
SENATE COMMITTEE ON HOUSING
Senator Aisha Wahab, Chair
2025 - 2026 Regular

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| Bill No: | AB 712 | Hearing Date: | 7/1/2025 |
| Author: | Wicks | | |
| Version: | 5/5/2025 Amended | | |
| Urgency: | No | Fiscal: | Yes |
| Consultant: | Hank Brady | | |

SUBJECT: Housing reform laws: enforcement actions: fines and penalties

DIGEST: This bill entitles applicants that prevail in an action over a local agency to reasonable attorney's fees and subjects local agencies to increased fines for violating housing reform laws under specified circumstances.

ANALYSIS:

Existing law:

- 1) Requires cities and counties to prepare and adopt a general plan, including a housing element, to guide the future growth of a community. The housing element shall consist of an identification and analysis of existing and projected housing needs and a statement of goals, policy objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing. Requires the housing element to contain an assessment of housing needs and an inventory of resources and constraints relevant to meeting those needs.
- 2) Provides the following pursuant to the Housing Accountability Act (HAA):
 - a) Prohibits a local agency from disapproving a housing development project containing units affordable to very low-, low- or moderate-income households or an emergency shelter, or conditioning the approval in a manner that renders the project infeasible, unless it makes specific findings based upon substantial evidence in the record.
 - b) Allows a project applicant, a person who would be eligible to apply for residency in the housing development project or emergency shelter, or a housing organization to bring an action to enforce the HAA. Requires a court to award reasonable attorney's fees and costs of suit to the plaintiff or

petitioner if certain conditions are met, unless the court finds, under extraordinary circumstances, that awarding fees would not further the purposes of the HAA, or in certain cases concerning specified disapprovals.

- c) Requires a court, upon a determination that a local agency has failed to comply with an order or judgment compelling compliance with the HAA within the time period prescribed by the court, to impose fines on the local agency and require the local agency to deposit any fine levied into a local housing trust fund or the Building Homes and Jobs Trust Fund. Requires the fine to be in a minimum amount of \$10,000 per housing unit in the housing development project on the date the application was deemed complete. Requires the court, in determining the amount of the fine to impose, to consider the local agency's progress in attaining its allocation of regional housing need and any prior violations of the HAA. Prohibits fines from being paid out of funds already dedicated to affordable housing, as specified.
 - d) Requires a court, if it finds that a local agency acted in bad faith when it violated the HAA and failed to carry out the court's order or judgment in the time period prescribed by the court, to multiply the fine in c) above by a factor of five. If a court has previously found that the local agency violated the HAA within the same planning period, requires the court to multiply the fines by an additional factor for each previous violation.
- 3) Requires the Department of Housing and Community Development (HCD) to notify a local government, and allows HCD to notify the office of the Attorney General (AG), if HCD finds that:
- a) A housing element does not substantially comply with state law; and,
 - b) A local government has taken an action in violation of specified housing laws.
- 4) Requires HCD, prior to the AG bringing any suit for a violation of the provisions of specified housing laws, to offer the jurisdiction the opportunity for two meetings in person or via telephone to discuss the violation, and to provide the jurisdiction written findings regarding the violation, with some exceptions.
- 5) Grants HCD and the AG the unconditional right to intervene in any suit brought to enforce specified housing laws, and grants the AG this unconditional right whether intervening in an independent capacity or pursuant to a notice or referral from HCD.

- 6) Provides that in any action brought by the AG or HCD to enforce the adoption of housing element revisions or to enforce any state law that requires a city, county, or local agency to ministerially approve, without discretionary review, any planning or permitting application for a housing development project, the city, county, or local agency shall be subject to the following remedies:
- a) A civil penalty of, at minimum, \$10,000 per month, and not exceeding \$50,000 per month, for each violation, accrued from the date of the violation until the violation is cured;
 - b) All costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs, whenever the AG or HCD prevails in a civil action to enforce any state laws under this provision; and
 - c) Other relief as the court deems appropriate, including equitable and injunctive relief, provisional or otherwise.

This bill:

- 1) Establishes that, notwithstanding any other law, and in addition to any other available remedies, in any action brought by an applicant for a housing development project against a public agency to enforce the public agency's compliance with a housing reform law as applied to the applicant's project, where the applicant is the prevailing party, the following apply:
- a) The applicant shall be entitled to reasonable attorney's fees and costs;
 - b) In the case of an action against a public agency that is a local agency:
 - i) If the local agency was advised in writing prior to the commencement of the action by either the AG or HCD that the local agency's decision, action, or inaction would represent a violation of law in substantially the same manner as alleged by the applicant in its lawsuit, the court must impose a fine in an amount not less than the minimum fines described in the HAA, unless the housing development project consists of four or fewer units, in which case the court must impose a fine of at least \$50,000 per violation; and
 - ii) If a court has previously found that the local agency violated the same statute on which the applicant prevailed in its lawsuit, within the same planning period, the court must impose a fine in an amount not less than the minimum fines under i), above, multiplied by a factor of five.
 - c) In the case of an action against a public agency that is a local agency, notwithstanding existing law governing the presentation and consideration

of claims against public entities, the applicant is not required to present a claim to seek the fines in 1) b) above; and

- d) In the case of an action against a public agency that is a local agency, nothing in this bill limits the application of existing Code of Civil Procedure provisions that allow a court to award attorney's fees to a successfully party, as specified, nor limits the availability of fees to a successful party under that provision.
- 2) Prohibits a public agency from requiring an applicant for a housing development project to indemnify, defend, or hold harmless the public agency in any manner with respect to an action brought by the applicant, or any other person, alleging that the public agency violated the applicant's rights or deprived the applicant of the benefits or protections provided by a housing reform law.
 - 3) Declares that a requirement, condition of approval, or agreement in violation of 2) above, is against public policy and void and unenforceable.
 - 4) Provides that 2) and 3) above shall not be construed to derogate any claim that a requirement in 2) above is or was unlawful under previously existing law.
 - 5) Defines for the purpose of this bill the following:
 - a) "Housing development project" means a use consisting of residential unit developments, mixed unit developments, as specified, transitional or supportive housing, or farmworker housing;
 - b) "Housing reform law" means any law or regulation, or provision of any law or regulation, that establishes or facilitates rights, safeguards, streamlining benefits, time limitations, or other protections for the benefit of applicants for housing development projects, or restricts, proscribes, prohibits, or otherwise imposes any procedural or substantive limitation on a public agency for the benefit of a housing development project;
 - c) "Local agency" means any public agency other than a state agency;
 - d) "Planning period" means the time period between the due date for one housing element and the due date for the next housing element for each revision according to the applicable schedule, as specified; and,
 - e) "Public agency" means any state agency, county, city and county, city, regional agency, public district, redevelopment agency, or other political subdivision.

Background

Housing Elements. Cities and counties are required to develop a housing element as part of the general plan every eight years (every five years for some rural areas). Cities must submit their housing element to HCD for approval by a specified date and currently most local governments should have adopted, or be in the process of finalizing, their sixth housing element. Each local agency receives a total number of housing units to plan for broken down by income category. The housing element must identify programs to increase the supply of housing, address inequities in the housing market, reduce barriers to producing housing, and identify an inventory of sites that are zoned for housing at the density necessary to result in housing sufficient to meet the locality's regional housing needs for the housing element cycle.

HAA. In 1982, in response to the housing crisis, which was viewed as threatening the economic, environmental, and social quality of life in California, the Legislature enacted the HAA, commonly referred to as the Anti-NIMBY Law. The purpose of the HAA is to help ensure that a city does not reject or make infeasible housing development projects that contribute to meeting the housing need determined pursuant to the Housing Element Law without a thorough analysis of the economic, social, and environmental effects of the action and without complying with the HAA. The HAA restricts a city's ability to disapprove, or require density reductions in, certain types of residential projects.

The HAA 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. If a court finds that a locality violated the HAA, a court must issue an order or judgment compelling compliance with the HAA within 60 days, including, but not limited to, an order that the locality take action on the housing development project or shelter. The plaintiff is entitled to attorney's fees unless the court finds that awarding fees would not further the purposes of the HAA. If a locality fails to comply within 60 days, the court must impose fines of at least \$10,000 per housing unit in the housing development project, which must be deposited in a local housing trust fund or the state Building Homes and Jobs Trust Fund. The court may also directly approve the housing development project. If the court finds the locality acted in bad faith, in addition to other remedies, the court must multiply the fine by a factor of five.

Comments

- 1) *Author's Statement.* “The Legislature has successfully passed a variety of housing laws to make it easier to build in California. However, these laws need to be enforceable, and have real consequences when they are broken. Some of our housing laws (notably the Housing Accountability Act) have strong enforcement provisions, but others do not. AB 712 would apply levels of enforcement that are similar to the provisions of the Housing Accountability Act to other state laws, thereby encouraging local agencies to act in compliance with existing state housing laws. Additionally, AB 712 would end the practice of public agencies asking housing development applicants to indemnify the local government against lawsuits when the local government violates the applicant's rights. This will result in more certainty for all parties, and more housing in California.”
- 2) *Enforcement of Housing Laws.* Over the last several years, the Legislature has strengthened the consequences for local agencies who are out of compliance or who amend their zoning after their housing element is found compliant. Local agencies cannot qualify for state funding for affordable housing, or infrastructure for affordable housing, without a compliant housing element. AB 72 (Santiago, Chapter 72, Statutes of 2017) gave HCD explicit authority to find a local agency's housing element out of substantial compliance if it determines that the local agency acts or fails to act in compliance with its housing element, and allows HCD to refer violations of law to the AG. The law 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 a local government has taken an action in violation of specified housing laws. HCD must offer verbal and written consultations and technical assistance to the jurisdiction before referring them for enforcement action. Both the AG and HCD have units with dedicated staff to enforce Housing Element Law and other land use laws passed by the legislature. The AG can also sue a city for non-compliance, and the court can issue fines up to \$10,000 a day, after the local agency fails to comply for an additional 12 months. After an additional six months of non-compliance, the court may increase the fines by six times.

In order to create a more effective deterrent for recalcitrant local agencies that violate state housing laws, this bill applies HAA fines in cases where an applicant prevails over a local agency and the agency was advised in writing by either the AG or HCD prior to the lawsuit that the agency's decision, action, or inaction would represent a violation of law in the same manner that is alleged in the applicant's lawsuit. If the local agency has violated the same statute more

than once in the same housing element cycle, the court must multiply the HAA fine by a factor of five.

- 3) *Private Enforcement.* While the AG and HCD have enforcement authority over and have stepped up efforts to monitor compliance with a number of housing laws, they do not have infinite resources with which to monitor the extremely high volume of regional and local public agency meetings and thousands of different development applications that may be proceeding in any given month or year. This necessarily leads to some targeting of the most egregious or flagrant violations of law, or actions that could be precedent-setting or otherwise resolve a question of law. HCD's accountability unit works to provide technical assistance as much as possible and intakes complaints from members of the public and developers about potential violations of housing laws, but is not in the practice of bringing a full legal case for every single violation or possible violation.

Several state housing laws provide a mechanism for private third party actors – such as, developers and project applicants, housing advocacy organizations, and members of the public – to file their own lawsuits to challenge local land use planning and permitting decisions. AB 1485 (Haney, Chapter 763, Statutes of 2023) granted HCD and the AG the unconditional right to intervene in any suit brought to enforce specified housing laws, to ensure that the state's interests are heard as a matter of right in private litigation dealing with the application of those laws.

However, housing developers face a difficult set of circumstances at the local or regional level when they are faced with a recalcitrant agency. Because they are often “repeat customers” in a jurisdiction and are reliant on an agency for essential approvals of the project in question and future projects they might wish to bring forward, they are reluctant to sue and possibly damage their relationships with these entities in cases where the agency is not following the law. The author and sponsor also point out that some agencies have begun requiring developers to indemnify them from the lawsuits the developers may end up deciding to bring if those agencies break housing laws, and even requiring developers to pay for the legal fees incurred by the agency. At the same time, only a limited number of housing statutes (like the HAA) allow an applicant who is a prevailing party to recoup attorney's fees, making the prospect of litigation even less appealing to a project proponent.

To address these concerns, this bill requires a court to award a housing developer reasonable attorney's fees in cases where they are the prevailing party over a public agency in an action brought to enforce a housing reform law. Importantly, this bill would not create or expand standing for any

developer or housing organization where it does not already exist in statute. This bill also prohibits a public agency from requiring an applicant for a housing project to indemnify, defend, or otherwise hold harmless the public agency in any manner with respect to an action brought by the applicant or any other person alleging the public agency violated the applicant's rights or deprived the applicant of benefits or rights established by housing laws.

- 4) *Compliance before enforcement.* The enhanced penalties proposed in this bill create a powerful deterrent to prevent local agencies from violating state housing laws. Compelling compliance through enforcement, especially litigation, is an expensive means of achieving compliance for all parties involved. Achieving compliance voluntarily can achieve the desired outcome more expeditiously at a fraction of the cost of litigation. This bill specifies that if a local agency receives a notification from the AG or HCD stating that the local agency's actions violates a state housing reform law, the local agency is immediately subject to enhanced penalties if an applicant brings litigation to compel compliance with the statute identified by the state. The threat of enhanced penalties associated with a warning letter may be enough to compel compliance in many cases. If the intent of this bill is to achieve an expeditious remedy to noncompliance with state housing reform laws, the committee may wish to consider amending the bill to provide a period of time for local agency to cure a violation prior to being subject to enhance penalties following litigation.
- 5) *Housing element planning periods.* The bill provides that if a court finds that a local agency violated the same statute more than once in the same planning period, the court shall increase the fines imposed on the local agency by a factor of five. This is intended to deter local agencies from repeatedly violating the same statute. Each Council of Government (COG) is subject to a housing element cycle that is defined in statute. This planning cycle determines when each local agency must adopt a new housing element. For example the current housing element cycle for the Association of Bay Area Governments (ABAG) began on January 31, 2023 the deadline for local agencies in that COG to adopt a certified housing element. It is reasonable to place a limitation on how long an original violation can enhance the penalties associated with subsequent violations of the same statute; however, in the current housing element cycle many local agencies failed adopt a housing element prior to the deadline. For example, the city of Palo Alto did not adopt a compliant housing element until May 2024, more than one year after the deadline. Under this bill, a city that has repeatedly violated the same statute will no longer be subject to enhanced penalties as of the date they are required to submit a compliant housing element, regardless of whether or not the city has adopted a compliant housing element. The penalty enhancement timeline should be linked to the date a local

agency actually adopts a compliant housing element, rather than the date they were supposed to adopt a compliant housing element.

- 6) *Rights and rules.* The bill specifies that the legislature intends to establish effective remedies against public agencies that are found to violate “rights” established by housing reform laws. The bill additionally notes legislative intent to prevent public agencies from undermining effective remedies through imposition of indemnification agreements on applications involving an applicant’s “rights” established by housing reform laws. The operative language of the bill employs a broad definition of housing reform laws. The intent language suggests that the focus of the bill is solely on protecting “rights” established by housing reform laws, when in fact the bill is focused on addressing violations of housing reform laws broadly. Most housing reform laws place conditions on local agencies, rather than establish “rights” for applicants. To ensure the bill is not narrowly interpreted to only apply to a narrow set of housing reform laws the committee may wish to amend the intent language to clarify that the legislative intent is for the bill to apply to housing reform laws generally.
- 7) *Double referral.* This bill is also referred to the Judiciary Committee.
- 8) *Committee Amendments.* **To address the items raised in Comments 4 - 6 and address technical and clarifying issues the Committee may wish to consider the following amendments.**
 - a) Require the written notification from the AG or HCD to identify the specific statute a local agency is violating.
 - b) Require that in order for a violation by a local agency to be subject to enhanced penalties specified in the bill, an applicant must first provide a local agency 60-days’ notice prior to filing a lawsuit to associated with a violation identified in a letter filed by HCD or the AG. If the 60-day timeframe will exceed the statute of limitations for bringing an action, specify that the statute of limitations is tolled until the 60-day timeframe expires.
 - c) Specify that a local agency may still be subject to enhanced penalties for repeat violations that occurred in a prior planning period until the local agency adopts a compliant housing element for the new planning period.
 - d) Remove erroneous intent language related to applicant’s rights.

Related/Prior Legislation

AB 1886 (Alvarez, Chapter 267, Statutes of 2024) — clarified that a housing element is substantially compliant with Housing Element Law, when both a local agency adopts the housing element and HCD or a court finds it in compliance.

SB 1037 (Wiener, Chapter 293, Statutes of 2024) — created new legal remedies that can be used by the AG to enforce the adoption of housing element revisions or to enforce any state law that requires a local government to ministerially approve any decision or application for a housing development project.

AB 1633 (Ting, Chapter 768, Statutes of 2023) — expanded the definition of a “disapproval” under the HAA, until 2031.

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) — provided 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 AG.

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

POSITIONS: (Communicated to the committee before noon on Wednesday, June 25, 2025.)

SUPPORT:

California Building Industry Association (Sponsor)
Abundant Housing LA
Boma California
CALchamber
California Apartment Association
California Association of Realtors
California Business Properties Association
California Housing Consortium
California Housing Partnership
California YIMBY
Circulate San Diego
Construction Employers' Association
Fieldstead and Company, INC.

Housing Action Coalition
Housing California
Inner City Law Center
Naiop California
Southern California Leadership Council
SPUR
The Two Hundred

OPPOSITION:

California Special Districts Association
City of Yorba Linda
League of California Cities
New Livable California DBA Livable California

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