



AB 2158—2004 Amendments to Housing Element Law

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AB 2158 (Stats. 2004, c. 696, §§ 1-12) amends the system for determining each community's share of the regional need for housing—the basis for the preparation of local housing elements—in several respects. Under current law the existing and projected housing needs of each region in the state are determined every five years (at least two years before the five-year housing element must be adopted) by the state Department of Housing and Community Development (HCD). (Government Code §65584¹) This is termed the Regional Housing Needs Allocation or "RHNA." Before local housing elements must be updated, the regional Council of Governments (COG) (or HCD for cities and counties not covered by a COG) allocates to each local jurisdiction its fair share of the RHNA for the next five-year housing element period. AB 2158 makes changes in the methodology for determining and allocating the RHNA and in the rules for transferring RHNA between cities and counties.

A. Changes In The RHNA Timeline & Methodology:

1. Incorporates the Regional Population Forecasts in Determining the RHNA. (§65584 & 65584.01)

In regions covered by a COG, HCD determines the RHNA in consultation with the COG. At

least *26 months* prior to the date when communities of a region must adopt their housing elements, HCD must consult with the COG regarding the determination of the RHNA. Generally, HCD's determination will be based upon population projections of the Department of Finance (DOF) and regional population forecasts used in preparing regional transportation plans. If the difference between the total regional transportation forecast is within 3% of the DOF forecast, HCD bases the RHNA on the transportation forecast. If the difference is greater than 3%, HCD must attempt to reach agreement with the COG on an appropriate methodology. If no agreement is reached, HCD bases the RHNA on the DOF projections, but HCD may modify the projections as a result of its discussions with the COG.

2. Allows COGs to Request A RHNA Determination Based Solely on Population Forecasts for Transportation. (§65584.02)

At least *six months* prior to the date HCD must determine the RHNA, a COG may request the use of population and household forecast assumptions used in the regional transportation plan. (§65584.02) HCD has the discretion to reject the request. (Under this alternative, the HCD RHNA determination is due at least *24 months* before the housing update deadline for COGs without subregions, and at least *28 months* before the deadline for COGs with subregions. (§65584.02))

3. Distribution of RHNA to Local

Governments—Must Consider Loss of Subsidized Housing and Farmworker Needs; May Not Consider Growth Controls. (§65584.04)

At least *two years* prior to the housing element revision date, each COG or subregion must develop a proposed methodology for distributing the RHNA to its local governments. To develop this methodology, the COG or subregion must survey the local governments regarding factors including: jobs-housing ratio, opportunities and constraints on development, distribution of household growth relative to transportation infrastructure, market demand for housing, local agreements to direct growth to unincorporated areas, loss of subsidized housing, housing cost burdens and farmworker housing needs. No ordinance, policy, voter-approved measure, or standard that directly or indirectly limits the number of residential building permits issued may be a justification for a determination or a reduction in the RHNA. (§65584.04(f))

4. Public Participation. (§65584.04(c))

A diligent effort must be made to achieve participation of all economic segments of the community. The proposed methodology, any relevant information and an explanation of how the survey data was incorporated in the methodology must be provided to any members of the public making a written request as well as local governments. At least one public hearing on the proposed methodology must

be conducted.

5. New Timelines for Appeal. (§65584.05)

- No less than 18 months prior to the housing element revision date, the COG or subregion must distribute the draft allocation to each local government.
- Within 60 days of the distribution a local government may request a revision of its share in accordance with factors surveyed and based upon comparable data from all affected jurisdictions.
- Within 60 days of the request the COG or subregion must accept, reject or modify the proposed revision.
- The local government may appeal its draft allocation if it is not satisfied with the decision. If the decision is appealed, the COG or subregion must conduct public hearings on the appeal within 60 days of the date it establishes to file appeals.
- Any reduction must be reallocated to other jurisdictions in the region or subregion. (§65584.05(e)) The decision must be issued within 45 days of the end of the 60-day period for hearing appeals. (§65584.05(f))

If the total of all adjustments to the RHNAs of appealing jurisdictions is a reduction of 7% or less of the total regional housing needs, the adjustment is redistributed proportionately to all local governments. (§65584.05(g)) If the total adjustments are greater than 7%, the COG or subregion must develop a methodology to redistribute the amount greater than 7%. Two or more localities may agree to an alternate distribution of the appealed housing allocations.

- Within 45 days of the proposed final distribution of the RHNA the COG must hold a public hearing to

adopt the final plan. (§65584.05(h))

- Within 60 days of the adoption, HCD may revise the allocation if it determines the allocation is inconsistent with the total RHNA it initially assigned to the region. (§65584.05(h))

6. Distribution of RHNA By HCD to Local Governments Without COGs. (§65584.06)

HCD will determine the local government allocation for counties without COGs. It may delegate this responsibility if it determines that a county or counties and a majority of the cities within a county or counties representing the majority of the population possesses the capability and has agreed to accept the responsibility.

- Within 90 days of HCD's draft RHNA distribution to cities and counties, a local government may propose to revise its RHNA share.
- HCD must issue a decision on the proposal within 60 days.
- If HCD rejects the proposal the jurisdiction may request a public hearing to review the determination within 30 days of the decision.
- HCD must issue a final RHNA distribution for all local governments within 45 days of the completion of the local review period. If HCD reduces the RHNA of one jurisdiction it must reallocate the forgone portion to other jurisdictions in the region.

B. Transfer of RHNA from a County to Cities. (§65584.07)

After the adoption of the final RHNA distribution, but before the due date for the housing element update, a county may transfer shares of RHNA to one or more cities if:

- The city or cities agrees to increase

its RHNA by an equivalent amount

- The county's share of low-income and very low-income housing is reduced in the same proportion as the county's share of moderate- and above moderate-income housing is reduced
- The COG or HCD, whichever assigned the RHNA, determines that all conditions of transfer have been satisfied. Counties and cities must include their revised RHNA in their updated housing element

A city incorporated after the distribution of the RHNA may agree to an allocation where the new city accepts part of the county's allocation. If the city and county cannot reach agreement, then either may request the COG (or HCD where there is no COG) to make a revised determination. The revision must be made within one year of the incorporation.

¹ All citations are to the Government Code unless otherwise indicated.