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DEPARTMENT OF
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July 27, 1994

Law and Legislation Committee
Sacramento, California

Honorable Members in Session:

**SUBJECT: HOUSING ELEMENT REFORM BILLS
ASSEMBLY BILL 51 AND SENATE BILL 1839 (M94-038)**

LOCATION AND COUNCIL DISTRICT: Citywide

RECOMMENDATION:

This report recommends that the Law and Legislation Committee review important provisions of Assembly Bill 51 and Senate Bill 1839 which would reform State Planning and Zoning Law regarding mandated housing elements. After discussion and review, the Committee may wish to direct staff and the City's legislative representative to convey its support for certain provisions of the bills to the State of California.

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Patricia Mendoza, Associate Planner, 264-8268

FOR COMMITTEE MEETING OF: August 2, 1994

SUMMARY

This report briefly describes Assembly Bill 51 (AB51), by Assembly Member Jim Costa, and Senate Bill 1839 (SB1839), by Senator Marian Bergeson, which propose to revise general plan housing element requirements. They are presented for discussion and possible action by the Law and Legislation Committee. The bills continue to be amended as they move toward State Assembly and Senate Committee hearings.

BACKGROUND INFORMATION

At the request of the Law and Legislation Committee, staff presents AB51 and SB1839 for review. The bills would amend the State-mandated law requiring jurisdictions to adopt a five-year housing element as part of its general plan. The bills are still pending action before State committees. The Senate Local Government Committee will review AB51 at a special hearing on August 10. It has the support of the California Rural Legal Assistance Foundation, the Western Center on Law and Poverty, and the California Association of Realtors. The League of California Cities and the California State Association of Counties are sponsors of SB1839. Like the Assembly bill, SB1839 is undergoing revisions in committee. It is currently before the Housing Committee in the Assembly. This staff report also contains the legislative analysis of each bill. Attachment A is the analysis of AB51 and Attachment B is the analysis of SB1839. Staff shall ask supporters of the two bills to attend the Law and Legislation Committee meeting to answer any specific questions regarding the legislation.

Both bills propose streamlining certain requirements of State law relating to housing elements. That would allow local jurisdictions the opportunity to direct staff resources to other projects. It would also give local governments the ability to focus on implementing the law's original intent, that is, to meet the housing needs of California's population.

There are key features that distinguish the bills from each other. The significant features of the bills are described below. A staff recommendation for each provision is also included.

1. Self-Certification Process

Both bills propose a process for local jurisdictions to self-certify their housing elements. Implementation of that process is the significant streamlining measure proposed under each bill.

- AB51 offers local jurisdictions that ability to self-certify its element if the following conditions are met: (1) The jurisdiction has issued building permits that equal or exceed its regional performance rate for new construction and (2) it provides at least 75% of its low-income housing needs or at least 10% of its very low income housing needs.
- SB1839 offers a streamlined self-certification process with fewer restrictions than AB51. A local government must have adequately zoned sites for the construction of at least 120 percent of its housing needs. The city or county must also demonstrate that it is building lower income homes to meet its local need.

Staff's recommendation is that SB1839 offers a self-certification process that can be controlled by the City. The provisions of AB51 are largely dependent on economic factors. Staff is also concerned with the amount of discretionary review under AB51.

2. HCD Review

- AB51 expands the review role of the State Department of Housing and Community Development (HCD) if the local government does not meet performance standards. For instance, if the locality does not self-certify its housing element, it must submit the element to

HCD for review and certification. HCD would also be required to provide additional technical assistance to local jurisdictions that do not self-certify.

- SB1839 limits HCD's role as a reviewer of housing elements. The bill limits the Agency's ability to raise issues outside of its housing element authority. Like AB51, HCD would provide technical assistance to those cities and counties that do not self-certify their housing elements.

Staff prefers the limited role that HCD would have under both bills; the City would have more authority over its long range housing goals and objectives. It is staff's recommendation that SB1839 offers more autonomy to the City.

3. Limitations on Local Action

- AB51 appears to limit aspects of local control. It imposes limits on local ability to deny housing projects, and local ability to rezone residential land to a lower density. For instance, a jurisdiction that has not adopted a housing element would be unable to disapprove a housing project that contains at least 20% low or very low income housing units or a housing project that has 100% moderate income housing units. A jurisdiction would be able to supersede that restriction if it either adopted a housing element or issued findings that the subject housing project would have an adverse impact upon public health or safety.

Under AB51, a local government would also have to make findings that a zone change is consistent with meeting its regional housing needs and would not result in a net reduction in residential development potential. Only after making those findings would the city or county be able to approve any residential rezoning. The Council has previously refused to adopt a no net housing loss policy similar to what this bill would impose.

- SB1839 does not appear to set new limitations on local action.

The recommendation by staff is to oppose this provision of AB51 because it imposes additional limitations on the City of Sacramento.

Staff has based its review of the bills and recommendations on the City of Sacramento's perspective. It is staff's opinion that the City of Sacramento has made positive efforts to meet its local housing obligation. The City implements several progressive housing programs that demonstrate its commitment toward meeting the housing need of all households. The following programs and land use actions taken by the City demonstrate this commitment: (1) Residential mixed use policies (Alhambra Corridor Plan, Southern Pacific/Richards Boulevard Area Plan, Central City Housing Strategy, Employment Center Zoning and the Artist Live/Work Ordinance), (2) housing and transit corridor policies (R Street Corridor Study and North Sacramento Light Rail Study), (3) housing ordinances (Infill and density bonus program, deep lot ordinance, and secondary housing ordinance), (4) housing preservation and maintenance programs (Rent Escrow Account Program, redevelopment target planning and vacant building ordinance) and (5) future programs (Zoning Ordinance update and development of an inclusionary housing policy and ordinance). It is staff's opinion that reform of existing housing element law would allow the City to focus staff resources on the implementation of these programs and policies.

In addition to considering the City of Sacramento's perspective, the Law and Legislation Committee might want to think about the statewide perspective. While staff feels that the City of Sacramento could fare favorably under both bills, the Committee members might want to weigh whether one bill would enable other cities and counties to ignore their local housing needs and the state's overall housing needs. Opponents of SB1839 have voiced concern over the bill's potential to relax housing law to the point of depriving California of its primary tool against exclusionary land use practices. They are concerned that SB1839's less restrictive requirements would result in an increase of anti-housing actions by some local jurisdictions. Supporters of AB51 have also asserted that SB1839 would harm the progress which California and housing advocates have made over the past years toward meeting overall housing needs.

FINANCIAL CONSIDERATIONS

A change in state housing element requirements may have future financial implications for the City of Sacramento through direct mandates for preparation of new housing elements and cost of future litigation.


POLICY CONSIDERATIONS

Support of portions of either bill appears to be consistent with Council's priority of streamlining administrative work.

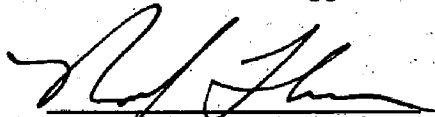
MBE/WBE

Support of either bill does not involve the procurement of goods or services.

Respectfully submitted,


DIANNE GUZMAN, AICP
Director of Planning & Development

Recommendation Approved:


ROBERT THOMAS
Deputy City Manager

SENATE LOCAL GOVERNMENT COMMITTEE VERSION: 06/29/94 A
Senator Marian Bergeson, Chairman SET: First B
HEARING: 07/06/94
FISCAL: Approp. 5
Assembly Bill 51 - Costa CONSULTANT: Yee 1

HOUSING ELEMENTS

Background and Existing Law:

Each city and county must prepare and adopt a general plan to guide the future growth of a community. Every general plan must contain seven elements: land use, circulation, housing, conservation, open-space, noise, and safety.

A housing element must identify and analyze existing and projected housing needs, and must contain goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing. It must identify adequate sites for housing, including rental housing, factory-built housing, and mobilehomes, and make adequate provision for the existing and projected needs of all economic segments of the community.

Housing element law requires a five-year schedule of actions program to implement the policies and achieve the goals and objectives of the housing element. The program must identify adequate housing sites for all income levels, assist in the development of low- and moderate-income households, remove governmental constraints, conserve and improve existing affordable housing, and promote housing opportunities for all persons.

Cities and counties must submit their draft housing elements to the State Department of Housing and Community Development (HCD) for review before adoption. HCD has 45 days to review a draft housing element and determine if it substantially complies with the law. Based on HCD's review, a city council or county board of supervisors must either change the draft element before adopting it or make findings explaining why the document complies with state law, despite HCD's comments.

Developers say that the housing element law focuses on document preparation and not housing production. Cities and counties are not able to comply with the housing element law because it is too complex. They want to make simplify the housing element and make it more production-oriented by providing incentives for local compliance.

Proposed Law:

Assembly Bill 51 makes the following changes to the housing element law:

I. Housing Element Contents. Housing elements must address housing needs and include a five-year schedule of actions program to identify housing opportunities. Cities must revise their housing elements every five years. Assembly Bill 51 combines the housing needs assessment and the five-year schedule of actions program into a single document.

AB 51 requires the housing element to include:

- o A report of the city or county's performance in meeting its new construction housing needs, including lower income housing needs.
- o An analysis and quantification of existing and future housing needs of the city or county.
- o An inventory of vacant zoned properties to meet future housing needs.
- o An inventory of available resources for housing development, assistance, rehabilitation, and preservation.
- o An implementation strategy containing specific actions that the city or county will take to meet its housing needs.

AB 51 allows cities and counties to utilize existing plans, including the Comprehensive Housing Affordability Strategy (CHAS) to address appropriate sections of the housing element. AB 51 also allows cities and counties to jointly adopt and implement a housing element.

II. Fairshare Allocation. HCD determines each region's share of statewide housing needs. Then, each Council of Governments (COG) or HCD determines each community's housing needs. COGs must consider housing demand, employment opportunities, availability of suitable sites and public facilities, commuting patterns, housing needs, and the loss of assisted housing developments. They must also seek to reduce the concentration of lower income households in cities and counties that already have disproportionately high proportions of lower income households.

I Assembly Bill 51 transfers the regional allocation authority

to the COGs. The allocation must be based on the Department of Finance's population projections, the Statewide Housing

Plan, and city and county general plans.

- o COGs determine the allocation for each city and county and HCD determines the allocation for areas with no COG.
- o COGs must distribute a draft allocation plan to cities and counties and HCD for review 120 days before adoption.
- o HCD must determine whether the COGs allocation is consistent with the statewide housing need and the Statewide Housing Plan goals within 30 days.
- o If requested, a COGs or HCD must delegate the allocation responsibility to counties or joint powers authorities, but the COG or HCD determines if the allocation is consistent with the Department of Finance's population projections, the Statewide Housing Plan, and city and county general plans.
- o Cities and counties may transfer up to 50% of its allocation of lower-income housing needs to adjacent jurisdictions that are located within the same COG. The COG or HCD must approve the transfer.

III. Self-Certification of Compliance. HCD reviews housing elements for compliance with state law. The approval process is complex, expensive, and time consuming. Many observers say that a self-certification process is more appropriate. Assembly Bill 51 allows cities and counties to self-certify their housing element if they:

- o Adopted a housing element.
- o Issue building permits that equal or exceed the regional performance rate for new construction.
- o Provide at least 75% of its lower-income housing needs or at least 10% of its very low-income housing needs.

If cities and counties do not self-certify their housing element, they must submit them to HCD for review and certification.

IV. HCD Assistance. Cities and counties are not able to

comply with housing element requirements. Some communities say HCD's requirements are not consistent. Assembly Bill 51 requires HCD to:

- o Adopt regulations and provide all necessary forms to facilitate preparation, adoption, and implementation of the housing element.
- o Provide cities and counties with a housing needs profile form which include base housing needs information, including census data.
- o Provide additional and targeted technical assistance to cities and counties that do not self-certify.

V. Other Requirements. Assembly Bill 51 also makes cities and counties justify their planning and zoning decisions by requiring:

- o Cities and counties to not disapprove a housing project that contains at least 20% low- or very low-income housing units or 100% moderate-income housing unless the city or county:
 - (1) adopts a housing element that complies with state law; or
 - (2) makes findings that the project will have a specific, adverse impact upon the public health or safety.
- o A court to order a local agency to approve a project within 90 days if the court determines that a city or county denies a lower income housing project without adequate findings.
- o Cities and counties to make a finding that a zone change is consistent with meeting the city or county's regional housing needs, and will not result in net reduction in residential development potential before approving any residential rezoning.
- o In any action filed to challenge the validity of a housing element, there shall be a rebuttable presumption of the validity of the housing element if the jurisdiction has self-certified or HCD find the housing element substantially complies with housing element requirements. Where cities and counties do not meet its performance standards and cannot self-certify compliance and HCD finds the housing

element does not substantially comply, there shall be a rebuttable presumption of the invalidity of the housing element.

Comments:

1. Housing element reform. Developers, local officials, and housing advocates are frustrated with the housing element requirements. Cities and counties say that HCD's requirements are not flexible and are impossible to meet. Most cities and counties don't comply with housing element requirements. The current housing element law emphasizes the preparation of a "planning document" instead of "housing

production." Housing element law needs to be changed. AB 51 makes major changes to simplify and encourage cities and counties to prepare their housing elements.

2. Appeal process. Under existing law, HCD assigns regional fairshare allocations to COGs and COGs assign allocations to cities and counties. If a city or county does not agree with the allocation, it may appeal to the COG or HCD. Another major housing element bill, SB 1839 (Bergeson) also requires HCD and COGs to assign allocations, but a COG or city or county can appeal the allocation to an independent board. AB 51 allows the COG or HCD (if there is no COG) to determine the allocation, but there is no appeal process. The Committee may wish to consider whether an appeal process is necessary.

3. Self-certification. Both AB 51 and SB 1839 allow a self-certification process. AB 51 requires cities and counties to adopt a housing element, issue building permits that equal or exceed the regional performance rate, and provide 75% of its lower-income housing needs or 10% of its very low-income housing needs. SB 1839 requires cities and counties to zone at least 120% of its housing needs and to providing a minimum number of lower-income housing units. The two self-certification processes conflict. The Committee may wish to consider which self-certification process is more desirable.

4. CHAS. State and local officials must prepare a CHAS before applying for, and receiving, certain federal housing assistance. The CHAS is an action-oriented management tool for state and local governments. It also serves as a monitoring tool for the federal Department of Housing and Urban Development (HUD) to determine if a jurisdiction meets its housing needs. AB 51 allows cities and counties to use the information in the CHAS for portions of the housing element. The bill reduces duplication between federal and

state requirements.

5. Other housing element bills. The Legislature is working on two other housing element bills:

o SB 1839 (Bergeson) makes major reforms to the housing element law: revises the fairshare allocation process to increase involvement by local governments and establishes an appeal process; establishes a self-certification process that requires cities and counties to zone 120 percent of projected housing needs and to demonstrate that lower-income homes are being built; establishes incentives for local governments to comply with housing element requirements; and requires HCD to develop guidelines and forms to help local governments prepare their housing elements. Status: Assembly Local Government Committee.

o AB 764 (Goldsmith) allows a city or county to identify adequate sites in its "five-year schedule of actions"

program to meet its housing needs by identifying sites that would be converted from nonaffordable to affordable housing, and are vacant or in need of substantial rehabilitation. Status: Senate Appropriations Committee.

Assembly Actions:

Local Government Committee:	11-0
Housing and Community Development Committee:	10-0
Ways and Means Committee:	21-0
Floor:	75-0

Support and Opposition: (06/30/94)

Support: California Association of Realtors, California Rural Legal Assistance Foundation, Western Center on Law and Poverty.

Opposition: Unknown.

Date of Hearing: July 6, 1994

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Mike Gotch, Chair

SB 1839 (Bergeson) - As Amended: July 5, 1994

SENATE ACTIONS:

COMMITTEE L. GOV. VOTE 6-0 COMMITTEE APPR. VOTE 8-0 FLOOR VOTE 21-15

ASSEMBLY ACTIONS:

COMMITTEE L. GOV. VOTE> COMMITTEE H. & C.D. VOTE>

COMMITTEE W. & M. VOTE> COMMITTEE VOTE

SUBJECT: Revises general plan housing element requirements.

DIGEST

Existing law, under Planning and Zoning Law, requires every city and county to adopt a general plan which includes the following seven mandatory elements: land use, circulation, housing, conservation, open space, noise, and safety. The housing element provision:

- 1) Provides definitions for certain terms (e.g., community, council of governments).
- 2) Specifies the content requirements of a housing element (e.g., assessment of housing needs, inventory of sites, analysis of constraints, analysis of assisted housing developments that will change from low-income housing uses within 10 years, five-year schedule of actions).
- 3) Requires the Department of Housing and Community Development (HCD), based on Department of Finance information, to determine the regional housing share of the statewide housing need. Based on HCD data, each council of governments (COG) must determine the housing need for each entity in the region (HCD also makes this determination if there is no COG). A process is established for cities and counties to revise their shares, subject to consideration by HCD and the COG, and request a review hearing.
- 4) Requires local governments to consider HCD-adopted guidelines in preparing the housing element, and the planning agency must submit a draft housing element or draft amendment to HCD for review. HCD must report its written findings, including a determination of whether the draft substantially complies with the housing element requirements.

Additionally, the local government legislative body must consider the findings prior to adopting the element or amendment. If the draft does not substantially comply, then the local legislative body must either change the element so that it does comply, or adopt it without changes and make written findings explaining why it complies with the housing element requirements despite HCD's findings. HCD must also review adopted housing elements and report its findings to the planning agency.

- 5) Allows HCD to adopt and revise guidelines for the preparation of the general plan housing element.
- 6) Requires the housing element to be revised at five-year intervals, which are specified for different regions of the state.

This bill:

- 1) Revises the definition of COGs so that an entity can be established to comply with the housing element requirements, and adds definitions for "general plan build-out" and "housing element".
- 2) Repeals the existing content requirements and adds new requirements (e.g., performance report, analysis and quantification of existing and future housing needs, inventory of sites or reference to the land use element, inventory of resources, implementation strategy). These new requirements also allow local governments to jointly adopt and implement a housing element.
- 3) Requires HCD also to base its allocation on the State Environmental Goals and Policy Report and regional population forecasts used in preparing regional transportation plans. City and county agricultural preservation policies that are being implemented must also be considered in regional allocations. The COG must disclose its proposed methodology for allocating the regional housing need to local governments, as well as the data describing the assumptions and methodology used, and must hold a public hearing to obtain comments before adopting these matters. The COG or HCD must delegate responsibilities for allocation to local governments jointly complying with housing element requirements when requested, and the COG or HCD is authorized to determine whether the allocation is consistent with these requirements.
- 4) Requires that HCD's findings on the draft element only relate to matters within the housing element requirements, and requires HCD's findings on the adopted housing element only to relate to issues raised in the initial findings except for changes implemented by the legislative body following the initial findings that raise new issues.
- 5) Requires HCD to: adopt guidelines in consultation with cities and counties, provide housing needs profiles and a list of available housing programs, and provide technical assistance to jurisdictions that do not

"self-certify" compliance with the housing element requirements.

- 6) Establishes deadlines for the subsequent two revisions which require the

update to be due on July 1, rather than June 30, of the respective dates, and extends the due date for the second update by one year for certain

regions. Following those revisions, this bill requires subsequent revisions to be in accordance with current law.

- 7) Allows local governments to submit a "self-certification of compliance" to HCD with its adopted housing element at least 90 days before the adoption due date. This self-certification must be based on certain factors (e.g., production of housing units meets certain criteria, production of housing units for low- and very-low income households meet certain criteria). A local government must be deemed to have complied with these requirements if it has issued building permits that equal or exceed the regional performance rate for new construction need, with exceptions. A local government that cannot self-certify compliance must submit its draft to HCD for review. Local governments that adopt a self-certification of compliance must be conclusively presumed to comply with the housing element requirements and are entitled to priority in the allocation of competitive state and regional grants, loans, and subventions.

FISCAL EFFECT

State-mandated local program.

COMMENTS

- 1) Background.

This bill, sponsored by the League of California Cities and the California State Association of Counties, revises housing element requirements by replacing the existing content requirements with new provisions (#2 above); revises the allocation process so that HCD allocations are based on additional factors, COGs disclose more information regarding allocations, public hearings are held on certain allocation factors, and local governments can jointly prepare housing elements (#3 above); specifies that HCD findings are limited to certain factors (#4 above); requires HCD to provide certain information and provide assistance (#5 above); revises deadlines for submitting draft elements (#6 above); and, provides a "self-certification" process (#7 above).

Local governments, housing advocates, and development interests have been working for several months on revising housing element requirements. The Senate Local Government Committee held an interim

hearing at the State Capitol on December 8, 1993, entitled "Housing Element Law". According to the author, this bill is a response to that interim hearing. AB 51 (Costa), to be heard by the Senate Local Government Committee July 6, and AB 764 (Goldsmith), approved by the Senate Local Government Committee June 30, also attempt to address similar issues.

2) Support and Opposition.

The support and opposition to this bill are based on previous versions of the bill. Nevertheless, supporters generally assert that this bill streamlines the housing element process, improves fair share allocation procedures, allows flexibility through objective performance standards, and rewards performance.

Opponents state that the broad consensus is "to allow localities that have good housing records, to meet a clear, objective performance standard and be exempt from HCD review." They contend that the standard in this bill is weak and that HCD must determine that the local government has met the standard. Some issues raised by opponents relate to matters that have now been removed from this bill.

3) Outstanding Issues.

This bill allows a COG or HCD to delegate allocation responsibilities to local governments jointly preparing elements and requires the COG or HCD to determine whether the allocation is consistent with these requirements [Government Code 65584(a)(8)], but does not specify how this will be done. This provision also provides that the consistency relates only to subdivisions (a) and (b) rather than the entire section.

(i) These provisions should be clarified.

This bill requires HCD's findings on an adopted element to relate only to issues raised in the initial finding, except where changes "implemented" by the legislative body following the initial findings raise new issues [65585(h)].

Will there be a need for HCD to raise issues other than those that raise new issues based on "implemented" actions?

This bill requires HCD to adopt guidelines [65585.8(a)], even though this is also allowed under current law [Health and Safety Code 50459]. These conflicting provisions should be consolidated.

This bill sets new deadlines for submitting housing elements to HCD for review [65585.9(a)], even though current law already sets deadlines [65584]. These conflicting provisions should be consolidated.

This bill allows local governments to submit a self-certification if certain requirements are met [65585.9]. The city's zoning ordinance

must provide sites for at least 120% of the entity's allocation and approve 90% of the applications for developments that are consistent with the general plan and zoning, and issue building permits that equal or exceed the regional performance rate for new construction need. A local government is presumed to have met the standard if it has approved entitlements for 75% of its allocation necessary to accommodate five years of regional growth. Standards for low- and very-low income households are also set (e.g., number of units of both at least equals that for lower-income households, at least 20% of the units are

affordable to these households). A local government is deemed to have complied with these requirements if it has issued building permits that equal or exceed the regional performance rate for new construction need, with exceptions.

Should this bill specify how the achievement of these standards will be determined? How will the "regional performance rate for new construction need" be defined?

This bill requires entities that self-certify to have a priority for the allocation of competitive state and regional grants, loans, and subventions [65585.7].

How will this be implemented?

SUPPORT

OPPOSITION

League of CA Cities and CA State CA Building Industry Association
Association of Counties [SPONSORS] CA Rural Legal Assistance Foundation

Cities of:

Agoura Hills
Bradbury
Buena Park
Carlsbad
Chico
Claremont
Cupertino
Duarte
El Cajon
Fortuna
La Mirada
La Puente
Long Beach
Los Gatos
Menlo Park
Modesto
Norco
Poway
Rolling Hills
Rolling Hills Estates

San Buenaventura
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Santa Barbara
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Santa Maria
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Victorville
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