

SENATE THIRD READING

SB 786 (Arreguín)

As Amended September 2, 2025

Majority vote

SUMMARY

Makes various changes to existing procedures and remedies for judicial challenges of whether or not a local jurisdiction's general plan, or any element thereof, complies with existing law.

Major Provisions

- 1) Provides that, 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 supersede inconsistent provisions of the previously adopted element. Defines "quantified development standard" to mean a site's maximum density or requirements for a height limit, setback, maximum or minimum unit size, lot coverage, or floor area ratio.
- 2) Requires the Department of Housing and Community Development (HCD) to undertake a housing element substantial compliance review if a local agency has established a specific deadline under specified housing element law to amend a local ordinance, development standard, condition, or policy applicable to quantified development standards or timelines or processes relating to entitlement and permitting decisions, and the local agency has failed to make that amendment by the specified deadline.
- 3) If a court finds that an action of a city or county that is required to be consistent with its general plan does not comply with its housing element, requires the local government to bring its action into compliance within 120 days, rather than 60 days. Deletes the option for the court to extend the time period for compliance by an additional 60 days.
- 4) If a court finds an action of a city or county does not comply with the local housing element, and if bringing such an action into compliance requires review by HCD, and HCD's review is not timely completed, authorizes the court to grant the city or county a reasonable extension of time to bring the action into compliance.
- 5) If a court finds that a city or county failed to complete a rezoning required to comply with the Planning and Zoning law, requires 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, rather than 60 days.
- 6) Applies to charter cities the provisions of Article 14 of the Government Code, which governs challenges to general plans or elements, and specifies that this provision is declaratory of existing law.
- 7) Modifies a court's ability to continue for a reasonable time the date of a hearing or trial relating to an action to challenge a general plan or any element thereof, by limiting the court to continuing the date upon written motion and finding of good cause, or upon the court's own motion, for no more than 60 days. Requires a court, if it has granted temporary relief, to consider ordering additional temporary relief in light of a continuance.

- 8) Makes immediately appealable any order or judgment issued in an action brought to challenge the validity of the general plan of any local government that resolves whether the general plan or any mandatory element of the general plan substantially complies with the Planning and Zoning laws, regardless of whether any final judgment has been issued.
- 9) 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 an appeal, except upon a local government making a showing that the local government will suffer irreparable harm.
- 10) Requires any request for temporary relief in an action brought to challenge the validity of the general plan or any mandatory element to be made by noticed motion or application and establishes timelines for such hearings and continuances.

COMMENTS

Housing Enforcement: Over the past several years the Legislature has passed numerous bills to address the housing crisis, including strengthening the state's housing element law to ensure that local governments plan to meet their fair share of the housing needs in their jurisdiction, and various ministerial approval laws with the goal of streamlining and expediting housing development throughout the state. Existing law allows the AG to enforce state housing laws in the AG's independent capacity and on behalf of other entities, such as HCD. The AG has recently brought several actions against local jurisdictions for violating state housing laws, such as the City of Elk Grove for failure to approve an affordable housing project. Additionally, the Attorney General and HCD have sued the City of Huntington Beach for failure to adopt a housing plan compliant with state law. The AG, the sponsor of the bill, states that the bill is intended to address several ambiguities that have complicated housing element litigation and have led to confusion among courts and parties.

General Plans and Housing Elements: The Planning and Zoning Law sets the general plan at the top of the land use regulation hierarchy – meaning the general plan and the elements comprising it set out high-level policies and objectives. Each level down in the hierarchy has narrower applicability and greater specificity (such as detailed standards that development must meet). Cities and counties must adopt a housing element as part of the general plan every eight years, or every five years for some rural areas. Each city or county receives a total number of housing units to plan for in its housing element, broken down by income category. The housing element must also contain specified information, programs, and objectives, including:

- 1) An assessment of housing needs, and an inventory of resources and constraints relevant to the meeting of these needs;
- 2) A statement of the community's goals, quantified objectives, and policies relative to affirmatively furthering fair housing and to the maintenance, preservation, improvement, and development of housing; and
- 3) A program that sets forth a schedule of actions to implement the goals, objectives, and policies in housing element during the planning period, and timelines for implementation.

Housing elements contain general policies that are intended to further housing development, but are not self-executing because they lack sufficient detail to be implementable on their own. At times, the policies in an adopted housing element conflict with higher-level provisions in the General Plan, which may not have been updated concurrently. To the extent a quantified

development standard contained in a general plan element is inconsistent with a quantified development standard contained in another element, this bill would specify that the provisions of the most recently adopted element supersede inconsistent provisions of the previous element.

Actions to Challenge the Validity of the General Plan or Elements: Existing law requires any action to challenge a general plan, or any element thereof, on the grounds that the plan or element does not substantially comply with the general planning law to be brought as a writ pursuant to Section 1085 of the Code of Civil Procedure. The court is required to set a date for a hearing or trial on the action within 30 days of the filing of the request for a hearing or trial. A hearing is to be set and heard at the earliest possible date that the business of the court permits, but not more than 120 days after the filing of the request. The court may continue, for a reasonable time, the date of the hearing or trial; however, if the court grants a continuance to a respondent, the court is required to grant temporary relief upon the written motion of the petitioner. If the court finds in a final judgement that the local jurisdiction does not substantially comply with the planning law, a local jurisdiction is required to bring its general plan into compliance within 120 days. Additionally, if a court finds that an action of a local jurisdiction, which is required to be consistent with its general plan, does not comply with its housing element, the local jurisdiction is required to bring that action into compliance within 60 days. The court may extend that time for an additional 60 days upon a showing that complying in 60 days places an undue hardship on the local jurisdiction. If a court issues an order of judgment that a local jurisdiction is not in compliance, the court is required to include one or more specified remedies, including suspension of permitting authority and mandating approval of certain housing permits and subdivision maps.

Existing law authorizes the court, upon a showing of probable success on the merits, to grant the relief described above as temporary relief. In any order granting temporary relief, the court is prohibited from enjoining, during the pendency of the action, any housing developments that comply with existing law and which may be developed without having an impact on the ability of the local jurisdiction to properly adopt and implement an adequate housing element.

This bill makes several changes to the procedure above. First, it makes the timelines to comply with an order related to a non-compliant action of a local jurisdiction 120 days. Second, the bill removes the ability of the court to grant a continuance for a reasonable time, and instead allows a continuance for no more than 60 days. If temporary relief has already been granted, the court is required to consider ordering additional temporary relief in light of the continuance. The bill also deletes the authority for the court to grant two extensions of time, not to exceed a total of 240 days, but allows for a reasonable extension if HCD review is necessary. Lastly, the bill would require the court, instead of merely authorizing the court, to grant the temporary relief sought above if a showing is made of probable success on the merits.

Appeals: This bill further states that the remedies ordered by a court under GOV 65755 – i.e. suspension of the authority for a local jurisdiction to grant building permits, zoning changes, or map approval and mandates certain actions, such as approval of specified maps or permits – are not stayed during the pendency of an appeal of an order or judgment issued in an action brought to challenge the validity of a local jurisdiction's general plan, including any mandatory element. The bill provides that the court may stay the granted remedies pending appeal if the local jurisdiction makes a showing that it will suffer irreparable harm.

This bill would provide that 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 is immediately appealable, regardless of whether any final judgment has been issued. The reason for this change stems from the AG's experience in litigation with the City of Huntington Beach. In that case, the superior court held that the housing element law did not apply to charter cities; however, the AG sought an appeal via writ of mandate on that matter. The appellate court eventually decided to take the issue up on appeal and found that the superior court decision was in error and that the housing element law did apply to charter cities. (*People of Cal. v. Superior Court of San Diego County* (Cal. Ct. App. 4th Dist. Jan. 1, 2024) No. D083339.) This change will provide for a quicker resolution of whether or not a local jurisdiction's general plan complies with existing law, which is beneficial to all parties.

According to the Author

"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."

Arguments in Support

According to AG Bonta, the bill's sponsor, "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

According to the Judicial Council of California, "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."

FISCAL COMMENTS

According to the Assembly Committee on Appropriations:

- 1) Cost pressures (Trial Court Trust Fund, General Fund) of an unknown amount to the courts for staff resources to meet the bill's expedited processes, including hearing timelines. It generally costs approximately \$1,000 to operate a courtroom for one hour. Although courts are not funded on the basis of workload, increased pressure on the Trial Court Trust Fund may create a demand for increased funding for courts from the General Fund. The fiscal year 2025-26 state budget provides \$82 million ongoing General Fund to the Trial Court Trust Fund for court operations. The Judicial Counsel notes the volume of recent legislation granting calendar preference to some types of cases over others has already strained finite resources.
- 2) HCD anticipates minor and absorbable costs.

VOTES

SENATE FLOOR: 28-10-2

YES: Allen, Archuleta, Arreguín, Ashby, Becker, Blakespear, Cabaldon, Caballero, Cervantes, Cortese, Durazo, Gonzalez, Grayson, Hurtado, Laird, McGuire, McNerney, Menjivar, Padilla, Pérez, Richardson, Rubio, Smallwood-Cuevas, Stern, Umberg, Wahab, Weber Pierson, Wiener

NO: Alvarado-Gil, Choi, Dahle, Grove, Jones, Niello, Ochoa Bogh, Seyarto, Strickland, Valladares

ABS, ABST OR NV: Limón, Reyes

ASM HOUSING AND COMMUNITY DEVELOPMENT: 7-3-2

YES: Haney, Ávila Fariás, Ward, Garcia, Kalra, Lee, Wilson

NO: Patterson, Ta, Tangipa

ABS, ABST OR NV: Quirk-Silva, Wicks

ASM JUDICIARY: 9-3-0

YES: Kalra, Bauer-Kahan, Bryan, Connolly, Harabedian, Pacheco, Papan, Stefani, Zbur

NO: Dixon, Macedo, Sanchez

ASM APPROPRIATIONS: 11-4-0

YES: Wicks, Arambula, Calderon, Caloza, Elhawary, Fong, Mark González, Ahrens, Pacheco, Pellerin, Solache

NO: Sanchez, Dixon, Ta, Tangipa

UPDATED

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