed by the SFM as provided in this bill. The standards for developments of 100+ units must incorporate all applicable recommendations included in OPR’s most recent publication of “Fire Hazard Planning-General Plan Technical Advice Series,” or conditions adopted by the city or county that provide the same practical effect.

OPR’s existing fire hazard planning technical advice² includes a recommendation to “[a]void, where feasible, approving new development in areas subject to wildfire risk. If avoidance is not feasible, condition such new development on implementation of measures to reduce risks associated with that development.” The most recent draft of the revised technical advice³ further directs locals to increase the resilience of existing development in high-risk areas, prioritize infill development, and avoid expanding new development in high-risk areas. The draft states that local agencies “can consider avoiding placement of new land uses or new growth designations that are in or near high fire hazard severity areas,” including all or portions of high fire hazard severity zones or VHFHSZ; areas mapped as high or extreme wildfire threat on CalFIRE’s threat maps; and specific sites or areas within the planning area that technical studies or fire behavior modeling demonstrate would place new development at unreasonable risk to extreme and catastrophic wildfire events.

A coalition led by the California Building Industry Association (CBIA) strongly opposes this bill’s requirement to incorporate the OPR technical advice. CBIA points out that while this bill only applies to the SRA and to the VHFHSZ, the technical advice also includes high and extreme fire areas. CBIA states that requiring incorporation of the OPR technical advice, therefore, effectively expands the reach of this bill beyond the SRA and VHFHSZ. CBIA states concern that requiring the OPR recommendations to be incorporated in the wildfire standards for 100+ units will result in large amounts of developable

² Governor’s Office of Planning and Research, *Fire Hazard Planning Technical Advisory: General Plan Technical Advice Series* (May 2015), https://opr.ca.gov/docs/Final_6.26.15.pdf.

³ Governor’s Office of Planning and Research, *Fire Hazard Planning Technical Advisory: General Plan Technical Advice Series:2020 Update* (Public Review Draft, November 2020), https://opr.ca.gov/docs/20201109-Draft_Wildfire_TA.pdf.

land being designated as unavailable for housing – at a time when the state is sorely behind in meeting its housing obligations.

The Committee on Governance & Finance analysis notes that this bill provides that the wildfire risk reduction standards “shall be reasonable, and shall be feasible and achievable for the majority of developments” in each tier. It seems dubious that the SFM could adopt standards that ban all development, yet still meet the ‘reasonable, feasible, and achievable’ criteria. Further, this bill places the wildfire risk reduction standards under the Administrative Procedures Act, a lengthy and transparent process that provides ample opportunities for proper consideration of comments from stakeholders. Finally, the analysis also notes that because the OPR guidance is the only difference between the second and third tiers, removing the OPR guidance would mean that developments of 100 or more units would not have to meet any more stringent requirements than developments of 9-99 units.

The committee may wish to consider amending this bill to help strike a balance between effectively designating land unavailable for large housing developments, but ensuring that large developments meet some level of additional requirements over smaller developments.

- 8) *Opposition concerns.* In addition to the concerns noted in #7 above, CBIA argues that this bill “would give the OPR excessive control over the state’s decision making process with regards to planning for future housing needs.” The coalition notes OPR’s disclaimer that the document should not be construed as legal advice, and that it is not the intent of the Legislature to give OPR any operating or regulatory powers over land use.
- 9) *SB 182 redux.* This bill is largely identical to SB 182 of 2020, except that this bill:
 - a) Requires primary and secondary routes for simultaneous evacuation and fire response, instead of requiring “adequate ingress and egress.”
 - b) Provides a longer period for local governments to demonstrate adequate progress towards meeting the fire response standards, water infrastructure requirements, and defensible space enforcement programs.
 - c) Adds changes to the statute relating to the Board regulations.
 - d) Delays implementation of the RHNA provisions until the seventh housing element cycle.
 - e) Delays other implementation dates based on the later introduction of this bill.

The Governor's veto message for SB 182 stated that "this bill creates inconsistencies, duplicates existing requirements, creates a loophole for regions to not comply with their housing requirements, fails to account for consequences that could increase sprawl, and places significant cost burdens on the state." The Governor's message further stated that "[w]ildfire resilience must become a more consistent part of our land use and development decisions. However, it must be done while meeting our housing needs."

- 10) *Triple referral.* Due to the COVID-19 Pandemic and the unprecedented nature of the 2021 Legislative Session, all Senate Policy Committees are working under a compressed timeline. This timeline does not allow this bill to be referred and heard by more than two committees as a typical timeline would allow. In order to fully vet the contents of this measure for the benefit of Senators and the public, this analysis includes information from the third committee included in the original referral. This bill was also referred to the Governance and Finance Committee, which passed it out on a 5-0 vote on March 25, 2021.

According to the Senate Natural Resources & Water Committee:

"The Senate Committee on Natural Resources and Water generally exercises jurisdiction over departments, commissions and boards within the California Natural Resources Agency, including CALFIRE and the Board. As noted in a previous section, this bill, by proposing to qualify 'access' to 'access from the perimeters' in PRC 4290, appears to significantly limit and undercut the Board's current draft regulations that seek to implement fire safe standards for roadways, including turnout and width requirements, between parcels to help provide for evacuation in the event of a wildfire in very high fire risk areas. Given the need to provide for local planning and capacity to prepare for the likelihood of wildfire in very high fire risk areas, the proposed Wildfire Risk Reduction Planning Support Grants Program for the approximately 32 counties that qualify appears to have merit. In the proposed subdivision (g) of PRC 4123.6, a reference to the Government Code should be added."

The author is continuing to work with the Natural Resources & Water Committee to address their concerns.

RELATED LEGISLATION:

SB 63 (Stern, 2021) — makes multiple changes to existing law to enhance fire prevention efforts by CalFIRE, including, among other things, expanding the areas

where enhanced fire safety building standards apply. *This bill will also be heard in Housing Committee today.*

SB 182 (Jackson, 2020) — would have imposed certain fire hazard planning responsibilities on local governments and would have required cities and counties to make specified findings on fire standards prior to permitting development in the VHFHSZ. Also would have required each COG to determine, based on data-driven analysis, whether or not it should provide lower RHNA allocations to cities and counties in the VHFHSZ. *This bill was vetoed by the Governor.*

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

POSITIONS: (Communicated to the committee before noon on Friday, April 23, 2021.)

SUPPORT:

American Planning Association, California Chapter
California Fire Chiefs Association
Catalysts
City of Lafayette
Fire Districts Association of California
Local Government Commission
National Fire Protection Association
Sonoma Land Trust
Tree Care Industry Association

OPPOSITION:

Associated General Contractors
CalChamber
California Association of Realtors
California Builders Alliance
California Building Industry Association
California Business Properties Association
California Chamber of Commerce
California Forestry Association
El Dorado County Chamber of Commerce
El Dorado Hills Chamber of Commerce
Elk Grove Chamber of Commerce
Folsom Chamber of Commerce
Rancho Cordova Chamber of Commerce

Roseville Area Chamber of Commerce
Sacramento Regional Builders Exchange
The Two Hundred
United Chamber Advocacy Network
Yuba Sutter Chamber of Commerce

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