

Date of Hearing: July 1, 2026

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Juan Carrillo, Chair

SB 457 (Becker) – As Amended June 11, 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) Makes various findings and declarations relating to the burdensome process for writing, reviewing, and implementing housing elements for local and state officials and the need to simplify the writing and review of the seventh housing element by authorizing HCD to issue formulas, associated user interfaces, or other tools for assessing the capacity of sites for residential uses.
- 2) 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) may rely on a formula promulgated or approved by HCD.
- 3) 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.
- 4) Requires the sites inventory in Housing Element Law (sites inventory) 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 that will be allowed after rezoning, as specified, to accommodate the city’s or county’s share of its regional housing need allocation (RHNA).
- 5) Requires, on or before January 1, 2028, HCD to take one of the following actions:
 - a) Promulgate formulas and associated user interfaces or other tools for the information, as specified.
 - b) Approve formulas and associated user interfaces or other tools developed by third parties, as specified.
- 6) Provides, except as provided by 6) d) below, that the formula and associated user interfaces or other tools promulgated or approved by HCD shall allow for a determination to be made for all of the following:

- a) The realistic capacity of the sites inventory under the regulatory status quo, including a presumptive probability of housing development at any level of affordability for each site, with realistic capacity defined as the product of these terms.
 - b) The additional realistic capacity that will be provided by a rezoning program or removal of a government constraint, including a presumptive probability of development at any level of affordability and a number of units conditional on development at any level of affordability for each site, with additional realistic capacity defined as the product of these terms per the applicable formula promulgated under a).
 - c) The realistic capacity for accessory dwelling units (ADUs).
- 7) Establishes the following parameters for the formula promulgated or approved by HCD:
- a) Requires the formula promulgated or approved by HCD to 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) Authorizes, for the purposes of determining capacity for housing at a level of affordability at or below above-moderate income, the formula promulgated or approved by HCD to exclude sites where size or zoning is 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) 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.
 - d) Allows the formula promulgated or approved by HCD to be limited to specified cities or counties if data availability or other reasonable consideration preclude making the formula universal.
- 8) Requires HCD to comply with requirements of the Administrative Procedures Act (APA) when promulgating, approving, or making a material change to a formula, associated user interface, or tool. Provides that a nonmaterial change to an approved formula, associated user interface, or tool may be implemented without prior notice, pursuant to the APA.
- 9) Provides that the use of any adopted formula, associated user interface, or tool by a city or county shall not be subject to judicial review. However, a court is authorized to review whether a city or county that elected to use a formula promulgated or approved, pursuant to this bill, misapplied the formula or relied on substantially inaccurate, misclassified, or otherwise faulty data.
- 10) Provides that a city or county is not required to use a formula, associated user interface, or tool promulgated or approved by HCD.
- 11) Authorizes HCD to hire economists and data scientists for the purpose of promulgating the formulas and associated user interfaces or other tools.

- 12) Defines “in-kind services” to mean nonmonetary assistance provided by a city or county that materially reduces development costs or materially facilitates the acquisition, rehabilitation, or preservation of units eligible under this bill. “In kind services” include, but are not limited to, all of the following:
- a) Provision of predevelopment loans that bear interest at or below the rates authorized by existing law governing predevelopment loans [Health and Safety Code (HSC) § 50532] with repayment terms that do not exceed those authorized under existing law, as specified.
 - b) The donation, dedication, or long-term lease of a specific parcel of land, or an existing structure, below-market value, as documented by a qualified, independent appraisal.
 - c) Any additional in-kind services identified in written guidance issued by HCD.
- 13) Makes technical and conforming changes.

EXISTING LAW:

- 1) Provides that each community’s fair share of housing be determined through the RHNA process. Sets out the process as follows:
 - a) Department of Finance and HCD develop regional housing needs determinations.
 - b) Councils of Governments (COGs) allocate housing via RHNA within each region based on these determinations, and where a COG does not exist, HCD conducts the allocations.
 - c) Cities and counties incorporate these allocations into their housing elements. [Government Code (GOV) §65584 and 65584.01]
- 2) Requires HCD, in consultation with each COG, to determine each region’s share of housing need at least two years prior to the scheduled revision of the housing element, as provided, and requires the COG or HCD to adopt a final RHNA that allocates a share of the regional housing need to each city or county at least one year prior to the housing element due date for the region. [GOV §65584(b)]
- 3) 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; an inventory of land suitable and available for residential development; an analysis of potential and actual governmental and nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels; and a demonstration of local efforts to remove constraints that hinder the locality from meeting its share of the regional housing need, among other things.
 - b) 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.

- c) 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. [GOV 65583 §(a)-(c)]
- d) Defines "committed assistance" to mean that the city or county enters into a legally enforceable agreement during the period from the beginning of the projection period until the end of the third year of the planning period that obligates sufficient available funds or other in-kind services to provide the assistance necessary to make the identified units affordable and that requires that the units be made available for occupancy within two years of the execution of the agreement. "Committed assistance" does not include tenant-based rental assistance. (GOV § 65583.1)

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

COMMENTS:

- 1) **Bill Summary.** This bill requires 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 fulfill the jurisdiction's AFFH duties, 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 the jurisdiction is using HCD's tools to fulfill 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. Under this bill, local agencies have the discretion to use the formulas or tools promulgated by HCD.

This bill also provides that any formula or tool promulgated or approved by HCD to undergo the requirements of the APA when developing and making material changes to the formula

or tools. For cities and counties that have used a formula or tool approved or promulgated by HCD, this bill allows a court to review whether a jurisdiction misapplied the formula or if the jurisdiction relied on substantially inaccurate, misclassified, or faulty data. However, the bill also provides that the use of any adopted formula or tool by a city or county shall not be subject to juridical review.

Lastly, this bill defines “in-kind services” that may qualify as “committed assistance” under 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 but is not limited to: providing low-interest predevelopment loans, donating or leasing land or structures below market value, and other in-kind services identified in HCD’s guidance

This bill is sponsored by the San Francisco Planning and Urban Research Association (SPUR).

- 2) **Author’s Statement.** According to the author, “Producing the housing we need in California requires a partnership among the State, local governments and the private, non-profit and for-profit housing developers. SB 457 directs the [HCD] 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 the 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. Despite guidance from HCD many local jurisdictions still don’t view the process as being tied to a binding standard. The current parcel-by-parcel review process has grown burdensome for both local governments and HCD, generating conflict and litigation without improving the quality of site assessments.”
- 3) **Planning for Housing.** The California Constitution allows cities and counties to “make and enforce within its limits, all local, police, sanitary and other ordinances and regulations not in conflict with general laws.” It is from this fundamental power (commonly called the police power) that cities and counties derive their authority to regulate behavior to preserve the health, safety, and welfare of the public—including land use authority.

Cities and counties use their police power to enact zoning ordinances that shape development, such as setting maximum heights and densities for housing units, minimum numbers of required parking spaces, setbacks to preserve privacy, lot coverage ratios to increase open space, and others. These ordinances can also include conditions on development to address aesthetics, community impacts, or other particular site-specific consideration. Zoning ordinances and other development decisions must be consistent with the city or county’s general plan.

- 4) **Adoption and Implementation of Housing Elements.** One important tool in addressing the state’s housing crisis is to ensure that all of the state’s cities and counties appropriately plan for new housing. Such planning is required through the housing element of each community’s General Plan, which outlines a long-term plan for meeting the community’s existing and projected housing needs. Cities and counties are required to update their housing elements every eight years in most of the high population parts of the state, and five years in areas with smaller populations. Localities must adopt a legally valid housing element by their

statutory deadline for adoption. Failure to do so can result in certain escalating penalties, including exposure to the “builder’s remedy” as well as public or private lawsuits, financial penalties, potential loss of permitting authority, or even court receivership. Localities that do not adopt a compliant housing element within 120 days from their statutory deadline also must complete any rezones within one year of their deadline, rather than the three years afforded to on-time adopters.

Among other things, the housing element must demonstrate how the community plans to accommodate its share of its RHNA which is a figure determined by HCD through a demographic analysis of housing needs and population projections, also known as the regional housing need determination (RHND). HCD establishes its determination of each COG’s regional housing targets across the state for the next five- or eight-year planning cycle. Each COG (or in some areas, HCD acting directly as COG) then sub-allocates the RHNA to each local government within the COG’s jurisdiction, and in turn each jurisdiction uses its housing element to show how it will accommodate that number of new housing units, split out by income level and with a focus on certain special needs housing types and on affirmatively furthering fair housing.

Adequate zoning, removal of regulatory barriers, protection of existing stock and targeting of resources are essential to obtaining a sufficient permanent supply of housing affordable to all economic segments of the community. Although not requiring the community to develop the housing, housing element law requires the community to plan for housing. Recognizing that local governments may lack adequate resources to house all those in need, the law nevertheless mandates that the community do all that it can and not engage in exclusionary zoning practices.

- 5) **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 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, existing law does not specify and HCD has not provided guidance on what constitutes valid “in-kind services.”
- 6) **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. 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 be developed during the planning period. The authors of the brief 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 of the brief 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.

- 7) **Administrative Procedures.** The Administrative Procedure Act (APA) establishes standard provisions that apply to rulemaking proceedings as well as the adjudicative procedures related to administrative hearings. Similar to other laws with broad application, such as the Fair Political Practices Act or the Ralph M. Brown Act (Brown Act), the APA is structured in a way that it can be applied to a wide universe of public entities, officials, or actions. The APA applies broadly to state agencies unless a statute specifically exempts an agency or action from the APA.
- 8) **Rulemaking Actions Under the APA.** The Office of Administrative Law (OAL) administers the rulemaking provisions of the APA and reviews rulemaking proceedings prepared by state agencies. The APA establishes procedures that all agencies must follow when developing regulations that implement or make clear statutory provisions. While the specific scope of an agency's authority to implement a particular statute is typically embedded in that statute, the APA establishes uniform procedures that agencies must comply with when adopting regulations. This includes, but is not limited to, the following requirements for rulemaking agencies proposing to add, amend or repeal regulations:
 - a) Requirements for rulemaking agencies to prepare an initial statement of reasons (ISOR) explaining the specific purpose and necessity of each section of the regulation.
 - b) Requirements for rulemaking agencies to prepare an estimate of the economic impact of the proposed regulations.
 - c) Requirements for rulemaking agencies to hold an initial 45-day comment period on the initial draft of the regulations and subsequent 15-day comment periods on any proposed changes to the initial regulations that occur during the rulemaking period.
 - d) Requirements for rulemaking agencies to hold a public hearing if requested by interested parties.
 - e) Requirements for rulemaking agencies to prepare written responses to written comments received during the 45-day or any subsequent 15-day comment period as well as any oral comments received at a public hearing.
 - f) Requirements to prepare a final statement of reasons (FSOR) recognizing changes made throughout the rulemaking process and deviations from the ISOR.
 - g) Requirements to complete the rulemaking and submit the rulemaking record to OAL for review and approval within one year.

OAL reviews rulemaking proceedings to ensure compliance with the APA, such as whether the agency has sufficiently demonstrated that specific provisions of the regulations are necessary to implement the statute, whether the agency has complied with the timelines and disclosure requirements of the APA, and whether the agency responded to all germane comments submitted to the agency regarding the rulemaking proceeding.

- 9) **Hearings Under the APA.** The APA additionally establishes standards for informal and formal hearings conducted either directly by state agencies and commissions or by the OAH on their behalf. The statute provides a standard process and code of procedures that govern hearings and ensure the rights of parties to the hearing are protected. The statute governs hearing procedures for more than 1,500 state and local agencies. The statute is written broadly enough to be applicable to and govern the array of state administrative hearings on a variety of subjects. For example, APA hearing requirements apply to hearings related to appeals of penalties issued for violations of environmental regulations, actions to suspend or revoke a medical license, actions related to financial audits of local education agencies, administrative fines assessed by the Department of Corrections, and many more.

The adjudicative procedures embedded in the APA include requirements for the conduct of informal and formal administrative hearings.

- 10) **Previous Legislation.** AB 1886 (Alvarez), Chapter 267, Statutes of 2024, clarified that a housing element or amendment is not considered substantially compliant with housing element law until the local agency has adopted a housing element that HCD has determined is in substantial compliance with housing element law, as specified.
- 11) **Arguments in Support.** SPUR writes in support, “Jurisdictions struggle with the existing HCD review process which can involve multiple rounds of comments and clarifications as well as multiple rounds of revisions, injecting uncertainty and unpredictability into the process while HCD expends considerable staff resources evaluating housing element compliance.

“In the 6th cycle, some local governments — such as San Francisco and Los Angeles — experimented with economic modeling in lieu of (or in complement to) parcel-by-parcel documentation of existing activities, lease terms, and property owner plans, etc. While HCD has signaled its interest in encouraging more of that approach through administrative processes, a recent Court of Appeal decision interpreting the new housing-element requirements—*New Commune DTLA LLC v. City of Redondo Beach (2025)*—called into question the ability of jurisdictions to adopt or HCD to approve housing elements that do not include extremely detailed site-by-site analyses of every housing element sites inventory residential parcel in a given jurisdiction.

“To address these challenges, 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.”

- 12) **Arguments in Opposition.** The California Council for Affordable Housing, California Building Industry Association, and California Apartment Association write in opposition to a previous version, “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.”

13) **Double-Referral.** This bill is double-referred to the Assembly Housing and Community Development, where it passed on a 10-1 vote on June 10, 2026.

REGISTERED SUPPORT / OPPOSITION:

Support

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

Opposition

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

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