

SENATE THIRD READING
SB 457 (Becker)
As Amended August 20, 2026
Majority vote

SUMMARY

Requires the Department of Housing and Community Development (HCD), by *July 1, 2028*, to develop *one or more* 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.

Major Provisions

- 1) Provides that the inventory of land suitable and available for residential development, as required by Housing Element Law, may rely on a formula promulgated or approved by HCD.
- 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 *July 1, 2028*, either promulgate *one or more of* its own formulas and associated user interfaces or other tools, or approve *one or more* 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 and a total number of new units if the site is developed, with realistic capacity defined as a product of these terms; and
 - c) The realistic capacity for Accessory Dwelling Units (ADUs) that will be developed and offered as housing during the planning period.
- 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 *or area*, statistically related site characteristics, and, if available, other information probative of a site's probability of development or the total number of units if the site is developed;

- 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) The post-rezoning capacity of any lower-income site which is subject to a rezoning program shall be counted only if the program will zone the site to permit owner-occupied and rental multifamily uses by right for developments where at least 20 of the units are affordable to lower-income households;
 - d) 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 multiplied by the total number of new units if the site is developed; and
 - e) It may be limited to specific cities or counties if data availability or other reasonable considerations preclude making the formula universal.
- 6) *Provides that nothing shall excuse a jurisdiction from its obligation to identify specific sites adequate for the development of housing at various income levels.*
- 7) Allows HCD to adopt emergency regulations pursuant to the Administrative Procedures Act (APA) to implement this bill, and *which shall remain in effect until the permanent regulations become effective.*
- 8) Provides that any formula, associated user interface, or tool promulgated or approved under 3) shall not limit a local government's discretion to establish the housing element inventory of sites to which the formula, associated user interface, or tool will be applied to assess the realistic capacity of the inventory sites.
- 9) Provides that a court may review whether a city or county that elected to use a formula promulgated or approved under 3) misapplied the formula or relied on substantially inaccurate, misclassified, or otherwise faulty data, but otherwise, the use of any adopted formula, associated user interface, or tool by a city or county shall not be subject to judicial review.
- 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 the formulas, user interfaces, and other tools developed in 3) shall be used solely for the purposes of estimating realistic development capacity of sites, and not for other provisions of Housing Element Law.
- 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.

14) *Makes a number of findings and declarations.*

15) *Makes other nonsubstantive and conforming changes.*

COMMENTS

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.

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 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.

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

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 two 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 July 1, 2028, to promulgate or approve *one or more* 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, then the use of any adopted formula, associated user interface, or tool by a local government shall not be subject to judicial review, 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 total number of new units if the site is developed. 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 that will be developed and offered as housing during the planning period. 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 comply with the Administrative Procedure Act (APA) when developing these tools, formulas, and related guidance, but may release emergency regulations *which will remain in effect until permanent regulations become effective*.

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.

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."

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. 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

None on file for current bill version.

FISCAL COMMENTS

According to the Assembly Appropriations Committee:

HCD estimates General Fund costs of \$1.58 million in fiscal years 2027-28 and 2028-29 for six additional positions, including two data scientists, one economist, two housing element specialists and one application/user interface developer, necessary to meet the requirements of this bill. These positions include staff resources not currently available at HCD, as well as additional support for housing element review tasks, promulgating regulations, providing technical assistance to jurisdictions, and reviewing sites inventories prepared with the new formulas.

In addition, HCD estimates one-time contract costs of \$2 million for additional technical support and access to proprietary formulas and tools.

VOTES

SENATE FLOOR: 39-0-1

YES: Allen, Alvarado-Gil, Archuleta, Arreguín, Ashby, Becker, Blakespear, Cabaldon, Caballero, Cervantes, Choi, Cortese, Dahle, Durazo, Grayson, Grove, Hurtado, Jones, Laird, Limón, McGuire, McNerney, Menjivar, Niello, Ochoa Bogh, Padilla, Pérez, Reyes, Richardson,

Rubio, Seyarto, Smallwood-Cuevas, Stern, Strickland, Umberg, Valladares, Wahab, Weber
Pierson, Wiener

ABS, ABST OR NV: Gonzalez

ASM HOUSING AND COMMUNITY DEVELOPMENT: 10-1-1

YES: Haney, Patterson, Ávila Farías, Caloza, Ward, Kalra, Lee, Quirk-Silva, Wicks, Wilson

NO: Tangipa

ABS, ABST OR NV: Ta

ASM LOCAL GOVERNMENT: 8-1-1

YES: Carrillo, Pacheco, Ramos, Ransom, Blanca Rubio, Stefani, Ward, Wilson

NO: Johnson

ABS, ABST OR NV: Ta

ASM APPROPRIATIONS: 11-2-2

YES: Wicks, Arambula, Calderon, Caloza, Fong, Mark González, Krell, Pacheco, Pellerin,
Sharp-Collins, Solache

NO: Dixon, Tangipa

ABS, ABST OR NV: Hoover, Ta

UPDATED

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