

Date of Hearing: April 18, 2023

ASSEMBLY COMMITTEE ON JUDICIARY
Brian Maienschein, Chair
AB 1485 (Haney) – As Amended March 28, 2023

SUBJECT: HOUSING ELEMENT: ENFORCEMENT: ATTORNEY GENERAL

KEY ISSUE: SHOULD THE ATTORNEY GENERAL AND THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT BE GRANTED AN UNCONDITIONAL RIGHT TO INTERVENE IN SPECIFIED HOUSING LAW CASES?

SYNOPSIS

According to the Department of Housing and Community Development, California needs to produce approximately 2.5 million housing units over the next eight years to keep up with demand. However, despite the Legislature providing several new tools to spur development, the author argues that too many local agencies are failing to comply with state housing laws and the housing development targets the localities have set for themselves. In recent years, new legislation has also strengthened the ability of the Department of Housing and Community Development and the Attorney General to take legal action against local governments that fail to comply with housing law. This straightforward bill provides to provide the state with a new tool to increase housing development by granting the Department of Housing and Community Development and the Attorney General an unconditional right to intervene in litigation brought by third parties to enforce state housing laws.

This bill is sponsored by Attorney General Rob Bonta and is supported by a broad coalition of housing advocates. The proponents note that the current intervention process results in litigation delays, which ultimately defer the ultimate decision in a housing law case. This measure is opposed by the organization Catalysts for Local Control, who appear to argue that the Department of Housing and Community Development's current process for evaluating compliance with state housing laws is inadequate. The bill was previously heard and approved by the Committee on Housing and Community Development by a vote of six to one.

SUMMARY: Grants the Department of Housing and Community Development and the Attorney General an unconditional right to intervene in various civil actions related to the enforcement of state housing law. Specifically, **this bill:**

- 1) Provides the Department of Housing and Community Development and the Attorney General an unconditional right to intervene in any suit brought to enforce any of the following state laws:
 - 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) Provides that the Attorney General's right to intervene is independent of any request, notice, or referral from the Department of Housing and Community Development.

EXISTING LAW:

- 1) Requires the local planning agency of all local governments to prepare, and the legislative body of each county and city to adopt, a comprehensive, long-term general plan for the physical development of the county or city, and of any land outside its boundaries which in the planning agency's judgment bears relation to its planning. (Government Code Section 65300.)
- 2) Requires a General Plan to consist of a statement of development policies and include a diagram or diagrams and text setting forth objectives, principles, standards, and plan proposals for each of the following elements:
- a) Land use;
 - b) Circulation;
 - c) Housing;
 - d) Conservation;
 - e) Open space;
 - f) Noise;
 - g) Safety; and
 - h) Environmental justice. (Government Code Section 65302.)
- 3) Requires the Housing Element of a General Plan to consist of an identification and analysis of existing and projected housing needs and a statement of goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing, as well as identifying adequate sites for housing, including rental housing, factory-built housing, mobilehomes, and emergency shelters, and make adequate provision for the existing and projected needs of all economic segments of the community. (Government Code Section 65583.)

- 4) Establishes a list of housing laws that the Department of Housing and Community Development is required to notify a local government, and allows the Department to notify the office of the Attorney General, if the Department finds that the local agency is in violation of the housing law. (Government Code Section 65585 (j).)
- 5) Authorizes the Attorney General to enforce various housing law in its independent capacity. (Government Code Section 65585 (n).)
- 6) Permits all persons to join an action as plaintiffs if:
 - a) They assert any right to relief jointly, severally, or in the alternative, in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action; or
 - b) They have a claim, right, or interest adverse to the defendant in the property or controversy which is the subject of the action. (Code of Civil Procedure Section 378.)
- 7) Provides that persons may be joined in one action as defendants if there is asserted against them:
 - a) Any right to relief jointly, severally, or in the alternative, in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action; or
 - b) A claim, right, or interest adverse to them in the property or controversy which is the subject of the action. (Code of Civil Procedure Section 379.)
- 8) Permits a nonparty to petition the court for leave to intervene by noticed motion or ex parte application to set forth the grounds upon which the intervention rests. (Code of Civil Procedure Section 387 (c).)
- 9) Requires the court to permit a nonparty to intervene in the 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. (Code of Civil Procedure Section 387 (d).)
- 10) Requires an intervening party, upon receiving the permission of the court to intervene to do the following:
 - a) Separately file the complaint in intervention, answer in intervention, or both; and
 - b) Serve a copy of the order, or notice of the court's decision or order, granting leave to intervene and the pleadings in intervention, as specified. (Code of Civil Procedure Section 387 (e).)

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

COMMENTS: There is little question that housing in California is inordinately expensive and that a growing number of Californians cannot afford to purchase a home. Given that state law provides them with significant authority over land use and housing policies, local governments play a critical role in boosting the supply of affordable housing. California's planning laws require local agencies to identify their housing needs and the areas within a jurisdiction suitable to meet those needs. Additional laws authorize local governments to provide incentives to develop affordable housing and new state level laws authorizing the state to take action to ensure local agencies meet their housing goals. Unfortunately, as a result of local opposition to new development or simple government inaction, far too many local agencies fail to meet their housing needs.

This bill would strengthen the ability for state regulators, specifically the Department of Housing and Community Development and the Attorney General, to intervene in lawsuits seeking to enforce state housing laws. In support of this bill, the author states:

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.

California law contains an array of tools to boost housing production, yet California's housing production is well below the levels necessary to sustain the population. Longstanding California law, the General Plan Law, has required local governments to identify the amount of housing needed in the jurisdiction to keep pace with growth and then to subsequently identify areas within the jurisdiction where housing can be constructed. To assist local governments meet these goals, the state has passed an array of pro-housing laws, including the density bonus law, fair housing laws, supportive housing laws, and permit streamlining laws. However, these state-level efforts have not been sufficient to overcome local inaction and opposition to new development. As a result, as highlighted by a recent report by the state Department of Housing and Community Development, the state needs to produce approximately 2.5 million housing units over the next eight years, with roughly one million of those units being set aside for lower income households, in order for the state to meet the anticipated demand for housing over the same time period. (Dept. of Housing and Community Development, California Statewide Housing Plan: A Home for Every Californian (Mar. 2022) available at: <https://storymaps.arcgis.com/stories/94729ab1648d43b1811c1698a748c136>.)

Seeking to close this gap, in recent years the Legislature has started taking steps to force local governments to build more housing. In 2017, the Legislature enacted AB 72 (Santiago) Chap.

370, Stats. 2017, which established a process for the Department of Housing and Community Development to enforce state housing laws against non-compliant local governments. Further, in 2019, the Legislature passed the Housing Crisis Act of 2019 (SB 330 (Skinner) Chap. 654, Stats. 2019), which limited certain actions local agencies were using to avoid producing housing. Several other recent measures have also sought to force local agencies to build housing by deeming certain developments “by right” which limits the ability for local agencies to deny development permits. Nonetheless, as California’s housing deficits worsen, additional state-level tools are necessary to ensure proper compliance with the law.

This bill. While existing law authorizes the Department of Housing and Community Development and the Attorney General to directly file lawsuits against local agencies that fail to comply with state housing law, should the state seek to intervene in a third party’s lawsuit, the state would be at the mercy of the presiding judge. To ensure that the state can enforce housing laws, whether or not it initiates the legal action, this straightforward bill grants the Department of Housing and Community Development and the Attorney General an unconditional right to intervene in lawsuits arising under 14 different state housing laws, most notably the law requiring a local agency to comply with the housing development targets established in the Housing Element of the General Plan. Recognizing the scarcity of state resources, this bill also prudently permits the Attorney General to act independently of the Department of Housing and Community Development and seek intervention without requiring the Department to request such an action.

This bill streamlines the litigation process for the state to intervene in local housing disputes. This measure is sponsored by Attorney General Rob Bonta who highlights that the existing discretionary intervention statutes delay housing litigation. The Attorney General notes that the existing requirements for a motion to be heard on the right to intervene can add months of delay to a case. The proponents of the bill highlight that in one case, involving the City of Anaheim and an affordable housing development, a series of judicial recusals and resulted in a six month delay between the time the state first moved to intervene in the matter and the date in which the motion for intervention was set to be heard. (Notably that motion is set for the same date as this bill is slated to be heard in this Committee, thus the delay may eventually be longer.) By granting the state an unconditional right to intervene in housing litigation, this bill should lessen delays, provide for judicial efficiency, and resolve housing issues in a more timely manner.

By granting the state unconditional rights to intervene in housing litigation this bill should protect critical state law from problematic court decisions. This measure is not entirely unique as it pertains to the Attorney General getting involved in third party litigation. For example, currently, the Attorney General is authorized to intervene in litigation involving Proposition 65. One of the primary drivers of intervention in those matters is to ensure that arguments are not put forward that may jeopardize the state enforcement at a later date. In addition to enforcing critical housing laws, this bill would similarly help the state ensure that no adverse court decision may inadvertently undermine state housing laws.

ARGUMENTS IN SUPPORT: This measure is sponsored by Attorney General Rob Bonta and is supported by a coalition of housing advocates and developers. In support of the bill the Attorney General notes:

The Attorney General’s Office enforces state housing and development laws in the Attorney General’s independent capacity and on behalf of client agencies, including HCD. Existing

law empowers the Attorney General to take legal action on HCD's behalf, or independently, against localities who violate state housing laws. Many of these laws, including the Housing Accountability Act, also allow third parties to file their own lawsuits to challenge local land use planning and permitting decisions.

When a third party files an action to enforce state housing laws, the Attorney General's Office may seek to become a party to the lawsuit to represent the interests of the State in cases that raise issues of statewide concern regarding the implementation or enforcement of state housing laws. To do so, the Attorney General must formally petition the court for permission to intervene. This procedural hurdle causes unnecessary delay as courts may take months to schedule a hearing on the petition. AB 1485 would remove this procedural hurdle by granting the Attorney General an unconditional, statutory right to intervene in pending third party actions to redress state housing law violations.

ARGUMENTS IN OPPOSITION: This bill is opposed by an organization named Catalysts for Local Control. In opposition to the bill they write:

Current law already gives Housing and Community Development and the Attorney General powers to intervene if local planning and zoning laws are violated. The Attorney General is counted on to first and foremost represent California citizens, not special profit-driven housing development and investment interests who are not building the supply of affordable housing that is needed. This law would further tensions and reduce trust and confidence in the Attorney General and the office. Calling on the state's top lawyer to operate hand-in-glove with an increasingly discredited state agency is not sound policy.

REGISTERED SUPPORT / OPPOSITION:

Support

Attorney General Rob Bonta (sponsor)
Abundant Housing LA
Bay Area Council
Build Casa
California Apartment Association
California Community Builders
California Yimby
Circulate San Diego
Civic Well
Council of Infill Builders
East Bay Yimby
Fieldstead and Company, INC.
Greenbelt Alliance
Grow the Richmond
Housing Action Coalition
How to ADU
Midpen Housing
Mountain View Yimby
Napa-Solano for Everyone
National Association of Hispanic Real Estate Professionals (NAHREP)
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

Opposition

Catalysts for Local Control

Analysis Prepared by: Nicholas Liedtke / JUD. / (916) 319-2334