

SENATE THIRD READING
SB 8 (Skinner)
As Amended August 26, 2021
Majority vote

SUMMARY

Extends the sunset on the Housing Crisis Act of 2019 (HCA) by five years, clarifies demolition and replacement provisions, and makes other changes.

Major Provisions

- 1) Extends the ability for projects to apply under the HCA by five years, from January 1, 2025, to January 1, 2030, and gives those projects until January 1, 2034 to utilize the provisions of the HCA.
- 2) Specifies the definition of "housing development project" for the purposes of the HCA to include both discretionary and ministerial projects, as well as projects to construct single family dwelling units. Further specifies that if a city did not apply the HCA to a ministerial project before the effective date of SB 8, they will not be subject to liability for not doing so.
- 3) Clarifies that appeals and public meetings related to density bonus law are counted for the purpose of the five hearing limit in the HCA, and specifies "hearing" does not include an appeal related to a legislative approval required for a proposed housing development project.
- 4) Clarifies that the HCA allows density restrictions, such as urban growth boundaries or conservation actions, that are adopted by initiative, so long as there is no net loss of housing capacity.
- 5) Extends by one year the period for 100% affordable housing projects to utilize the provisions of the HCA, from 2.5 years to 3.5 years, after receiving its final approval.
- 6) Provides, regarding the HCA's demolition and replacement provisions, that:
 - a) The replacement requirements must be followed, despite local density requirements that may be in conflict;
 - b) Any existing occupants that are required to leave their units must be allowed to return at their prior rental rate if the demolition does not proceed and the property is returned to the rental market;
 - c) Relocation and right-of-first-refusal requirements no longer apply to occupants of any protected units that are moderate-income or high-income households; and
 - d) The right of first refusal provided to occupants of protected units would not apply in the following circumstances:
 - i) In a development project that consists of a single residential unit located on a site where a single protected unit is being demolished.
 - ii) In units in a housing development in which 100% of the units, exclusive of a manager's unit or units, are reserved for lower income households, and the existing

residents of the protected unit would be precluded from occupying the new units based on requirements of one or more funding source of the housing development.

COMMENTS

Planning for and Approval of Housing: Planning for and approving new housing is mainly a local responsibility. The California Constitution allows cities and counties to "make and enforce within its limits, all local, police, sanitary and other ordinances and regulations not in conflict with general laws." It is from this fundamental power (commonly called the police power) that cities and counties derive their authority to regulate behavior to preserve the health, safety, and welfare of the public – including land use authority. Cities and counties enforce this land use authority through zoning regulations, as well as through an "entitlement process" for obtaining a building permit. In most cities, the entitlement process requires multiple discretionary decisions regarding the subdivision of land, environmental review per the California Environmental Quality Act (CEQA), design review, and project review through such bodies as a planning commission and city council. These processes are often time consuming, redundant, and risky. Additionally, they vary greatly between jurisdictions. Both of these factors make it very difficult for smaller, less well-resourced developers to feasibly develop moderate-density housing.

Housing Crisis Act of 2019 (HCA): In response to the state's ongoing housing crisis, the Legislature enacted SB 330 (Skinner), Chapter 654, Statutes of 2019. The HCA had several main components, including but not limited to the following:

- 1) Maintaining the amount of development capacity in the state, by prohibiting certain local actions that would reduce housing capacity;
- 2) Increasing certainty for developers, by prohibiting a local agency from applying new rules or standards to a project after a preliminary application containing specified information is submitted;
- 3) Facilitating a timely approval process, by establishing a cap of five hearings that can be conducted on a project that complies with objective local standards in place at the time a development application is deemed complete; and
- 4) Ensuring there is no reduction of housing in the state, especially affordable housing, by establishing anti-demolition and anti-displacement protections. Under the HCA, projects cannot require the demolition of housing unless the project creates at least as many new homes, and cannot demolish affordable housing units protected by law unless the project replaces the units and allows existing residents to occupy their units until six months before construction starts. The developer must also provide relocation assistance and a right of first refusal to the residents in the new development at affordable rates.

This bill proposes several changes to the HCA. The most substantial change is the proposed extension of the HCA's sunset in two ways. First, that applicants for a housing development have another five years, to January 1, 2030, to submit an application for which the provisions of the HCA will apply. Second, that the HCA itself will no longer be in effect as of January 1, 2034 – meaning that even the last projects that submit by the deadline have four years to get their approvals utilizing the provisions of the HCA.

The HCA has only been in effect for 20 months – 16 of which have been during a global pandemic. As such, it is very difficult to determine its effectiveness and need for extension. Conversely, the original five-year sunset is likely too short to produce the systematic change envisioned by the bill, which merits its extension. Either way, given the substantial mismatch between supply and demand for housing, it is unlikely that the state's housing crisis will be resolved by 2025 – or even 2030.

Other proposed changes to the HCA are in response to challenges that have arisen in implementing the bill – including discrepancies in the intent of the author and interpretations of the law by the Department of Housing and Community Development, as well as local agencies. This includes language to specify that the HCA applies to both discretionary and ministerial projects, and to projects to construct single dwelling units.

A final set of changes are proposed to the HCA's anti-demolition provisions, as described above. HCA imposed new requirements to provide replacement, relocation, and right of first refusal to protect the existing housing stock and the residents who lived in those units. Previously, the state had no requirement that demolished units be replaced, despite our housing crisis. Additionally, the state did not have requirements to provide support for those displaced by these demolitions, including relocation and right of first refusal.

This bill makes changes to these provisions to limit their application in certain circumstances. First, it would remove the relocation and right of first refusal provisions for moderate- and high-income residents of demolished units. Additionally, the bill would remove the right of first refusal for residents of demolished units when the project is a new single family home replacing an existing one, or in the instance when the existing residents do not qualify for the units being built due to funding parameters – such as when the new units are supportive housing for the formerly homeless.

According to the Author

"California continues to face a severe housing shortage and affordability crisis. Rent and home prices remain too high because we've failed to build enough housing for decades. The good news is SB 330, the Housing Crisis Act of 2019, is working, and more housing is getting built. However, the Act is scheduled to expire in 2025. SB 8 allows the success of SB 330 to continue for five additional years by extending SB 330's provisions until 2030, and adding clarifying language to ensure that the bill's original intent of streamlining the production of housing that meets a local jurisdiction's existing zoning and other rules is met."

Arguments in Support

Supporters of this bill include groups that support housing production as part of the solution to the housing crisis. They argue that the HCA is an important tool to address the state's housing crisis, and that extending the sunset is therefore justified. They also support the clarifying changes made. For example, according to the League of Women Voters, this bill is "an important step toward preventing local jurisdictions from reducing housing capacity and ameliorating California's housing crisis."

Arguments in Opposition

Opponents of this bill are largely local jurisdictions that seek to protect local control over land use, as well as groups that do not support the development of housing in existing residential communities. They argue that it is too soon to extend the sunset date for the HCA, and that the HCA itself is detrimental, particularly to cities recovering financially from the pandemic. For

example, according to the City of Newport Beach, "SB 330 is under two years old. Accounting for COVID-19 related impacts over the past year, it is far too early to evaluate necessary changes to enhance SB 330's effectiveness, let alone extend its sunset to 2030."

FISCAL COMMENTS

According to the Assembly Appropriations Committee:

- 1) Department of Housing and Community Development indicates minor and absorbable costs. Their technical assistance requests are expected to decline through the current sunset date, and ongoing costs to monitor compliance are expected to be minor.
- 2) Likely minor state-mandated local costs as a result of the extended sunset. Any projected costs are likely not eligible for state reimbursement because local agencies can charge permitting and planning fees to offset local costs. It is unlikely the Commission on State Mandates would approve any claims for state reimbursement.

VOTES

SENATE FLOOR: 30-2-8

YES: Allen, Archuleta, Atkins, Becker, Bradford, Caballero, Cortese, Dodd, Durazo, Eggman, Gonzalez, Hertzberg, Hueso, Hurtado, Kamlager, Laird, Leyva, Limón, McGuire, Min, Newman, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Umberg, Wieckowski, Wiener

NO: Bates, Glazer

ABS, ABST OR NV: Borgeas, Dahle, Grove, Jones, Melendez, Nielsen, Stern, Wilk

ASM HOUSING AND COMMUNITY DEVELOPMENT: 6-0-2

YES: Chiu, Gabriel, Kalra, Kiley, Quirk-Silva, Wicks

ABS, ABST OR NV: Seyarto, Maienschein

ASM LOCAL GOVERNMENT: 7-1-0

YES: Aguiar-Curry, Lackey, Bloom, Ramos, Luz Rivas, Robert Rivas, Voepel

NO: Boerner Horvath

ASM APPROPRIATIONS: 16-0-0

YES: Lorena Gonzalez, Bigelow, Bryan, Calderon, Carrillo, Chau, Megan Dahle, Voepel, Fong, Mullin, Eduardo Garcia, Luz Rivas, Quirk, Kalra, Stone, McCarty

UPDATED

VERSION: August 26, 2021

CONSULTANT: Steve Wertheim / H. & C.D. / (916) 319-2085

FN: 0001158