

Date of Hearing: June 10, 2026

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

Matt Haney, Chair

SB 457 (Becker) – As Amended May 20, 2026

SENATE VOTE: 39-0

SUBJECT: Housing element compliance: committed assistance: in-kind services: realistic capacity formula

SUMMARY: Requires the Department of Housing and Community Development (HCD), by January 1, 2028, to develop formulas or other tools that a jurisdiction may use when developing its housing element sites inventory and completing any rezoning required under Housing Element Law, and specifies the types of “in-kind services” that qualify as “committed assistance” for the purposes of determining the number of housing units a jurisdiction may count towards their adequate sites obligation under Housing Element Law. Specifically, **this bill:**

- 1) Provides that the inventory of land suitable and available for residential development, the analysis of the relationship of zoning and public facilities and services to the sites, and the analysis of the relationship of the sites identified in the land inventory to the jurisdiction’s duty to affirmatively further fair housing (AFFH), as required by Housing Element Law, may rely on a formula promulgated or approved by HCD.
 - a) Specifies that if a jurisdiction uses the formula developed by HCD, it is determined to have satisfied the related requirements under Housing Element Law, unless it misapplies the formula or relies on faulty data to use the formula.
- 2) Requires the sites inventory under Housing Element Law to specify the number of units allowed to be built on each site at the time of the housing element’s adoption, and the number of units that will be allowed after any required rezoning, to accommodate a jurisdiction’s regional housing needs allocation (RHNA).
- 3) Mandates that HCD, by January 1, 2028, either promulgate its own formulas and associated user interfaces or other tools, or approve third-party formulas or tools, for the purposes of determining housing capacity as part of the housing element process.
- 4) Requires the formulas and associated user interfaces or other tools in 3) to allow a local government to determine all of the following:
 - a) The realistic capacity of the housing element sites inventory under the regulatory status quo, including a presumptive probability of housing development for each site;
 - b) The additional realistic capacity that will be provided through rezoning or removing a governmental constraint, including the presumptive probability of housing development for each site; and
 - c) The realistic capacity for Accessory Dwelling Units (ADUs).
- 5) Establishes the following parameters for the formula promulgated or approved by HCD pursuant to 3):

- a) It must be based on historical data on the development and redevelopment of a site, statistically related site characteristics, and, if available, other information probative of a site's probability of development or the total number of units conditional on development;
 - b) It may exclude sites where the site's size or underlying zoning are not conducive to project sizes or densities that HCD deems appropriate for lower income or moderate income housing, as applicable, including a site zoned to not allow ministerial development;
 - c) It requires the realistic capacity of an eligible site for housing at a level of affordability at or below above-moderate income to be based on the site's probability of development during the planning period for housing at any level of affordability multiplied by the total expected units conditional on development at any level of affordability; and
 - d) It may be limited to specific cities or counties if data availability or other reasonable considerations preclude making the formula universal.
- 6) Requires HCD to make the proposed formula, associated user interface, or tool developed pursuant to 3), as well as any supporting documentation, available through a public website with a form or email address for submission of written comments by members of the public, available at least 60 days before promulgating, approving, or making a material change to it.
 - 7) Allows HCD to make a nonmaterial change to an approved formula, associated user interface, or tool without following the public notice procedures in 6).
 - 8) Exempts any rule, policy, or standard issued by HCD to implement this bill from the Administrative Procedure Act (APA), notwithstanding any other law.
 - 9) Provides that any formula, associated user interface, or tool promulgated or approved under 3) is not subject to judicial review, except a court may review whether a jurisdiction that used the HCD-developed formula misapplied the formula or relied on substantially inaccurate, misclassified, or otherwise faulty data.
 - 10) Provides that a jurisdiction is not required to use the tools developed by HCD in 3) for its housing element sites inventory.
 - 11) Allows HCD to hire economists and data scientists to promulgate the tools in 3).
 - 12) Provides that for the purposes of a jurisdiction's sites inventory of land suitable for residential development for its share of RHNA, nonvacant sites analysis, and any required housing element rezoning program, a jurisdiction has satisfied those specific requirements of Housing Element Law if it uses the applicable formula promulgated and approved by HCD in 3), except insofar as it misapplied the formula or relied on substantially inaccurate, misclassified, or otherwise faulty data.
 - 13) Specifies the types of "in kind services" that qualify as "committed assistance" for the purposes of determining the number of preserved or rehabilitated housing units a jurisdiction may count toward their adequate sites obligation under Housing Element Law to include, but not be limited to, the following:

- a) Providing low interest predevelopment loans;
- b) Donating, dedicating, or providing a long-term lease of land, or an existing structure at below-market value; and
- c) Any additional in-kind services identified in written guidance issued by HCD.

EXISTING LAW:

- 1) Requires each city and county to adopt a housing element, which must contain specified information, programs, and objectives, including:
 - a) An assessment of housing needs and an inventory of resources and constraints relevant to the meeting of these needs, including a quantification of the locality's existing and projected housing needs for all income levels;
 - b) An inventory of land suitable and available for residential development, including vacant sites and sites having realistic and demonstrated potential for redevelopment during the planning period to meet the locality's housing needs for a designated income level
 - c) An analysis of potential and actual governmental and nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels;
 - d) A demonstration of local efforts to remove constraints that hinder the locality from meeting its share of the regional housing need (RHNA), among other things;
 - e) A statement of the community's goals, quantified objectives, and policies relative to affirmatively furthering fair housing and to the maintenance, preservation, improvement, and development of housing; and
 - f) A program that sets forth a schedule of actions during the planning period, and timelines for implementation, that the local government is undertaking to implement the policies and achieve the goals and objectives of the housing element, including actions that will be taken to make sites available during the planning period with appropriate zoning and development standards and with services and facilities to accommodate that portion of the local government's share of the regional housing need for each income level that could not be accommodated on sites identified in the sites inventory without rezoning, among other things. (Government Code (GOV) Section 65583)
- 2) Authorizes HCD to allow jurisdictions to satisfy portions of their housing element site inventory obligations through alternative methods, including increased zoning capacity, ADU projections, and, for up to 25% of the RHNA obligation in an income category, committed assistance programs for rehabilitation, preservation, conversion, or acquisition of affordable housing units, subject to specified affordability, replacement, and reporting requirements. (GOV 65583.1)
- 3) Requires a local government's inventory of land suitable for residential development to be used to identify sites throughout the community that can be developed for housing within

the planning period and that are sufficient to provide for the jurisdiction's share of the RHNA for all income levels. Defines "land suitable for residential development" to include:

- a) Vacant sites zoned for residential use;
 - b) Vacant sites zoned for nonresidential use that allows residential development;
 - c) Residentially zoned sites that are capable of being developed at a higher density, including sites owned or leased by a jurisdiction; and
 - d) Sites zoned for nonresidential use that can be redeveloped for residential use, and for which the housing element includes a program to rezone the site, as necessary and as specified. (GOV 65583.2)
- 4) Establishes standards for determining whether sites are adequate and realistic for housing development, including density thresholds deemed appropriate for lower income housing, limitations on relying on small, large, or nonvacant sites, and requirements related to infrastructure availability and replacement housing obligations. (GOV 65583.2)
 - 5) Requires jurisdictions that lack sufficient sites to accommodate lower income housing needs to adopt programs to rezone sites to allow multifamily housing "by right," subject to specified density, affordability, and mixed-use requirements. (GOV 65583.2)
 - 6) Requires a planning agency to provide an Annual Progress Report (APR) to the legislative body, the Office of Planning and Research, and HCD by April 1 of each year that includes certain information, including the progress in meeting its share of RHNA, and local efforts to remove governmental constraints to the maintenance, improvement, and development of housing included in the housing element (GOV 65400)

FISCAL EFFECT: Unknown.

COMMENTS:

Author's Statement: According to the author, "The current parcel-by-parcel review process for the site inventory analysis has grown burdensome for both local governments and the Department of Housing and Community Development (HCD), generating conflict and litigation without improving the quality of site assessments. During the 6th RHNA, California cities and counties were subject to much more stringent standards for demonstrating the true development potential of housing sites, which in turn required extensive and expensive technical work. HCD review can involve multiple rounds of comments, clarifications, and revisions which injects uncertainty into the process while HCD expends considerable staff resources evaluating housing element compliance. The requirements were particularly onerous for jurisdictions that planned to meet over half of their lower-income RHNA through redevelopment of occupied parcels because they had to show that current uses on those sites were reasonably expected to end within the planning horizon.

SB 457 directs HCD to develop or approve statistical formulas which may be used for assessing the realistic capacity of housing element inventory sites by January 1, 2028, in time for 7th Cycle Housing Element development process. This will resolve ambiguity as to what constitutes "realistic" capacity for both HCD and local jurisdictions when determining whether an analysis

is compliant. It is important to note that use of the formulas proposed in this bill are voluntary and jurisdictions may still elect to continue to use existing site inventory methodologies. It is time to move towards including data-driven statistical estimates of the likelihood and extent of future residential development in the housing element process and make it more effective and efficient.”

Adoption and Implementation of Housing Elements: All 540 cities and counties in California are required to plan for housing needs through the housing element of their general plans, which outlines a long-term strategy for meeting existing and projected housing needs. Cities and counties are required to update their housing elements every eight years in higher population regions of the state and every five years in lower population regions. Local jurisdictions must adopt a legally compliant housing element, and receive approval of the housing element from HCD, by their statutory deadline. Failure to do so can result in escalating consequences, including accelerated rezoning deadlines, exposure to the “builder’s remedy,” litigation, financial penalties, potential loss of permitting authority, or court receivership.

Among other things, a housing element must demonstrate how a jurisdiction plans to accommodate its share of the region’s housing needs, or RHNA. To do so, a jurisdiction must identify an inventory of sites with sufficient capacity to accommodate its RHNA. If the jurisdiction does not already have adequate sites zoned to accommodate its RHNA, it must adopt a rezoning program to make additional sites available for housing development. Pursuant to Housing Element Law, jurisdictions that fail to adopt a substantially compliant housing element by the statutory deadline must complete their rezoning program within one year of the deadline, while jurisdictions that adopt a substantially compliant housing element by the deadline generally have three years from the beginning of the planning period to complete the rezonings.

Local governments are required to adopt housing elements on a statutory schedule that varies by region. At least 90 days before the housing element adoption deadline, a local government must submit a draft housing element to HCD for review. HCD is required to review the draft within 90 days and provide written findings as to whether the draft substantially complies with Housing Element Law. Following adoption, the local government must submit the adopted housing element to HCD, and HCD is required to complete its review within 60 days. HCD then issues written findings determining whether the adopted housing element substantially complies with state law. A jurisdiction is not considered to have a compliant housing element unless and until HCD finds the adopted element to be in substantial compliance with Housing Element Law.

While Housing Element Law does not require a jurisdiction to actually build housing or achieve housing construction numbers that meet its RHNA within a given planning period, it does require cities and counties to plan for and facilitate housing production through zoning, identification of adequate sites, removal of regulatory barriers, and implementation of housing programs. The housing element process is intended to ensure that local governments create the conditions necessary to accommodate housing development at all income levels.

Probability of Development: In 2020, a group of University of California (UC) researchers published a brief titled *A New Approach to the Housing Element Update*.¹ In this brief, the authors argued that jurisdictions should move away from relying on theoretical housing capacity assumptions and instead evaluate the likelihood (or probability) that housing will actually be

¹ <https://lewis.ucla.edu/research/new-approach-housing-element-update/>

developed during the planning period. The authors contend that traditional housing element sites inventories often overstate likely housing production because they assume vacant and underutilized sites will be developed with housing in the housing element cycle, regardless of market conditions, existing uses, or redevelopment feasibility, even though many jurisdictions historically have not seen those sites develop as anticipated.

Instead, the brief proposes that local governments use data and recent development trends to estimate the “probability of development” for sites with housing potential and calibrate site inventories accordingly, particularly in higher-opportunity and higher-demand neighborhoods where redevelopment is more likely to occur. The authors also acknowledged that implementing such an approach would create technical and administrative challenges, including the need for more sophisticated local land use data and analytical capacity, and suggested that HCD would likely need to provide technical assistance, standardized methodologies, or redevelopment probability estimates to support local governments in carrying out the analysis consistently.

6th Housing Element Cycle Probability of Development Optimism and Controversy: In the 6th (current) RHNA cycle, the City of Los Angeles and the City and County of San Francisco relied on a probability of development approach to their housing element sites inventories, resulting in housing elements that identified many more sites for rezoning than what would otherwise be required under the traditional interpretation of Housing Element Law. At the time of housing element adoption, both jurisdictions were lauded by housing advocates for this probability of development approach. Both jurisdictions have planning staff capacity that far exceeds the average planning department in the state, allowing them to conduct the technical analysis required for probability of development modeling.

Notably, when both San Francisco and Los Angeles were required to implement their housing element rezoning programs, both opted to deviate from the probability of development plans contained in their adopted housing elements, and to instead conduct rezonings that would allow for less zoned capacity, more aligned with a traditional housing element rezoning program. In both jurisdictions, HCD reviewed the changes to the rezone programs and signed off on them, finding them compliant with the requirements of Housing Element Law, and noting that “HCD recognizes the challenges and opportunities to implement the housing element and applauds the efforts of the Cit[ies] in addressing the housing needs of all segments of the community.”²³ Subsequently, both Los Angeles and San Francisco were sued by housing advocates, on claims that their adopted housing element rezoning programs “did not follow through on the [housing element] rezoning process required to implement it” and “contradicts the city’s own adopted Housing Element, and fails to deliver the housing capacity the city promised to allow,” respectively.⁴

In-Kind Services and Committed Assistance: Under current law, a local jurisdiction may provide up to 25% of its lower-income RHNA through the preservation of affordable housing. In

² HCD Letter: RE: City of Los Angeles 6th Cycle (2021-2029) Adopted Housing Element, dated November 18, 2024

³ HCD Letter: RE: San Francisco’s 6th Cycle (2023-2031) Adopted Housing Element and Draft Rezoning Package, dated September 9, 2025.

⁴ Los Angeles is being sued by YIMBY Law and Californians for Homeownership (<https://www.yimbylaw.org/press/la-rezoning-lawsuit>) while San Francisco is being sued by YIMBY Law, the California Housing Defense Fund, and Californians for Homeownership (<https://www.yimbylaw.org/sf-family-zoning-plan>)

order to qualify for receiving that credit, they must demonstrate that they have entered into a legally enforceable agreement with committed financial assistance or in-kind services substantial enough to make the units available for occupancy within 2 years of the agreement taking effect. However, HCD does not have any published specific guidance on what constitutes valid “in-kind services,” resulting in additional administrative ambiguity.

This Bill: This bill authorizes HCD, by January 1, 2028, to promulgate or approve formulas, user interfaces, or other tools that jurisdictions may use to determine the “realistic capacity” of sites identified in a housing element sites inventory and authorizes HCD to hire economists and data scientists to develop them. If a jurisdiction elects to use an HCD-approved formula and properly applies it, this bill provides that the jurisdiction is deemed to have satisfied specified Housing Element Law requirements related to the sites inventory, analysis of zoning and public facilities, and the relationship of identified sites to affirmatively furthering fair housing (AFFH), unless the jurisdiction relied on substantially inaccurate or faulty data in using the tools. This bill requires each housing element sites inventory to specify both the number of units currently allowed on each site and the number that would be allowed following any required rezoning, regardless of whether or not the jurisdiction is using HCD’s tools to fulfil its sites inventory obligations.

The HCD-approved formulas would be required to estimate site capacity using historical development data, site characteristics, and other statistically relevant information, including a presumptive probability of development and the expected number of units conditional on development. This bill authorizes formulas developed or approved by HCD to estimate realistic capacity under existing zoning, the additional realistic capacity created through rezoning or removal of governmental constraints, and the realistic capacity of ADUs. Additionally, this bill authorizes formulas to exclude sites where the site size or zoning are not conducive to development at densities appropriate for lower- or moderate-income housing, including sites that do not allow for ministerial development. HCD may tailor the tools to particular cities or counties (which are not specified) where data limitations prevent statewide application. While this bill creates the option for jurisdictions to use these tools in their sites inventories and associated rezonings, it does not require them to do so, as some may prefer a more tailored local approach.

HCD would be required to publicly post any proposed formula, tool, or supporting documentation for at least 60 days before approval or promulgation, but is otherwise exempt from the requirements of the Administrative Procedure Act (APA) when developing these tools, formulas, and related guidance. This bill further provides that HCD-approved formulas and tools, and the jurisdictions that use them to complete their housing element sites inventories and any required rezoning programs, are not subject to judicial review, except that a court may review whether a jurisdiction misapplied the formula or relied on faulty data when using those tools.

Finally, this bill expands the definition of “in-kind services” that may qualify as “committed assistance” for purposes of allowing jurisdictions to count preserved or rehabilitated affordable housing units toward a portion of their adequate sites obligation under Housing Element Law. Specifically, it provides that qualifying “in-kind services” include: providing low-interest predevelopment loans, donating or leasing land or structures below market value, and other in-kind services identified in HCD’s guidance.

Policy Considerations: The Committee may wish to consider the following:

- 1) **Timing.** The majority of the state is currently in its 6th housing element cycle, with 7th cycle housing elements due as early as January 31, 2027 in certain regions.⁵ RHNA methodology development, approval of regional housing allocations, and housing element reviews are labor-intensive for HCD. This bill would require HCD to promulgate or approve formulas or other tools, presumably for use in the 7th housing element cycle, by January 1, 2028. This formula development will be inherently technical in nature, regarding economic and statistical expertise as well as familiarity with Housing Element Law and local planning practices and regulations. The Committee may wish to consider whether the timeline proposed in this bill is feasible, and whether the tool would be developed in time for local governments to make use of it (housing elements for the larger regions in the state are due between 2029 and 2031).
- 2) **Public Input.** This bill provides HCD with an exemption from the Administrative Procedure Act in the development of this tool, formula, or user interface, and provides a safe harbor from lawsuits for any jurisdiction that uses the resulting tool, so long as they do not input faulty or inadequate data into the tool. HCD is only required to complete a 60 day public comment period before promulgating, approving, or changing a tool under this bill. Any local government that uses this tool both for its housing element sites inventory and for any resulting housing element rezoning programs would not be subject to third party lawsuits related to those provisions of Housing Element Law. The Committee may wish to consider whether HCD should be required to comply with the provisions of the APA during tool development in order to ensure robust public participation and whether the tool development itself should still be subject to judicial review, in order to ensure that the requirements of Housing Element Law are met, especially since the bill provides a safe harbor for the cities that may choose to use it. Some critics maintain that the legal safe harbor for local governments is too high of a standard, and that the formula should instead be afforded a rebuttable presumption of validity.
- 3) **Local Uptake?** This bill creates the option for local governments to use the tool developed by HCD for their housing element sites inventories and any required rezoning, but does not require them to use it. Proponents of this bill maintain that this would help reduce ambiguity and back and forth between local governments and HCD during the housing element review and approval process, a common complaint associated with housing elements as a whole. While it is true that the use of this tool would help streamline and standardize a portion of the housing element reviews, jurisdictions would still be subject to the iterative HCD review process to verify compliance with other aspects of Housing Element Law, and cities could still face legal scrutiny over other aspects of their housing elements. Furthermore, cities that currently express interest in such a tool may find that using it would require them to identify far more sites suitable for housing in their sites inventories, and rezone for much more residential capacity than would otherwise be required if cities relied on the current sites inventory system. While good for housing outcomes and furthering the objectives of Housing Element Law, this may ultimately reduce local uptake. For example, both Los Angeles and San Francisco relied on a probability of development approach for their 6th cycle housing element sites inventories, but ultimately approved rezonings that deviated from those approved plans due to the amount of rezoning that would have been required (among other

⁵ <https://www.hcd.ca.gov/housing-open-data-tools/housing-element-regional-housing-needs-determination-schedule>

factors), and as such, are currently facing lawsuits over their housing element rezoning programs.

- 4) **Effort versus Outcomes.** Some may argue that the overall cost and effort for HCD to approve or promulgate such a detailed tool (for an unspecified number of jurisdictions) may not achieve better outcomes than if a simpler probability of development model were adopted for the whole state to use, such as a 50% probability of development for newly identified rezone sites, and a 10% probability of development for sites recycled from prior housing element cycles.

Arguments in Support: SPUR, the bill sponsor, writes in support: “SB 457 would authorize HCD to identify and approve specific economic models that assess whether jurisdictions have an adequate number of sites and zoned capacity to reasonably meet their RHNA goals. HCD would accept such an analysis as part of the housing element certification process subject to approval of the methods utilized. This approach will save HCD considerable time on review and give jurisdictions predictability and certainty in the review process.

Jurisdictions that properly apply the formula will be deemed compliant with the corresponding site inventory requirements. It is important to note that use of the formula is voluntary and that jurisdictions may elect to use existing site inventory methodologies.

Arguments in Opposition: The California Council for Affordable Housing, California Building Industry Association, and California Apartment Association write in opposition: “It is premature to replace existing adequate-sites requirements with a probability-of-development computer model. We support exploring probability-of-development analysis as a potential tool within the housing element process. In fact, CBIA sponsored SB 405 (Cortese, 2023), which proposed introducing such analysis through pilot programs that could be tested, evaluated, and refined before broader implementation. SB 457 takes the opposite approach by authorizing the Department of Housing and Community Development and unspecified third-party researchers to establish a binding statewide methodology without complying with the California Administrative Procedure Act’s notice-and-comment requirements. The bill further shields the resulting model from judicial review, meaning even an arbitrary or irrational methodology could not be challenged in court.”

Committee Amendments: The Committee may wish to consider the following amendments:

- 1) Requiring HCD to comply with the APA while promulgating, approving, or making material changes to the tool proposed by this bill.
- 2) Removing the exemption from judicial review for HCD’s tool development, while maintaining it for any local use of the tool unless the local government misapplied the formula or relied on faulty data.

Related Legislation:

SB 405 (Cortese) of 2023 would have required the HCD to establish a pilot program to develop a methodology to analyze whether a local agency’s inventory of land suitable for development had identified adequate sites to accommodate its share of the regional housing need for all income levels. SB 405 was held in the Senate Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

San Francisco Bay Area Planning and Urban Research Association (Sponsor)
Bay Area Council
Circulate Planning & Policy
City of San José
Equitable Land Use Alliance
Housing Action Coalition
Mayor Matt Mahan, City of San José

Opposition

California Apartment Association
California Building Industry Association
California Council for Affordable Housing

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