
SENATE COMMITTEE ON HOUSING

Senator Scott Wiener, Chair

2023 - 2024 Regular

Bill No: AB 1485

Hearing Date: 6/20/2023

Author: Haney

Version: 3/28/2023

Urgency: No

Fiscal: Yes

Consultant: Alison Hughes

SUBJECT: Housing element: enforcement: Attorney General

DIGEST: This bill grants the Department of Housing and Community Development (HCD) and the Office of the Attorney General (AG) the unconditional right to intervene in any suit brought to enforce specified housing laws.

ANALYSIS:

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.
- 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.
- 3) Authorizes the AG to seek all remedies available under law to enforce state law in an independent capacity.
- 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.
- 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.

- 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.
- 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.

This bill:

- 1) Grants HCD and the AG 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;
 - 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 AG this unconditional right whether intervening in an independent capacity or pursuant to a notice or referral from HCD.

COMMENTS:

- 1) *Author's statement.* “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.”
- 2) *Enforcement of State Housing Laws.* 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.

AB 72 (Santiago, Chapter 370, Statutes of 2017) 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 AG, 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.

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 AG 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.

- 3) *Role of the AG in Enforcement.* Currently, the AG enforces state housing and development laws both in the AG'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 AG may bring direct enforcement actions against local governments, in order to intervene in third party housing litigation, HCD/AG must use a specified process to petition the court to be granted intervenor status and join a suit. In essence, HCD/AG 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 AG notes that while parties to third party actions may seek different outcomes for a particular project, HCD/AG seeks to represent the people of California's interest in private lawsuits that raise issues of statewide concern.

The AG 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.

Under this bill, HCD/AG 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/AG 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.

- 4) *Double referral.* This bill was also referred to the Senate Judiciary Committee.

RELATED LEGISLATION:

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.

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

POSITIONS: (Communicated to the committee before noon on Wednesday, June 14, 2023.)

SUPPORT:

Housing Action Coalition (Sponsor)
State of California Attorney General (Co-Sponsor)
Abundant Housing LA
Bay Area Council
BuildCasa
California Apartment Association
California Community Builders
California Housing Partnership Corporation
California YIMBY
Circulate San Diego
Civicwell
Council of Infill Builders
East Bay YIMBY
Eden Housing
Fieldstead and Company, INC.
Greenbelt Alliance
Grow the Richmond
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 Bay Area Planning and Urban Research Association (SPUR)
San Francisco YIMBY
Sand Hill Property Company
Santa Cruz YIMBY
Santa Rosa YIMBY
Silicon Valley @ Home
Silicon Valley Leadership Group
Slo YIMBY
South Bay YIMBY
Southside Forward
Ventura County YIMBY
YIMBY Action

OPPOSITION:

None received.

-- END --