

Date of Hearing: July 15, 2025

ASSEMBLY COMMITTEE ON JUDICIARY

Ash Kalra, Chair

SB 786 (Arreguín) – As Amended May 1, 2025

SENATE VOTE: 28-10

SUBJECT: PLANNING AND ZONING: GENERAL PLAN: JUDICIAL CHALLENGES

KEY ISSUE: SHOULD PETITIONS FOR A WRIT OF MANDATE TO REVIEW THE LEGALITY OF A GENERAL PLAN BE PROVIDED EXPEDITED JUDICIAL REVIEW?

SYNOPSIS

In recent years, the Legislature has enacted a series of reforms designed to boost housing production and ensure that local agencies cannot avoid their legal obligations to approve and develop necessary housing units. A significant portion of the prior legislation focused on providing new legal tools to developers, as well as the state, to hold local governments accountable. Despite the ambitious nature of several of these bills, they did not reform the underlining court procedures for judicial review of these cases. The author and proponents of this bill now contend that court delays are undercutting the effectiveness of California's housing reform laws. One such area of delay, identified by the author of this bill, relates to judicial challenges to general plans and housing elements. Given that these documents represent the foundation of all local housing policy, the proponents of this measure contend that resolving legal issues surrounding general plans in an expeditious manner is critical to building more housing.

This measure would streamline court review of challenges to general plans and various implementing activities. The bill would require these cases to get calendar preference and require courts to issue certain remedies should it appear that a case has a high likelihood of success, even before reaching a final judgment. The bill limits the court's ability to order continuances in order to keep the proceedings moving in an expeditious manner. The bill also adopts various rules regarding appeals of these matters. Finally, the bill clarifies that these procedures, as well as the existing law they build upon, apply to both general law and charter cities.

This bill is sponsored by Attorney General Rob Bonta and is supported by over one dozen housing advocacy organizations. The proponents argue that this bill is necessary to resolve ambiguities in existing law that result in delays of general plan litigation. This bill is opposed by the Judicial Council of California who contend that the flurry of litigation calendaring preference bills passed by the Legislature in recent years risk overwhelming court staff and rendering the totality of these bills ineffective. The Council also contends that the mandatory consideration of statutorily prescribed early relief measures unnecessarily, and potential improperly usurps the trial judge's discretion to manage pending litigation on a case-by-case basis. This bill was previously heard and approved by the Committee on Housing and Community Development by a vote of 7 to 3.

SUMMARY: Updates judicial review procedures for challenges to a local government's general plan, housing element therein, and related zoning ordinances. Specifically, **this bill:**

- 1) Requires, if a court finds that an action of a city, county, or city and county, which is required to be consistent with its general plan, does not comply with its housing element, the city, county, or city and county to bring its action into compliance within 120 days.
- 2) Requires the court to retain jurisdiction over a matter specified in 1) until the city, county, or city and county comes into compliance.
- 3) Provides that if bringing an action into compliance in a matter specified in 1) requires review by the Department of Housing and Community Development, and the Department's review is not timely completed to allow a city, county, or city and county to comply with a court order to bring their housing element into compliance within 120 days, the court may grant a reasonable extension of time for the city, county, or city and county to comply.
- 4) Requires, if a court finds that a city, county, or city and county failed to complete a rezoning required to comply with the Planning and Zoning law, the court to issue an order or judgment, after considering the equities of the circumstances presented by all parties, compelling the local government to complete the rezoning within 120 days or the earliest time consistent with public hearing notice requirements in existence at the time the action was filed.
- 5) Requires the court to retain jurisdiction over a matter specified in 4) until the city, county, or city and county completes the rezoning.
- 6) Requires the court, within 30 days of the filing of the request for a hearing or trial pursuant to the filing of a petition for a writ of mandate related to a local government's non compliance with the Planning and Zoning law, the court to set a date for a hearing or trial on the action at the earliest possible date that the business of the court permits, but not more than 120 days after the filing of a request for hearing.
- 7) Authorizes the court to continue the date of the hearing or trial requested in 6) upon written motion and a finding of good cause, or upon the court's own motion, for no more than 60 days.
- 8) Requires, if requested by the petitioner, the court to adopt any one of more means of temporary relief provided in existing law in light of a continuance issued pursuant to 7), as specified.
- 9) Requires that any order or judgment issued in an action brought to challenge the validity of the general plan of any city, county, or city and county, or any mandatory element thereof that resolves whether the general plan or any mandatory element of the general plan substantially complies with the Planning and Zoning laws is immediately appealable.
- 10) Requires, if the court finds that the general plan or mandatory element does not substantially comply with the requirements of the Planning and Zoning law, the general plan to be brought into compliance within 120 days.
- 11) Prohibits any relief provided, as specified in existing law, to a petitioner as a result of a non-compliant general plan from being stayed during the pendency of an appeal, except as specified.

- 12) Provides that, notwithstanding 11), relief may only be stayed upon a showing made by the city, county, or city and county that the city, county, or city and county will suffer irreparable harm.
- 13) Requires the court, when a petition seeking temporary relief for a noncompliant general plan, to set a date for a hearing within 15 days of the filing of a request for temporary relief and that the hearing must commence at the earliest possible date that the business of the court permits, but not more than 30 days after the filing of the request for temporary relief.
- 14) Authorizes, if the court does not hear the motion by the deadlines provided by 13), the petitioner to file an ex parte application requesting temporary relief on the 61st day after the initial filing of a request for temporary relief.
- 15) Requires, to the extent that a quantified development standard contained in a general plan element is inconsistent with a quantified development standard contained in another element, the provisions of the most recently adopted element to supersede inconsistent provisions of the previously adopted element.
- 16) Defines for the purpose of 15), “quantified development standard” means a site’s maximum density or requirements for a height limit, setback, maximum or minimum unit size, lot coverage, or floor area ratio.
- 17) Applies the above provisions to charter cities.
- 18) Makes various technical and conforming changes.

EXISTING LAW:

- 1) Requires any action brought by any interested party to review the conformity to the Planning and Zoning law of any housing element or portion thereof or revision thereto to be brought as a petition for a writ of mandate; the court’s review of compliance is to extend to whether the housing element or portion thereof or revision thereto substantially complies with the requirements of the Planning and Zoning law. (Government Code Section 65587 (b).)
- 2) Provides that a writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by that inferior tribunal, corporation, board, or person. (Code of Civil Procedure Section 1085 (a).)
- 3) Requires, if a court finds that an action of a city, county, or city and county, which is required to be consistent with its general plan, does not comply with its housing element, the city, county, or city and county to bring its action into compliance within 60 days. (Government Code Section 65587 (c).)
- 4) Requires the court to retain jurisdiction throughout the period for compliance to enforce its decision rendered pursuant to 3), and if the court’s determines that the 60-day period for compliance would place an undue hardship on the city, county, or city and county, the court may extend the time period for compliance by an additional 60 days. (*Ibid.*)

- 5) Requires, if a court finds that a city, county, or city and county failed to complete the rezoning necessary to bring its housing element into compliance with the Planning and Zoning law, the court to issue an order or judgment, after considering the equities of the circumstances presented by all parties, compelling the local government to complete the rezoning within 60 days or the earliest time consistent with public hearing notice requirements in existence at the time the action was filed, as specified. (Government Code Section 65587 (d).)
- 6) Requires a petitioner to request a hearing or trial on the alternative writ or peremptory writ of mandate, and any other party may request a hearing or trial, within 90 days of the date the petitioner files the petition for a writ of mandate as provided in 1). (Government Code Section 65753 (a).)
- 7) Requires the court, within 30 days of the filing of the request for a hearing or trial pursuant to 6), to set a date for a hearing or trial on the action or part of an action brought pursuant to 1), and that the hearing or trial is to be set to be heard at the earliest possible date that the business of the court permits, but not more than 120 days after the filing of a request for hearing. (Government Code Section 65753 (b).)
- 8) Authorizes a court to grant a continuance of the hearing or trial specified in 7), upon written motion and a finding of good cause, however, the court cannot enjoin any housing developments which comply with applicable provisions of law and which may be developed without having an impact on the ability of the city, county, or city and county to properly adopt and implement an adequate housing element. (*Ibid.*)
- 9) Requires, if a court in a final judgment in favor of the plaintiff or petitioner, finds that the general plan or any mandatory element of the general plan does not substantially comply with the Planning and Zoning law, the city, county, or city and county to bring its general plan or relevant mandatory element or elements thereof into compliance within 120 days. (Government Code Section 65754 (a).)
- 10) Requires the planning agency of the city, county, or city and county required to bring a housing element into compliance with the Planning and Zoning law to submit a draft of its revised housing element or housing element amendment at least 45 days prior to its adoption to the Department of Housing and Community Development for its review, notifying the Department that the element is subject to judicial review. (*Ibid.*)
- 11) Requires a court, if it finds any portion of a general plan, including a housing element, out of compliance with the Planning and Zoning law, to include within its order or judgment one or more of the following remedies for any or all types of developments or any or all geographic segments of the city or county until the city or county has complied with the law, including:
 - a) Suspension of the city's or county's authority to issue building permits;
 - b) Suspension of the city's or county's authority to grant zoning changes or variances;
 - c) Suspension of the city's or county's authority to grant subdivision map approvals;
 - d) Mandating the approval of building permits for residential housing that meet specified criteria;

- e) Mandating the approval of final subdivision maps for housing projects that meet specified criteria; or
 - f) Mandating the approval of tentative subdivision maps for residential housing projects that meet specified criteria. (Government Code Section 65755.)
- 12) Authorizes the court, during the pendency of any action described in 9), upon a showing of probable success on the merits, grant the relief provided in 11) as temporary relief. (Government Code Section 65757 (a).)
- 13) Exempts any local government's actions to bring its General Plan into compliance with the Planning and Zoning law following a court order issued pursuant to 9) from the provisions of the California Environmental Quality Act, as specified. (Government Code Section 65759.)

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

COMMENTS: In recent years, the Legislature has approved a number of bills seeking to streamline housing development and ensure that local governments comply with their obligations to approve housing projects under the law. Despite the new legal authority provided by those measures, the author and proponents of this measure note that court processes are slowing down litigation of housing disputes. This bill expedites several court processes related to challenges to general plans and the housing element within a general plan. In support of this bill, the author states:

Californians need more housing, at more affordable price-points, to be built as soon as possible. The best path to that outcome is for every city and county to plan to meet the community's housing needs by adopting and implementing a valid housing element. In 2017 and 2018, the Legislature strengthened the state's housing element law to ensure that local governments would each do their part to plan to meet their fair share of their region's housing needs. Implementation and enforcement during this first cycle of housing elements under the revised rules have revealed some ambiguities in the law, which has led to administrative friction, litigation, and, most importantly, delays in realizing the goal of facilitating robust home building at all income levels. SB 786 would resolve several ambiguities in housing element law to provide clarity for local governments, project applicants, and courts to ensure that housing is developed as planned for.

In recent years, the Legislature has focused on expanding enforcement of other state housing laws. In 2017, the Legislature authorized the Department of Housing and Community Development to unilaterally enforce most state housing laws without requiring the intervention of the Attorney General. (AB 72 (Santiago) Chap. 370, Stats. 2017.) Similarly, in 2023, the Legislature provided the Department of Housing and Community Development and the Attorney General with an unconditional right to intervene in private litigation to enforce state housing laws whenever the state's interests are at issue in the case. (AB 1485 (Haney) Chap. 762, Stats. 2023.) In addition to expanding the state's role in policing local agency decision-making regarding housing development, the Legislature dramatically strengthened two critical housing laws last year. First, the Legislature Act enacted AB 1893 (Wicks) Chap. 268, Stats. 2024, which dramatically strengthened the "builders remedy" within the Housing Accountability Act. Second, the Legislature moved to significantly strengthen the fine and fee recovery provisions of the housing element law whenever actions are brought by the Department of Housing and Community Development, or the Attorney General. (SB 1037 (Wiener) Chap. 293, Stats. 2024.)

While these efforts have significantly strengthened the state's ability to enforce housing laws, the lengthy court processes required to force local governments to comply with their obligations under the law can significantly impede the construction of new housing.

Enforcement of the Planning and Zoning law, despite being the foundation of California's local land use decision-making, has not been addressed in recent housing related legislation.

California's Planning and Zoning law outlines the procedures local agencies must take in order to ensure the orderly development of a municipality. The guiding document for local planning is the General Plan which has been described as a local government's "constitution" for development. (*Leshar Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 540.) A general plan, which consists of nine individual "elements" outlining various aspects of local planning consists of a statement of policies to guide local planning as well as maps, diagrams, and other exhibits detailing how development is to occur in a municipality. A city or county's land use decisions, including development, siting, and permitting, must be consistent with the general plan. (See *DeVita v. County of Napa* (1995) 9 Cal.4th 763, 772.) Once a general plan has been adopted, a local government may adopt specific plans, community plans, and zoning ordinances to add further detail to the local planning process.

One of the most critical aspects of a general plan is the housing element. The housing element of a general plan is typically one of the most detailed aspects of a general plan. The housing element is required to contain an identification and analysis of existing and projected housing needs and a statement of goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing. The housing element must also identify adequate sites for housing, including rental housing, factory-built housing, mobilehomes, and emergency shelters, and make adequate provision for the existing and projected needs of all economic segments of the community. Because housing needs change far more rapidly than other aspects of a municipal planning, for example new roadway construction, the housing element must be updated every five years.

Although many of the above-described bills, including the Housing Accountability Act, modified the housing element laws and provided new avenues to enforce the requirements of the housing element in court, they did not change the underlying procedures utilized by the courts when reviewing challenges to the general plan itself. While municipal government's noncompliance with their own stated housing goals was the focus of earlier legislation, inadequate housing elements play just as much of a role in undermining efforts to solve California's housing crisis.

This bill seeks to speed up court reviews of general plan challenges. This bill seeks to expedite judicial review of general plan challenges in several ways. First, if a court determines that a local government is taking an action in defiance of a valid general plan, or the local government must revise a zoning ordinance to comply with a general plan, or the local government adopted a noncompliant general plan, the local agency must remedy the issue within 120 days. Although the compliance timeline is longer than the 60 days in existing law, the bill deletes the existing law's provisions permitting a court to award a local agency greater time to come into compliance with the court order if the court determines compliance within the statutory timeline would cause undue hardship to the local government. By removing the court's flexibility, the bill seeks to eliminate local government's ability to utilize a sympathetic court to delay compliance, no matter how meritorious such a delay may be. The bill permits additional time only if the Department of Housing and Community Development is required to review the local agency's actions.

Additionally, while existing law requires a court to calendar all writ of mandate proceedings attacking a local government's general plan and related actions within 120 days, the law does not limit continuances. This bill permits the court to order a continuance for only 60 days. The bill also requires the court to set a hearing date within 15 days of receiving a petition for a writ of mandate. The bill provides that if a court orders temporary relief at the outset of the petition, in accordance with existing law (i.e. temporarily suspending a local government's ability to issue building permits or approve subdivision maps during the pendency of the litigation), the court must consider ordering additional temporary relief in light of any continuance. Additionally, the bill requires, instead of merely authorizing, the court to grant the temporary relief sought above if a showing is made of probable success on the merits. If the court fails to meet the timelines for hearing a request for this relief, the petitioner may seek an ex parte hearing on the matter.

This bill also amends several provisions of the law regarding appeals of cases arising out of general plan challenges. First, this bill prohibits any of the relief measures discussed above from being stayed during an appeal. The bill provides a narrow exemption to the strict imposition of remedies during an appeal only if the local government can demonstrate that the municipality will suffer irreparable harm as a result of the remedy; for example, not being able to issue building permits in the wake of a natural disaster. Secondly, the bill requires any order or judgment in an action challenging the validity of a general plan that resolves whether the general plan, or element thereof, substantially complies with the general plan law to be immediately appealable, regardless of whether any final judgment has been issued. Finally, the bill clarifies ambiguity in existing law and codifies aspects of the courts holding in *People of California. v. Superior Court of San Diego County* (Cal. Ct. App. 4th Dist. Jan. 1, 2024) No. D083339.), by applying the provisions of this bill to charter cities.

The Judicial Council of California rightfully notes that this bill may be difficult for courts to implement without delaying justice for other Californians. Like many expedited judicial review measures considered by this Committee, this bill is opposed by the Judicial Council of California. Of note, the Judicial Council objects to the strict hearing timelines and the removal of discretion from a judicial officer to order continuances based upon the individualized circumstances of a given case.

Any time the Legislature begins to strictly prescribe litigations timelines that must be adhered to by judicial officers, as opposed to counsel in discovery, the Legislature risks overstepping its constitutional role under California's system of governmental checks and balances. California's Constitution recognizes an explicit separation of powers between the three branches of government. Article III, section 3, of the California Constitution provides, "The powers of State government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution." While California courts have declined to adopt strict demarcations between the three branches of government, and as it relates to the interplay between the courts and the Legislature, the Supreme Court has generally upheld Legislative mandates to the court so long as those mandates do not "defeat" or "materially impair" the core constitutional functions of the courts. (*People v. Bunn* (2002) 27 Cal.4th 1, 16.)

Although courts have held that statutes that provide aspirational timelines for deciding cases are constitutional (see, *Saltonstall v. City of Sacramento* (2014) 231 Cal.App.4th 837, 855-856), the lack of clear case law regarding legislation imposing mandatory deadlines on courts means that such bills are on much shakier constitutional ground. Not only does this bill impose rigid

deadlines on the court for calendaring actions, the measure also limits a judicial officer's ability to grant continuances. While the bill permits continuances to be provided in some cases, the measure adopts one-size-fits-all continuance timelines, thus stripping the court of the authority to provide continuances in a manner that takes into account the specifics of a given case. While it is understandable that the bill's sponsor, the Attorney General, may wish to limit recalcitrant local governments from utilizing continuances to prolong litigation and avoid complying with state law, the rigid framework adopted by this bill removes nearly all judicial discretion. Accordingly, should the Attorney General seek more continuances than allowed by this bill, they too would be harmed by the bill's strict elimination of judicial discretion.

The Judicial Council also raises concerns regarding the imposition of remedies against a local government. This bill requires the imposition of this relief if the court determines that a petition is likely to succeed on the merits unless a local government can demonstrate that the relief would cause an undue hardship. The Council is concerned, again, this replaces a judicial officer's ability to evaluate cases on an individualized basis with a one-sized-fits-all remedy. To the extent all of these provisions strip judicial officers of discretion, this bill risks violating the separation of powers doctrine. Given that the ultimate decision regarding on the constitutionality of this bill rests with the very judicial officers whose discretion is being severely limited by this bill, *the author and proponents are encouraged to work with the Judicial Council to reach an agreement on workable case timelines.*

Finally, the Judicial Council contends that given the volume of recent legislation granting some case types calendar preference over others, these bills are pushing average Californians to the back of the line in civil cases, and taken together, essentially cancelling out the effectiveness of one another. In light of California's housing shortage, cases involving recalcitrant local governments refusing to comply with housing laws may well deserve calendar preferences in court. However, the Judicial Council is correct in stating that such calendar preferences bump litigation around wage theft, person injuries, and other important civil matters to the back of the line. Accordingly, the author and sponsors of this bill *may wish to adopt a sunset clause* to better enable the courts and the Legislature to evaluate the impact of this measure on the ability of everyday Californians to access the civil justice system.

ARGUMENTS IN SUPPORT: This bill is sponsored by Attorney General Rob Bonta and is supported by over a dozen housing advocates. In support of the bill, the Attorney General states:

California is facing a severe housing shortage, and millions of California families struggle to afford housing and the high cost of living. Californians are counting on their elected officials to tackle housing affordability. The Legislature has passed a number of important laws in recent years to address this crisis and facilitate housing production, including strengthening the state Housing Element Law in 2017 and 2018 to ensure that local governments would plan to meet their fair share of the region's housing needs.

More than 400 jurisdictions have adopted updated housing elements under the new regulatory regime. But hundreds of local rules that were designed to limit population growth remain on the books. Many of these population control measures are now out of sync with state law and can conflict with important programs in subsequently adopted local housing elements. These conflicts can lead to confusion for project applicants, local governments, and courts. We can't build housing more quickly if project applicants and local governments don't share a common understanding of the blueprint – in this case the locally adopted housing element.

SB 786 would resolve several ambiguities in housing element law with sensible, bright line rules. First, when there are conflicting development standards in the housing element and another general plan element, the most recently adopted element would control. Second, when local governments commit to removing constraints on housing development by a specific deadline, this bill would clarify the consequence for failing to meet that deadline by directing the Department of Housing and Community Development to review the housing element for potential decertification. This will encourage local governments to keep their commitments to remove housing constraints that muddy the rules and development standards for builders. Setting clear rules benefits all parties and will facilitate implementation and avoid litigation and project delays.

The bill will also address procedural shortcomings in existing law and ensure that court orders deliver fair and effective relief. The bill will clarify when compliance with trial court orders is required, reduce delays in the adoption of compliant housing elements, align the procedural statutes with current practice, and harmonize the timelines in overlapping existing laws. These amendments would address several ambiguities that have complicated housing element litigation and have led to confusion among courts and the parties.

ARGUMENTS IN OPPOSITION: As noted, this bill is opposed by the Judicial Council. In opposition the Council argues:

The Judicial Council opposes Senate Bill 786, because the bill (1) requires—rather than allows—a judge to grant temporary relief upon a showing of probable success on the merits in a case litigating general plan compliance; (2) requires a court clerk to set a date for a hearing within 15 days and no more than 30 days after the filing of any request; (3) limits the court’s ability to grant any continuance for more than 60 days, and; (4) requires a court to further manage an ex parte application, requesting temporary relief after the 60 days, all of which impacts limited court resources.

When everything is a priority, nothing is a priority. Placing strict timelines on the judicial branch in this fashion constrains finite staff resources and forces the courts to prioritize some cases over other worthy matters. The branch’s judicial officers and court employees are already overwhelmed with managing complicated calendars with myriad cases. As with other legislation that continues to add to the growing list of calendar preferences, SB 786 will likely have an adverse impact on other cases in the courts, including other cases with statutorily mandated calendar preferences, such as juvenile cases, criminal cases, civil cases in which a party is at risk of dying, wage theft cases, and election integrity issues. These equally meritorious case types will likely be pushed to the back of the line and take longer to be adjudicated.

REGISTERED SUPPORT / OPPOSITION:

Support

Attorney General Rob Bonta (sponsor)
Abundant Housing LA
California Housing Partnership
California Rural Legal Assistance Foundation
California YIMBY
Circulate San Diego

East Bay YIMBY
Grow the Richmond
Habitat for Humanity California
Housing Action Coalition
Housing California
Inner City Law Center
Mountain View YIMBY
Napa-Solano for Everyone
Northern Neighbors
Peninsula for Everyone
Public Interest Law Project
Santa Cruz YIMBY
Santa Rosa YIMBY
SF YIMBY
South Bay YIMBY
South Pasadena Residents for Responsible Growth
SPUR
The Two Hundred
The Two Hundred for Homeownership
Ventura County YIMBY
YIMBY Action
YIMBY LA
YIMBY SLO

Opposition

Judicial Council of California

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