

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 1485 (Haney)
Version: March 28, 2023
Hearing Date: July 6, 2023
Fiscal: Yes
Urgency: No
ME

SUBJECT

Housing element: enforcement: Attorney General

DIGEST

Permits the Department of Housing and Community Development (HCD) and the Attorney General to intervene as a matter of unconditional right in any legal action addressing a violation of specified housing laws, including, among others, the Housing Accountability Act, the Density Bonus Law, and the Housing Crisis Act of 2019.

EXECUTIVE SUMMARY

The Attorney General and HCD do not have an unconditional statutory right to intervene in third party housing enforcement litigation. Under current law the Attorney General and HCD must show that they have an interest related to the litigation that may be impaired if they are not allowed to intervene. The author and sponsors explain that under the current process it can take several months to a year for a motion to intervene to be considered by a court. The author brings this bill to prevent this delay by allowing HCD and the Attorney General to intervene as a matter of unconditional right in any legal action addressing a violation of housing laws, including, among others, the Housing Accountability Act, The Density Bonus Law, and the Housing Crisis Act of 2019. Specifically, AB 1485 grants the Attorney General an unconditional, statutory right to intervene in pending third party actions to redress state housing law violations, pursuant to California Code of Civil Procedure Section 387(d)(1)(A).

This bill is sponsored by Attorney General Rob Bonta and supported by the California Apartment Association and numerous organizations that work to increase affordable housing. The bill is opposed by the Association of California Cities- Orange County, Catalysts for Local Control, and the San Rafael/Marin County Council of Mayors and Council Members. The bill passed the Senate Housing Committee with a 9 to 2 vote.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Requires the local planning agency of all local governments to prepare, and the legislative body of each county and city to adopt, a comprehensive, long-term general plan for the physical development of the county or city, and of any land outside its boundaries which in the planning agency's judgment bears relation to its planning. (Gov. Code § 65300.)
- 2) Requires a General Plan to consist of a statement of development policies and include a diagram or diagrams and text setting forth objectives, principles, standards, and plan proposals for each of the following elements:
 - a) Land use;
 - b) Circulation;
 - c) Housing;
 - d) Conservation;
 - e) Open space;
 - f) Noise;
 - g) Safety; and
 - h) Environmental justice. (Gov. Code § 65302.)
- 3) Requires the Housing Element of a General Plan to consist of 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, as well as identifying 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. (Gov. Code § 65583.)
- 4) Establishes a list of housing laws that HCD is required to notify a local government, and allows HCD to notify the office of the Attorney General, if HCD finds that the local agency is in violation of the housing law. (Gov. Code § 65585 (j).)
- 5) Authorizes the Attorney General to enforce various housing laws in its independent capacity. (Gov. Code § 65585 (n).)
- 6) Permits all persons to join an action as plaintiffs if:
 - a) they assert any right to relief jointly, severally, or in the alternative, in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action; or

- b) they have a claim, right, or interest adverse to the defendant in the property or controversy which is the subject of the action. (Civ. Proc. Code § 378.)
- 7) Provides that persons may be joined in one action as defendants if there is asserted against them:
- a) any right to relief jointly, severally, or in the alternative, in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action; or
 - b) a claim, right, or interest adverse to them in the property or controversy which is the subject of the action. (Civ. Proc. Code § 379.)
- 8) Permits a nonparty to petition the court for leave to intervene by noticed motion or ex parte application to set forth the grounds upon which the intervention rests. (Civ. Proc. Code § 387 (c).)
- 9) Requires the court to permit a nonparty to intervene in the action or proceeding if either of the following conditions is satisfied:
- a) a provision of law confers an unconditional right to intervene; or
 - b) the person seeking intervention claims an interest relating to the property or transaction that is the subject of the action and that person is so situated that the disposition of the action may impair or impede that person's ability to protect that interest, unless that person's interest is adequately represented by one or more of the existing parties. (Civ. Proc. Code § 387 (d).)
- 10) Requires an intervening party, upon receiving the permission of the court to intervene to do the following:
- a) separately file the complaint in intervention, answer in intervention, or both; and
 - b) serve a copy of the order, or notice of the court's decision or order, granting leave to intervene and the pleadings in intervention, as specified. (Civ. Proc. Code § 387 (e).)

This bill:

- 1) Provides the HCD and the Attorney General an unconditional right to intervene in any suit brought to enforce any of the following state laws:
- a) Housing Element Law;
 - b) The Housing Accountability Act;
 - c) "No net loss" policy for implementing housing elements, as specified;

- d) Density bonus law;
 - e) Fair housing law, as specified;
 - f) The Housing Crisis Act of 2019;
 - g) The obligation to affirmatively further fair housing as specified in Government Code Section 8899.50;
 - h) Housing streamlining laws, as specified;
 - i) Supportive housing streamlining laws;
 - j) Low barrier navigation center streamlining laws;
 - k) Laws related to floor area ratio standards, as specified;
 - l) The requirement to submit an annual progress report regarding implementation of local housing elements;
 - m) Laws related to the enforcement of minimum parking requirements on certain developments; and
 - n) The Affordable Housing and High Road Jobs Act of 2022.
- 2) Provides that the Attorney General's right to intervene is independent of any request, notice, or referral from HCD.

COMMENTS

1. Stated need for the bill

According to the author:

Over the last few years the California Legislature has made responding to the State's housing crisis a top priority. Numerous laws requiring local governments to follow the State's affordable housing goals and actually build housing have been signed into law. Unfortunately, many local governments have chosen to break State law by ignoring the important housing requirements enacted by their State government.

Attorney General Rob Bonta has also made housing law enforcement a top priority for the Department of Justice, taking legal action to prosecute housing law violators. But in order for the Attorney General to represent the State's interests in cases filed by third parties, the Department of Justice is currently required to petition the court for the ability to intervene in the case. This requirement can cause months of delays in housing violation litigation. AB 1485 strengthens the State's ability to enforce our affordable housing goals and to hold violators accountable, by granting the Attorney General the automatic right to intervene in pending housing cases.

The California Apartment Association, in support, writes:

Most of California's state housing laws include a private right of action allowing third parties to file lawsuits to enforce state housing laws and to challenge local land use and planning decisions. However, if a third-party files

the lawsuit first, the Attorney General may only get involved in the case by formally petitioning the court for permission to intervene. This procedural hurdle causes unnecessary delay as courts may take months to schedule a hearing on the petition. AB 1485 would strengthen enforcement of state housing law by ensuring that both the Attorney General and HCD are able to timely represent the state's interests in pending actions filed by third parties to redress violations of state housing laws.

In support, the California Home Building Alliance, writes:

Most of California's state housing laws include a private right of action, allowing third parties, like developers and housing advocacy organizations, to file lawsuits independent of HCD or AG action. When a third party is the first to take action, the AG has to petition the court to intervene in the case. The process of intervening can take six months to a year, and on at least one occasion, a court has denied the AG's application to intervene.

A statutory right to intervene would give the AG an unconditional right to join lawsuits to enforce state housing law. The AG already has a statutory right to intervene in other contexts, including when a state statute or regulation has been declared unconstitutional by a court, and in environmental cases affecting the public generally.

This is a straightforward solution to an issue that impacts the AG's ability to intervene and represent the State's interests in housing cases.

As explained by the Assembly Judiciary Committee in their analysis of this bill:

General Plan Law has required local governments to identify the amount of housing needed in the jurisdiction to keep pace with growth and then to subsequently identify areas within the jurisdiction where housing can be constructed. To assist local governments meet these goals, the state has passed an array of pro-housing laws, including the density bonus law, fair housing laws, supportive housing laws, and permit streamlining laws. However, these state-level efforts have not been sufficient to overcome local inaction and opposition to new development. As a result, as highlighted by a recent report by the state Department of Housing and Community Development, the state needs to produce approximately 2.5 million housing units over the next eight years, with roughly one million of those units being set aside for lower income households, in order for the state to meet the anticipated demand for housing over the same time period. (Dept. of Housing and Community Development, California Statewide Housing Plan: A Home for Every Californian (Mar. 2022)[...])

Seeking to close this gap, in recent years the Legislature has started taking steps to force local governments to build more housing. In 2017, the Legislature enacted AB 72 (Santiago) Chap. 370, Stats. 2017, which established a process for the Department of Housing and Community Development to enforce state housing laws against non-compliant local governments. Further, in 2019, the Legislature passed the Housing Crisis Act of 2019 (SB 330 (Skinner) Chap. 654, Stats. 2019), which limited certain actions local agencies were using to avoid producing housing. Several other recent measures have also sought to force local agencies to build housing by deeming certain developments “by right” which limits the ability for local agencies to deny development permits. Nonetheless, as California’s housing deficits worsen, additional state-level tools are necessary to ensure proper compliance with the law.

3. Under current law it can take months for the Attorney General and HCD to intervene in third party housing enforcement litigation

The Attorney General and HCD do not have an unconditional statutory right to intervene in third party housing enforcement litigation. Under current law the Attorney General and HCD must show that they have an interest related to the litigation that may be impaired if they are not allowed to intervene. The author and sponsors explain that under the current process it can take several months to a year for a motion to intervene to be considered by a court. They provide the following example of a timeline in a fair housing case that involves securing supportive housing for low-income women with mental health issues where the Attorney General seeks to intervene:

1. *Grandma’s House of Hope v. City of Anaheim* case filed: January, 19, 2022
2. HCD’s initial ex parte application to intervene: October 3, 2022
3. HCD’s motion for leave to intervene filed: October 20, 2022- for a hearing on April 4, 2023. (6 months)
4. The presiding judge recused himself on November 14, 2022.
5. HCD had to re-file its motion on November 15, 2022 for a hearing scheduled for February 3, 2023.
6. The week of the February 3, 2023 hearing, a second presiding judge recused himself.
7. The matter was transferred to a third courtroom that scheduled a hearing for the motion on April 18, 2023.
8. On April 17, 2023, the Court issued a tentative ruling initially denying HCD’s motion for leave to intervene on grounds that the statute does not grant the Attorney General the right to represent HCD in an enforcement action under the relevant enforcement statute. This issue was not briefed by either party, and was raised sua sponte by the Court.
9. On April 18, 2023, the Court held an initial hearing on HCD’s motion for leave to intervene. HCD argued that the Court’s tentative ruling failed to fully consider all provisions of the operative enforcement statute which, read together, does allow the

Attorney General to intervene as counsel for HCD. Acknowledging that the issue was not briefed by either party, the Court allowed for the parties to submit supplemental briefing on the issue and continued the hearing to May 18, 2023.

10. On May 18, 2023, the Court granted HCD's motion for leave to intervene.

11. On May 23, 2023, HCD filed its Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief.

12. A merits hearing is scheduled for November 7, 2023.

The author explains:

Essentially, in this action, it took over 7 months from HCD/AGO's initial request to intervene for the court to rule on whether it would grant the intervention.

Were HCD/AGO to have the statutory right to intervene in matters to enforce housing laws, it could simply file an ex parte application or uncontested motion seeking leave or, more likely, the parties would simply stipulate to HCD/AGO joining the case as a matter of statutory right. This would have avoided a delay of over 7 months in the case.

The author brings this bill to prevent much of the delay in the process delineated above. The bill would do so by allowing HCD and the Attorney General to intervene as a matter of unconditional right in any legal action addressing a violation of housing laws, including, among others, the Housing Accountability Act, The Density Bonus Law, and the Housing Crisis Act of 2019. Specifically, AB 1485 grants the Attorney General an unconditional, statutory right to intervene in pending third party actions to redress state housing law violations, pursuant to California Code of Civil Procedure Section 387(d)(1)(A).

4. Opposition

The Association of California Cities – Orange County writes the following in opposition:

This bill would allow both the Department of Housing and Community Development as well as the Attorney General to intervene as a matter of unconditional right in any legal action addressing a violation of specified housing laws including the Housing Accountability Act, the Density Bonus Law, and the Housing Crisis Act of 2019.

ACC-OC believes that the production of housing is best advanced through a partnership between the State and local agencies that includes support, resources, and reforms to meet our shared housing goals. Unfortunately this is not the approach taken in AB 1485, which instead pursues a contentious and litigious approach to housing.

SUPPORT

Attorney General Rob Bonta (sponsor)
Housing Action Coalition (sponsor)
Abundant Housing LA
Bay Area Council
BuildCasa
California Apartment Association
California Community Builders
California Housing Partnership
California YIMBY
Circulate San Diego
Civic Well
Council of Infill Builders
East Bay YIMBY
Eden Housing
Fieldstead and Company, INC.
Greenbelt Alliance
Grow the Richmond
How to ADU
Midpen Housing
Mountain View YIMBY
Napa-Solano for Everyone
National Association of Hispanic Real Estate Professionals (NAHREP)
Northern Neighbors SF
Peninsula for Everyone
People for Housing - Orange County
Progress Noe Valley
San Francisco Bay Area Planning and Urban Research Association (SPUR)
San Francisco YIMBY
Sand Hill Property Company
Santa Cruz YIMBY
Santa Rosa YIMBY
Silicon Valley @ Home
Silicon Valley Leadership Group
SloCo YIMBY
South Bay YIMBY
Southside Forward
SPUR
Ventura County YIMBY
YIMBY Action

OPPOSITION

Association of California Cities- Orange County
Catalysts for Local Control
Marin County Council of Mayors and Council Members

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

AB 215 (Chiu, Ch. 342, Stats. 2021) provided HCD with additional enforcement authority for local agency violations of specified housing laws, and increased public review for housing elements.

AB 72 (Santiago, Ch. 370, Stats. 2017) gave HCD authority to find a city's, county's, or city's and county's housing element out of substantial compliance if it determines that the city, county, or city and county acts or fails to act in compliance with its housing element, and allowed HCD to refer violations of law to the Attorney General.

PRIOR VOTES:

Senate Housing Committee (Ayes 9, Noes 2)
Assembly Floor (Ayes 56, Noes 16)
Assembly Appropriations Committee (Ayes 12, Noes 3)
Assembly Judiciary Committee (Ayes 8, Noes 3)
Assembly Housing and Community Development Committee (Ayes 6, Noes 1)
