

Date of Hearing: April 12, 2023

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

Buffy Wicks, Chair

AB 1485 (Haney) – As Amended March 28, 2023

SUBJECT: Housing element: enforcement: Attorney General

SUMMARY: Grants the Department of Housing and Community Development (HCD) and the Office of the Attorney General (OAG) the unconditional right to intervene in any suit brought to enforce specified housing laws. Specifically, **this bill:**

- 1) Grants HCD and the OAG the unconditional right to intervene in any suit brought to enforce any of the following state laws, as specified:
 - a) Housing Element Law;
 - b) The Housing Accountability Act;
 - c) “No net loss” policy for implementing housing elements, as specified;
 - d) Density bonus law;
 - e) Fair housing law, as specified;
 - f) The Housing Crisis Act of 2019;
 - g) The obligation to affirmatively further fair housing as specified in GC Section 8899.50;
 - h) Housing streamlining laws, as specified;
 - i) Supportive housing streamlining laws;
 - j) Low barrier navigation center streamlining laws;
 - k) Laws related to floor area ratio standards, as specified;
 - l) The requirement to submit an annual progress report regarding implementation of local housing elements;
 - m) Laws related to the enforcement of minimum parking requirements on certain developments; and
 - n) The Affordable Housing and High Road Jobs Act of 2022.
- 2) Grants the OAG this unconditional right whether intervening in an independent capacity or pursuant to a notice or referral from HCD.

EXISTING LAW:

- 1) Establishes Housing Element law, which provides that each city and county's fair share of housing is to be determined through the regional housing needs allocation process. (Government Code (GC) Section 65580 through 65589.11)
- 2) Requires HCD to notify a local government, and allows HCD to notify the office of the Attorney General, if HCD finds that:
 - a) A housing element does not substantially comply with state law; and
 - b) Any local government has taken an action in violation of specified laws. (GC 65585(j))
- 3) Authorizes the OAG to seek all remedies available under law to enforce state law in an independent capacity. (GC 65585(n))
- 4) Specifies that an intervention in a civil action takes place when a nonparty, deemed an intervenor, becomes a party to an action or proceeding between other persons by doing any of the following:
 - a) Joining a plaintiff in claiming what is sought by the complaint;
 - b) Uniting with a defendant in resisting the claims of a plaintiff; or
 - c) Demanding anything adverse to both a plaintiff and a defendant. (Code of Civil Procedure (CCP) Section 387(b))
- 5) Requires a nonparty to petition the court for leave to intervene by noticed motion or ex parte application. Requires the petition to include a copy of the proposed complaint in intervention or answer in intervention and set forth the grounds upon which intervention rests. (CCP 387(c))
- 6) Requires a court, upon timely application, to permit a nonparty to intervene in an action or proceeding if either of the following conditions is satisfied:
 - a) A provision of law confers an unconditional right to intervene; or
 - b) The person seeking intervention claims an interest relating to the property or transaction that is the subject of the action and that person is so situated that the disposition of the action may impair or impede that person's ability to protect that interest, unless that person's interest is adequately represented by one or more of the existing parties. (CCP 387(d)(1))
- 7) Authorizes a court, upon timely application, to permit a nonparty to intervene in the action or proceeding if the person has an interest in the matter in litigation, or in the success of either of the parties, or an interest against both. (CCP 387(d)(2))

FISCAL EFFECT: Unknown.

COMMENTS:

Author’s Statement: According to the author, “Over the last few years the California Legislature has made responding to the State’s housing crisis a top priority. Numerous laws requiring local governments to follow the State’s affordable housing goals and actually build housing have been signed into law. Unfortunately, many local governments have chosen to break State law by ignoring the important housing requirements enacted by their State government. Attorney General Rob Bonta has also made housing law enforcement a top priority for the Department of Justice, taking legal action to prosecute housing law violators. But in order for the Attorney General to represent the State’s interests in cases filed by third parties, the Department of Justice is currently required to petition the court for the ability to intervene in the case. This requirement can cause months of delays in housing violation litigation. AB 1485 strengthens the State’s ability to enforce our affordable housing goals and to hold violators accountable, by granting the Attorney General the automatic right to intervene in pending housing cases.”

Enforcement of State Housing Laws: California has a multi-million unit deficit of housing. This mismatch of supply and demand has resulted in our longstanding housing crisis: home prices that are double the national average, a majority of renters sacrificing basic needs like food and health care to pay for housing, and homelessness that exceeds 170,000 unhoused Californians.

In recent years, the Legislature has implemented many policy changes to address the housing deficit, including creating processes requiring streamlined, ministerial approval of housing and requiring local governments to plan and zone for more housing via the housing element process. For many years prior to the enactment of these and other laws, local governments often treated the housing element and other housing requirements as a “paper exercise” because the state lacked strong enforcement tools to ensure compliance.

However, in 2017, AB 72 (Santiago, Chapter 370) established a process for HCD to enforce state housing laws. AB 72 requires HCD to notify a local government, and allows HCD to notify the OAG, if HCD finds that a local government’s housing element does not substantially comply with state law, or if any local government has taken an action in violation of specified housing laws. AB 72 currently covers violations of the following statutes:

- Four statutes to streamline both market-rate and affordable housing: state Density Bonus Law; SB 35 (Wiener, Chapter 366, Statutes of 2017), AB 2162 (Chiu, Chapter 753, Statutes of 2017), AB 101 (Chapter 159, Statutes of 2019), and AB 2011 (Wicks, Chapter 647, Statutes of 2022).
- Statutes to create more certainty for development: the Housing Accountability Act; SB 330 (Skinner, Chapter 654, Statutes of 2019), which, among other provisions, locks in the development rules at the time of application and creates demolition protections for existing housing; SB 478 (Wiener, Chapter 363 Statutes of 2021), which established minimum floor-area ratios for smaller housing development projects; and AB 2097 (Friedman, Chapter 459 Statutes of 2022), which removed the ability for local governments to require parking near transit.
- Statutes that direct certain local government actions and behaviors: fair housing and antidiscrimination laws; the “no net loss” policy for implementing housing elements; the longstanding requirement for local governments to submit their Annual Progress Report

to the state regarding implementation of their housing elements; and AB 686 (Santiago, Chapter 958, Statutes of 2018), which requires the state and local governments to affirmatively further fair housing.

Committee staff notes that this committee recently approved AB 434 (Grayson, 2023), which proposes to add eight new statutes to the list of statutes HCD and the OAG must enforce, including laws that streamline approvals of ADUs, require ministerial approval of certain lot and parcel splits, create the Middle Class Housing Act of 2022, and require that local governments cannot conduct more than five public hearings for a project that meets certain standards. Additionally, SB 450 (Atkins, 2023) would add the provisions of SB 9 (Atkins, Chapter 162, Statutes of 2021) governing urban lot splits and certain ministerial housing approvals to the list of laws HCD and the OAG must enforce.

In addition to the expanded authority under AB 72, HCD has created and staffed a Housing Accountability Unit (HAU), which provides education and technical assistance as well as oversight and enforcement of housing element laws to ensure local governments comply with specified state housing laws. Violations of these laws may lead to a variety of consequences for local governments, including referral to the OAG for further civil action.

Furthermore, many of the laws referenced above also provide a mechanism for private third party actors – for example, developers, advocacy organizations, and members of the public – to file their own lawsuits to challenge local land use planning and permitting decisions. The Housing Accountability Act, as an example, provides a private right of action to parties, including the development proponent, a person who would be eligible to live in the proposed development, or a housing organization, who wish to challenge a local government that denied approval or imposed severely burdensome conditions for approval on a housing development project.

Role of the OAG in Enforcement. Currently, the OAG enforces state housing and development laws both in the OAG’s independent capacity and on behalf of client agencies, including HCD.

In 2022 Attorney General Bonta created a Housing Strike Force within the Department of Justice. The Strike Force is a cross-sectoral team of attorneys who work with state agencies and partners to enforce statewide housing laws.

While HCD and the OAG may bring direct enforcement actions against local governments, in order to intervene in third party housing litigation, HCD/OAG must use the process outlined in Code of Civil Procedure Section 387 to petition the court to be granted intervenor status and join a suit. In essence, HCD/OAG must prove to the court that they have an interest related to the litigation that may be impaired if they are not allowed to intervene, which can be a lengthy and onerous process. The OAG notes that while parties to third party actions may seek different outcomes for a particular project, HCD/OAG seeks to represent the people of California’s interest in private lawsuits that raise issues of statewide concern.

The OAG further notes that given the impacted dockets of California courts, which were further delayed due to the COVID-19 pandemic, it can take several months to a year for such a motion to even be considered by a court. As an example of a current suit where HCD and OAG sought intervenor status, OAG provided information regarding the timeline of their petition in the case of *Grandma’s House of Hope v. City of Anaheim*, a fair housing case involving a supportive housing project for low-income women with mental health conditions:

- 1) Case filed: January 19, 2022
- 2) HCD's initial ex parte application to intervene filed: October 3, 2022
- 3) HCD's motion for leave to intervene filed: October 20, 2022
- 4) Hearing on HCD's motion for leave to intervene set for: April 4, 2023 (six month delay)
- 5) The presiding judge recused himself: November 14, 2022
- 6) HCD re-filed its motion for leave to intervene: November 15, 2022
- 7) Hearing on HCD's second motion for leave to intervene set for: February 3, 2023 (three month delay)
- 8) Second presiding judge also recused himself: Week of the February 3 hearing
- 9) Matter was transferred to a third courtroom that scheduled a hearing for HCD's second motion for leave to intervene: April 18, 2023 (two month delay from rescheduled February 3, 2023 hearing date)

Essentially, in this action, HCD/OAG and the existing plaintiff and defendant will be waiting approximately 6 months from their initial request to intervene before the departments even receive a ruling on whether or not the court will grant intervention.

Under this bill, HCD/OAG would have the statutory right to intervene in matters to enforce housing laws, meaning they could simply file an ex parte application or uncontested motion seeking leave to intervene or, more likely, the parties would simply stipulate to HCD/OAG joining the case as a matter of statutory right. This would strengthen the state's ability to enforce housing laws and ensure that the state's interests are heard as a matter of right in private litigation dealing with the application of those laws.

Arguments in Support: According to California Attorney General Rob Bonta and the Housing Action Coalition, the bill's cosponsors, this bill will grant OAG a statutory right to intervene similar to what already exists for the OAG for other areas of law, including environmental cases affecting the public. They further argue this bill will strengthen the OAG's ability to hold housing law violators accountable and ensure the state's interests are more efficiently represented in privately filed cases challenging local land use planning and permitting decisions.

Arguments in Opposition: None on file.

Related Legislation:

AB 434 (Grayson, 2023) would add several additional housing laws to the list of laws that HCD must enforce. This bill is currently pending before the Assembly Committee on Local Government.

SB 450 (Atkins, 2023) would, among other things, add the provisions of SB 9 to the list of laws that HCD must enforce. This bill is currently pending before the Senate Housing Committee.

AB 215 (Chiu), Chapter 342, Statutes of 2021 provided HCD with additional enforcement authority over local agency violations of specified housing laws.

AB 72 (Santiago), Chapter 370, Statutes of 2017 gave HCD the authority to find a local government's housing element out of substantial compliance if it determines that the local government acts or fails to act in compliance with its housing element, and allows HCD to refer violations of law to the Attorney General.

Double Referred: This bill was also referred to the Assembly Committee on Judiciary, where it will be heard should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Housing Action Coalition (Sponsor)
State of California Attorney General (Sponsor)
Abundant Housing LA
Bay Area Council
Build Casa
California Apartment Association
California Community Builders
California YIMBY
Circulate San Diego
CivicWell
Council of Infill Builders
East Bay Yimby
Fieldstead and Company
Greenbelt Alliance
Grow the Richmond
How to ADU
MidPen Housing
Mountain View Yimby
Napa-Solano for Everyone
National Association of Hispanic Real Estate Professionals
Northern Neighbors SF
Peninsula for Everyone
People for Housing - Orange County
Progress Noe Valley
San Francisco YIMBY
Sand Hill Property Company
Santa Cruz YIMBY
Santa Rosa YIMBY
Silicon Valley @ Home
Silicon Valley Leadership Group
South Bay YIMBY
Southside Forward
SPUR
Ventura County YIMBY

Yimby Action
Yimby SLO

Support if Amended
Livable California

Opposition

None on file.

Analysis Prepared by: Nicole Restmeyer / H. & C.D. / (916) 319-2085