

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

AB 1764 (Committee on Housing and Community Development)

Version: June 23, 2023

Hearing Date: July 6, 2023

Fiscal: Yes

Urgency: No

ID

SUBJECT

Housing omnibus

DIGEST

This bill makes various technical or clarifying changes to Health and Safety, Civil, and Government Codes relating to housing and community development.

EXECUTIVE SUMMARY

AB 1764 is an omnibus bill authored by the Assembly Housing and Community Development Committee. As an omnibus bill, it combines a number of minor, non-controversial technical and ministerial changes to various statutes into one bill. This year's omnibus bill on housing makes a variety of minor changes to the Civil, Government, Business and Professions, and the Health and Safety Codes relating to housing developments, housing funding programs, and related provisions. AB 1764 is supported by the California Housing Partnership, and has no known opposition. It previously passed the Senate Housing Committee 11 to 0.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Creates the Subdivided Lands Law, and includes within that law a requirement that subdivided lands must submit a Department of Real Estate public report to potential buyers of property in the subdivision. A provision of the law exempts certain, qualifying limited-equity housing cooperatives from the Subdivided Lands Law.
- 2) Permits landlords to charge an application fee, as specified, to process a rental application. States that a landlord must provide an itemized receipt to the applicant regarding this fee.

- 3) Specifies that cities and counties must create general plans regarding the development of land in their jurisdiction, and specifies that one element of this plan is the housing element. Specifies that a city or county shall submit a draft of the housing element to the Housing and Community Development Department (HCD) a specified amount of time before adoption, and that HCD shall review the element for compliance and provide its report to the city or county within a specified time.
- 4) Specifies that a Common Interest Development shall be governed by an association, and that this association shall have a board of directors. Specifies the procedures for nominating and electing members of the board for the association.
- 5) Specifies that the Preservation Notice Law is a law that applies to certain, enumerated rental housing developments who seek to terminate rental restrictions imposed under the terms of a federal, state, or local subsidy or land use program.
- 6) Various laws currently require HCD to submit reports to the Legislature on its work and various programs. These reporting requirements are contained in different sections of the law and have a variety of different timelines and deadlines for reporting.
- 7) Defines a "Recreational Vehicle" for the purposes of the Manufactured Housing Act of 1980 and various other statutory provisions and programs.
- 8) Creates the Manufactured Housing Opportunity and Revitalization (MORE) program to allow HCD to make loans to mobilehome parks to correct health and safety deficiencies. Such loans currently are restricted to parks where rents are affordable to households making less than 80 percent of the area median income, or where rents are "below 30 percent of market rents."

This bill:

- 1) Makes minor technical changes to the requirements a limited-equity housing cooperative must meet to be exempt from the Subdivided Lands Law.
- 2) Clarifies that a landlord and applicant for a rental may agree that the required itemized receipt for a rental application fee be provided by email.
- 3) Amends various provisions to replace gendered language with gender-neutral language.
- 4) Corrects errors in the specified timelines required for the HCD to submit its report of a proposed housing element back to the city or county that submitted the draft housing element to HCD.

- 5) Amends the provisions relating to nomination and election to the board of an association for a Common Interest Development to clarify certain requirements and disqualifications apply to nominees for the board as well as the director of the board.
- 6) Adds multiple local government programs to the list of enumerated programs to which the Preservation Notice Law apply when rental housing developments seek to terminate rental restrictions imposed under the terms of a federal, state, or local subsidy or land use program.
- 7) Consolidates the reporting requirements of HCD so that it may report on various programs under different statutes in the same report on the same timeline.
- 8) Amends the definition of “recreational vehicle” to clarify that the definition includes such a vehicle used for seasonal or permanent occupancy, consistent with other sections of law that impliedly allow such use of a recreational vehicle.
- 9) Amends the MORE program to correct drafting error regarding park eligibility for loans to correct health and safety deficiencies, specifying that a park must either have rents affordable to households making less than 80 percent of area median income, or rents that are 30 percent below market rents for a comparable unit.
- 10) Makes additional amendments to various sections of the law to correct errors and remove obsolete references.

COMMENTS

1. AB 1764 is the omnibus housing bill of 2023

As an omnibus bill, AB 1764 was authored by the Assembly Housing and Community Development committee with the input of various stakeholders. It combines a variety of minor, technical changes to numerous statutes relating to housing and housing funding programs. The committee receives proposals from organizational or individual stakeholders for the technical changes that it will include in the omnibus bill, and any proposal is vetted by policy consultants of both majority and minority parties of both houses. A proposal for the omnibus is not eligible for inclusion in the omnibus bill if a concern is raised that the individual or organization that proposed that change cannot address. The provisions included in AB 1764 have been reviewed by stakeholders and there was no opposition to any of the provisions included. No opposition to any of the amendments in AB 1764 is known.

2. AB 1764’s statutory changes correct various errors or ambiguities in housing law

- a. *Amendments to exemptions for limited-equity housing cooperatives or workforce housing cooperative trusts*

This bill amends the Business and Professions Code to be more inclusive of limited-equity housing cooperatives (LEHC) who receive funding from a source other than a federal or state agency for exemption from the Subdivided Lands Law. LEHCs are a form of permanently affordable home ownership. To be exempt from the Subdivided Lands Law, an LEHC must be directly financed or subsidized at least 50 percent by a specified lender (currently a federal or state entity). The LEHC also must not have more than 10 percent of the development cost for a LEHC to be provided by purchasers of membership shares, and must sign a regulatory agreement with the lending entity or local public agency that includes a number of specified elements.

AB 1764 amends the code to include housing authority and community development commissions as listed entities that, if such entities directly finances or subsidizes a percentage of the total construction or development cost of the cooperative, may exempt the cooperative from the section's requirements governing subdivided lands. Specifically, the exemption is for the Department of Real Estate public report (DRE). These changes mean that, if a limited-equity housing cooperative receives financing or subsidies from a housing authority or community development commission, it may still qualify for an exemption to the DRE. The author states this is necessary because public funding for such cooperatives has largely dried up, such that other funders often are the sources of funding for LEHC projects. However, because these funders are not listed in the statute relating to exemptions for LEHCs, those projects cannot meet the exemption. Recent bills expanded the list of entities providing financing that can qualify a LEHC for an exemption, but did not include them within the requirement that a regulatory agreement covers the cooperative and the funder, preventing such projects from being included in the DRE exemption. Thus, this bill amends the provisions relating to the exemption to the DRE to include housing authorities and community development commissions as entities whose financing or subsidy qualifies an LEHC for DRE exemption, and clarifies that the regulatory agreement requirement can be fulfilled if entered into by the LEHC with the lender or funding source, or the local public agency under whose jurisdiction the cooperative will be located. It also makes minor conforming changes to this section.

b. Amendments to the Civil Code Section 1950.6 relating to application screening fees for applications to rent a residential property

The omnibus bill also makes some changes to the language of Civil Code section 1950.6, primarily replacing all gender-specific references to "his or her" to "their." This change recognizes that the term "his or her" is not inclusive of all genders or respectful of individuals who identify as nonbinary or use different pronouns.

Section 1950.6 also has a subsection requiring the landlord to provide a receipt to the prospective tenant for the application screening fee. This subsection specifies a number of requirements of this receipt, including that the landlord or their agent shall provide the receipt personally or by mail. AB 1764 adds a provision to this subsection specifying

that a landlord and the applicant may agree that the landlord provide a copy of the receipt by email.

- c. Amends provisions relating to the nomination and disqualification of candidates for a homeowners' association board*

Sections 5103 and 5105 of the Civil Code relate to the election of members of the board of directors of an association for the management of a common interest development. It contains requirements and disqualifications for running, and includes that a nominee shall be disqualified if they have served the maximum number of terms or sequential terms allowed by the association, that a nominee shall be disqualified if they cease to be a member of the association, and that a nominee may be disqualified if it comes to light that they have been convicted of a crime that would, if elected, prevent the association from purchasing required insurance or terminate the association's current insurance. AB 1764 reorganizes the requirement in these provisions that an association shall disqualify a nominee who has served the maximum number of terms allowed, so that it is in the appropriate section and applies to all elections held by an association. AB 1764 also amends this section to extend the disqualifications for certain criminal convictions and for no longer being a member to a director.

- d. Corrects error in Government Code section 65585 relating to Department of Housing and Community Development review of the housing element of a city or county's general plan*

Section 65585 of the Government Code relates to the housing element required to be part of the general plan that all cities of counties are required to create under the law. Section 65585 requires that a city or county, in preparation of the housing element of its general plan, submit a draft to the Department of Housing and Community Development (HCD) for review at least 90 days prior to the adoption of a revision of the housing element or at least 60 days prior to the adoption of a subsequent amendment to the element. This section requires the HCD to review the draft housing element and provide written findings regarding whether the proposed element complies with the statutory requirements. This section requires the HCD to review the proposed element and report its findings to the city or county's planning agency within 90 days for an initial draft, and 60 days for any subsequent draft amendment or adopted revision or amendment to the housing element. AB 1764 corrects an error in a subsequent section of the provision to align with this 90 and 60 day arrangement.

- e. Government Code 65850.01*

This bill includes non-substantive changes to language of the provision, including replacing "his or her" with the gender-neutral language "their."

- f. Government Code 65863.10*

AB 1764 makes changes to the Preservation Notice Law to correct technical oversights. The Preservation Notice Law is a law that applies to rental housing developments who seek to terminate rental restrictions imposed under the terms of a federal, state, or local subsidy or land use program. The Preservation Notice Law lists the federal, state, and local programs to which it applies in Government Code section 65863.10. However, this list must be updated to reflect current programs that should be covered but are not listed. For example, the federal Section 811 rental subsidy program is a program that split from the Section 202 program, and as such is not listed in section 65863.10 as a program to which the Preservation Notice law applies. The list also does not currently list the California Housing Finance Agency (CalHFA). AB 1764 corrects these errors by adding the federal Section 811, Section 521, and CalHFA programs to the list of enumerated programs to which the Preservation Notice Law applies.

g. Government Code section 65912.101

AB 1764 corrects an incorrect reference to the wrong definition in section 65912.101 of the Government Code that relates to AB 2011 (Wicks, Ch. 647, Stats. 2022). That section, in defining “commercial corridor,” uses the term “right-of-way” to mean the required width of a commercial corridor. However, the current version of the statute references a definition for “right-of-way” at Section 525 of the Vehicle Code, which defines a right-of-way as when a driver has a right to enter an intersection. This same error is corrected in a later subdivision of the same code.

h. Government Code 65912.114 and 65912.124

This bill includes minor corrections to references within the section. A subsection currently includes a reference to itself, when it was meant to refer to the preceding section. The same error occurs in Government Code section 65912.124. This error is corrected by AB 1764 in both sections.

i. Changes to various reporting requirements of the HCD to align the HCD’s timelines for reporting

Existing law requires the HCD to submit various reports and plans at various times to various entities, including reports related to building standards submitted to the California Building Standards Commission, reports related to the Code Enforcement Incentive Program, updates to the California Statewide Housing Plan, and reports related to the No Place Like Home Program. Existing law also requires the HCD, on or before December 31 of each year, to submit an annual report to the Governor and both houses of the Legislature on the operations and accomplishments during the previous fiscal year of the housing programs administered by the HCD, as specified.

AB 1764 amends section 17928 of the Health and Safety Code relating to the HCD’s required reports to state that it must summarize the Green building features proposed as building standards and the Green building guidelines during the most recent Triennial and Intervening

Building Standards Adoption Cycles, and include these summaries in the HCD's reports required under Section 50408 of the Health and Safety Code. This will begin in 2025, and be required every three years thereafter. AB 1764 also consolidates the report required under Sections 17998.1, 17998.2, 50408.1, 50423, 50459, 53559, 53591, 5849.11, and 18009.3 of the Health and Safety Code with the report required by Section 50408, further streamlining the HCD's reporting requirements. By making this change, AB 1764 is consolidating the timelines for the reports required under that section with the reports required under Section 50408, streamlining and synchronizing these reporting processes for the HCD.

j. Health & Safety Code section 17974.1

AB 1764 makes technical corrections to Section 17974.1 of the Health and Safety code for incorrect references to other subsections and the California Building Code.

k. Amends the definition of "recreational vehicle" in section 18010 of the Health and Safety Code

Section 18010 of the Health and Safety Code defines the term "Recreational Vehicle" for the purposes of the section and the "Manufactured Housing Act of 1980." In addition, the definition at 18010 is referenced in various other sections of California code. In various sections of the code, someone who occupies a Recreational Vehicle (RV) lot or a Mobilehome lot in an RV for nine months or more is considered a resident of that RV or Mobilehome park. This is relevant because, once they are considered a resident, various protections apply, including "just cause" protections against eviction. (Civ. Code §§ 799.20-799.79; Civ. Code §§798-799.11.) The Mobilehome Residency Law at Civil Code section 798 defines mobilehome for the applicability of that law as inclusive of recreational vehicles if the recreational vehicle either occupied a mobilehome site in the park under a rental agreement during a certain period of time, or if the recreational vehicle occupies a mobilehome site in the park for nine or more continuous months after November 15, 1992. (Civ. Code § 798.3.)

However, the current definition of Recreational Vehicle at section 18010 of the Health and Safety Code is currently unclear about whether a Recreational Vehicle includes that it is seasonally or permanently occupied. It defines one as a "motor home, travel trailer, truck camper, or camping trailer, with or without motive power, designed for human habitation for recreational, emergency, or other occupancy." (Health & Saf. Code § 18010(a).) The author asserts that "other occupancy" within this definition is often interpreted to include permanent occupancy of a recreational vehicle, but that it is not clear. AB 1764 amends this definition, adding "seasonal" to the list of types of occupancy, and deletes "other" to replace it with "permanent." Thus, it clarifies that the definition of recreational vehicle includes those used for permanent occupancy, which is otherwise implied by other various sections like the Mobilehome Residency Law but just not clear. This change makes the definition clear on that point.

l. Health & Safety Code section 18062.8

When selling a manufactured home, a retailer will enter into a sales contract with the consumer. Separately, the retailer will enter into a sales order contract with the manufacturer, who will then begin manufacturing the home as specified in the order from the retailer, once purchased. Health and Safety Code Section 18062.8(h) prohibits a manufacturer from increasing the price of a manufactured home ordered by the retailer before the retailer has received a notification of the price increase. This section allows the sales contract between the consumer and retailer to serve as evidence of a sales order contract between a manufacturer and that retailer. This bill deletes that provision of the statute allowing the signed sales contract to constitute evidence of each order.

m. Health & Safety Code section 18931.6

AB 1764 corrects an incorrect reference in Health and Safety Code section 18931.6. That reference is meant to be, as described in that section, to the Building Standards Administration Special Revolving Fund. However, it cites to Section 19831.7, which does not exist. AB 1764 corrects this error to reference the correct section that actually relates to the Building Standards Administration Special Revolving Fund.

n. Health & Safety Code section 50091

AB 1764 amends the definition of nonprofit housing sponsor or nonprofit corporation in Health and Safety Code section 50091, taking out a provision that states that a limited equity housing cooperative shall not be deemed to be nonprofit for the purpose of the Homeowner Assistance Program described in Chapter 10, section 50775. This amendment takes out this reference because the reference is no longer applicable; the Homeowner Assistance Program of Chapter is no longer funded.

o. Health & Safety Code section 50468

AB 1764 updates a reference in Health and Safety Code section 50468 relating to SB 948 (Becker, Ch. 667, Stats. 2022) that was passed last year. SB 948 prohibited HCD from requiring a project-specific transition reserve for any unit subject to a qualified project rental or operating subsidy. In defining a qualified project rental or operating subsidy, the bill specifically referenced “the local rental housing subsidy programs operated by the City and County of San Francisco and the City of Los Angeles.” The Flexible Housing Subsidy Pool program of Los Angeles County, not the City of Los Angeles, was the intended target of this provision. This bill updates the language to reference the correct local entity.

p. Health & Safety Code section 50783

AB 1764 clarifies a provision of Health and Safety Code section 50783 relating to the Manufactured Housing Opportunity and Revitalization program (MORE) and its provisions providing for HCD loans to certain mobilehome parks to correct health and safety deficiencies that have resulted in a revocation or suspension of the park's permit to operate. Currently, the provision specifies that parks receiving such loans will be subject to affordability restrictions, either that rent is at a housing cost affordable to households making less than 80 percent of the area median income, or where rents charged are below 30 percent of market rents, whichever is lowest. AB 1764 changes the second option of this provision to be such that rents charged are 30 percent below market rents. Thus, instead of the requirement being below 30 percent of market rents, the requirement under AB 1764 will be that the rents are 30 percent below those market rents (or in other words, 70 percent of market rents). The author states that the change made by AB 1764 was the intended definition, and the current language was an error. Under the current definition, the author asserts, most park owners will be unable to apply for loans under the MORE program, and the funding is likely to be under-utilized.

SUPPORT

California Housing Partnership

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

SB 948 (Becker, Ch. 667, Stats. 2022) prohibited HCD from requiring a project-specific transition reserve for any unit subject to a qualified project rental or operating subsidy in the local rental housing subsidy programs operated by the City and County of San Francisco and the City of Los Angeles.

PRIOR VOTES:

Senate Housing Committee (Ayes 11, Noes 0)

Assembly Floor (Ayes 74, Noes 0)

Assembly Appropriations Committee (Ayes 14, Noes 0)

Assembly Housing and Community Development Committee (Ayes 8, Noes 0)
