

UNFINISHED BUSINESS

Bill No: SB 457
Author: Becker (D)
Amended: 8/20/26
Vote: 21

PRIOR SENATE VOTES NOT RELEVANT

SENATE HOUSING COMMITTEE: 8-2, 8/27/26

AYES: Arreguín, Cabaldon, Caballero, Cortese, Durazo, Gonzalez, Grayson,
Padilla

NOES: Seyarto, Ochoa Bogh

ASSEMBLY FLOOR: 59-13, 8/24/26 - See last page for vote

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

SOURCE: Author

DIGEST: This bill 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 its adequate sites obligation under Housing Element Law

Assembly Amendments add the substantive portions of the bill requiring HCD to adopt formulas or tools that a jurisdiction may use when developing its housing element sites inventory.

ANALYSIS:

Existing law:

- 1) Provides that the fair share of housing for each city and county is determined through the Regional Housing Needs Determination (RHND) and the subsequent Regional Housing Needs Allocation (RHNA) plan for the region. The law establishes the RHND/RHNA process as follows: (a) Department of Finance (DOF) and HCD develop regional housing needs estimates; (b) COGs allocate housing within each region based on these determinations, and where a COG does not exist, HCD conducts the allocations; and (c) cities and counties incorporate these allocations into their housing elements.
- 2) Requires each city and county to prepare and adopt a General Plan, including a housing element, to guide the future growth of a community. The housing element must include an inventory of land suitable and available for residential development. Where a jurisdiction's inventory of land suitable for development does not accommodate the jurisdiction's share of RHNA, the jurisdiction must identify actions that will be taken to make adequate sites available during the planning period to accommodate the jurisdiction's share of RHNA that is not accommodated on sites in the inventory.
- 3) Authorizes HCD to allow jurisdictions to meet up to 25% of their requirement to identify adequate sites to accommodate their share of RHNA in their housing element by implementing a "committed assistance program" that rehabilitates or preserves affordable units or converts existing property into affordable housing. Specifically, a committed assistance program must:
 - a) Identify the specific sources of funding for committed assistance.
 - b) Indicate the number of affordable units that will be provided and the amount of dedicated funds necessary to develop affordable housing units.
 - c) Demonstrate that the units meet one of the following:
 - i) The units will be substantially rehabilitated with committed assistance from the jurisdiction to prevent imminent loss of housing stock. Jurisdictions must apply long-term affordability covenants to rehabilitated units and meet other conditions.
 - ii) The units are located on foreclosed property or in a multifamily housing complex of three or more units that is acquired with committed assistance from the jurisdiction and converted from nonaffordable housing to affordable housing subject to a long-term affordability covenant.
 - iii) The units will be preserved at affordable housing costs for lower income households through committed assistance from the jurisdiction by

- acquisition of the unit, or the purchase of affordability covenants for the unit.
- iv) The unit is part of a long-term COVID-19 recovery response through which units in a motel, hotel, or hostel are converted with committed assistance from the city or county from nonresidential to residential for people experiencing homelessness by the acquisition of the unit or purchase of affordability covenants and restrictions for the unit.
 - v) The units are spaces in a mobile home park that are acquired with committed assistance from the jurisdiction that are subject to an agreement to maintain affordability.
- 4) Specifies that “committed assistance” means 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.

This bill:

- 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 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 regarding 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 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) The post-rezoning capacity of any lower-income site that 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 an 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 its 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.

Background

Housing elements. Every city and county in California is required to develop a general plan that outlines the community’s vision of future development through a

series of policy statements and goals. A community's general plan lays the foundation for all future land use decisions, as these decisions must be consistent with the plan. General plans are comprised of several elements that address various land use topics. State law mandates seven elements: land use, circulation (e.g., traffic), housing, conservation, open-space, noise, and safety.

Each community's general plan must include a housing element, which outlines a long-term plan for meeting the community's existing and projected housing needs. The housing element demonstrates how the community plans to accommodate its "fair share" of its region's housing needs. Following a staggered schedule, cities and counties located within the territory of a metropolitan planning organization (MPO) must revise their housing elements every eight years, and cities and counties in rural non-MPO regions must revise their housing elements every five years. These five- and eight-year periods are known as the housing element planning period.

In general, a jurisdiction's housing element must identify and analyze existing and projected housing needs, identify adequate sites with appropriate zoning to meet its share of the RHNA, and ensure that regulatory systems provide opportunities for, and do not unduly constrain, housing development.

RHND & RHNA process. Before each housing element revision, each community is assigned its fair share of the region's housing need for defined household income levels. Currently local agencies must plan for four separate income categories (very low-, low-, moderate-, and above-moderate income households). Beginning in the seventh housing element cycle, household income levels will include planning requirements for acutely low- and extremely low-income households. This planning occurs through a two-step process. First, HCD determines the aggregate housing need for the region during the planning period the housing element will cover (RHND); then the COG allocates the regional housing need to each city and county within the region (RHNA).

Sites Identification. In adopting a housing element, jurisdictions are required to prepare an inventory of land suitable and available for residential development. Where the inventory of sites does not include adequate sites to accommodate the housing needs for all household income levels, the jurisdiction's housing element must include a program to make sites available during the planning period with appropriate zoning and development standards to accommodate the jurisdiction's share of regional housing need that could not be accommodated on the land identified in the inventory. This includes a program to rezone sites within specific

timeframes during the housing element period (typically three years for jurisdictions with a timely and compliant housing element).

Comments

- 1) *Author's statement.* "The current parcel-by-parcel review process for the site inventory analysis has grown cumbersome for local governments and 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 require considerable staff resources. 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 economic formulas which may be used for assessing the realistic capacity of housing element inventory sites. This will resolve ambiguity as to what constitutes "realistic" capacity for both HCD and local jurisdictions when determining whether an analysis is compliant. The use of the formulas proposed in this bill is voluntary, and jurisdictions may still elect to continue to use existing site inventory methodologies."
- 2) *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.

- 3) *Formulas and tools.* 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 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 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 is 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

APA when developing these tools, formulas, and related guidance, but may release emergency regulations, which will remain in effect until permanent regulations are adopted.

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

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.

SUPPORT: (Verified 8/27/26)

San Francisco Bay Area Planning and Urban Research Association (SPUR)
California Community Land Trust Network
City of Sunnyvale
Greenbelt Alliance
Housing Action Coalition
Housing Leadership Council
Mayor Matt Mahan, City of San Jose
Mountain View Community Land Trust

OPPOSITION: (Verified 8/27/26)

Neighbors for a Better San Diego

ASSEMBLY FLOOR: 59-13, 8/24/26

AYES: Addis, Aguiar-Curry, Ahrens, Alvarez, Arambula, Ávila Farías, Bains, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Calderon, Caloza, Carrillo, Connolly, Elhawary, Fong, Gabriel, Garcia, Gipson, Mark González, Haney, Harabedian, Hart, Irwin, Jackson, Kalra, Krell, Lee, Lowenthal, Muratsuchi, Nguyen, Ortega, Pacheco, Papan, Patel, Patterson, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Celeste Rodriguez, Michelle Rodriguez, Rogers,

Blanca Rubio, Schiavo, Schultz, Sharp-Collins, Solache, Soria, Stefani,
Valencia, Ward, Wicks, Wilson, Zbur, Rivas
NOES: Alanis, Castillo, Chen, Davies, DeMaio, Dixon, Ellis, Flora, Jeff
Gonzalez, Hadwick, Johnson, Macedo, Tangipa
NO VOTE RECORDED: Hoover, Lackey, McKinnor, Ransom, Sanchez, Ta,
Wallis

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**** **END** ****