



American Planning Association
California Chapter

Making Great Communities Happen

MEMO TO: SENATE TRANSPORTATION AND HOUSING COMMITTEE
FROM: AMERICAN PLANNING ASSOCIATION
DATE: JUNE 20, 2017
SUBJECT: **AB 686 (Santiago) – Notice of Support IF AMENDED** In
Senate Transportation and Housing Committee – Tuesday,
June 27

APA California supports AB 686 if the bill is narrowed to mirror the existing federal “affirmatively further fair housing” (AFFH) requirements. APA agrees that the state should incorporate the federal AFFH regulations into state law in anticipation that the federal regulations may be eliminated. APA also appreciates amendments removing the long lists of extensive requirements related to barriers, meaningful actions and programs and activities relating to housing and community development.

However, the bill continues to require actions that are substantially beyond the federal AFFH. It in fact still adds a brand-new section with new definitions of “affirmatively furthering fair housing”, “barriers that restrict access to opportunity”, “meaningful actions”, and “programs and activities” that are very broad and are not financially feasible or are beyond the capabilities of a city or county.

The HUD regulations apply only to the state and to jurisdictions that receive HUD funds. The HUD regulations require that a plan be done and that the local agency’s administration of the HUD programs “affirmatively further fair housing.” The local agency can select what is a “fair housing issue.”

The federal regulations also contain no definitions of “barriers that restrict access to opportunity” or “programs and activities relating to housing and community development.” Instead they allow communities to discuss the issues that they identify and suggest their own solutions. Here is the definition of “meaningful actions” in the HUD regulations:

“Meaningful actions” means significant actions that are designed and can be reasonably expected to achieve a material positive change that affirmatively furthers fair housing by, for

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example, increasing fair housing choice or decreasing disparities in access to opportunity.”

AB 686 instead now requires, under an expanded definition of “meaningful actions” that communities “must eliminate or materially ameliorate within a reasonable period of time the impact of significant barriers that restrict access to opportunity, and must be commensurate with the scale of those barriers.”

Although APA appreciates the recent amendment that limits elimination of barriers to those that are “legally possible for the public agency to undertake,” there are a number of barriers listed in the bill that may be legally possible but are not financially or logistically possible, or for which the local agency has no expertise. For instance, the bill lists barriers such as inadequate supply of affordable housing or poorly maintained affordable housing, housing that is inaccessible to persons with disabilities, and actions or inactions that restrict access to high-quality education, transportation, jobs, health care, recreation, features of a healthy environment including clean water and air, safe neighborhoods, social services, cultural institutions and other opportunities based on characteristics protected by the bill. These are not feasible actions that can be eliminated within a specific timeline by a city or county, particularly a city or county acting alone without a significant source of new resources.

The bill then lists “programs and activities relating to housing and community development” to include any actions, inactions, policies, etc. by the public agency that affect where a person may live including services, affordable housing and community conditions.

Because of the barriers and actions included in AB 686 that go substantially beyond existing federal regulations, the bill unfortunately would still allow almost any action related to land use or housing to be challenged as not “affirmatively furthering fair housing.” It also now requires housing elements to include an analysis of barriers and a commitment to specific meaningful actions to affirmatively further fair housing. Because all of these “barriers” simply cannot be removed by a city or county, AB 686 would appear to set up cities and counties for legal challenges even if they have policies in place now that meet the requirements of the federal regulations.

One option to this very detailed and overly-broad statute would be to require cities to prepare an AFFH plan consistent with the federal requirements and to ensure their general plans and housing elements are consistent with that plan. But sufficient lead time for such changes would be necessary, and the state would have to supply all of the data agencies need to develop the AFFH plan because the data that local agencies would have relied upon may no longer be available from HUD and local agencies won’t receive any HUD dollars for the effort.

We would be happy to work with you and the sponsors on amendments. For information, please contact Sande George, Stefan/George Associates, APA California’s lobbyist, at 443-5301, sgeorge@stefangeorge.com.

Sincerely,

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cc: Members of the Senate Transportation and Housing Committee
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