



American Planning Association
California Chapter

Making Great Communities Happen

March 27, 2018

Senator Scott Wiener
Room 4066 - State Capitol
Sacramento, California 95814

SUBJECT: **SB 828 (WIENER) – NOTICE OF OPPOSITION UNLESS AMENDED**
SIGNIFICANT CHANGES TO THE REGIONAL HOUSING NEED
ALLOCATION PROCESS – IN SENATE TRANSPORTATION &
HOUSING COMMITTEE

Dear Senator Wiener:

The American Planning Association, California Chapter (APA California) must respectfully oppose SB 828 as amended March 14th. SB 828 makes a number of major changes to how the Regional Housing Need Allocation process (RHNA) is determined in housing element law.

APA agrees that the RHNA allocation process should be reviewed to ensure the allocations are balanced throughout the state. We would like to work with you on this issue. However, this bill's main focus instead is doubling-down on an approach that isn't working - almost 90% of cities and counties have certified housing elements, meaning that they have identified enough sites to meet their RHNA. In spite of the RHNA process, not enough housing is getting built; actual production is not close to the total RHNA numbers, especially in below-market categories. The state is not going to solve a housing production problem by doubling-down on planning requirements.

In addition, there are not nearly enough subsidies now available to build the number of lower-income units, and no funds at all available to subsidize the moderate-income units, that are currently included in the RHNA. In spite of funding bills passed last year, the state has cut local funding options for affordable housing by 75% since redevelopment was eliminated in 2011, with SB 2 funds estimated to make up only 25% of the \$1 billion formerly available through redevelopment. Federal sources have also been substantially reduced. Adding more and more units and site requirements without enough funding to meet the RHNA allocation, and then blaming cities and counties for not meeting their RHNA for low-income and moderate-income housing, punishes local agencies for results that are impossible to achieve -- and will not solve that deficit.

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As mentioned, APA would like to work with you on the section in the bill that would make the RHNA allocations more balanced among jurisdictions. In many instances, jurisdictions that are actively promoting housing in their jurisdiction also continue to get the highest number of units. As you know, the housing package bills signed into law last year now impose consequences on jurisdictions that for a variety of reasons do not see enough housing built to match those allocations. Given those consequences, it is critical that the RHNA process be fair and balanced, and that laws relating to RHNA compliance do not unfairly punish those jurisdictions with the highest RHNA numbers and highest production. When one city gets 10 units in their RHNA and another gets 25,000 it is easy to see that equal outcomes aren't possible.

APA supports the provision in SB 828 that will consider distribution of RHNA based on employment and also recommends tying the RHNA distribution to available and planned fixed rail transit investment. APA also recommends that funding for very-low income, low-income and moderate-income housing development must be coupled with the RHNA allocation process if California is dedicated to actually meeting the RHNA allocations in the entire state – without those subsidies, that goal is not achievable.

Beyond the more positive changes to RHNA distribution, however, the bill contains a number of new RHNA requirements that simply can't be met and would set up local governments to fail. The bill would:

1. Require the COGs and cities and counties to take "all possible actions" to ensure that future housing production meet, at a minimum, the RHNA established for planning purposes.
2. Require sites to be identified to accommodate 200% of the actual rezoning requirement to meet the RHNA.
3. Prohibit the council of governments in determining the RHNA for each jurisdiction from considering prior underproduction of housing or to justify a lower allocation for a local jurisdiction, **continuing to punish the cities given the highest allocations, while allowing cities given less than their fair share to continue to underperform.**
4. Require HCD to address historic underproduction of housing in California by completing an audit of unmet housing needs for each region -- and require the results of the audit to be added to the next RHNA allocation after January 1, 2019.
5. Require HCD to add, for each income category in each jurisdiction, the difference between the previous cycle's housing allocation and the reported housing production based on the annual production report submitted to HCD. States that this "housing deficit shall be considered a binding and nonnegotiable obligation, and that the assignment shall be considered an administrative action by the department.

These requirements added together will pile on requirement after requirement that cities and counties will be unable to meet.

- It isn't clear what it means and who will decide if "all possible actions" have or have not been taken to produce the allocated number of RHNA units. How will a COG, a city or

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county know if or when they have met this requirement? Also, as part of the “possible actions” the bill requires jurisdictions to embrace and promote “all applicable reforms and incentives in S. 65582.1.” This doesn’t make sense given the language included in S. 65582.1. In particular, S. 65582.1 includes Housing Sustainability Districts (HSDs). HSDs are intended to be an optional tool for cities and counties, not a mandate. Does the change in the bill make HSDs mandatory?

- Adding unmet need with each new housing element will result in an escalating number of RHNA sites when current RHNA allocations can’t be met.
- Requiring an exponentially ever-larger number of vacant sites to be zoned for housing will not build those units, but instead force jurisdictions without that much vacant land to prematurely annex areas to zone that many sites, or rezone agricultural and open space.
- Both the 200% zoning requirement in the bill, and piling on unmet units to the RHNA, will leave cities and counties, and particularly built-out cities that must rely on redeveloped sites, scrambling to meet the requirements in both SB 828 and the new restrictions on the ability to identify sites as adequate in AB 1397 just signed into law. AB 1397 makes it much more difficult to identify sites. And AB 1397 specifies that a redeveloped site can only be considered an adequate site if development potential can be proven based on a number of difficult-to-prove factors. One of those factors presumes that an existing use will be an impediment to residential development absent findings based on substantial evidence that the use is likely to be discontinued during the planning period – something a landowner is unlikely to volunteer.
- The requirement that the “housing deficit shall be considered a binding and nonnegotiable obligation, and that the assignment shall be considered an administrative action by the department” appears to leave cities and counties open to legal challenge should they not be able to address the requirements in this bill, even though they can’t be implemented.

APA California is willing to work with you on a more balanced RHNA distribution process, but the other provisions in this bill are punitive rather than constructive and mischaracterize the purpose of the RHNA. **If the Legislature truly believes that all low- and moderate-income housing included in the RHNA must be constructed, it should calculate the total subsidy required to accomplish that, and then determine if there are even possibly adequate funds at all levels of government to accomplish those goals.**

If you have any questions, please contact our lobbyist, Sande George, with Stefan/George Associates, sgeorge@stefangeorge.com, 916-443-5301.

Sincerely,

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cc: Governor’s Office
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OPR
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