

CONCURRENCE IN SENATE AMENDMENTS

AB 712 (Wicks)

As Amended July 3, 2025

Majority vote

SUMMARY

Enhances the enforcement of housing reform laws and the penalties that may be imposed on a local agency determined to have violated those laws.

Senate Amendments

- 1) Limit the ability of a court to impose fines to situations where, after the Attorney General (AG) or the Department of Housing and Community Development (HCD) sends a written communication to the local agency that their action or inaction represents a violation of a specific housing reform law, the housing development project applicant provides written notice to the local agency of its intent to commence an action, as specified, at least 60 days before the commencement of the action.
- 2) Requires any period of limitation for actions under any California law to be extended for a period of 60 days beginning on the date the applicant provides written notice to the local agency indicating its intent to commence an action under this bill.
- 3) Provides that, for purposes of calculating fines for repeated violations of a housing reform law on which an applicant prevailed within the same planning period, any subsequent violation of the same housing reform law shall be considered to have occurred within the same planning period if the local agency does not have a substantially compliant housing element.

COMMENTS

Housing Accountability Act (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. 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 jurisdiction's share of regional housing need or emergency shelters without a thorough analysis of the economic, social, and environmental effects of the action and without complying with the HAA. The HAA restricts a jurisdiction's ability to disapprove, or require density reductions in, certain types of residential projects. The HAA does not preclude a locality from imposing developer fees necessary to provide public services or requiring a housing development project to comply with objective standards, conditions, and policies appropriate to the locality's share of the regional housing need.

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 locality denies approval or imposes conditions that have a substantial adverse effect on the viability or affordability of a housing development for very low-, low-, or moderate-income

households, and the denial or imposition of conditions is subject to a court challenge, the burden is on the local government to show that its decision is consistent with specified written findings.

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 find 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, a minimum of \$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.

State Enforcement of Housing Laws: In recent years, the Legislature has implemented many policy changes to address the housing deficit, including 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 many state housing laws. 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.

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 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.

Some of these laws, similar to the HAA, also provide a mechanism for private third party actors – for example, 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. In 2023, the Legislature passed and the Governor signed AB 1485 (Haney), Chapter 763, which also 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.

There have been further efforts to add more "teeth" to state law to deter bad actors from continuing to obstruct housing development, including SB 1037 (Wiener), Chapter 293, Statutes of 2024, which established minimum civil fines and attorney fee awards in cases where the AG or HCD are acting to enforce housing element law or state laws that require ministerial approval of housing development projects, and AB 1633 (Ting), Chapter 768, Statutes of 2023, which expanded the definition of local agency "disapproval" of projects under the HAA.

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 lawsuit for every single violation or possible violation.

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.

This bill would require 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. AB 712 (Wicks) would also prohibit 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.

In order to create a more effective deterrent for recalcitrant local agencies, the bill would also apply HAA fines (or for projects with four or fewer units, a minimum fine of \$50,000 per violation) in cases where the 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, and declined to remedy the violation during a 60-day cure period. If the local agency has violated the same statute more than once in the same housing element cycle (or without a compliant housing element), the court must multiply the HAA fine by a factor of five.

According to the Author

"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 extend the enforcement 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."

Arguments in Support

According to the California Building Industry Association, the bill's sponsor, "With very limited exceptions, enforcement of housing reform laws relies on housing project applicants to sue the offending public agency. However, applicants are reluctant to vindicate these rights because litigation is expensive, and the applicant must maintain cordial relationships with agencies that have permitting authority over current and future housing projects. Moreover, unlike opponents of housing projects who typically are awarded attorney's fees if they successfully sue to block a housing project, project applicants generally do not recover their attorney's fees when they are the successful party, with the limited exception of suits under the Housing Accountability Act. Further undermining housing law enforcement, there are no effective penalties to deter public agencies from forcing applicants to file lawsuits over the same issue even after the public agency has consistently lost in court and committed violations after having been warned in writing by the Attorney General or Department of Housing and Community Development (HCD)."

Arguments in Opposition

According to the California Special Districts Association, "Taken together, AB 712's attorneys' fees, costs, and fines provisions result in private enforcement of 'housing reform laws' without regard to whether private enforcement is provided for in those carefully crafted measures. Most concerning for special districts, AB 712 defines 'Housing reform law' as '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.' This vague definition, coupled with the bill's severe penalties, places an undue burden on local agencies, exposing them to litigation and expense concerning whether a specific law that an applicant claims to be covered by the bill's provisions is indeed a 'housing reform law.' This is especially untenable for special districts, which are not land use authorities. Although special districts do not have land-use authority, and therefore the specified applicability of the provisions of this measure remain unclear, special districts remain an essential provider of the infrastructure and critical services needed to build thriving communities."

FISCAL COMMENTS

According to the Assembly Appropriations Committee:

- 1) HCD anticipates minor and absorbable costs to provide technical assistance to developers and to inform local jurisdictions when they are out of compliance with provisions requiring them to reimburse plaintiffs who succeed in lawsuits.
- 2) Possible future costs to local agencies of an unknown amount to the extent they are sued and lose and must pay an applicant's reasonable attorney's fees and costs. Actual costs will depend on the number of violations and lawsuits filed, the number of suits that settle, and the extent the litigation before an applicant prevails. These costs are not reimbursable by the state.

VOTES:**ASM HOUSING AND COMMUNITY DEVELOPMENT: 11-0-1**

YES: Haney, Ávila Farías, Caloza, Gallagher, Garcia, Kalra, Lee, Quirk-Silva, Ta, Wicks, Wilson

ABS, ABST OR NV: Patterson

ASM JUDICIARY: 9-0-3

YES: Kalra, Dixon, Bryan, Connolly, Harabedian, Pacheco, Lee, Stefani, Zbur

ABS, ABST OR NV: Bauer-Kahan, Macedo, Sanchez

ASM APPROPRIATIONS: 12-0-3

YES: Wicks, Arambula, Calderon, Caloza, Elhawary, Fong, Mark González, Hart, Pacheco, Solache, Ta, Alanis

ABS, ABST OR NV: Sanchez, Dixon, Pellerin

ASSEMBLY FLOOR: 64-2-13

YES: Addis, Aguiar-Curry, Ahrens, Alanis, Alvarez, Arambula, Ávila Farías, Bains, Bennett, Berman, Boerner, Bonta, Bryan, Calderon, Caloza, Carrillo, Connolly, Davies, Dixon, Elhawary, Flora, Fong, Gabriel, Gallagher, Garcia, Gipson, Jeff Gonzalez, Mark González, Hadwick, Haney, Harabedian, Hart, Hoover, Jackson, Kalra, Krell, Lee, Lowenthal, McKinnor, Nguyen, Ortega, Pacheco, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Ransom, Celeste Rodriguez, Michelle Rodriguez, Rogers, Blanca Rubio, Schiavo, Schultz, Sharp-Collins, Solache, Soria, Ta, Valencia, Wallis, Ward, Wicks, Wilson, Zbur, Rivas

NO: DeMaio, Sanchez

ABS, ABST OR NV: Bauer-Kahan, Castillo, Chen, Ellis, Irwin, Lackey, Macedo, Muratsuchi, Papan, Patel, Patterson, Stefani, Tangipa

SENATE FLOOR: 35-2-3

YES: Allen, Archuleta, Arreguín, Ashby, Becker, Blakespear, Cabaldon, Caballero, Cervantes, Cortese, Dahle, Durazo, Gonzalez, Grayson, Grove, Hurtado, Laird, Limón, McGuire, McNerney, Menjivar, Niello, Ochoa Bogh, Padilla, Pérez, Reyes, Richardson, Rubio, Smallwood-Cuevas, Stern, Umberg, Valladares, Wahab, Weber Pierson, Wiener

NO: Choi, Seyarto

ABS, ABST OR NV: Alvarado-Gil, Jones, Strickland

UPDATED

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

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