



American Planning Association
California Chapter

Making Great Communities Happen

April 18, 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 – TUESDAY, APRIL 24

Dear Senator Wiener:

The American Planning Association, California Chapter (APA California) appreciates several of the amendments made to SB 828 April 16th, many at APA's request. We remain committed to working with you on additional changes to the RHNA process as the bill moves forward. However, we must respectfully continue to oppose SB 828 unless amended. SB 828 makes a number of major changes to the Regional Housing Need Allocation process (RHNA) in housing element law that will make it impossible for cities and counties to meet, setting them up for failure.

APA supports targeting the RHNA in a way that is related to major job and transit centers. For instance, jurisdictions that have approved large high-tech offices should receive corresponding higher numbers. Most mixed-use plans include many more jobs than the housing they are providing. For instance, in the SoMa plan in San Francisco, the project is estimated to provide 7,500 units of housing for 45,000 jobs. Higher housing density and affordability around rail transit options should be encouraged by the state.

However, APA continues to see major problems with SB 828 as amended:

It is impossible for every city and county to meet its lower-income and moderate-income housing needs as suggested by S. 65584 (a)(2). The bill continues to assign the ENTIRE responsibility to local government to meet all regional housing needs. This is regardless of the subsidies available, state of the economy, CEQA challenges which the state has not addressed, and other conditions, like a shortage of labor, interest rate increases, and state disasters. It is also regardless of the number of RHNA housing units assigned to each individual city or county – they are not equal. Those numbers relative to local municipal resources and market strength also vary widely. Some cities with low municipal service levels

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due to rapid residential growth and lagging non-residential tax revenues have the highest RHNA numbers. Also, in cities with lower housing costs inclusionary housing would create negative land values making that affordability tool infeasible. In addition, the intent language in this section requiring the COGs, cities and counties take “all reasonable actions” to ensure that future housing production meets the RHNA is undefined and appears to invite challenges. It isn’t clear what it means and who will decide if “all reasonable actions” have or have not been taken to produce the allocated number of RHNA units.

As APA noted with the previous version of this bill, increasing city and county RHNA by factors over which they have no control simply means that most will fail. This will also hit those local governments with the highest RHNA, trying to get a lot of housing built, much harder than those that have very low RHNA numbers. Without substantially increased subsidies, this requirement can’t be met. In spite of the very important housing 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.

The requirement in S. 65583 (c) (1) that each city and county make 200% of the RHNA sites available, and the new amendment requiring half of the need to be met by multifamily development in undefined “developed areas”, will be impossible for local agencies to meet under the AB 1397 requirements. AB 1397, signed into law last year as part of the housing package, makes it extremely difficult to utilize non-vacant sites to meet the RHNA. 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. Also, AB 1397 allows owners of non-vacant, or even vacant, sites to control compliance with AB 1397. Owners can simply say that they have no interest in developing multifamily housing within the planning period – meaning those sites will no longer qualify. In addition, if the goal of the bill is to up-zone areas that are now developed, it needs to be accepted that much of this rezoning will occur over the opposition of landowners.

The bill also exponentially piles on additional RHNA numbers, above the RHNA allocation current “need number” determined by the COG. This requirement will raise the RHNA numbers higher and higher when, for a number of reasons already discussed above, the original RHNA wasn’t met. This is an ever-increasing and self-defeating requirement with no reasonable remedy provided to cities and counties to meet those escalating numbers. S. 65584.01 (c) (4) requires 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, making this housing deficit an unappealable obligation no matter why there is unmet need. S. 65584.01.1 then requires HCD to address historic underproduction of housing in California by completing an audit of unmet housing needs for each region and requiring the results of the audit to also be added to the next RHNA allocation after January 1, 2019. These numbers can’t be met – so why pile them on? The RHNA represents the total need.

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S. 65584.04 (i)(4) will prohibit the council of governments in determining the final allocation plan from considering prior underproduction of housing from the previous cycle in order to justify a lower allocation for a local government. This will punish cities given the highest allocation, while allowing cities given less than their fair share to continue to underperform.

Both the 200% zoning requirement in the bill, and escalating higher RHNA numbers based on unmet units, 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. These requirements added together will pile on requirement after requirement that cities and counties will be unable to meet or implement and appear to leave cities and counties open to legal challenge should they not be able to address the requirements in this bill.

The state is not going to solve a housing production problem by doubling-down on planning requirements. This bill's main focus is doubling-down on an approach that isn't working - almost 90% of cities and counties have certified housing elements, meaning that they have already 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.

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,

John C. Terell

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cc: Governor's Office
Senate Transportation and Housing Committee
OPR
Republican Caucus

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