

CONCURRENCE IN SENATE AMENDMENTS

AB 1485 (Haney)

As Amended September 8, 2023

Majority vote

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.

Senate Amendments

Move the contents of this bill to a stand-alone section to avoid chaptering issues with other bills.

COMMENTS

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, 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 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:

- 1) 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).
- 2) 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.
- 3) Statutes that direct local government actions and behaviors: fair housing and antidiscrimination laws; "no net loss" policy for implementing housing elements; the requirement for local governments to submit Annual Progress Reports regarding

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

AB 434 (Grayson) of the current legislative session 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 prohibit local governments from conducting more than five public hearings for a project that meets certain standards. Additionally, SB 450 (Atkins) of the current session 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.

In addition to the expanded authority under AB 72, HCD has created and staffed a Housing Accountability Unit, 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 third party actors – 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.

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. Essentially, in this action, HCD/OAG and the existing plaintiff and defendant were forced to wait approximately six months from their initial request to intervene before the departments even received a ruling on whether or not the court would 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 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. This bill should lessen delays, provide for judicial efficiency, and resolve housing issues in a timelier manner.

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."

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

According to the South Bay Cities Council of Governments, "Authorizing the Attorney General and HCD an unconditional right to insert themselves into housing law cases will not bring down housing costs for Californians. However, working with cities to develop policies that respect local control and the wide-ranging needs of differing communities throughout the state could."

FISCAL COMMENTS

According to the Assembly Appropriations Committee, minor and absorbable costs to HCD and OAG.

VOTES:**ASM HOUSING AND COMMUNITY DEVELOPMENT: 6-1-1****YES:** Wicks, Wendy Carrillo, Gabriel, Kalra, Quirk-Silva, Ward**NO:** Sanchez**ABS, ABST OR NV:** Joe Patterson**ASM JUDICIARY: 8-3-0****YES:** Maienschein, Connolly, Haney, Kalra, Pacheco, Papan, Reyes, Robert Rivas**NO:** Essayli, Dixon, Sanchez**ASM APPROPRIATIONS: 12-3-1****YES:** Holden, Bryan, Calderon, Wendy Carrillo, Mike Fong, Addis, Lowenthal, Papan, Pellerin, Robert Rivas, Weber, Wilson**NO:** Megan Dahle, Dixon, Sanchez**ABS, ABST OR NV:** Mathis**ASSEMBLY FLOOR: 56-16-8****YES:** Addis, Aguiar-Curry, Alvarez, Arambula, Bains, Bauer-Kahan, Bennett, Berman, Bonta, Bryan, Juan Carrillo, Wendy Carrillo, Cervantes, Mike Fong, Friedman, Garcia, Gipson, Grayson, Haney, Hart, Holden, Jackson, Jones-Sawyer, Kalra, Lee, Low, Lowenthal, Maienschein, McCarty, McKinnor, Stephanie Nguyen, Ortega, Pacheco, Papan, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Santiago, Schiavo, Soria, Ting, Valencia, Villapudua, Ward, Weber, Wicks, Wilson, Wood, Zbur, Rendon**NO:** Alanis, Chen, Megan Dahle, Davies, Dixon, Essayli, Flora, Vince Fong, Gallagher, Lackey, Mathis, Jim Patterson, Sanchez, Ta, Waldron, Wallis**ABS, ABST OR NV:** Boerner, Calderon, Connolly, Gabriel, Hoover, Irwin, Muratsuchi, Joe Patterson**UPDATED**

VERSION: September 8, 2023

CONSULTANT: Nicole Restmeyer / H. & C.D. / (916) 319-2085

FN: 0002424