Beverly Hills City Council Liaison / Legislative/Lobby Committee will conduct a Special Meeting, at the following time and place, and will address the agenda listed below:

CITY OF BEVERLY HILLS
455 N. Rexford Drive
Beverly Hills, CA 90210

TELEPHONIC VIDEO CONFERENCE MEETING

Beverly Hills Liaison Meeting
https://www.gotomeet.me/BHLiaison
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United States (Toll Free): 1-866-899-4679 or United States: +1 646-749-3117
Access Code: 660-810-077

Monday, March 22, 2021
10:00 AM

Pursuant to Executive Order N-25-20, members of the Beverly Hills City Council and staff may participate in this meeting via a teleconference. In the interest of maintaining appropriate social distancing, members of the public can view this meeting through live webcast at www.beverlyhills.org/live and on BH Channel 10 or Channel 35 on Spectrum Cable, and can participate in the teleconference/video conference by using the link above. Written comments may be emailed to mayorandcitycouncil@beverlyhills.org.

AGENDA

A. Oral Communications

1. Public Comment
   Members of the public will be given the opportunity to directly address the Committee on any item listed on the agenda.

B. Direction

1. State and Federal Legislative Updates

Comment: The City's state and federal lobbyists will provide a verbal update to the Liaisons on various legislative issues.

2. Assembly Constitutional Amendment 7 (Muratsuchi) - Local government: police power: municipal affairs: land use and zoning

Comment: This item is a request by Councilmember Mirisch for the Legislative/Lobby Liaison Committee to consider taking a position on ACA 7. This Constitutional Amendment would amend the California Constitution to provide that, with certain exceptions, a county or city ordinance or regulation enacted under the police power that regulates the zoning or use of land within the boundaries of the county or city would prevail over conflicting general laws.

3. Assembly Bill 816 (Chiu) - State and local agencies: homelessness plan

Comment: This item seeks direction on AB 816. This bill, upon appropriation by the Legislature or upon receiving technical assistance offered by the federal Department of Housing and Urban Development (HUD), would require the Homeless Coordinating and Financing Council to

conduct, or contract with an entity to conduct a statewide needs and gaps analysis to, among other things, identify state programs that provide housing or services to persons experiencing homelessness and create a financial model that will assess certain investment needs for the purpose of moving persons experiencing homelessness into permanent housing.

4. **Assembly Bill 1119 (Wicks) - Employment discrimination**

   Comment: This item is a request by Councilmember Mirisch for the Legislative/Lobby Liaison Committee to consider taking a position on AB 1119. The California Fair Employment and Housing Act (FEHA), protects the right to seek, obtain, and hold employment without discrimination because of prescribed characteristics. FEHA makes various employment practices unlawful and empowers the Department of Fair Employment and Housing to investigate and prosecute complaints alleging unlawful practices. This bill would expand the protected characteristics to include family responsibilities, defined to mean the obligations of an employee to provide direct and ongoing care for a minor child or a care recipient.

5. **Assembly Bill 1372 (Muratsuchi) - Right to temporary shelter**

   Comment: This item seeks direction on AB 1372. This bill would require every city, or every county in the case of unincorporated areas, to provide every person who is homeless with temporary shelter, mental health treatment, resources for job placement, and job training until the person obtains permanent housing if the person has actively sought temporary shelter in the jurisdiction for at least 3 consecutive days and has been unable to gain entry into all temporary shelters they sought for specified reasons. The bill would require the city or county, as applicable, to provide a rent subsidy, as specified, if it is unable to provide temporary shelter. The bill would authorize a person who is homeless to enforce the bill's provisions by bringing a civil action.

6. **Senate Bill 82 (Skinner) - Petty theft**

   Comment: This item is a request by Councilmember Mirisch for the Legislative/Lobby Liaison Committee to consider taking a position on SB 82. This bill would divide petty theft into two categories with petty theft in the first degree defined as the taking the property from the person of another or from a commercial establishment by means of force or fear without the use of a deadly weapon or great bodily injury. Further it states that petty theft in the first degree shall be charged as such, and shall not be charged as robbery or burglary.

7. **Senate Bill 284 (Stern) - Workers' compensation: firefighters and peace officers: post-traumatic stress**

   Comment: This item seeks direction on SB 284, which would substantial expand California's current presumption for Post-Traumatic Stress Disorder (PTSD) for police officers and firefighters, to thousands of additional safety officers and non-sworn personnel.

8. **Senate Bill 612 (Portantino) - Electrical corporations and other load-serving entities: allocation of legacy resources**

   Comment: This item seeks direction on SB 612. This bill would require an electrical corporation, by July 1, 2022, and by each July 1 thereafter, to annually offer, for the following year, an allocation of each product, as defined, arising from legacy resources, as defined, to its bundled customers and to other load-serving entities, defined to include electric service providers and community choice aggregators, serving departing-load customers, as defined, who bear cost responsibility for those resources. The bill would authorize a load-serving entity within the service territory of the electrical corporation to elect to receive all or a portion of the vintaged proportional share of products allocated to its end-use customers and, if so, require it to pay to

the electrical corporation the commission-established market price benchmark for the vintage proportional share of products received.

9. **Senate Bill 679 (Hertzberg) - Los Angeles County: housing development: financing**

   Comment: This item is a request by Councilmember Mirisch for the Legislative/Lobby Liaison Committee to consider taking a position on SB 679, the Los Angeles County Regional Housing Finance Act. This bill would establish the Los Angeles County Affordable Housing Solutions Agency and would state that the agency's purpose is to increase affordable housing in Los Angeles County by providing for significantly enhanced funding and technical assistance at a regional level for renter protections, affordable housing preservation, and new affordable housing production, as specified.

10. **Senate Bill 765 (Stern) - Accessory dwelling units: setbacks**

    Comment: This item seeks direction on SB 765. Current law prohibits a local agency's accessory dwelling unit ordinance from imposing a setback requirement of more than 4 feet from the side and rear lot lines for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure. This bill would remove the above-described prohibition on a local agency's accessory dwelling unit ordinance, and would instead provide that the rear and side yard setback requirements for accessory dwelling units may be set by the local agency.

11. **Senate Bill 809 (Allen) - Multijurisdictional regional agreements: housing element**

    Comment: This item seeks direction on SB 809, which would authorize a city or county to satisfy part of its requirement to identify zones suitable for residential development by adopting and implementing a multijurisdictional regional agreement.

C. Adjournment

Huma Ahmed

Huma Ahmed
City Clerk

Posted: March 18, 2021

A DETAILED LIAISON AGENDA PACKET IS AVAILABLE FOR REVIEW AT WWW.BEVERLYHILLS.ORG

Pursuant to the Americans with Disabilities Act, the City of Beverly Hills will make reasonable efforts to accommodate persons with disabilities. If you require special assistance, please call (310) 285-1014 (voice) or (310) 285-6881 (TTY). Providing at least forty-eight (48) hours advance notice will help to ensure availability of services.

Item B-1

CITY OF BEVERLY HILLS

POLICY AND MANAGEMENT

MEMORANDUM

TO:	City Council Liaison/Legislative/Lobby Committee
FROM:	Cynthia Owens, Policy and Management Analyst
DATE:	March 22, 2021
SUBJECT:	State and Federal Legislative Updates
ATTACHMENTS:	None

Verbal updates on legislative issues will be presented by the City's lobbyists.

Item B-2

CITY OF BEVERLY HILLS

POLICY AND MANAGEMENT

MEMORANDUM

TO: City Council Liaison/Legislative/Lobby Committee

FROM: Cynthia Owens, Policy and Management Analyst

DATE: March 22, 2021

SUBJECT: Assembly Constitutional Amendment 7 (Muratsuchi) - Local government: police power: municipal affairs: land use and zoning

ATTACHMENTS:
1. Summary Memo – ACA 7
2. Bill Text – ACA 7

The City Council has historically taken positions on proposed federal and state legislation of interest to Beverly Hills because of the City's location, economy, programs, and policies through the adoption of a Legislative Platform.

Councilmember John Mirisch has requested this item be considered by the Legislative/Lobby Liaisons. Assembly Constitutional Amendment 7 (Muratsuchi) - Local government: police power: municipal affairs: land use and zoning involves a policy matter that has a nexus to the City's adopted Legislative Platform language. Specifically, the following statements may apply to ACA 7 as it relates to local control and land use:

- Support legislation that preserves local control.
- Support legislation that protects local control over urban planning.
- Support a state constitutional amendment to protect local discretionary authority whereby legislative oversight remains at the lowest level of the appropriate governing body while encouraging regional cooperation. For example, zoning authority would remain with a city whereas air quality, etc. would remain at the regional or state level.

The City's state lobbyist, Shaw Yoder Antwih Schmelzer & Lange, provided a summary memo for ACA 7 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of ACA 7, the Liaisons may recommend the following actions:

1) Oppose ACA 7;
2) Support ACA 7;
3) Support if amended ACA 7;
4) Oppose unless amended ACA 7;
5) Remain neutral; or
6) Provide other direction to City staff.

Should the Liaisons recommend a position of support, then staff will prepare a letter for the Mayor to sign as the legislation appears to be consistent with the City's Legislative Platform. Any other positions recommended by the Liaisons will require the concurrence of the City Council and staff will place this item on a future City Council agenda.

Attachment 1

Shaw
Yoder
Antwih
Schmelzer
& Lange

1415 L Street
Suite 1000
Sacramento
CA, 95814
916-446-4656

March 17, 2021

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw Yoder Antwih Schmelzer & Lange
Priscilla Quiroz, Legislative Advocate, Shaw Yoder Antwih Schmelzer & Lange
Tim Sullivan, Legislative Aide, Shaw Yoder Antwih Schmelzer & Lange

Re: ACA 7 (Muratsuchi) Municipal Affairs: Land Use and Zoning

Summary

ACA 7 was introduced on March 17, 2021. The measure is authored by Assemblyman Al Muratsuchi and Senator Steve Glazer is listed as a principal coauthor. This measure would amend the California Constitution to provide that, with certain exceptions, a county or city ordinance or regulation enacted under the police power that regulates the zoning or use of land within the boundaries of the county or city would prevail over conflicting general laws. Specifically, this measure:

(1) Sets forth the following findings and declarations:

(a) The circumstances and impacts of local land use decisions vary greatly across the state from locality to locality.

(b) The infrastructure required to maintain appropriate levels of public services, including police and fire services, parklands and public open spaces, transportation, schools, and sewers, also varies greatly across the state from locality to locality.

(c) Land use decisions made by local officials seek to balance development with the economic, environmental, and social needs of the particular communities served by those local officials.

(d) Thus, it is in the best interests of the state for these complex decisions to be made at the local level to ensure that the specific, unique characteristics, constraints, and needs of those communities are properly analyzed and addressed.

(e) Gentrification of housing adjacent to public transportation will reduce or eliminate the availability of very low-income housing near public transit.

(f) The Legislature cannot properly assess the impacts upon each community of sweeping land use rules and zoning regulations that apply across the state and, as a result, do great harm to many local communities with differing circumstances and concerns.

(g) Development within a community should not be controlled by state laws that may or may not address the needs of, and the impacts upon, that local community.

(h) Numerous state laws have been enacted, and continue to be proposed, that eliminate or erode local control over the type and character of local development.

(i) The purpose of this measure is to ensure that all decisions regarding local land use controls and zoning regulations are made within the affected communities in accordance with local law, while still allowing either local or state law to control, as it otherwise would, in those instances where state and local law conflict regarding the coastal zone, the siting of a power plant that can generate more than 50 megawatts of electricity, or the development or construction of a water or transportation infrastructure project for which the Legislature declares why the project addresses a matter of statewide concern and is in the best interests of the state. For purposes of this measure, it is the intent that a transportation infrastructure project not include a transit-oriented development project that is residential, commercial, or mixed used.

(2) Specifies that unless determined otherwise by a court of competent jurisdiction, in the event of a conflict with a state statute, a city charter provision, or an ordinance or regulation adopted pursuant to a city charter that regulates the zoning or use of land within the boundaries of the city shall be deemed to address a municipal affair and shall prevail over a conflicting state statute.

(3) Provides that a city charter provision, or an ordinance or a regulation adopted pursuant to a city charter may be determined by a court of competent jurisdiction to address either a matter of statewide concern or a municipal affair if that provision, ordinance, or regulation conflicts with a state statute with regard to any of the following:

(a) The California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), or a successor statute.

(b) The siting of a power generating facility capable of generating more than 50 megawatts of electricity.

(c) The development or construction of a water or transportation infrastructure project for which the Legislature has declared in statute the reasons why the project addresses a matter of statewide concern and is in the best interests of the state. For purposes of this paragraph, a transportation infrastructure project does not include a transit-oriented development project, whether residential, commercial, or mixed use.

(4) Declares that the provisions of this act are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(5) Provides that with certain exceptions, a county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations that are not in conflict with general laws.

(6) A county or city ordinance or regulation that regulates the zoning or use of land within the boundaries of the county or city shall prevail over conflicting general laws, except for the following:

(a)An ordinance or regulation that conflicts with the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), or a successor statute.

(b) An ordinance or regulation that addresses the siting of a power generating facility capable of generating more than 50 megawatts of electricity.

(c) An ordinance or regulation that addresses the development or construction of a water or transportation infrastructure project for which the Legislature has declared in statute the reasons why the project addresses a matter of statewide concern and is in the best interests of the state. For purposes of this exception, a transportation infrastructure project does not include a transit-oriented development project, whether residential, commercial, or mixed use.

Background

The California Constitution authorizes a city or county to make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws, which is also known as the police power. Existing law also authorizes a county or city to adopt a charter, as provided. The California Constitution authorizes a city governed under a charter to make and enforce all ordinances and regulations in respect to municipal affairs and provides that, with respect to municipal affairs, a city charter supersedes all inconsistent laws.

Under the California Constitution, the power to regulate land use is within the scope of the police power, and is also generally considered to be a municipal affair, for purposes of these provisions.

California's complex housing and affordability problems does not benefit from a one-size-fits-all legislative solution. According to the author, there have been numerous legislative attempts aimed at solving the state's complex housing problem but many of those attempts go against local communities that have actively worked to address their complex housing issues through local action. Land use decisions seek to balance development with the economic, environmental, and social needs of the communities they serve. This is necessary to create a livable community with the best possible balance between public safety, schools, public parks, and businesses.

The California Coastal Act requires projects in coastal communities to include affordable housing as required through the Mello Act. This Act requires affordable housing within the coastal zone to include new low-income housing units as part of new developments and to replace low-income housing during construction when existing affordable housing is demolished.

The author argues that it is in the best interest of the state that these complex decisions be made at the local level, by incorporated cities, to ensure the specific characteristics, constraints, and needs of those communities are properly considered. Local communities are best equipped to make development decisions based on their unique individual cities development plan.

Proposals to amend the California Constitution can be placed on the ballot in two different ways. Voters may propose to amend the constitution through an initiative measure by presenting the Secretary of State with a petition that sets forth the text of the proposed amendment to the Constitution that is certified to have been signed by electors equal in number to 8% of the votes for all candidates for Governor at the last gubernatorial election. Constitutional amendments placed on the ballot in this manner are "initiative constitutional amendments."

Alternately, the Legislature may place a proposed amendment to or revision of the Constitution on the ballot by a two-thirds vote of each house. Constitutional amendments that are placed on the ballot in this manner are "legislative constitutional amendments." ACA 7 (Muratsuchi) is a legislative constitutional amendment. If approved by a two-thirds vote in each house, this measure would require majority voter approval on a statewide ballot before taking effect.

Status of Legislation
This constitutional amendment was introduced on March 17, 2021 and is pending further action by the Assembly Rules Committee.

Support
None listed at this time.

Opposition
None listed at this time.

Attachment 2

Assembly Constitutional Amendment No. 7

Introduced by Assembly Member Muratsuchi
(Principal coauthor: Senator Glazer)

March 16, 2021

Assembly Constitutional Amendment No. 7—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending Section 7 of, and adding Section 5.5 to, Article XI thereof, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

ACA 7, as introduced, Muratsuchi. Local government: police power: municipal affairs: land use and zoning.

The California Constitution authorizes a city or county to make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws, which is also known as the police power. Existing law also authorizes a county or city to adopt a charter, as provided. The California Constitution authorizes a city governed under a charter make and enforce all ordinances and regulations in respect to municipal affairs and provides that, with respect to municipal affairs, a city charter supersedes all inconsistent laws. Under the California Constitution, the power to regulate land use is within the scope of the police power, and is also generally considered to be a municipal affair, for purposes of these provisions.

This measure would provide that a county or city ordinance or regulation enacted under the police power that regulates the zoning or use of land within the boundaries of the county or city would prevail over conflicting general laws, with specified exceptions. The measure, in the event of the conflict with a state statute, would also specify that

a city charter provision, or an ordinance or regulation adopted pursuant to a city charter, that regulates the zoning or use of land within the boundaries of the city is deemed to address a municipal affair and prevails over a conflicting state statute, except that the measure would provide that a court may determine that a city charter provision, ordinance, or regulation addresses either a matter of statewide concern or a municipal affair if it conflicts with specified state statutes. The measure would make findings in this regard and provide that its provisions are severable.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

Resolved by the Assembly, the Senate concurring, That the Legislature of the State of California at its 2021–22 Regular Session commencing on the seventh day of December 2020, two-thirds of the membership of each house concurring, hereby proposes to the people of the State of California, that the Constitution of the State be amended as follows:

First—That the people of the State of California find and declare all of the following:

(a) The circumstances and impacts of local land use decisions vary greatly across the state from locality to locality.

(b) The infrastructure required to maintain appropriate levels of public services, including police and fire services, parklands and public open spaces, transportation, schools, and sewers, also varies greatly across the state from locality to locality.

(c) Land use decisions made by local officials seek to balance development with the economic, environmental, and social needs of the particular communities served by those local officials.

(d) Thus, it is in the best interests of the state for these complex decisions to be made at the local level to ensure that the specific, unique characteristics, constraints, and needs of those communities are properly analyzed and addressed.

(e) Gentrification of housing adjacent to public transportation will reduce or eliminate the availability of very low income housing near public transit.

(f) The Legislature cannot properly assess the impacts upon each community of sweeping land use rules and zoning regulations that apply across the state and, as a result, do great harm to many local communities with differing circumstances and concerns.

(g) Development within a community should not be controlled by state laws that may or may not address the needs of, and the impacts upon, that local community.

(h) Numerous state laws have been enacted, and continue to be proposed, that eliminate or erode local control over the type and character of local development.

(i) The purpose of this measure is to ensure that all decisions regarding local land use controls and zoning regulations are made within the affected communities in accordance with local law, while still allowing either local or state law to control, as it otherwise would, in those instances where state and local law conflict regarding the coastal zone, the siting of a power plant that can generate more than 50 megawatts of electricity, or the development or construction of a water or transportation infrastructure project for which the Legislature declares why the project addresses a matter of statewide concern and is in the best interests of the state. For purposes of this measure, it is the intent that a transportation infrastructure project not include a transit-oriented development project that is residential, commercial, or mixed used.

Second—That Section 5.5 is added to Article XI thereof, to read:

SEC. 5.5. (a) Except as provided in subdivision (b), in the event of a conflict with a state statute, a city charter provision, or an ordinance or a regulation adopted pursuant to a city charter, that regulates the zoning or use of land within the boundaries of the city shall be deemed to address a municipal affair within the meaning of Section 5 and shall prevail over a conflicting state statute.

(b) A city charter provision, or an ordinance or a regulation adopted pursuant to a city charter, may be determined by a court of competent jurisdiction, in accordance with Section 5, to address either a matter of statewide concern or a municipal affair if that provision, ordinance, or regulation conflicts with a state statute with regard to any of the following:

(1) The California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), or a successor statute.

(2) The siting of a power generating facility capable of generating more than 50 megawatts of electricity.

(3) The development or construction of a water or transportation infrastructure project for which the Legislature has declared in statute the reasons why the project addresses a matter of statewide concern and is in the best interests of the state. For purposes of this paragraph, a transportation infrastructure project does not include a transit-oriented development project, whether residential, commercial, or mixed use.

(c) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

Third—That Section 7 of Article XI thereof is amended to read:

SEC. 7. *(a)* A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations ~~not~~ *that are not, except as provided in subdivision (b),* in conflict with general laws.

(b) (1) A county or city ordinance or regulation that regulates the zoning or use of land within the boundaries of the county or city shall prevail over conflicting general laws, except for the following:

(A) An ordinance or regulation that conflicts with the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), or a successor statute.

(B) An ordinance or regulation that addresses the siting of a power generating facility capable of generating more than 50 megawatts of electricity.

(C) An ordinance or regulation that addresses the development or construction of a water or transportation infrastructure project for which the Legislature has declared in statute the reasons why the project addresses a matter of statewide concern and is in the best interests of the state. For purposes of this subparagraph, a transportation infrastructure project does not include a transit-oriented development project, whether residential, commercial, or mixed use.

(2) The provisions of this subdivision are severable. If any provision of this subdivision or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

O

Item B-3

CITY OF BEVERLY HILLS

POLICY AND MANAGEMENT

MEMORANDUM

TO: City Council Liaison/Legislative/Lobby Committee

FROM: Cynthia Owens, Policy and Management Analyst

DATE: March 22, 2021

SUBJECT: Assembly Bill 816 (Chiu) - State and local agencies: homelessness plan

ATTACHMENTS:
1. Summary Memo – AB 816
2. Bill Text – AB 816

The City Council has historically taken positions on proposed federal and state legislation of interest to Beverly Hills because of the City's location, economy, programs, and policies through the adoption of a Legislative Platform.

Assembly Bill 816 - State and local agencies: homelessness plan (AB 816) involves a policy matter that does not have a nexus to the City's adopted Legislative Platform language.

The City's state lobbyist, Shaw Yoder Antwih Schmelzer & Lange, provided a summary memo for AB 816 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of AB 816, the Liaisons may recommend the following actions:

1) Oppose AB 816;
2) Support AB 816;
3) Oppose unless Amended;
4) Support if Amended;
5) Remain neutral; or
6) Provide other direction to City staff.

Should the Liaisons recommend a position then the item will be placed on a future City Council agenda for concurrence.

Attachment 1

Shaw
Yoder
Antwih
Schmelzer
& Lange

1415 L Street
Suite 1000
Sacramento
CA, 95814
916-446-4656

March 16, 2021

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw Yoder Antwih Schmelzer & Lange
Priscilla Quiroz, Legislative Advocate, Shaw Yoder Antwih Schmelzer & Lange

Re: AB 816 (Chiu) State and local agencies: homelessness plan

Summary
Requires state and local governments to develop plans to reduce homelessness by 90 percent by December 31, 2029 and requires the Department of Housing and Community Development (HCD) to review and approve those plans. Establishes a Housing and Homelessness Inspector General (Inspector General) and authorizes that entity to take legal action against a state or local governments for failing to submit or follow a plan to reduce homelessness. Specifically, this bill:

1) Requires the Homeless Coordinating and Financing Council (Council), upon appropriation by the Legislature, or upon receiving technical assistance from the federal department of Housing and Urban Development (HUD), to conduct, or enter into a contract to conduct, a statewide gaps and needs analysis that will, among other items, do all of the following:

2) Identify programs in the state that provide housing or services to persons experiencing homelessness and describe all of the following for each program to the extent that data is available:

    i) The amount of funding the program receives each year and funding sources for the program.
    ii) The number of persons the program serves each year, disaggregated by race and gender.
    iii) The types of housing and services provided to the persons the program serves each year, disaggregated by race and gender.
    iv) Limitations, if any, on the length of stay for housing programs and length of provision of services for service programs.
    v) If applicable, reasons for the unavailability of data.

3) Identify the total number and type of permanent housing beds, units, or opportunities available to persons experiencing homelessness statewide and in geographically diverse regions across the state.

4) Analyze the need for permanent housing opportunities, including, but not limited to, supportive housing, rapid rehousing, and affordable housing.

5) Analyze the need for services to assist persons in exiting homelessness and remaining housed.

6) Identify the number of and types of interim interventions available to persons experiencing homelessness in geographically diverse regions across the state. The data shall also include, but is not limited to, all of the following:

    i) The number of year-round shelter beds.
    ii) The average length of stay in or use of interim interventions, to the extent data is available.
    iii) The exit rate from an interim intervention to permanent housing, to the extent data is available.

7) Analyze the need for additional interim interventions and funding needed to create these interventions, taking into consideration the ideal length of stay in or use of the intervention.

8) Identify state-funded institutional settings that discharge persons into homelessness, and the total number of persons discharged into homelessness from each of those settings, to the extent data is available, disaggregated by race and gender. If data is unavailable, the entity conducting the analysis may extrapolate from national, local, or statewide estimates on the number or percentage of people discharged from specific institutional settings into homelessness.

9) Collect data on the numbers and demographics of persons experiencing homelessness, including, but not limited to, a quantification of the racial and ethnic disparities in the homeless population relative to the general population and, to the extent data is available, race and gender demographics, including several specific circumstances.

10) Collect data, to the extent data is available, on exits from homelessness to housing, including, but not limited to, the number of people moving into permanent housing and the type of housing being accessed, the type of interventions people exiting homelessness received, if any, and racial and gender characteristics of people accessing each type of housing and receiving each type of intervention.

11) To the extent data is available, assess a sampling of data provided by local jurisdictions regarding the number of people experiencing homelessness who gained access to interim interventions, including, but not limited to, shelters, recuperative care, and motels and hotels, in response to the COVID-19 pandemic, and the number of people who were able to gain access to permanent housing on or before the expiration of interim assistance.

12) Requires the assessment to include the number and racial identification of people experiencing homelessness who sheltered in place or were quarantined during the COVID-19 pandemic and the number and racial identification of people experiencing homelessness who were able to access permanent housing on or before the expiration of temporary assistance, as well as the type of housing accessed.

13) Create a financial model that will assess needs for investment in capital, in operating supports in project-based housing, in rental assistance with private-market landlords, and in services costs for purposes of moving persons experiencing homelessness into permanent housing. Requires the financial model to include an explanation of how these investments will affirmatively reduce and close any racial disparities identified in the homeless population.

14) Several other specified data and analysis requirements.

15) Prohibits a state, a local agency, or a city from deliberately and intentionally transporting a homeless individual or households to a different jurisdiction in order to reduce the number of homeless individuals within its jurisdiction, unless those individuals or households choose to move to a different jurisdiction.

16) Specifies that any person may file a complaint with the inspector general that the state, a local agency, or a city violated subdivision (a).

17) Requires the Inspector General to investigate a complaint received related to the illegal movement of homeless individuals against their will.

18) After investigating a complaint, the inspector general shall impose on the state or any local jurisdiction found to have violated subdivision (a) a civil penalty in an amount not to exceed one hundred thousand dollars ($100,000) per individual transported outside of the jurisdiction.

Background

Homelessness remains a vexing problem in California with over 150,000 people experiencing homelessness on any given night. The state has the largest unsheltered population in the nation. As California has seen COVID outbreaks in shelters and congregate settings, the pandemic has only made the need to reduce homelessness more urgent.

In recent years, state government has taken important steps and allocated significant one-time investments to address homelessness, but there is still no coordinated plan among state and local governments to tackle this issue. While many local governments have tried valiantly to house those experiencing homelessness in their jurisdictions, others have taken no action and perpetuate myths about homelessness that allow them to shirk responsibility all together. There is currently no legal requirement for local governments to take steps to reduce homelessness in California.

The Governor's 2021-22 budget proposes $1.75 billion in one-time funding from the State General Fund for three major proposals related to homelessness: $750 million for increased funding for Project Homekey, administered by the State Housing and Community Development Department (HCD), $250 million to the State Department of Social Services for programs that provide support for residential facilities that serve vulnerable adults and seniors, and $750 million to the State Department of Health Care Services (DHCS) for programs that provide behavioral health services.

Over the last several years, the Legislature has demonstrated an interest in increasing the state's role in addressing homelessness. These funding efforts largely have been one time in nature and, while largely administered at the local level, have been overseen by a variety of state entities.

In March 2020, the state's public health and economic situations began to change dramatically because of the emergence of COVID-19. State funding strategies to address homelessness evolved given the immediate need to prevent the spread of COVID-19 among people experiencing homelessness and at risk of homelessness. The state acted quickly to establish new programs and expand funding, using one-time resources, to help people experiencing or at risk of homelessness through the COVID-19 crisis. Beyond this pandemic, continued work and resources will be necessary to address the state's homelessness challenges.

AB 816 would require state and local governments to develop actionable plans to reduce homelessness by 90 percent by December 31, 2029. The Department of Housing and Community Development would review and approve the plans created.

AB 816 would establish a Housing and Homelessness Inspector General that could take legal action against a state or local government for failing to submit or follow a plan to reduce homelessness.

The author argues that AB 816 ensures local governments are only held accountable for what they are fiscally able to bear by considering their level of existing resources.
The bill would also require a thorough analysis of all existing homelessness programs in California and the overall need for housing interventions and homelessness services.

Prior Legislation
AB 816 is similar to AB 2329 (Chiu) from 2020 this measure was held on the Assembly Appropriations Committee's suspense file and failed to reach the Governor's desk before the end of the 2019-2020 Regular Session.

Status of Legislation
The bill is currently in Assembly Housing and Community Development Committee. Hearing date not currently available.

Support
The Corporation for Supportive Housing (co-sponsor)
Housing California (co-sponsor)
Sacramento Mayor Darrell Steinberg (co-sponsor)
The Steinberg Institute (co-sponsor)

Opposition
None listed at this time.

Attachment 2

ASSEMBLY BILL No. 816

Introduced by Assembly Members Chiu, Bloom, Bonta, Quirk-Silva, Santiago, and Wicks

February 16, 2021

An act to amend Section 11552 of the Government Code, and to add Sections 8257.1 and 8257.2 to, and to add Chapter 6.6 (commencing with Section 8258) to Division 8 of, the Welfare and Institutions Code, relating to homelessness.

LEGISLATIVE COUNSEL'S DIGEST

AB 816, as introduced, Chiu. State and local agencies: homelessness plan.

Existing law establishes in state government the Business, Consumer Services, and Housing Agency, comprised of the Department of Consumer Affairs, the Department of Housing and Community Development, the Department of Fair Employment and Housing, the Department of Business Oversight, the Department of Alcoholic Beverage Control, the Alcoholic Beverage Control Appeals Board, the California Horse Racing Board, and the Alfred E. Alquist Seismic Safety Commission.

Existing law requires the Governor to create the Homeless Coordinating and Financing Council (referred to as "the coordinating council") and to appoint up to 19 members of that council, as provided. Existing law specifies the duties of the coordinating council, including creating partnerships among state agencies and departments, local government agencies, and specified federal agencies and private entities, for the purpose of arriving at specific strategies to end homelessness.

This bill, upon appropriation by the Legislature or upon receiving technical assistance offered by the federal Department of Housing and Urban Development (HUD), if available, would require the coordinating council to conduct, or contract with an entity to conduct, a statewide needs and gaps analysis to, among other things, identify state programs that provide housing or services to persons experiencing homelessness and create a financial model that will assess certain investment needs for the purpose of moving persons experiencing homelessness into permanent housing. The bill would provide that the council's obligation to conduct the statewide needs and gaps analysis is fulfilled if a technical assistance provider from HUD conducts the analysis on behalf of the council. The bill would require the council to work with the technical assistance provider to complete the analysis. The bill would authorize local governments to collaborate with the coordinating council or other entity conducting the analysis upon an appropriation by the Legislature to cover costs of the collaboration or upon provision of technical assistance by HUD. The bill would also require the coordinating council or any other entity conducting the analysis to seek input from the coordinating council's members on the direction of, design of data collection for, and items to be included in the statewide needs and gaps analysis. The bill would require the council to report on the analysis to specified committees in the Legislature by July 31, 2022. The bill would require the coordinating council or other entity conducting the analysis to evaluate all available data, including, among other things, data from other state departments and agencies. The bill would require a state department or agency with a member on the coordinating council to assist in data collection for the analysis by responding to data requests within 180 days, as specified.

This bill would require the Department of Housing and Community Development (department) to set a benchmark goal in reducing homelessness by January 1, 2029, for the state pursuant to the statewide needs and gaps analysis. The bill would require the department to approve or work with local agencies, as defined, to identify, as provided, appropriate benchmark goals to reduce homelessness for each local agency and cities within each local agency. The bill would also require the department to set annual benchmarks to meet these benchmark goals. The bill, on or before January 1, 2023, would require each local agency to submit to the department an actionable county-level plan for meeting specific annual benchmarks, with the goal of achieving the state-identified benchmark goal. The bill would require each city in the

local agency's jurisdiction to participate in the plan, and each local agency would be required to request and actively seek the participation of all homeless continuums of care that serve the local agency's jurisdiction. The bill would require the plan to include, among other things, a description and the amount of all funding sources the local agency, and any incorporated jurisdiction and continuum of care, has earmarked or committed to addressing homelessness, mental illness, and substance abuse within its jurisdiction. The bill would require the state and each local agency to submit an annual progress report to the department that details the progress and implementation of the adopted plan and any amendments proposed to the plan.

This bill would require the department to review submitted plans and provide feedback and recommended revisions. The bill would require the state or a local agency to either adopt those recommended revisions, or adopt findings as to why the recommended revisions are not needed. The bill would require the department to monitor the implementation and progress of state and local agency plans. The bill would require the department to notify the state or the local agency and the inspector general if the agency fails, within a reasonable time, to make progress in accordance with their plan. The bill would provide that an innovative project to test new programs, as described, shall be deemed approved by the department if the department approves a plan or plan amendment with the innovative project and the local agency or city establishes and documents outcomes upon implementation of the project.

This bill would establish an independent state officer, named the Housing and Homelessness Inspector General, within the department. The bill would require the Governor to appoint the Housing and Homelessness Inspector General, subject to confirmation by the Senate. The bill would, on and after January 1, 2023, authorize the inspector general to bring an action against the state, a local agency, or a city that fails to adopt a plan or fails, within a reasonable time, to make progress in accordance with their adopted plan. The bill, if the court finds that the state or applicable local agency or city has not substantially complied, would authorize the Housing and Homelessness Inspector General to request the court to issue an order or judgment directing the state, local agency, or city to substantially comply, as provided.

The bill would authorize the inspector general to impose a civil penalty on the state, a local agency, or a city that is found to have deliberately and intentionally transported a homeless individual to a different

jurisdiction in order to reduce the number of homeless individuals within their jurisdiction, as specified.

By requiring local agencies to submit a county-level plan for meeting specific annual benchmarks relating to homelessness and to develop and implement a homelessness plan to achieve the benchmark goal developed by the department, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) As of January 2019, California has had an estimated 151,278 people experiencing homelessness on any given day, as reported by Continuum of Care to the United States Department of Housing and Urban Development. This is the highest number since 2007, and represents a 17-percent increase since 2018.

(b) African Americans are disproportionately represented among California's homeless population. While 6.5 percent of Californians identify as black or African American, almost 40 percent of the state's homeless population is African American, far outpacing the rates of poverty among African Americans in general. Similarly, indigenous populations have rates of homelessness that are several times higher than among people who are white, and rates of homelessness among Latinx communities are rapidly rising.

(c) The vast majority of homeless Californians were unsheltered, which is about 71 percent and the highest rate in the nation, meaning that they were living in streets, parks, or other locations not meant for human habitation. In 2018, among homeless veterans, California had the nation's highest share that are unsheltered (67

percent), and among homeless youth, the share that are unsheltered (80 percent) ranked second highest.

(d) As local communities work to house the unsheltered, more people are falling into homelessness. Larger urban areas with high numbers of people experiencing homelessness have reported that more people are falling into homelessness than they are able to house.

(e) In the City of Oakland, for every one person they are able to house, two more are falling into homelessness.

(f) In the County of Los Angeles, despite housing 20,000 homeless people in 2018, for every 133 people housed, 150 fall into homelessness per day.

(g) In the City and County of San Francisco, for every one person they are able to house, three more fall into homelessness.

(h) A growing percentage of the state's homeless population are seniors who are experiencing homelessness for the first time. Seniors who are on fixed incomes and who are severely rent burdened have no potential for additional income.

(i) Once seniors are homeless, their health quickly deteriorates and they use emergency services at a higher rate and face high mortality rates.

(j) Fifty percent of seniors who are homeless become homeless after 50 years of age.

(k) While comprehensive statewide data is lacking, local surveys indicate that people living on the streets are typically from the surrounding neighborhood. For example, 70 percent of the people experiencing homelessness in the City and County of San Francisco were housed somewhere in the city where they lost housing, while only 8 percent came from out-of-state. In addition, three-quarters of the homeless population of the County of Los Angeles lived in the region before becoming homeless.

(*l*) About 1,300,000 California renters are considered "extremely low income," making less than twenty-five thousand dollars ($25,000) per year.

(m) In many parts of the state, many lower income residents are severely cost burdened, paying over 50 percent of their income toward housing costs. One small financial setback can push these individuals and families into homelessness.

(n) The Legislature has made the following investments in affordable housing and homelessness response:

(1) In 2016, the Legislature passed and the voters approved Proposition 63, known as the Mental Health Services Act, which generates two billion dollars ($2,000,000,000) per year for mental health services that can be used for people experiencing homelessness.

(2) In 2017, Senate Bill 2 (Chapter 364 of the Statutes of 2017) established a recording fee for real estate documents that has generated three hundred fifty million dollars ($350,000,000) per year since its creation. Beginning this year, 70 percent of funds from the recording fee go directly to cities and counties to use to address affordable housing and homelessness.

(3) In 2017, the Legislature passed No Place Like Home to authorize the use of two billion dollars ($2,000,000,000) in Proposition 63 revenues in bonds for supportive housing for chronically homeless individuals with mental illness.

(4) In 2018, the Legislature passed and the voters approved Proposition 1, which authorized three billion dollars ($3,000,000,000) in general fund bonds to increase the supply of affordable housing around the state.

(5) Local governments have also passed general obligation bonds to fund affordable housing, supportive housing, and emergency shelters:

(A) In 2016, the voters of the City of Los Angeles passed Measure HHH, which authorizes 1.2 billion dollars ($1,200,000,000) to fund the construction of 10,000 supportive housing units.

(B) In 2019, the City and County of San Francisco passed Proposition A, which authorized six hundred million dollars ($600,000,000) to support the creation of affordable housing.

(C) In 2019, the City and County of San Francisco passed Proposition C, which authorizes a tax on gross receipts of business with incomes of fifty million dollars ($50,000,000) or more to fund affordable housing, supportive housing, and legal assistance programs.

(6) The Legislature has also made policy changes to allow for siting and building emergency shelters, affordable housing, and supportive housing:

(A) In 2017, the Legislature passed Senate Bill 35 (Chapter 366 of the Statutes of 2017), which created a streamlined process for

housing developments that include a percentage of affordable housing.

(B) In 2018, the Legislature passed Assembly Bill 2162 (Chapter 753 of the Statutes of 2018), which established a streamlined process for supportive housing developments.

(C) In 2018, the Legislature authorized five hundred million dollars ($500,000,000) for the Homeless Emergency Aid Program to provide local governments with flexible block grant funds to address their immediate homelessness challenges.

(D) In 2019, the Legislature passed Assembly Bill 101 (Chapter 159 of the Statutes of 2019), which streamlines navigation centers that provide emergency shelter and services to people experiencing homelessness.

(E) In 2019, the Legislature authorized six hundred fifty million dollars ($650,000,000) for the Homeless Housing, Assistance, and Prevention Program one-time block grant that provides local jurisdictions with funds to support regional coordination and expand or develop local capacity to address their immediate homelessness challenges.

(o) State and local government at all levels should be held responsible for responding to homelessness and providing permanent housing for people experiencing homelessness. In order to ensure state and local jurisdictions are making best use of existing resources, and to determine the additional resources needed to substantially reduce unsheltered homelessness in California, the state should work with local communities to determine the appropriate roles of each level of government.

(p) To identify the types and levels of interventions the state currently provides, and to arrive at strategies the state will pursue to solve homelessness, the state must conduct a state gaps analysis. The analysis should include an assessment of existing resources, gaps in interventions needed to solve homelessness, and a financial analysis of the costs of filling those gaps at a state level.

(q) There are few other areas of important public policy where government efforts to achieve a compelling societal objective are voluntary.

(r) The state required the state's utilities and public agencies to meet a timetable for increasing their use of renewable energy, and the state is achieving dramatic results.

(s) Government at all levels should be obligated to spend existing resources in the most efficient and expeditious manner to reduce homelessness.

SEC. 2. Section 11552 of the Government Code is amended to read:

11552. (a) Effective January 1, 1988, an annual salary of eighty-five thousand four hundred two dollars ($85,402) shall be paid to each of the following:

(1) Commissioner of Business Oversight.
(2) Director of Transportation.
(3) Real Estate Commissioner.
(4) Director of Social Services.
(5) Director of Water Resources.
(6) Director of General Services.
(7) Director of Motor Vehicles.
(8) Executive Officer of the Franchise Tax Board.
(9) Director of Employment Development.
(10) Director of Alcoholic Beverage Control.
(11) Director of Housing and Community Development.
(12) Director of Alcohol and Drug Programs.
(13) Director of Statewide Health Planning and Development.
(14) Director of the Department of Human Resources.
(15) Director of Health Care Services.
(16) Director of State Hospitals.
(17) Director of Developmental Services.
(18) State Public Defender.
(19) Director of the California State Lottery.
(20) Director of Fish and Wildlife.
(21) Director of Parks and Recreation.
(22) Director of Rehabilitation.
(23) Director of the Office of Administrative Law.
(24) Director of Consumer Affairs.
(25) Director of Forestry and Fire Protection.
(26) The Inspector General pursuant to Section 6125 of the Penal Code.
(27) Director of Child Support Services.
(28) Director of Industrial Relations.
(29) Director of Toxic Substances Control.
(30) Director of Pesticide Regulation.
(31) Director of Managed Health Care.

(32) Director of Environmental Health Hazard Assessment.
(33) Director of California Bay-Delta Authority.
(34) Director of California Conservation Corps.
(35) Director of Technology.
(36) Director of Emergency Services.
(37) Director of the Office of Energy Infrastructure Safety.
(38) The Housing and Homelessness Inspector General.

(b) The annual compensation provided by this section shall be increased in any fiscal year in which a general salary increase is provided for state employees. The amount of the increase provided by this section shall be comparable to, but shall not exceed, the percentage of the general salary increases provided for state employees during that fiscal year.

SEC. 3. Section 8257.1 is added to the Welfare and Institutions Code, to read:

8257.1. (a) Upon appropriation by the Legislature, or upon receiving technical assistance offered by the federal Department of Housing and Urban Development, if available, the coordinating council, or an entity the council contracts with for this purpose, shall do all of the following:

(1) Conduct a statewide needs and gaps analysis that will do all of the following:

(A) Identify programs in the state that provide housing or services to persons experiencing homelessness and describe all of the following for each program to the extent that data is available:

(i) The amount of funding the program receives each year and funding sources for the program.

(ii) The number of persons the program serves each year, disaggregated by race and gender.

(iii) The types of housing and services provided to the persons the program serves each year, disaggregated by race and gender.

(iv) Limitations, if any, on the length of stay for housing programs and length of provision of services for service programs.

(v) If applicable, reasons for the unavailability of data.

(B) Identify the total number and type of permanent housing beds, units, or opportunities available to persons experiencing homelessness statewide and in geographically diverse regions across the state.

(C) Analyze the need for permanent housing opportunities, including, but not limited to, supportive housing, rapid rehousing, and affordable housing.

(D) Analyze the need for services to assist persons in exiting homelessness and remaining housed.

(E) Identify the number of and types of interim interventions available to persons experiencing homelessness in geographically diverse regions across the state. The data shall also include, but is not limited to, all of the following:

(i) The number of year-round shelter beds.

(ii) The average length of stay in or use of interim interventions, to the extent data is available.

(iii) The exit rate from an interim intervention to permanent housing, to the extent data is available.

(F) Analyze the need for additional interim interventions and funding needed to create these interventions, taking into consideration the ideal length of stay in or use of the intervention.

(G) Identify state-funded institutional settings that discharge persons into homelessness, and the total number of persons discharged into homelessness from each of those settings, to the extent data is available, disaggregated by race and gender. If data is unavailable, the entity conducting the analysis may extrapolate from national, local, or statewide estimates on the number or percentage of people discharged from specific institutional settings into homelessness.

(H) Collect data on the numbers and demographics of persons experiencing homelessness, including, but not limited to, a quantification of the racial and ethnic disparities in the homeless population relative to the general population and, to the extent data is available, race and gender demographics, in all of the following circumstances:

(i) As a young adult.

(ii) As an unaccompanied minor.

(iii) As a single adult experiencing chronic homelessness and nonchronic homelessness.

(iv) As an adult over 50 years of age.

(v) As a domestic violence survivor.

(vi) As a veteran.

(vii) As a person on parole or probation.

(viii) As a member of a family experiencing either chronic or nonchronic patterns of homelessness.

(I) Collect data, to the extent data is available, on exits from homelessness to housing, including, but not limited to, the number of people moving into permanent housing and the type of housing being accessed, the type of interventions people exiting homelessness received, if any, and racial and gender characteristics of people accessing each type of housing and receiving each type of intervention.

(J) To the extent data is available, assess a sampling of data provided by local jurisdictions regarding the number of people experiencing homelessness who accessed interim interventions, including, but not limited to, shelters, recuperative care, and motels and hotels, in response to the COVID-19 pandemic, and the number of people who were able to access permanent housing on or before the expiration of interim assistance. The assessment shall include the number and racial identification of people experiencing homelessness who sheltered in place or were quarantined during the COVID-19 pandemic and the number and racial identification of people experiencing homelessness who were able to access permanent housing on or before the expiration of temporary assistance, as well as the type of housing accessed.

(K) Create a financial model that will assess needs for investment in capital, in operating supports in project-based housing, in rental assistance with private-market landlords, and in services costs for purposes of moving persons experiencing homelessness into permanent housing. The financial model shall include an explanation of how these investments will affirmatively reduce and close any racial disparities identified in the homeless population.

(2) (A) For purposes of collecting data to conduct the analysis pursuant to paragraph (1), evaluate all available data, including, but not limited to, data from agencies and departments other than the council, statewide and local homeless point-in-time counts and housing inventory counts, and available statewide information on the number or rate of persons exiting state-funded institutional settings into homelessness.

(B) To the extent specific data is unavailable for purposes of subparagraph (A), the council may calculate estimates based on

national or local data. The council shall only use data that meets either of the following requirements:

(i) The data is from an evaluation or study from a third-party evaluator or researcher and is consistent with data from evaluations or studies from other third-party evaluators or researchers.

(ii) A federal agency cites and refers to the data as evidence-based.

(3) Seek input from the council's members on the direction of, design of data collection for, and items to be included in the analysis conducted pursuant to paragraph (1).

(b) The council's obligation to conduct the statewide needs and gaps analysis under subdivision (a) shall be fulfilled if a technical assistance provider from the federal Department of Housing and Urban Development conducts the analysis on behalf of the council. The council shall work with the technical assistance provider to complete the analysis.

(c) For purposes of collecting data pursuant to paragraph (1) of subdivision (a), and upon appropriation pursuant to subdivision (a) to fund costs or upon the provision of technical assistance by the federal Department of Housing and Urban Development, a local government may collaborate with the coordinating council or the entity conducting the statewide analysis to do both of the following:

(1) If available, share existing data from local gaps or needs analyses to inform statewide data.

(2) Provide data for conducting needs analyses in a sampling of up to six geographically diverse regions to inform statewide data. The council or other entity conducting the statewide analysis may extrapolate data from these local data analyses to inform the statewide analysis.

(d) The council shall report on the final needs and gaps analysis by July 31, 2022, to the Assembly Committee on Housing and Community Development, the Assembly Committee on Budget, Senate Committee on Housing, and Senate Committee on Budget and Fiscal Review. The report submitted pursuant to this paragraph shall comply with Section 9795 of the Government Code.

(e) For purposes of this section, all of the following definitions apply:

(1) "Chronic homelessness" has the same definition as that in Section 578.3 of Title 24 of the Code of Federal Regulations, as that section read on January 1, 2020.

(2) "Council" or "coordinating council" shall mean the Homeless Coordinating and Financing Council, as created pursuant to Section 8257.

(3) "Interim interventions" include, but are not limited to, year-round shelter beds, recuperative care beds, and motel vouchers.

(4) "State-funded institutional settings" include, but are not limited to, justice, juvenile justice, child welfare, and health care settings.

(5) "Young adult" means a person 18 to 24 years of age, inclusive.

SEC. 4. Section 8257.2 is added to the Welfare and Institutions Code, to read:

8257.2. (a) Notwithstanding any other law, for purposes of designing, collecting data for, and approving the needs and gaps analysis described in Section 8257.1, a state department or agency that has a member on the coordinating council shall, within 180 days of a request for data pertaining to that state department or agency, provide to the council, or the entity conducting the analysis, the requested data, including, but not limited to, the number or rate of persons exiting state-funded institutional settings into homelessness.

(b) The state department or agency shall remove any personally identifying data provided pursuant to subdivision (a), if any.

(c) For purposes of this section, the following definitions apply:

(1) "Personally identifying information" has the same meaning as that in Section 1798.79.8 of the Civil Code.

(2) "State-funded institutional settings" include, but are not limited to, justice, juvenile justice, child welfare, and health care settings.

SEC. 5. Chapter 6.6 (commencing with Section 8258) is added to Division 8 of the Welfare and Institutions Code, to read:

Chapter 6.6. Housing and Homelessness Inspector General

8258. For purposes of this chapter:

(a) "Department" means the Department of Housing and Community Development.

(b) "Inspector general" means the Housing and Homelessness Inspector General.

(c) "Local agency" means a county or city and county.

(d) "State department or agency" means state agency or department that has a representative on the Homeless Coordinating and Financing Council, as created pursuant to Section 8257.

8258.1. (a) There is in state government an independent officer, named the Housing and Homelessness Inspector General, within the department.

(b) The inspector general shall be appointed by, and hold office at the pleasure of, the Governor. The appointment of the inspector general is subject to confirmation by the Senate.

(c) The inspector general shall receive an annual salary as set forth in Section 11552 of the Government Code.

(d) The inspector general shall have all of the following responsibilities:

(1) Oversee the implementation of this chapter.

(2) Monitor the implementation and progress of state plans and local agency plans adopted pursuant to Section 8258.3.

(3) Provide technical assistance to the state, local agencies, and cities in complying with this chapter.

(4) Audit the state, local agencies, and cities to determine compliance with adopted plans.

(5) Bring actions against the state, local agencies, and cities to compel compliance with their respective adopted plans pursuant to Section 8258.3.

(6) Investigate complaints and issue civil penalties pursuant to Section 8258.5.

8258.2. (a) It is the intent of the Legislature that the state, each local agency, and each city shall aim to reduce homelessness in their jurisdiction by 90 percent by December 31, 2029, based on the 2019 homeless point-in-time count pursuant to Section 578.3 of Title 24 of the Code of Federal Regulations.

(b) It is the intent of the Legislature that racial disparities in the homeless population be eliminated by December 31, 2029.

(c) It is the intent of the Legislature that the inspector general's decision that a local agency's or city's good standing status may

influence future funding decisions related to housing and homelessness to that jurisdiction.

(d) It is the intent of the Legislature that the state, a local agency, or a city is only accountable under this chapter for reducing homelessness to the extent that it has available resources to address homelessness, and that the local agency or city should not be required to expend additional funds not contained in its actionable plan in order to meet the benchmark goal set by the department.

8258.3. (a) (1) The department shall, based on the gap analysis conducted pursuant to Section 8257.1, set a benchmark goal to reduce homelessness for the state. The department shall, based on the plan required under subdivision (b) of this section, approve or work with local agencies to identify appropriate benchmark goals to reduce homelessness for each local agency and cities within each local agency. These benchmark goals shall establish both of the following by December 31, 2029, and be based on the 2019 homeless point-in-time count pursuant to Section 578.3 of Title 24 of the Code of Federal Regulations:

(A) The minimum number of people experiencing homelessness who are diverted from a homeless shelter or who have successfully accessed permanent housing during the relevant period.

(B) The minimum reductions in people becoming homeless, including targeted homelessness prevention and reductions in returns to homelessness, during the relevant period.

(2) The department shall establish annual benchmarks for each local agency and city subject to the requirements of paragraph (1) of subdivision (b) and the state.

(b) (1) On or before January 1, 2023, each local agency shall submit to the department an actionable county-level plan for meeting specific annual benchmarks, with the goal of achieving the benchmark goal set pursuant to subdivision (a). Each city in the local agency's jurisdiction shall participate in the county-level plan, and the local agency shall request and actively seek the participation of all homeless continuums of care that serve the local agency's jurisdiction.

(2) The plan described in paragraph (1) shall include all of the following:

(A) A gaps analysis, conducted by the local agency or a homeless continuum of care that serves the local agency, that assesses key indicators of homeless system performance, including

estimates of inflow into homelessness, exits to permanent housing, length of time of homelessness, rate of returns to homelessness, and other federal Department of Housing and Urban Development System Performance Measures, disaggregated by race, and that quantifies the need for interim, affordable, rapid rehousing, and supportive housing interventions, and the associated costs for those interventions, to achieve a 90-percent reduction in population-level homelessness by December 31, 2029.

(B) A description of any racial and ethnic disparities among the homeless population relative to the general population, and a description of the specific actions that will be taken to affirmatively eliminate these disparities by December 31, 2029.

(C) A description and the amount of all funding sources that the local agency, and any incorporated jurisdiction and continuum of care within the local agency, has earmarked or committed to addressing homelessness, mental illness, substance use, medical care, justice system needs, and child welfare within their jurisdiction.

(D) The estimated amount of additional funding needed to meet the homelessness reduction goal described in subdivision (a).

(E) Timelines for the state or local agency to utilize the funding identified in subparagraph (C).

(F) Specific actions that the local agency, cities in the local agency's jurisdiction, and the homeless continuum of care that serves the local agency will take to meet the goal established in subdivision (c), taking into account funding limitations in subparagraph (D) and the housing market in the local agency's area, by reducing the number of individuals who are experiencing homelessness in the relevant jurisdiction by moving individuals into permanent housing and ensuring the adequate provision of related social services to achieve and maintain that housing.

(G) Specific roles and responsibilities that each local agency, city, and homeless continuum of care will assume to meet the benchmark goal established in subdivision (a), to ensure collaboration, leverage resources, and avoid the duplication of services and efforts. Identifying roles may include roles in siting housing and establishing zoning, funding affordable and supportive housing, funding rapid rehousing, funding interim interventions, funding services, establishing and running coordinated entry systems, promoting health and services access, and establishing

protocols to avoid discharges from institutional systems into homelessness.

(H) A plan may identify innovative projects to test new policies or programs that are designed to help the local agency meet its benchmark goal by reducing costs, leveraging additional resources, or increasing performance, such as by increasing housing exits, reducing returns to homelessness, and reducing the length of time experiencing homelessness.

(3) Each participating local agency's, city's, and homeless continuum of care's governing body shall approve, by resolution or, in the case of a homeless continuum of care, by another method in accordance with the continuum of care's bylaws or governance procedures, the county-level plan required by paragraph (1).

(4) A local agency may use or incorporate an existing gaps or needs analysis or plan to fulfill the requirements of paragraphs (1) and (2), if approved, pursuant to the procedure described in paragraph (3), by each participating jurisdiction's and homeless continuum of care's governing body, and if entered into no earlier than three years prior to submission to the department.

(5) The state and each local agency shall submit an annual progress report to the department that details the progress and implementation of the adopted plan and any amendments proposed to the plan. Amendments to a plan shall be reviewed by the department pursuant to subdivision (c).

(c) (1) Upon receipt of a plan adopted pursuant to subdivision (b), the department shall review the plan and provide feedback and recommended revisions to the state or local agency.

(2) If the department sends recommended revisions to the state's or local agency's plan, the state or applicable local agency shall either adopt the recommended revisions, or adopt findings as to why the revisions are not needed.

(d) (1) The department shall monitor the progress of the state and each local agency required to adopt and implement a plan pursuant to subdivision (b). If the department determines that the state or a local agency has not adopted an actionable plan pursuant to subdivision (b), or has failed within a reasonable time after adoption of a plan to make progress in accordance with that plan, the department shall notify the state or local agency and the inspector general that the state or local agency is not in substantial compliance with subdivision (b).

(2) If new resources are identified in a progress report submitted pursuant to paragraph (5) of subdivision (b), the department may revise a benchmark goal established pursuant to subdivision (a).

(3) An innovative project, as described in subparagraph (H) of paragraph (2) of subdivision (b), shall be deemed approved by the department if the department approves a plan or plan amendment with the innovative project and the local agency or city establishes and documents outcomes upon implementation of the project.

8258.4. (a) (1) On or after January 1, 2023, the inspector general may bring an action against the state, a local agency, or a city to compel compliance with Section 8258.3 pursuant to Section 1085 of the Code of Civil Procedure.

(2) In determining whether to bring an action, the inspector general shall consider, among other considerations, all of the following:

(A) The number of people experiencing homelessness who are now living in permanent housing due to the actions or inactions of the city, local agency, or state.

(B) The number of people entering homelessness, as measured by the homeless point-in-time count.

(C) The number of people diverted from the homeless system.

(D) Whether actions taken are consistent with evidence-based or best practices as the primary indicators of benchmark goal compliance.

(3) In determining whether to bring an action, the inspector general may also consider the state's or local agency's demonstrated progress or good faith efforts toward progress in achieving the HUD System Performance Measures.

(b) An action against the state pursuant to this section shall be brought in the Superior Court of the County of Sacramento. An action against a local agency pursuant to this section shall be brought in the superior court for that local agency, and an action brought against a city pursuant to this section shall be brought in the superior court for the local agency in which the city is located.

(c) (1) If the inspector general finds that court action is warranted, the inspector general shall present findings around responsibility of a city, local agency, or state, and identify requested remedies for the court to consider.

(2) If, in an action brought pursuant to this section, the court finds that the state or applicable local agency or city has not

substantially complied with Section 8258.3, the court may issue an order or judgment directing the state, local agency, or city to substantially comply with this section by taking any of the following actions:

(A) In the case of a state, local agency, or city that has failed to adopt an actionable plan within the time period specified in subdivision (b) of Section 8258.3, adopt a plan in accordance with this section.

(B) Direct the state, local agency, or city to dedicate the resources identified in the plan, consistent with applicable state or federal law, to move people experiencing homelessness into permanent housing and to provide adequate interim housing.

(C) Direct the local agency or city to coordinate with the state or other local agencies to reduce the number of individuals who are experiencing homelessness.

(D) Direct the local agency or city to pool resources identified in the plan, consistent with applicable state or federal law, with the resources of other jurisdictions in order to address regional challenges to reducing homelessness.

(E) Require jurisdictions within local agencies to rezone sites to permit the construction of housing and emergency shelters.

(F) Order a jurisdiction to otherwise comply with the roles identified in subdivision (b) of Section 8258.3.

(3) The remedies available to a court that finds that the state or applicable local agency or city has not substantially complied with Section 8258.3 shall be limited to those described in paragraph (1).

(4) If the court issues an order or judgment pursuant to paragraph (1), it shall retain jurisdiction for no more than 24 months to ensure that its order or judgment is carried out.

(5) If the department approves a local agency's or city's plan to pursue an innovative program pursuant to subparagraph (H) of paragraph (2) of subdivision (b) of Section 8258.3, the inspector general and court shall not pursue any action described in paragraph (1) due to that program's failure to meet anticipated goals for up to 18 months after the program implementation. If, after 18 months, an innovative program is deemed unsuccessful in achieving benchmarks, the local agency or city operating the program shall have up to six additional months to close, repurpose, or reallocate

funding intended for the program, which shall be reflected in the annual report.

(6) An order or judgment of the court pursuant to paragraph (1) may be reviewed in the manner prescribed in Title 13 (commencing with Section 901) of Part 2 of the Code of Civil Procedure. Notwithstanding any other law, an appeal pursuant to this paragraph shall be heard on an expedited basis.

8258.5. (a) The state, a local agency, or a city shall not deliberately and intentionally transport a homeless individual or households to a different jurisdiction in order to reduce the number of homeless individuals within its jurisdiction, unless those individuals or households choose to move to a different jurisdiction.

(b) Any person may file a complaint with the inspector general that the state, a local agency, or a city violated subdivision (a).

(c) (1) The inspector general shall investigate a complaint received pursuant to subdivision (a).

(2) After investigating a complaint, the inspector general shall impose on the state or any local jurisdiction found to have violated subdivision (a) a civil penalty in an amount not to exceed one hundred thousand dollars ($100,000) per individual transported outside of the jurisdiction.

SEC. 6. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

O

Item B-4

CITY OF BEVERLY HILLS

POLICY AND MANAGEMENT

MEMORANDUM

TO: City Council Liaison/Legislative/Lobby Committee

FROM: Cynthia Owens, Policy and Management Analyst

DATE: March 22, 2021

SUBJECT: Assembly Bill 1119 (Wicks) - Employment discrimination

ATTACHMENTS:
1. Summary Memo – AB 1119
2. Bill Text – AB 1119

The City Council has historically taken positions on proposed federal and state legislation of interest to Beverly Hills because of the City's location, economy, programs, and policies through the adoption of a Legislative Platform.

Councilmember John Mirisch has requested this item be considered by the Legislative/Lobby Liaisons. Assembly Bill 1119 - Employment discrimination (AB 1119) involves a policy matter that does not have a nexus to the City's adopted Legislative Platform language.

The City's state lobbyist, Shaw Yoder Antwih Schmelzer & Lange, provided a summary memo for AB 1119 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of AB 1119, the Liaisons may recommend the following actions:

1) Oppose AB 1119;
2) Support AB 1119;
3) Oppose unless Amended;
4) Support if Amended;
5) Remain neutral; or
6) Provide other direction to City staff.

Should the Liaisons recommend a position then the item will be placed on a future City Council agenda for concurrence.

Attachment 1

Shaw
Yoder
Antwih
Schmelzer
& Lange

1415 L Street
Suite 1000
Sacramento
CA, 95814
916-446-4656

March 16, 2021

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw Yoder Antwih Schmelzer & Lange
Priscilla Quiroz, Legislative Advocate, Shaw Yoder Antwih Schmelzer & Lange

Re: AB 1119 (Wicks) Employment discrimination

Summary

AB 1119 (Wicks) will add "family responsibilities" to the list of protected categories under the Fair Employment and Housing Act (FEHA) and will also provide employees with caregiving responsibilities with the right to reasonable accommodations to deal with school or care closures under FEHA.

Specifically, this bill:

- Expands the protected characteristics to include family responsibilities defined to mean the obligations of an employee to provide direct and ongoing care for a minor child or a care recipient.
- Defines "Family responsibilities" to mean the obligations of an employee to provide direct and ongoing care for a minor child or a care recipient.
- Defines "care recipient" as a person who (1) is a family member or a person who resides in the employee's household and (2) relies on the employee for medical care or to meet the needs of daily living and "family member" means a spouse, child, parent, sibling, grandparent, grandchild, domestic partner, or any other individual related by blood or whose close association with the employee is the equivalent of a family relationship.

Existing Law

The California Fair Employment and Housing Act (FEHA), protects the right to seek, obtain, and hold employment without discrimination because of prescribed characteristics. FEHA makes various employment practices unlawful and empowers the Department of Fair Employment and Housing to investigate and prosecute complaints alleging unlawful practices.

FEHA makes it an unlawful practice for an employer or other entity to fail to make reasonable accommodation for the known physical or mental disability of an applicant or employee. FEHA further makes it an unlawful practice for an employer or other entity to fail to engage in a timely, good faith, interactive process with the employee or applicant to determine effective reasonable accommodations, if any, in response to a request for reasonable accommodation by an employee or applicant with a known physical or mental disability or known medical condition.

Status of Legislation

The bill has been referred to the Assembly Labor and Employment Committee.

Support
None listed at this time

Opposition
None listed at this time.

Attachment 2

ASSEMBLY BILL No. 1119

Introduced by Assembly Member Wicks

February 18, 2021

An act to amend Sections 12920, 12921, 12926, and 12940 of the Government Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1119, as introduced, Wicks. Employment discrimination.

Existing law, the California Fair Employment and Housing Act (FEHA), protects the right to seek, obtain, and hold employment without discrimination because of prescribed characteristics. FEHA makes various employment practices unlawful and empowers the Department of Fair Employment and Housing to investigate and prosecute complaints alleging unlawful practices.

This bill would expand the protected characteristics to include family responsibilities, defined to mean the obligations of an employee to provide direct and ongoing care for a minor child or a care recipient. The bill would define additional terms for this purpose.

FEHA makes it an unlawful practice for an employer or other entity to fail to make reasonable accommodation for the known physical or mental disability of an applicant or employee. FEHA further makes it an unlawful practice for an employer or other entity to fail to engage in a timely, good faith, interactive process with the employee or applicant to determine effective reasonable accommodations, if any, in response to a request for reasonable accommodation by an employee or applicant with a known physical or mental disability or known medical condition.

This bill would expand those reasonable accommodation protections to include, as a basis for reasonable accommodation and for engaging in the prescribed process to determine effective reasonable accommodations, the known family responsibilities of an applicant or employee related to obligations arising from needing to care for a minor child or care recipient whose school or place of care is closed or otherwise unavailable.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 12920 of the Government Code is amended to read:

12920. It is hereby declared as the public policy of this state that it is necessary to protect and safeguard the right and opportunity of all persons to seek, obtain, and hold employment without discrimination or abridgment on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, *family responsibilities,* sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.

It is recognized that the practice of denying employment opportunity and discriminating in the terms of employment for these reasons foments domestic strife and unrest, deprives the state of the fullest utilization of its capacities for development and advancement, and substantially and adversely affects the interests of employees, employers, and the public in general.

Further, the practice of discrimination because of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, veteran or military status, or genetic information in housing accommodations is declared to be against public policy.

It is the purpose of this part to provide effective remedies that will eliminate these discriminatory practices.

This part shall be deemed an exercise of the police power of the state for the protection of the welfare, health, and peace of the people of this state.

SEC. 2. Section 12921 of the Government Code is amended to read:

12921. (a) The opportunity to seek, obtain, and hold employment without discrimination because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, *family responsibilities,* sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status is hereby recognized as and declared to be a civil right.

(b) The opportunity to seek, obtain, and hold housing without discrimination because of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, veteran or military status, genetic information, or any other basis prohibited by Section 51 of the Civil Code is hereby recognized as and declared to be a civil right.

SEC. 3. Section 12926 of the Government Code is amended to read:

12926. As used in this part in connection with unlawful practices, unless a different meaning clearly appears from the context:

(a) "Affirmative relief" or "prospective relief" includes the authority to order reinstatement of an employee, awards of backpay, reimbursement of out-of-pocket expenses, hiring, transfers, reassignments, grants of tenure, promotions, cease and desist orders, posting of notices, training of personnel, testing, expunging of records, reporting of records, and any other similar relief that is intended to correct unlawful practices under this part.

(b) "Age" refers to the chronological age of any individual who has reached a 40th birthday.

(c) Except as provided by Section 12926.05, "employee" does not include any individual employed by that person's parent, spouse, or child or any individual employed under a special license in a nonprofit sheltered workshop or rehabilitation facility.

(d) "Employer" includes any person regularly employing five or more persons, or any person acting as an agent of an employer, directly or indirectly, the state or any political or civil subdivision of the state, and cities, except as follows:

"Employer" does not include a religious association or corporation not organized for private profit.

(e) "Employment agency" includes any person undertaking for compensation to procure employees or opportunities to work.

(f) "Essential functions" means the fundamental job duties of the employment position the individual with a disability holds or desires. "Essential functions" does not include the marginal functions of the position.

(1) A job function may be considered essential for any of several reasons, including, but not limited to, any one or more of the following:

(A) The function may be essential because the reason the position exists is to perform that function.

(B) The function may be essential because of the limited number of employees available among whom the performance of that job function can be distributed.

(C) The function may be highly specialized, so that the incumbent in the position is hired based on expertise or the ability to perform a particular function.

(2) Evidence of whether a particular function is essential includes, but is not limited to, the following:

(A) The employer's judgment as to which functions are essential.

(B) Written job descriptions prepared before advertising or interviewing applicants for the job.

(C) The amount of time spent on the job performing the function.

(D) The consequences of not requiring the incumbent to perform the function.

(E) The terms of a collective bargaining agreement.

(F) The work experiences of past incumbents in the job.

(G) The current work experience of incumbents in similar jobs.

(g) "Family responsibilities" means the obligations of an employee to provide direct and ongoing care for a minor child or a care recipient. For purposes of this subdivision, "care recipient" means a person who (1) is a family member or a person who resides in the employee's household and (2) relies on the employee for medical care or to meet the needs of daily living and "family member" means a spouse, child, parent, sibling, grandparent, grandchild, domestic partner, or any other individual related by blood or whose close association with the employee is the equivalent of a family relationship.

~~(g)~~

(h) (1) "Genetic information" means, with respect to any individual, information about any of the following:

(A) The individual's genetic tests.

(B) The genetic tests of family members of the individual.

(C) The manifestation of a disease or disorder in family members of the individual.

(2) "Genetic information" includes any request for, or receipt of, genetic services, or participation in clinical research that includes genetic services, by an individual or any family member of the individual.

(3) "Genetic information" does not include information about the sex or age of any individual.

~~(h)~~

(i) "Labor organization" includes any organization that exists and is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection.

~~(i)~~

(j) "Medical condition" means either of the following:

(1) Any health impairment related to or associated with a diagnosis of cancer or a record or history of cancer.

(2) Genetic characteristics. For purposes of this section, "genetic characteristics" means either of the following:

(A) Any scientifically or medically identifiable gene or chromosome, or combination or alteration thereof, that is known to be a cause of a disease or disorder in a person or that person's offspring, or that is determined to be associated with a statistically increased risk of development of a disease or disorder, and that is presently not associated with any symptoms of any disease or disorder.

(B) Inherited characteristics that may derive from the individual or family member, that are known to be a cause of a disease or disorder in a person or that person's offspring, or that are determined to be associated with a statistically increased risk of development of a disease or disorder, and that are presently not associated with any symptoms of any disease or disorder.

~~(j)~~

(k) "Mental disability" includes, but is not limited to, all of the following:

(1) Having any mental or psychological disorder or condition, such as intellectual disability, organic brain syndrome, emotional or mental illness, or specific learning disabilities, that limits a major life activity. For purposes of this section:

(A) "Limits" shall be determined without regard to mitigating measures, such as medications, assistive devices, or reasonable accommodations, unless the mitigating measure itself limits a major life activity.

(B) A mental or psychological disorder or condition limits a major life activity if it makes the achievement of the major life activity difficult.

(C) "Major life activities" shall be broadly construed and shall include physical, mental, and social activities and working.

(2) Any other mental or psychological disorder or condition not described in paragraph (1) that requires special education or related services.

(3) Having a record or history of a mental or psychological disorder or condition described in paragraph (1) or (2), which is known to the employer or other entity covered by this part.

(4) Being regarded or treated by the employer or other entity covered by this part as having, or having had, any mental condition that makes achievement of a major life activity difficult.

(5) Being regarded or treated by the employer or other entity covered by this part as having, or having had, a mental or psychological disorder or condition that has no present disabling effect, but that may become a mental disability as described in paragraph (1) or (2).

"Mental disability" does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

~~(k)~~

(l) "Veteran or military status" means a member or veteran of the United States Armed Forces, United States Armed Forces Reserve, the United States National Guard, and the California National Guard.

~~(l)~~

(m) "On the bases enumerated in this part" means or refers to discrimination on the basis of one or more of the following: race, religious creed, color, national origin, ancestry, physical disability,

mental disability, medical condition, genetic information, marital status, sex, age, sexual orientation, or veteran or military status.

~~(m)~~

(n) "Physical disability" includes, but is not limited to, all of the following:

(1) Having any physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss that does both of the following:

(A) Affects one or more of the following body systems: neurological, immunological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine.

(B) Limits a major life activity. For purposes of this section:

(i) "Limits" shall be determined without regard to mitigating measures such as medications, assistive devices, prosthetics, or reasonable accommodations, unless the mitigating measure itself limits a major life activity.

(ii) A physiological disease, disorder, condition, cosmetic disfigurement, or anatomical loss limits a major life activity if it makes the achievement of the major life activity difficult.

(iii) "Major life activities" shall be broadly construed and includes physical, mental, and social activities and working.

(2) Any other health impairment not described in paragraph (1) that requires special education or related services.

(3) Having a record or history of a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment described in paragraph (1) or (2), which is known to the employer or other entity covered by this part.

(4) Being regarded or treated by the employer or other entity covered by this part as having, or having had, any physical condition that makes achievement of a major life activity difficult.

(5) Being regarded or treated by the employer or other entity covered by this part as having, or having had, a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment that has no present disabling effect but may become a physical disability as described in paragraph (1) or (2).

(6) "Physical disability" does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or

psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

~~(n)~~

(o) Notwithstanding subdivisions ~~(j) and (m),~~ *(k) and (n),* if the definition of "disability" used in the federal Americans with Disabilities Act of 1990 (Public Law 101-336) would result in broader protection of the civil rights of individuals with a mental disability or physical disability, as defined in subdivision ~~(j) or (m),~~ *(k) or (n),* or would include any medical condition not included within those definitions, then that broader protection or coverage shall be deemed incorporated by reference into, and shall prevail over conflicting provisions of, the definitions in subdivisions ~~(j) and (m).~~ *(k) and (n).*

~~(o)~~

(p) "Race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, *family responsibilities,* sex, age, sexual orientation, or veteran or military status" includes a perception that the person has any of those characteristics or that the person is associated with a person who has, or is perceived to have, any of those characteristics.

~~(p)~~

(q) "Reasonable accommodation" may include either of the following:

(1) Making existing facilities used by employees readily accessible to, and usable by, individuals with disabilities.

(2) Job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

~~(q)~~

(r) "Religious creed," "religion," "religious observance," "religious belief," and "creed" include all aspects of religious belief, observance, and practice, including religious dress and grooming practices. "Religious dress practice" shall be construed broadly to include the wearing or carrying of religious clothing, head or face coverings, jewelry, artifacts, and any other item that is part of an individual observing a religious creed. "Religious

grooming practice" shall be construed broadly to include all forms of head, facial, and body hair that are part of an individual observing a religious creed.

~~(r)~~

(s) (1) "Sex" includes, but is not limited to, the following:

(A) Pregnancy or medical conditions related to pregnancy.

(B) Childbirth or medical conditions related to childbirth.

(C) Breastfeeding or medical conditions related to breastfeeding.

(2) "Sex" also includes, but is not limited to, a person's gender. "Gender" means sex, and includes a person's gender identity and gender expression. "Gender expression" means a person's gender-related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth.

~~(s)~~

(t) "Sexual orientation" means heterosexuality, homosexuality, and bisexuality.

~~(t)~~

(u) "Supervisor" means any individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend that action, if, in connection with the foregoing, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

~~(u)~~

(v) "Undue hardship" means an action requiring significant difficulty or expense, when considered in light of the following factors:

(1) The nature and cost of the accommodation needed.

(2) The overall financial resources of the facilities involved in the provision of the reasonable accommodations, the number of persons employed at the facility, and the effect on expenses and resources or the impact otherwise of these accommodations upon the operation of the facility.

(3) The overall financial resources of the covered entity, the overall size of the business of a covered entity with respect to the number of employees, and the number, type, and location of its facilities.

(4) The type of operations, including the composition, structure, and functions of the workforce of the entity.

(5) The geographic separateness or administrative or fiscal relationship of the facility or facilities.

~~(v)~~

(w) "National origin" discrimination includes, but is not limited to, discrimination on the basis of possessing a driver's license granted under Section 12801.9 of the Vehicle Code.

~~(w)~~

(x) "Race" is inclusive of traits historically associated with race, including, but not limited to, hair texture and protective hairstyles.

~~(x)~~

(y) "Protective hairstyles" includes, but is not limited to, such hairstyles as braids, locks, and twists.

SEC. 4. Section 12940 of the Government Code is amended to read:

12940. It is an unlawful employment practice, unless based upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California:

(a) For an employer, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, *family responsibilities,* sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status of any person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment.

(1) This part does not prohibit an employer from refusing to hire or discharging an employee with a physical or mental disability, or subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee with a physical or mental disability, if the employee, because of a physical or mental disability, is unable to perform the employee's essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger the

employee's health or safety or the health or safety of others even with reasonable accommodations.

(2) This part does not prohibit an employer from refusing to hire or discharging an employee who, because of the employee's medical condition, is unable to perform the employee's essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations. Nothing in this part shall subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee who, because of the employee's medical condition, is unable to perform the employee's essential duties, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations.

(3) Nothing in this part relating to discrimination on account of marital status shall do either of the following:

(A) Affect the right of an employer to reasonably regulate, for reasons of supervision, safety, security, or morale, the working of spouses in the same department, division, or facility, consistent with the rules and regulations adopted by the commission.

(B) Prohibit bona fide health plans from providing additional or greater benefits to employees with dependents than to those employees without or with fewer dependents.

(4) Nothing in this part relating to discrimination on account of sex shall affect the right of an employer to use veteran status as a factor in employee selection or to give special consideration to Vietnam-era veterans.

(5) (A) This part does not prohibit an employer from refusing to employ an individual because of the individual's age if the law compels or provides for that refusal. Promotions within the existing staff, hiring or promotion on the basis of experience and training, rehiring on the basis of seniority and prior service with the employer, or hiring under an established recruiting program from high schools, colleges, universities, or trade schools do not, in and of themselves, constitute unlawful employment practices.

(B) The provisions of this part relating to discrimination on the basis of age do not prohibit an employer from providing health benefits or health care reimbursement plans to retired persons that are altered, reduced, or eliminated when the person becomes

eligible for Medicare health benefits. This subparagraph applies to all retiree health benefit plans and contractual provisions or practices concerning retiree health benefits and health care reimbursement plans in effect on or after January 1, 2011.

(b) For a labor organization, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, *family responsibilities,* sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status of any person, to exclude, expel, or restrict from its membership the person, or to provide only second-class or segregated membership or to discriminate against any person because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, *family responsibilities,* sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status of the person in the election of officers of the labor organization or in the selection of the labor organization's staff or to discriminate in any way against any of its members or against any employer or against any person employed by an employer.

(c) For any person to discriminate against any person in the selection, termination, training, or other terms or treatment of that person in any apprenticeship training program, any other training program leading to employment, an unpaid internship, or another limited duration program to provide unpaid work experience for that person because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, *family responsibilities,* sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status of the person discriminated against.

(d) For any employer or employment agency to print or circulate or cause to be printed or circulated any publication, or to make any nonjob-related inquiry of an employee or applicant, either verbal or through use of an application form, that expresses, directly or indirectly, any limitation, specification, or discrimination as to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, *family responsibilities,* sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military

status, or any intent to make any such limitation, specification, or discrimination. This part does not prohibit an employer or employment agency from inquiring into the age of an applicant, or from specifying age limitations, if the law compels or provides for that action.

(e) (1) Except as provided in paragraph (2) or (3), for any employer or employment agency to require any medical or psychological examination of an applicant, to make any medical or psychological inquiry of an applicant, to make any inquiry whether an applicant has a mental disability or physical disability or medical condition, or to make any inquiry regarding the nature or severity of a physical disability, mental disability, or medical condition.

(2) Notwithstanding paragraph (1), an employer or employment agency may inquire into the ability of an applicant to perform job-related functions and may respond to an applicant's request for reasonable accommodation.

(3) Notwithstanding paragraph (1), an employer or employment agency may require a medical or psychological examination or make a medical or psychological inquiry of a job applicant after an employment offer has been made but prior to the commencement of employment duties, provided that the examination or inquiry is job related and consistent with business necessity and that all entering employees in the same job classification are subject to the same examination or inquiry.

(f) (1) Except as provided in paragraph (2), for any employer or employment agency to require any medical or psychological examination of an employee, to make any medical or psychological inquiry of an employee, to make any inquiry whether an employee has a mental disability, physical disability, or medical condition, or to make any inquiry regarding the nature or severity of a physical disability, mental disability, or medical condition.

(2) Notwithstanding paragraph (1), an employer or employment agency may require any examinations or inquiries that it can show to be job related and consistent with business necessity. An employer or employment agency may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that worksite.

(g) For any employer, labor organization, or employment agency to harass, discharge, expel, or otherwise discriminate against any person because the person has made a report pursuant to Section 11161.8 of the Penal Code that prohibits retaliation against hospital employees who report suspected patient abuse by health facilities or community care facilities.

(h) For any employer, labor organization, employment agency, or person to discharge, expel, or otherwise discriminate against any person because the person has opposed any practices forbidden under this part or because the person has filed a complaint, testified, or assisted in any proceeding under this part.

(i) For any person to aid, abet, incite, compel, or coerce the doing of any of the acts forbidden under this part, or to attempt to do so.

(j) (1) For an employer, labor organization, employment agency, apprenticeship training program or any training program leading to employment, or any other person, because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, *family responsibilities,* sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status, to harass an employee, an applicant, an unpaid intern or volunteer, or a person providing services pursuant to a contract. Harassment of an employee, an applicant, an unpaid intern or volunteer, or a person providing services pursuant to a contract by an employee, other than an agent or supervisor, shall be unlawful if the entity, or its agents or supervisors, knows or should have known of this conduct and fails to take immediate and appropriate corrective action. An employer may also be responsible for the acts of nonemployees, with respect to harassment of employees, applicants, unpaid interns or volunteers, or persons providing services pursuant to a contract in the workplace, if the employer, or its agents or supervisors, knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing cases involving the acts of nonemployees, the extent of the employer's control and any other legal responsibility that the employer may have with respect to the conduct of those nonemployees shall be considered. An entity shall take all reasonable steps to prevent harassment from occurring. Loss of

tangible job benefits shall not be necessary in order to establish harassment.

(2) The provisions of this subdivision are declaratory of existing law, except for the new duties imposed on employers with regard to harassment.

(3) An employee of an entity subject to this subdivision is personally liable for any harassment prohibited by this section that is perpetrated by the employee, regardless of whether the employer or covered entity knows or should have known of the conduct and fails to take immediate and appropriate corrective action.

(4) (A) For purposes of this subdivision only, "employer" means any person regularly employing one or more persons or regularly receiving the services of one or more persons providing services pursuant to a contract, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision of the state, and cities. The definition of "employer" in subdivision (d) of Section 12926 applies to all provisions of this section other than this subdivision.

(B) Notwithstanding subparagraph (A), for purposes of this subdivision, "employer" does not include a religious association or corporation not organized for private profit, except as provided in Section 12926.2.

(C) For purposes of this subdivision, "harassment" because of sex includes sexual harassment, gender harassment, and harassment based on pregnancy, childbirth, or related medical conditions. Sexually harassing conduct need not be motivated by sexual desire.

(5) For purposes of this subdivision, "a person providing services pursuant to a contract" means a person who meets all of the following criteria:

(A) The person has the right to control the performance of the contract for services and discretion as to the manner of performance.

(B) The person is customarily engaged in an independently established business.

(C) The person has control over the time and place the work is performed, supplies the tools and instruments used in the work, and performs work that requires a particular skill not ordinarily used in the course of the employer's work.

(k) For an employer, labor organization, employment agency, apprenticeship training program, or any training program leading

to employment, to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring.

(*l*) (1) For an employer or other entity covered by this part to refuse to hire or employ a person or to refuse to select a person for a training program leading to employment or to bar or to discharge a person from employment or from a training program leading to employment, or to discriminate against a person in compensation or in terms, conditions, or privileges of employment because of a conflict between the person's religious belief or observance and any employment requirement, unless the employer or other entity covered by this part demonstrates that it has explored any available reasonable alternative means of accommodating the religious belief or observance, including the possibilities of excusing the person from those duties that conflict with the person's religious belief or observance or permitting those duties to be performed at another time or by another person, but is unable to reasonably accommodate the religious belief or observance without undue hardship, as defined in subdivision ~~(u)~~ *(v)* of Section 12926, on the conduct of the business of the employer or other entity covered by this part. Religious belief or observance, as used in this section, includes, but is not limited to, observance of a Sabbath or other religious holy day or days, reasonable time necessary for travel prior and subsequent to a religious observance, and religious dress practice and religious grooming practice as described in subdivision ~~(q)~~ *(r)* of Section 12926. This subdivision shall also apply to an apprenticeship training program, an unpaid internship, and any other program to provide unpaid experience for a person in the workplace or industry.

(2) An accommodation of an individual's religious dress practice or religious grooming practice is not reasonable if the accommodation requires segregation of the individual from other employees or the public.

(3) An accommodation is not required under this subdivision if it would result in a violation of this part or any other law prohibiting discrimination or protecting civil rights, including subdivision (b) of Section 51 of the Civil Code and Section 11135 of this code.

(4) For an employer or other entity covered by this part to, in addition to the employee protections provided pursuant to subdivision (h), retaliate or otherwise discriminate against a person

for requesting accommodation under this subdivision, regardless of whether the request was granted.

(m) (1) For an employer or other entity covered by this part to fail to make reasonable accommodation for the known physical or mental disability of an applicant or ~~employee.~~ *employee or for the known family responsibilities of an applicant or employee related to obligations arising from needing to care for a minor child or care recipient whose school or place of care is closed or otherwise unavailable.* Nothing in this subdivision or in paragraph (1) or (2) of subdivision (a) shall be construed to require an accommodation that is demonstrated by the employer or other covered entity to produce undue hardship, as defined in subdivision ~~(u)~~ *(v)* of Section 12926, to its operation.

(2) For an employer or other entity covered by this part to, in addition to the employee protections provided pursuant to subdivision (h), retaliate or otherwise discriminate against a person for requesting accommodation under this subdivision, regardless of whether the request was granted.

(n) For an employer or other entity covered by this part to fail to engage in a timely, good faith, interactive process with the employee or applicant to determine effective reasonable accommodations, if any, in response to a request for reasonable accommodation by an employee or applicant with a known physical or mental disability or known medical ~~condition.~~ *condition or by an employee or applicant with known family responsibilities related to obligations arising from needing to care for a minor child or care recipient whose school or place of care is closed or otherwise unavailable.*

(o) For an employer or other entity covered by this part, to subject, directly or indirectly, any employee, applicant, or other person to a test for the presence of a genetic characteristic.

(p) Nothing in this section shall be interpreted as preventing the ability of employers to identify members of the military or veterans for purposes of awarding a veteran's preference as permitted by law.

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Item B-5

CITY OF BEVERLY HILLS

POLICY AND MANAGEMENT

MEMORANDUM

TO: City Council Liaison/Legislative/Lobby Committee

FROM: Cynthia Owens, Policy and Management Analyst

DATE: March 22, 2021

SUBJECT: Assembly Bill 1372 (Muratsuchi) - Right to temporary shelter

ATTACHMENTS:
1. Summary Memo – AB 1372
2. Bill Text – AB 1372

The City Council has historically taken positions on proposed federal and state legislation of interest to Beverly Hills because of the City's location, economy, programs, and policies through the adoption of a Legislative Platform.

Assembly Bill 1372 - Right to temporary shelter (AB 1372) involves a policy matter may have a nexus to the City's adopted Legislative Platform language. Specifically, the following statements may apply to AB 1372 as related to unfunded state mandates and housing for the homeless:

- In general, oppose any county, state or federal mandates without the direct or indirect reimbursement for the costs associated with complying with new and/or modified laws, regulations, policies, procedures, permits and/or programs.
- Support legislation that addresses the need for housing and supportive services, (e.g. health, mental health and social services) for the City's homeless population.

The City's state lobbyist, Shaw Yoder Antwih Schmelzer & Lange, provided a summary memo for AB 1372 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of AB 1372, the Liaisons may recommend the following actions:

1) Oppose AB 1372;
2) Support AB 1372;
3) Support if amended AB 1372;
4) Oppose unless amended AB 1372;
5) Remain neutral; or
6) Provide other direction to City staff.

Any position recommended by the Liaisons may require the concurrence of the City Council.

Attachment 1

Shaw
Yoder
Antwih
Schmelzer
& Lange

1415 L Street
Suite 1000
Sacramento
CA, 95814
916-446-4656

March 15, 2021

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw Yoder Antwih Schmelzer & Lange
Priscilla Quiroz, Legislative Advocate, Shaw Yoder Antwih Schmelzer & Lange

Re: AB 1372 (Muratsuchi) Homelessness Right to Shelter

Introduction and Background

Establishes requirements and penalties for local jurisdictions with respect to planning for and providing temporary shelter, mental health treatment, job placement and job training services for homeless individuals. Specifically, this bill:

(1) Finds and declares that cities and counties shall have the following legal responsibilities with respect to homeless persons in their jurisdictions:
   a. Provide temporary shelter to an individual seeking such shelter.
   b. Create a temporary shelter plan for their respective jurisdictions and allocate the necessary funds for shelter, resources, and services.
   c. Review and approve draft ordinances to ensure that shelters meet minimum habitability, health, and safety standards.

(2) Specifies that every person who is homeless shall have a right to temporary shelter if the person has actively sought temporary shelter in a local jurisdiction for at least three consecutive days and has been unable to gain entry into all of the temporary shelters that they sought because (a) the temporary shelter declined the person for any reason, or (b) the temporary shelter does not meet minimum state or federal housing, health, habitability, planning and zoning, or safety standards, procedures, or laws for the structure.

(3) Authorize a person who is homeless to enforce the bill's provisions by bringing a civil action.

(4) Require a court to award specified remedies and penalties upon finding a violation of the bill's provisions, including:

   a. A mandate to provide temporary shelter, mental health treatment, resources for job placement, and job training to the person who is homeless until the person obtains permanent housing.
   b. For local jurisdictions that are unable to provide temporary shelter, a requirement that the city or county to provide a rent subsidy in an amount sufficient to cover costs for shelter for each day until the local jurisdiction is able to provide temporary shelter.

c. A requirement to pay, for each plaintiff in the civil action, a civil penalty of an unspecified amount ($_____) into a discrete fund of the city or county for purposes of creating temporary shelters in the jurisdiction.
d. A requirement to pay the plaintiff's attorney's fees and costs.

Existing Law

1) Establishes the Homeless Coordinating and Financing Council (HCFC), with the purpose of coordinating the state's response to homelessness by utilizing Housing First practices.
2) Requires agencies and departments administering state programs created on or after July 1, 2017, to incorporate the core components of Housing First.
3) Defines "Housing First" to mean the evidence-based model that uses housing as a tool, rather than a reward, for recovery and that centers on providing or connecting homeless people to permanent housing as quickly as possible. Housing First providers offer services as needed and requested on a voluntary basis and that do not make housing contingent on participation in services.
4) Establishes the Homeless Emergency Aid Program (HEAP) to provide one-time grant funds to address the immediate homelessness challenges of local cities and counties. HEAP is administered by the HCFC.
5) Establishes the Homeless Housing Assistance and Prevention Program (HHAPP) to build on HEAP and provide funds to help local jurisdictions combat homelessness. HHAPP is also administered by the HCFC.

Background

The Governor's 2021-22 budget proposes $1.75 billion in one-time funding from the State General Fund for three major proposals related to homelessness: $750 million for increased funding for Project Homekey, administered by the State Housing and Community Development Department (HCD), $250 million to the State Department of Social Services for programs that provide support for residential facilities that serve vulnerable adults and seniors, and $750 million to the State Department of Health Care Services (DHCS) for programs that provide behavioral health services.

Over the last several years, the Legislature has demonstrated an interest in increasing the state's role in addressing homelessness. These funding efforts largely have been one time in nature and, while largely administered at the local level, have been overseen by a variety of state entities.

In March 2020, the state's public health and economic situations began to change dramatically because of the emergence of COVID-19. State funding strategies to address homelessness evolved given the immediate need to prevent the spread of COVID-19 among people experiencing homelessness and at risk of homelessness. The state acted quickly to establish new programs and expand funding, using one-time resources, to help people experiencing or at risk of homelessness through the COVID-19 crisis. Beyond this pandemic, continued work and resources will be necessary to address the state's homelessness challenges.

At the outset of the COVID-19 public health emergency, the state provided $50 million General Fund (later offset by federal funds) for the newly established Project Roomkey to help local governments lease hotels and motels to provide immediate housing to vulnerable individuals experiencing homelessness that were at risk of contracting COVID-19. Overall, the goal of this effort was to provide non-congregate shelter options for people experiencing homelessness, to protect human life, and to minimize strain on the state's health care system.

In November 2020, the state authorized an additional $62 million in one-time funding to continue operating the program while transitioning people to permanent housing. The program is administered by DSS.

The 2020-21 budget and subsequent action allocated $800 million in one-time funding for the newly established Homekey Program. The program provides for the acquisition of hotels, motels, residential care facilities, and other housing that can be converted and rehabilitated to provide permanent housing for persons experiencing homelessness or at risk of homelessness, and who also are impacted by COVID-19. Homekey provides grants to local governments to acquire these properties, which are owned and operated at the local level.

Ongoing funding for supportive services and maintenance of these properties would likely need to be provided by local governments and other entities. Governor Newsom has also proposed to target state resources administered by the Department of Health Care Services (DHCS) and Department of Social Services (DSS) to provide additional support services.

The Budget includes $1.75 billion one-time General Fund to purchase additional motels, develop short-term community mental health facilities and purchase or preserve housing dedicated to seniors. The Budget also proposes changes to the state's Medi-Cal system to better support behavioral health and housing services that can help prevent homelessness.

Status of Legislation
SB 1372 (Muratsuchi) has been referred to two policy committees: the Assembly Housing and Community Development Committee and the Assembly Judiciary Committee.

Support
None listed at this time.

Opposition
None listed at this time.

Attachment 2

ASSEMBLY BILL No. 1372

Introduced by Assembly Member Muratsuchi

February 19, 2021

An act to add Chapter 7.9 (commencing with Section 8699) to Division 1 of Title 2 of the Government Code, relating to homelessness.

LEGISLATIVE COUNSEL'S DIGEST

AB 1372, as introduced, Muratsuchi. Right to temporary shelter.

Existing law authorizes a governing body of a political subdivision, as those terms are defined, to declare a shelter crisis if the governing body makes a specified finding. Upon declaration of a shelter crisis, existing law, among other things, suspends certain state and local laws, regulations, and ordinances, including those prescribing standards of housing, health, or safety, to the extent that strict compliance would prevent, hinder, or delay the mitigation of the effects of the shelter crisis and allows a city, county, or city and county, in lieu of compliance, to adopt by ordinance reasonable local standards and procedures for the design, site development, and operation of homeless shelters and the structures and facilities therein.

This bill would require every city, or every county in the case of unincorporated areas, to provide every person who is homeless, as defined, with temporary shelter, mental health treatment, resources for job placement, and job training until the person obtains permanent housing if the person has actively sought temporary shelter in the jurisdiction for at least 3 consecutive days and has been unable to gain entry into all temporary shelters they sought for specified reasons. The bill would require the city or county, as applicable, to provide a rent subsidy, as specified, if it is unable to provide temporary shelter. The

bill would authorize a person who is homeless to enforce the bill's provisions by bringing a civil action. The bill would require a court to award specified remedies and penalties upon finding a violation of the bill's provisions, including by requiring the city or county, as applicable, to provide the person who is homeless with temporary shelter, mental health treatment, resources for job placement, and job training until the person obtains permanent housing.

This bill would require every city, county, and city and county to adopt a plan, subject to approval by the Department of Housing and Community Development, to provide for temporary shelter for persons who are homeless in its jurisdiction, as specified. By imposing additional duties on cities and counties, the bill would impose a state-mandated local program.

The bill would include findings that changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) It should be the legal responsibility of the city or county to provide temporary shelter to an individual seeking such shelter.

(b) It should be the city's or county's legal obligation to create a temporary shelter plan in its jurisdiction and to allocate the necessary funds for shelter, resources, and services.

(c) The city or county should review and approve draft ordinances to ensure that shelters meet minimum habitability, health, and safety standards.

SEC. 2. Chapter 7.9 (commencing with Section 8699) is added to Division 1 of Title 2 of the Government Code, to read:

CHAPTER 7.9. RIGHT TO TEMPORARY SHELTER

8699. For purposes of this chapter, "person who is homeless" has the same meaning as "homeless person," as defined in Section 11302(a) of Title 42 of the United States Code, as that section read on January 1, 2021.

8699.1. (a) (1) Every person who is homeless shall have a right to temporary shelter if the person has actively sought temporary shelter in the jurisdiction for at least three consecutive days and has been unable to gain entry into all temporary shelters they sought for either of the following reasons:

(A) The temporary shelter declined the person for any reason.

(B) The temporary shelter does not meet minimum state or federal housing, health, habitability, planning and zoning, or safety standards, procedures, or laws for the structure.

(2) (A) Every city, or every county in the case of unincorporated areas, shall provide temporary shelter, mental health treatment, resources for job placement, and job training to a person who has a right to temporary shelter pursuant to paragraph (1) until the person obtains permanent housing. If the city or county, as applicable, is unable to provide temporary shelter, it shall provide a rent subsidy in an amount sufficient to cover costs for shelter for each day until the city or county is able to provide temporary shelter to the person.

(B) Every city, or every county in the case of unincorporated areas, shall establish written procedures that a person may use to claim the remedy in subparagraph (A).

(b) A person who is homeless may bring a civil action to enforce paragraph (2) of subdivision (a).

(c) A court shall order the following penalties and remedies upon finding a violation of paragraph (2) of subdivision (a):

(1) The city or county, as applicable, shall provide temporary shelter, mental health treatment, resources for job placement, and job training to the person who is homeless until the person obtains permanent housing.

(2) If the city or county, as applicable, is unable to provide temporary shelter, as described in paragraph (1), the city or county shall provide a rent subsidy in an amount sufficient to cover costs for shelter for each day until the city or county is able to provide the remedy in paragraph (1).

(3) The city or county, as applicable, shall pay, for each plaintiff in the civil action, a civil penalty of ____ dollars ($____) into a discrete fund of the city or county for purposes of creating temporary shelters in the jurisdiction.

(4) The city or county shall pay the plaintiff's attorney's fees and costs.

8699.2. (a) Every city, county, and city and county shall adopt a plan, subject to approval by the Department of Housing and Community Development, to provide for temporary shelter for persons who are homeless in its jurisdiction.

(b) Every city, county, and city and county shall include, in the plan described in subdivision (a), all of the following:

(1) Identification of temporary shelter options within its jurisdiction.

(2) Identification of sites, plans, timelines, and costs for increasing temporary shelter options within its jurisdiction.

(3) Plans for the funding and the provision of mental health and substance abuse services, as well as housing and job counseling, at the temporary shelter sites.

SEC. 3. The Legislature finds and declares that finding solutions to the statewide housing crisis is a matter of statewide concern and is not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, Section 1 of this act adding Chapter 7.9 (commencing with section 8699) to Division 1 of Title 1 of the Government Code applies to all cities, including charter cities.

SEC. 4. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

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Item B-6

CITY OF BEVERLY HILLS

POLICY AND MANAGEMENT

MEMORANDUM

TO: City Council Liaison/Legislative/Lobby Committee

FROM: Cynthia Owens, Policy and Management Analyst

DATE: March 22, 2021

SUBJECT: Senate Bill 82 (Skinner) - Petty theft

ATTACHMENTS:
1. Summary Memo – SB 82
2. Bill Text – SB 82

The City Council has historically taken positions on proposed federal and state legislation of interest to Beverly Hills because of the City's location, economy, programs, and policies through the adoption of a Legislative Platform.

Senate Bill 82 - Petty theft (SB 82) involves a policy matter which may have a nexus to the City's adopted Legislative Platform language. Specifically, the following statements may apply to SB 82:

- Oppose any efforts to further decriminalize existing crimes in California or lessen the sentences of any offenses that would result in the release of serious criminals who would further harm the safety of the public and law enforcement personnel.

The City's state lobbyist, Shaw Yoder Antwih Schmelzer & Lange, provided a summary memo for SB 82 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of SB 82, the Liaisons may recommend the following actions:

1) Oppose SB 82;
2) Support SB 82;
3) Support if amended SB 82;
4) Oppose unless amended SB 82;
5) Remain neutral; or
6) Provide other direction to City staff.

Any position recommended by the Liaisons may require the concurrence of the City Council.

Attachment 1

Shaw
Yoder
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& Lange

1415 L Street
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916-446-4656

March 17, 2021

To: **Cindy Owens, City of Beverly Hills**

From: **Andrew K. Antwih, Partner, Shaw Yoder Antwih Schmelzer & Lange**
Priscilla Quiroz, Legislative Advocate, Shaw Yoder Antwih Schmelzer & Lange
Tim Sullivan, Legislative Aide, Shaw Yoder Antwih Schmelzer & Lange

Re: **SB 82 (Skinner) Petty Theft**

Summary

Note: Recent amendments to SB 82 (Skinner) are summarized below but not in print at time of this memo. (Based on a conversation with staff in the author's office, we believe that amendments will soon come into print to exempt organized retail theft from the crime of petty theft in the first degree).

1. Provides the following legislative findings and declarations:
    a. The Penal Code Review Committee has concluded that the current law regarding theft is out of date and leads to unjust results, warranting reform;
    b. It is the intent of the Legislature to reform the theft statutes to ensure fair punishment and to apply those changes retroactively.

2. Classifies the crime of petty theft into two degrees.

3. Provides that petty theft in the first degree is the taking the property from the person of another or from a commercial establishment by means of force or fear without the use of a deadly weapon or great bodily injury.

4. States that all other forms of petty theft are in the second degree.

5. Provides that an act of petty theft in the first degree shall be charged as such, and shall not be charged as robbery or burglary.

6. Punishes petty theft in the first degree by a fine not exceeding one thousand dollars ($1,000), by imprisonment in a county jail not exceeding one year, or both.

7. Authorizes a person currently serving a felony sentence to file a petition to have the petitioner's conviction vacated and to be resentenced on any remaining counts when all of the following conditions apply:

a. The person is currently serving a sentence based on a conviction for robbery, the person was sentenced under an alternative sentencing scheme based on one or more prior convictions for robbery, or the person's sentence includes an enhancement based on one or more prior convictions for robbery;

b. The person did not use a deadly weapon or cause great bodily injury during the robbery that is the basis of the current conviction or one or more of the prior convictions used in sentencing the individual; and,

c. The person could not be convicted of robbery based on the provisions in this bill creating petty theft in the first degree.

8. Authorizes other persons who have previously been convicted of robbery to file a petition to have the petitioner's conviction vacated when all of the following conditions apply:

    a. The person did not use a deadly weapon or cause great bodily injury during the robbery; and,

    b. The person could not be convicted of robbery based on the provisions of this bill creating petty theft in the first degree.

9. States that the petition shall be filed with the presiding judge of the court that sentenced the petitioner and shall be served by the petitioner on the district attorney, or on the agency that prosecuted the petitioner, and on the attorney who represented the petitioner in the trial court or on the public defender of the county where the petitioner was convicted. The presiding judge may assign the petition to the judge that originally sentenced the petitioner or another judge designated to review such petitions.

10. Requires the petition to include all of the following:

    a. A declaration by the petitioner that the petitioner is eligible for relief as provided;

    b. The superior court case number and year of the petitioner's conviction; and,

    c. Whether the petitioner requests the appointment of counsel.

11. States that if any of the information required by this subdivision is missing from the petition and cannot be readily ascertained by the court, the court may deny the petition without prejudice and advise the petitioner that the matter cannot be considered without the missing information. If the petitioner has requested counsel, the court shall appoint counsel to represent the petitioner.

12. Requires the prosecutor to file and serve a response within 60 days of service of the petition and the petitioner may file and serve a reply within 30 days after the prosecutor's response is served. These deadlines shall be extended for good cause. If the petitioner makes a prima facie showing

that the petitioner is entitled to relief, the court shall issue an order to show cause.

13. Requires the court to hold a hearing to determine whether to vacate the conviction within 60 days after the order to show cause has issued and whether to recall the sentence and resentence the petitioner on any remaining counts in the same manner as if the petitioner had not been previously sentenced, provided that the new sentence, if any, is not greater than the initial sentence. This deadline shall be extended for good cause.

14. Provides that the parties may waive a resentencing hearing and stipulate that the petitioner is eligible to have the conviction vacated and for resentencing.

15. States that at the hearing to determine whether the petitioner is entitled to relief, the burden of proof shall be on the prosecution to prove, beyond a reasonable doubt, that the petitioner is ineligible for resentencing. If the prosecution fails to sustain its burden of proof, the prior conviction shall be vacated and the petitioner shall be resentenced on the remaining charges. The prosecutor and the petitioner may rely on the record of conviction or offer new or additional evidence.

16. States that a person who is resentenced pursuant to this section shall be given credit for time served.

17. Clarifies that the resentencing provisions of this bill do not diminish or abrogate any rights or remedies otherwise available to the petitioner.

Existing Law

1) Divides theft into two degrees: petty theft and grand theft. (Pen. Code, § 486.)
2) States that grand theft is committed when the money, labor, or real or personal property taken is of a value exceeding $950, except in specified cases of theft authorizing a lower threshold. (Pen. Code, § 487.)

3) States that any other case of theft is petty theft. (Pen. Code, § 488.)

4) States that petty theft is a misdemeanor punishable by a fine not exceeding $1000 or by imprisonment in the county jail not exceeding 6 months, or both. (Pen. Code, § 490.)

5) States that grand theft is generally punishable as an alternate felony-misdemeanor. (Pen. Code, § 489, subd. (c).)

6) Defines robbery as the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear. (Pen. Code, § 211.)

7) Provides that "fear" for purposes of robbery may include fear of an unlawful injury to the person or property of the person robbed, or of any relative of his or member of his family; or fear of an immediate and unlawful injury to the person or property of anyone in the company of the person robbed at the time of the robbery. (Pen. Code, § 212.)

8) Punishes first degree robbery as a felony punishable by imprisonment in the state prison for 3, 4, or 6 years, or by imprisonment in the state prison for 3, 6, or 9 years the robbery is accomplished in concert with two or more persons. (Pen. Code, § 213, subd. (a)(1).)

9) Punishes second degree robbery as a felony punishable by imprisonment in the state prison for 2, 3, or 5 years. (Pen. Code, § 213, subd. (a)(2).)

Background

Existing law contains various statutes that criminalize theft. The crime of theft is separated into two degrees: petty theft and grand theft. Grand theft is generally separated from petty theft by a threshold amount established in statute. Currently, the amount of taking or loss that constitutes grand theft is that which has value in excess of $950. Thefts that do that reach that threshold amount are generally considered petty theft.

Petty theft is punishable as a misdemeanor. Grand theft is punishable as a "wobbler," meaning that it may be punished as either a felony or misdemeanor. (Pen. Code, § 489, subd. (c).) Prior to Proposition 47, most theft offenses had to meet the $950 threshold in order to be charged as a felony. This threshold did not apply to certain offenses such as receiving stolen property, fraud and forgery which were punishable as wobblers. Also, in cases of retail theft, prosecutors had the option of charging a person with second degree burglary, which was punishable as a wobbler without having to reach the $950 threshold. However, the provisions of Proposition 47 specifically required that the crime of "shoplifting" be punished as a misdemeanor. "Shoplifting" was defined by the initiative as "entering a commercial establishment with intent to commit larceny while that establishment is open during regular business hours, where the value of the property that is taken or intended to be taken does not exceed $950." (Pen. Code, § 459.5; Proposition 47, approved by California voters on Nov. 4, 2014.)

Robbery is defined as "felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear." (Pen. Code, § 211.) Robbery is also separated into two degrees: first degree and second degree. First degree robbery occurs when the victim of the robbery is of a driver or passenger of a vehicle operated for a fare or hire; when the victim is robbed while at home or other residential dwelling; or when the victim is in the process of using, or immediately after using, an automated teller machine (ATM). Robbery in the second degree is any type of robbery that is not specified as first degree robbery. Both robbery in the first degree and second degree are felonies regardless of the level of force or fear used in the taking or escape after the taking or the value of the goods stolen.

This bill creates within the crime of petty theft two separate degrees: first degree and second degree. First degree petty theft would be defined as the taking of property valued at $950 or less from the person of

another or from a commercial establishment by means of force or fear without the use of a deadly weapon or great bodily injury. Any other form of petty theft would be second degree petty theft. First degree petty theft would be punishable as a misdemeanor with up to one year imprisonment and a fine of up to $1000. Second degree petty theft would be punishable as a misdemeanor with up to six months imprisonment and a fine of up to $1000.

The change in the theft laws proposed by this bill would apply retroactively. A person who is currently incarcerated or has previously been convicted of robbery would be authorized to petition the court for recall and resentencing if the facts of their case would meet the new elements of first degree petty theft. The bill requires the petition to include a declaration by the petitioner that they are eligible for relief; the superior court case number and year of the conviction; and whether the petitioner requests counsel.

The prosecutor must prove beyond a reasonable doubt that the petitioner is ineligible for relief. This standard of proof is the highest standard in criminal law and is typically used in jury trials but is also found in resentencing provisions enacted with the recent changes to the law on felony-murder (SB 1437, Ch. 1015, Stats. 2018; Pen. Code, § 1170.95, subd. (d)(3).) If the prosecutor fails to meet this burden, the petitioner's conviction shall be vacated and the petitioner shall be resentenced on any remaining charges. Both parties may also agree to waive the hearing and stipulate that the petitioner is eligible for relief.

According to the author of this bill:
California's robbery statute has not been updated since 1872. The 150-year-old definition of robbery still allows people to be sentenced to substantial terms in prison for minor petty thefts where the incident involved a perception of fear or a very minimal use of force.

Current law allows prosecutors to charge some types of simple theft such as shoplifting or snatching a cell phone as felony robbery. The blurred interpretation between robbery and theft has resulted in convictions and lengthy prison sentences disproportionate to the crime. Under current law, a person who used minimal "force" or was perceived to invoke "fear" during a petty theft can be charged and convicted of robbery, which is a felony. The terms "force" and "fear" can be interpreted loosely. For example, someone accused of having made a verbal threat during a shoplifting incident, even when no force was used and no weapon was involved, can be charged with robbery. Likewise, if the person accused of shoplifting bumps into another customer or security guard while running out of the store causing no serious injury, their charge can be elevated to robbery. Individuals experiencing a mental health crisis or who have a developmental disability also have a higher likelihood of having their charge include force or fear.

Under current law, prosecutors can elect not to charge robbery when minimal force is used. However, that discretion is not always exercised resulting in many shoplifting or other petty theft crimes being elevated to robbery, a felony that carries up to a five-year prison sentence.

SB 82 sets to establish a clear distinction between theft and robbery by creating a second category of petty theft for cases where no weapon was used and no one was seriously injured, but where there may have been an inadvertent use of force or perceived fear.

The Committee on the Revision of Penal Code, which includes judges in its membership, discussed at length the need to address the problem of theft being charged as robbery and recommended the code changes contained in SB 82. New York, Oregon, Illinois and Texas are among the states that have enacted similar statutes.

The purpose of this bill is to require theft of property that is valued under $950 where specified circumstances are not present to be charged as a misdemeanor.

Status of Legislation

The bill is currently in Assembly Housing and Community Development Committee. Hearing date as not been set.

Argument in Support

According to Prosecutors Alliance of California:
California's robbery statute has not been updated since 1872, and still allows people to be sentenced to substantial terms in prison for minor thefts in cases where the incident involved a perception of fear or a very minimal use of force. This allows prosecutors to charge some types of simple theft, such as shoplifting or snatching a cell phone, as felony robbery. The blurred interpretation between robbery and theft has resulted in convictions and lengthy prison sentences disproportionate to the crime.

Proponents argue that SB 82 will establish a clear distinction between theft and robbery by creating a second category of petty theft for cases where no deadly weapon was used and no one was seriously injured, but where there may have been an inadvertent use of force.
The Committee on the Revision of Penal Code, which includes judges in its membership, discussed at length the need to address the problem of theft being charged as robbery and recommended the code changes contained in SB 82. New York, Oregon, Illinois and Texas are among the states that have enacted similar statutes.

Argument in Opposition

According to the Alameda County District Attorney:
The answer to this issue is not to essentially eliminate the crime of robbery, which is violent. Rather, the answer is to provide resource options to the offenders to stop the continued criminal conduct.

You can hear more on my PODCAST "Justice For All" a 2-part series with repeat offenders who have been criminal justice involved and are now working within my programs to help other individuals to move beyond criminal justice. They move beyond criminal justice with the help and resources of organizations like my Office. They needed help and we provided it.

My Office is very prudent in charging crimes. We have created several programs that are designed to move individuals out of the criminal justice system and into a productive pathway of their lives. We have had tremendous success in programs such as Early Intervention Court, Mentor Diversion, Alameda County Justice Restoration Court, Behavioral Health Court, Veterans Court and more.

These individuals, many of whom have committed and are charged with robbery, involving violent takings of property from another, have successfully removed themselves from the criminal justice system into a productive life. Their successful completion generally involves dismissal of the charges, with the knowledge of the victim of crime.

We have utilized Restorative Justice processes; we have a partnership with Cypress Mandela, a job training program in Oakland and programs that provide life resources for those who have been criminal justice involved.

Support
American Civil Liberties Union
Bend the Arc: Jewish Action
Communities United for Restorative Youth Justice
Drug Policy Alliance
Ella Baker Center for Human Rights
Fresno Barrios Unidos
Friends Committee on Legislation of California
Initiate Justice
Legal Services for Prisoners With Children
Prosecutors Alliance of California
Re:Store Justice
Rubicon Programs
San Francisco Public Defender's Office
Smart Justice California
Time for Change Foundation

Opposition
Alameda County District Attorney's Office

Attachment 2

AMENDED IN SENATE FEBRUARY 8, 2021

SENATE BILL No. 82

Introduced by Senator Skinner

December 15, 2020

An act to amend ~~Section 1202.7 of~~ *Sections 486, 488, and 490 of, and to add Section 1170.98 to,* the Penal Code, relating to ~~crimes.~~ *theft.*

LEGISLATIVE COUNSEL'S DIGEST

SB 82, as amended, Skinner. ~~Crimes: probation.~~ *Petty theft.*

Existing law, the Safe Neighborhoods and Schools Act, enacted as an initiative statute by Proposition 47, as approved by the electors at the November 4, 2014, statewide general election, requires the theft of money, labor, or property to be considered petty theft, punishable as a misdemeanor by up to 6 months in county jail, a fine of up to $1,000, or both, whenever the value of the property taken does not exceed $950 or in other cases that are specifically defined as grand theft.

This bill would define the crime of petty theft in the first degree as taking the property from the person of another or from a commercial establishment by means of force or fear without the use of a deadly weapon or great bodily injury. The bill would define the crime of petty theft in the 2nd degree as all other petty theft. The bill would impose a penalty of imprisonment in county jail for up to one year, a $1,000 fine, or both, for petty theft in the first degree and would prohibit an act of petty theft from being charged as robbery or burglary. By creating a new crime, this bill would impose a state-mandated local program.

This bill would provide a means of vacating the sentence of, and resentencing, a currently incarcerated defendant who had been convicted of robbery, who was sentenced under an alternative sentencing scheme based on one or more prior convictions for robbery, or whose

sentence includes an enhancement based on one or more prior convictions for robbery and who would not be convicted of robbery based on the changes made in this bill. The bill would also provide a means of vacating the sentence of, and resentencing, a person who had previously served a term of imprisonment for robbery and who would not be convicted of robbery based on the changes made in this bill. By requiring the participation of district attorneys and public defenders in the resentencing process, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

~~Under existing law, a court may place a person convicted of a crime on probation, subject to supervision by the county probation officer and court-ordered conditions of probation. Under existing law, the Legislature finds and declares that the provision of probation services is an essential element in the administration of criminal justice.~~

~~This bill would make a technical, nonsubstantive change to this provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ *yes*. State-mandated local program: ~~no~~ *yes*.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares both of the following:

(a) The Penal Code Review Committee has concluded that the current law regarding theft is out of date and leads to unjust results, warranting reform.

(b) It is the intent of the Legislature to reform the theft statutes to ensure fair punishment and to apply those changes retroactively.

SEC. 2. Section 486 of the Penal Code is amended to read:

486. Theft is divided into ~~two~~ *three* degrees, the first of which is termed grand theft; the second, petty ~~theft.~~ *theft in the first degree; and the third petty theft in the second degree.*

SEC. 3. Section 488 of the Penal Code is amended to read:

488. *(a)* Theft in other cases is petty theft.

(b) (1) Petty theft in the first degree is taking property from the person of another or from a commercial establishment by means of force or fear without the use of a deadly weapon or causing great bodily injury.

(2) An act of petty theft in the first degree shall be charged as such, and shall not be charged as robbery or burglary.

(c) Petty theft in the second degree is all petty theft that is not in the first degree.

SEC. 4. Section 490 of the Penal Code is amended to read:

490. *(a)* Petty theft ~~is~~ *in the first degree is punishable by a fine not exceeding one thousand dollars ($1,000), by imprisonment in a county jail not exceeding one year, or both.*

(b) Petty theft in the second degree is punishable by fine not exceeding one thousand dollars ($1,000), ~~or~~ by imprisonment in ~~the~~ *a* county jail not exceeding six months, or both.

SEC. 5. Section 1170.98 is added to the Penal Code, to read:

1170.98. (a) A person currently serving a sentence in state prison or in a county jail pursuant to subdivision (h) of Section 1170 may file a petition to have the petitioner's conviction vacated and to be resentenced on any remaining counts when all of the following conditions apply:

(1) The person is currently serving a sentence based on a conviction for robbery pursuant to Section 211, the person was sentenced under an alternative sentencing scheme based on one or more prior convictions for robbery, or the person's sentence includes an enhancement based on one or more prior convictions for robbery.

(2) The person did not use a deadly weapon or cause great bodily injury during the robbery that is the basis of the current conviction or one or more of the prior convictions used in sentencing the individual.

(3) The person could not be convicted of robbery based on the changes to Sections 486 and 488 effective January 1, 2022.

(b) Any other person previously convicted of robbery pursuant to Section 211 may file a petition to have the petitioner's conviction vacated when all of the following conditions apply:

(1) The person did not use a deadly weapon or cause great bodily injury during the robbery.

(2) The person could not be convicted of robbery based on the changes to Sections 486 and 488 that became effective January 1, 2022.

(c) (1) The petition shall be filed with the presiding judge of the court that sentenced the petitioner and shall be served by the petitioner on the district attorney, or on the agency that prosecuted the petitioner, and on the attorney who represented the petitioner in the trial court or on the public defender of the county where the petitioner was convicted. The presiding judge may assign the petition to the judge that originally sentenced the petitioner or another judge designated to review such petitions. The petition shall include all of the following:

(A) A declaration by the petitioner that the petitioner is eligible for relief under this section, based on the requirements of subdivision (a) or (b).

(B) The superior court case number and year of the petitioner's conviction.

(C) Whether the petitioner requests the appointment of counsel.

(2) If any of the information required by this subdivision is missing from the petition and cannot be readily ascertained by the court, the court may deny the petition without prejudice to the filing of another petition and advise the petitioner that the matter cannot be considered without the missing information. If the petitioner has requested counsel, the court shall appoint counsel to represent the petitioner.

(d) The prosecutor shall file and serve a response within 60 days of service of the petition and the petitioner may file and serve a reply within 30 days after the prosecutor's response is served. These deadlines shall be extended for good cause. If the petitioner makes a prima facie showing that the petitioner is entitled to relief, the court shall issue an order to show cause.

(e) (1) Within 60 days after the order to show cause has issued, the court shall hold a hearing to determine whether to vacate the conviction and, if the petition is filed pursuant to subdivision (a), whether to recall the sentence and resentence the petitioner on

any remaining counts in the same manner as if the petitioner had not been previously sentenced, provided that the new sentence, if any, is not greater than the initial sentence. This deadline shall be extended for good cause.

(2) The parties may waive a resentencing hearing and stipulate that the petitioner is eligible to have the conviction vacated and for resentencing.

(3) At the hearing to determine whether the petitioner is entitled to relief, the burden of proof shall be on the prosecution to prove, beyond a reasonable doubt, that the petitioner is ineligible for resentencing. If the prosecution fails to sustain its burden of proof, the prior conviction shall be vacated and the petitioner shall be resentenced on the remaining charges. The prosecutor and the petitioner may rely on the record of conviction or offer new or additional evidence to meet their respective burdens.

(f) This section does not diminish or abrogate any rights or remedies otherwise available to the petitioner.

(g) A person who is resentenced pursuant to this section shall be given credit for time served.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

~~SECTION 1. Section 1202.7 of the Penal Code is amended to read:~~

~~1202.7. The Legislature finds and declares that the provision of probation services is an essential element in the administration of criminal justice. The safety of the public, which shall be a primary goal through the enforcement of court-ordered conditions of probation; the nature of the offense; the interests of justice,~~

~~including punishment, reintegration of the offender into the community, and enforcement of conditions of probation; the loss to the victim; and the needs of the defendant shall be the primary considerations in granting probation. It is the intent of the Legislature that efforts be made with respect to persons who are subject to Section 290.011 who are on probation to engage them in treatment.~~

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Item B-7

CITY OF BEVERLY HILLS

POLICY AND MANAGEMENT

MEMORANDUM

TO: City Council Liaison/Legislative/Lobby Committee

FROM: Cynthia Owens, Policy and Management Analyst

DATE: March 22, 2021

SUBJECT: Senate Bill 284 (Stern) - Workers' compensation: firefighters and peace officers: post-traumatic stress

ATTACHMENTS:
1. Summary Memo – SB 284
2. Bill Text – SB 284

The City Council has historically taken positions on proposed federal and state legislation of interest to Beverly Hills because of the City's location, economy, programs, and policies through the adoption of a Legislative Platform.

Senate Bill 284 - Workers' compensation: firefighters and peace officers: post-traumatic stress (SB 284) involves a policy matter that does not have a nexus to the City's adopted Legislative Platform language.

The City's state lobbyist, Shaw Yoder Antwih Schmelzer & Lange, provided a summary memo for SB 284 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of SB 284, the Liaisons may recommend the following actions:

1) Oppose SB 284;
2) Support SB 284;
3) Oppose unless Amended;
4) Support if Amended;
5) Remain neutral; or
6) Provide other direction to City staff.

Should the Liaisons recommend a position then the item will be placed on a future City Council agenda for concurrence.

Attachment 1

Shaw
Yoder
Antwih
Schmelzer
& Lange

1415 L Street
Suite 1000
Sacramento
CA, 95814
916-446-4656

March 15, 2021

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw Yoder Antwih Schmelzer & Lange
Priscilla Quiroz, Legislative Advocate, Shaw Yoder Antwih Schmelzer & Lange

Re: SB 284 (Stern) Workers' compensation: firefighters and peace officers: post-traumatic stress.

Introduction and Background

On February 1, Senator Stern introduced SB 284, which would extend the existing industrial injury rebuttable presumption for a diagnosis of a post-traumatic stress disorder to include firefighters employed by the State Department of State Hospitals, the State Department Developmental Services, and the Military Department.

Existing Law

Establishes a workers' compensation system that provides benefits to an employee who suffers from an injury or illness that arises out of and in the course of employment, irrespective of fault. This system requires all employers to secure payment of benefits by either securing the consent of the Department of Industrial Relations to self-insure or by securing insurance against liability from an insurance company duly authorized by the state.

Existing law also creates a series of disputable presumptions of an occupational injury for peace and safety officers for the purposes of the workers' compensation system. These presumptions include:

- Heart disease
- Hernias
- Pneumonia
- Cancer
- Meningitis
- Tuberculosis
- Bio-chemical illness

The compensation awarded for these injuries must include full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by workers compensation law. These presumptions tend to run for 5 to 10 years commencing on their last day of employment, depending on the injury and the peace officer classification involved. Peace officers whose principal duties are clerical, such as stenographers, telephone operators, and other office workers are excluded.

Provides, until January 1, 2025, a disputable presumption that a diagnosis of Post-Traumatic Stress Disorder (PTSD) for specified peace officers and firefighters is an occupational injury,

running for up to 5 years. The benefit includes full hospital, surgical, medical treatment, disability indemnity, and death benefits, but only applies to peace officers who have served at least 6 months.

Status of Legislation

The bill passed out of the Senate Labor, Public Employment and Retirement Committee. The bill will be heard in the Senate Appropriations Committee on March 22.

Support

- California Professional Firefighters (Co-Sponsor)
- California Statewide Law Enforcement Association (Co-Sponsor)
- Peace Officers Research Association of California (Co-Sponsor)
- Association of Conservationist Employees
- Association of Criminalists for the California Department of Justice
- Association of Deputy Commissioners
- Association of Motor Carrier Operation Specialists
- Association of Motor Vehicle Investigators of California
- Association of Special Agents - DOJ
- California Alcoholic Beverage Control Agents
- California Association of Food and Drug Investigators
- California Association of Fraud Investigators
- California Association of Law Enforcement Employees
- California Association of Regulatory Investigators and Inspectors
- California Chapter National Emergency Number Association
- California Fish & Game Warden Supervisors and Managers Association
- California Fish and Game Wardens Association
- California Highway Patrol Public Safety Dispatchers Association
- California Organization of Licensing Registration Examiners
- Hospital Police Association of California
- Riverside Sheriffs' Association

Opposition

- American Property Casualty Insurance Association
- California Association of Joint Powers Authorities
- California Coalition on Workers Compensation
- California Special Districts Association
- California State Association of Counties
- League of California Cities
- Public Risk Innovation, Solution, and Management
- Association of Motor Carrier Operation Specialists

Attachment 2

SENATE BILL No. 284

Introduced by Senator Stern

February 1, 2021

An act to amend Section 3212.15 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

SB 284, as introduced, Stern. Workers' compensation: firefighters and peace officers: post-traumatic stress.

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of employment. Existing law provides, only until January 1, 2025, that, for certain state and local firefighting personnel and peace officers, the term "injury" includes post-traumatic stress that develops or manifests during a period in which the injured person is in the service of the department or unit, but applies only to injuries occurring on or after January 1, 2020. Existing law requires the compensation awarded pursuant to this provision to include full hospital, surgical, medical treatment, disability indemnity, and death benefits.

This bill would make that provision applicable to active firefighting members of the State Department of State Hospitals, the State Department of Developmental Services, and the Military Department, and to additional peace officers, including security officers of the Department of Justice when performing assigned duties as security officers and the officers of a state hospital under the jurisdiction of the State Department of State Hospitals or the State Department of Developmental Services, among other officers. The bill would also make that provision applicable to public safety dispatchers, public safety

telecommunicators, and emergency response communication employees, as defined.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 3212.15 of the Labor Code is amended to read:

3212.15. (a) This section applies to all of the following:

(1) Active firefighting members, whether volunteers, partly paid, or fully paid, of all of the following fire departments:

(A) A fire department of a city, county, city and county, district, or other public or municipal corporation or political subdivision.

(B) A fire department of the University of California and the California State University.

(C) The Department of Forestry and Fire Protection.

(D) A county forestry or firefighting department or unit.

(E) The State Department of State Hospitals.

(F) The State Department of Developmental Services.

(G) The Military Department.

(2) Active firefighting members of a fire department that serves a United States Department of Defense installation and who are certified by the Department of Defense as meeting its standards for firefighters.

(3) Active firefighting members of a fire department that serves a National Aeronautics and Space Administration installation and who adhere to training standards established in accordance with Article 4 (commencing with Section 13155) of Chapter 1 of Part 2 of Division 12 of the Health and Safety Code.

(4) Peace officers, as defined in ~~Section 830.1, subdivisions (a), (b), and (c) of Section 830.2, Section 830.32, subdivisions (a) and (b) of Section 830.37,~~ *Sections 830.1, 830.2, 830.3, 830.32, 830.37, and 830.38, subdivision (b) of Section 830.4,* and Sections 830.5 and 830.55 of the Penal Code, who are primarily engaged in active law enforcement activities.

(5) (A) Fire and rescue services coordinators who work for the Office of Emergency Services.

(B) For purposes of this paragraph, "fire and rescue services coordinators" means coordinators with any of the following job

classifications: coordinator, senior coordinator, or chief coordinator.

(6) (A) Public safety dispatchers, public safety telecommunicators, and emergency response communication employees.

(B) For the purposes of this paragraph, a "public safety dispatcher," "public safety telecommunicator," or "emergency response communication employee" means an individual employed by a public safety agency whose primary responsibility is to receive, process, transmit, or dispatch emergency and nonemergency calls for law enforcement, fire, emergency medical, and other public safety services by telephone, radio, or other communication device, and includes an individual who supervises other individuals who perform these functions.

(b) In the case of a person described in subdivision (a), the term "injury," as used in this division, includes "post-traumatic stress disorder," as diagnosed according to the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association and that develops or manifests ~~itself~~ during a period in which any ~~member~~ *person* described in subdivision (a) is in the service of the ~~department or unit.~~ *department, unit, office, or agency.*

(c) For an injury that is diagnosed as specified in subdivision (b):

(1) The compensation that is awarded shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by this division.

(2) The injury ~~so~~ developing or manifesting ~~itself~~ in these cases shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with the presumption. This presumption shall be extended to a ~~member~~ *person described in subdivision (a)* following termination of service for a period of 3 calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

(d) Compensation shall not be paid pursuant to this section for a claim of injury unless the ~~member~~ *person described in subdivision (a)* has performed services for the ~~department or unit~~

department, unit, office, or agency for at least six months. The six months of employment need not be continuous. This subdivision does not apply if the injury is caused by a sudden and extraordinary employment condition.

(e) This section applies to injuries occurring on or after January 1, 2020.

(f) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.

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Item B-8

CITY OF BEVERLY HILLS

POLICY AND MANAGEMENT

MEMORANDUM

TO: City Council Liaison/Legislative/Lobby Committee

FROM: Cynthia Owens, Policy and Management Analyst

DATE: March 22, 2021

SUBJECT: Senate Bill 612 (Portantino) - Electrical corporations and other load-serving entities: allocation of legacy resources

ATTACHMENTS:
1. Summary Memo – SB 612
2. Bill Text – SB 612

The City Council has historically taken positions on proposed federal and state legislation of interest to Beverly Hills because of the City's location, economy, programs, and policies through the adoption of a Legislative Platform.

Senate Bill 612 - Electrical corporations and other load-serving entities: allocation of legacy resources (SB 612) involves a policy matter may have a nexus to the City's adopted Legislative Platform language. Specifically, the following statements may apply to SB 612:

- Support legislation that ensures equitable cost-sharing between investor-owned utilities and community choice aggregation for stranded costs.

The City's state lobbyist, Shaw Yoder Antwih Schmelzer & Lange, provided a summary memo for SB 612 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of SB 612, the Liaisons may recommend the following actions:

1) Oppose SB 612;
2) Support SB 612;
3) Support if amended SB 612;
4) Oppose unless amended SB 612;
5) Remain neutral; or
6) Provide other direction to City staff.

Any position recommended by the Liaisons may require the concurrence of the City Council.

Attachment 1

Shaw
Yoder
Antwih
Schmelzer
& Lange

1415 L Street
Suite 1000
Sacramento
CA, 95814
916-446-4656

March 16, 2021

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw Yoder Antwih Schmelzer & Lange
Priscilla Quiroz, Legislative Advocate, Shaw Yoder Antwih Schmelzer & Lange

Re: SB 612 (Portantino) Electrical corporations and other load-serving entities: allocation of legacy resources.

Summary

Establishes new requirements between Investor-Owned Utilities (IOUs), referenced here as electrical corporations and load serving entities, including community choice aggregators (CCAs), regarding how certain costs for electrical generation are procured, calculated, allocated, managed and publicly reported. Specifically, this bill:

1) Requires electrical corporations with an approved procurement plan to conduct a request for offers from any party to an existing electricity purchase agreement, at that party's full discretion, to modify the agreement to reduce the electrical corporation's total procurement costs over the remaining life of the contract.

2) Requires electrical corporations to issue a request for offer on January 1, 2023, and by January 1 of each odd-numbered year thereafter and to publicly report the results of the request for offers on an annual basis through an existing reporting process required under current law. These reports must identify the total cost savings to customers, without disclosing competitively sensitive price information for individual contracts.

3) Requires the Public Utilities Commission (PUC), through an existing annual review process required under current law to determine if the electrical corporation's actions or inactions in response to the request for offers were reasonable and in the interest of bundled and departing load customers.

4) Requires the PUC, by July 1, 2022, and by each July 1 thereafter, to require an electrical corporation to annually offer, for the following year, an allocation of each product arising from legacy resources to its bundled customers and to other load-serving entities serving departing-load customers who bear cost responsibility for those resources.

5) Requires the electrical corporation to offer this allocation in amount calculated by the PUC to be up to each customer's proportional share of legacy resources in the customer's vintage.

6) Requires the electrical corporation to offer the products for a term and in a manner that maximizes the value of the legacy resources.

7) Authorizes a load-serving entity within the service territory of an electrical corporation to elect to receive all or a portion of the vintaged proportional share of products allocated to it and requires the load-serving entity to make payments to the electrical corporation in amounts calculated by the PUC based on a proportional share of products received calculated by the PUC.

8) Requires an electrical corporation to offer the same long-term renewable portfolio standard (RPS) value available to bundled customers by offering an allocation of eligible renewable portfolio standard resources with a remaining term of at least 10 years for a term equal to the proportionate share of the remaining term of the eligible renewable energy resources.

9) These allocated resources shall count toward a load-serving entity's long-term procurement requirement under current law.

10) To enable a load-serving entity to effectively align its supply with its customers' requirements, the electrical corporation must provide specific information to each load-serving entity that elects to receive an allocation:

    a) Not less than seven months before the beginning of the production year, the most recent three-year historical production data for the allocated products and the estimated annual production profile by vintage and resource type in all hours.

    b) Within 15 days following the end of each production month, actual production data for the prior month.

Background

Under existing law, the Public Utilities Commission (PUC) has regulatory authority over public utilities, including electrical corporations. The PUC is authorized to set rates and charges for every public utility and requires that those rates and charges be just and reasonable.

The PUC must also authorize and facilitate direct transactions between electric service providers and retail end-use customers, but suspends direct transactions except as expressly authorized. Existing law expressly requires the commission to authorize direct transactions for nonresidential end-use customers, subject to an annual maximum allowable total kilowatthour limit established, as specified, for each electrical corporation, to be achieved following a now-completed 3-to-5-year phase-in period.

On or before June 1, 2019, the PUC must issue an order specifying, among other things, an increase in the annual maximum allowable total kilowatthour limit by 4,000 gigawatthours and to apportion that increase among the service territories of the electrical corporations.

Existing law requires the commission, by June 1, 2020, to provide the Legislature with recommendations on the adoption and implementation of a 2nd direct transactions reopening schedule and requires that the commission make specified findings with respect to those recommendations, including that the recommendations do not cause undue shifting of costs to bundled service customers of an electrical corporation or to direct transaction customers.

Under current law, a community choice aggregator (CCA) is allowed to aggregate the electrical load of interested electricity consumers within its boundaries and requires a community choice aggregator to file an implementation plan with the PUC in order to determine a cost-recovery

mechanism to be imposed on the CCA to prevent a shifting of costs to an electrical corporation's bundled customers.

Specifies that the bundled retail customers of an electrical corporation not experience any cost increase as a result of the implementation of a CCA program and requires the PUC to ensure that the departing load does not experience any cost increases as a result of an allocation of costs that were not incurred on behalf of the departing load.

The PUC has adopted decisions and orders imposing certain costs on customers of an electrical corporation that depart from receiving bundled electrical service from an electrical corporation to instead receive electric service from an electric service provider or a community choice aggregator.

The PUC must review and accept, modify, or reject a procurement plan for each electrical corporation in accordance with specified elements, incentive mechanisms, and objectives, except that an electrical corporation that serves less than 500,000 electric retail customers within the state may file with the commission a request for exemption from the requirement to file a procurement plan.

The PUC is also required to grant the exemption upon a showing of good cause. Procurement plans must eliminate the need for after-the-fact reasonableness reviews of an electrical corporation's actions in compliance with the plan. The PUC is authorized to establish a regulatory process to verify and ensure that each contract entered into pursuant to an approved plan was administered in accordance with the terms of the contract, and contract disputes that may arise are reasonably resolved.

Over the last decade, more than 11 million utility customers have transitioned from IOU electric service to Community Choice Aggregators (CCAs), local publicly-owned energy providers that purchase electricity for their communities. As part of this transition, CCA customers continue to share with IOU customers cost responsibility for power supply commitments entered into by IOUs prior to their departure for CCA service. These include expensive long-term renewable energy contracts with third parties and capital-intensive utility-owned generation facilities (e.g. nuclear, natural gas, hydroelectric plants). These so-called "legacy" resources account for billions of dollars in above-market costs in IOU energy portfolios, and IOUs rely on California ratepayers to pay the costs. CCA customers continue to pay for these *legacy resources* through a fee known as the Power Charge Indifference Adjustment (PCIA).

CalCCA argues that California's investor-owned utilities (IOUs) use the PCIA to recover above-market costs associated with their power portfolios. They argue that the impact of the PCIA on ratepayers is a major concern because it has increased by hundreds of millions of dollars in recent years and argue that more can be done to reduce the PCIA.

Proponents of SB 612 argue that legacy resources are a burden because the electricity they generate is very expensive compared to today's market prices, resulting in billions of dollars in above-market costs that accrue to all ratepayers. However, there are also valuable products associated with the electricity produced by legacy resources – such as resource adequacy, RPS attributes, and GHG-free attributes – that can be used by energy providers to meet their clean energy goals and reliability requirements.

Under current structure, these products are retained by IOUs. So, while CCA customers must pay their fair share for legacy resources, CCA customers do not have access to all of the beneficial

products they are paying for. The bill's proponents argue that is no good policy rationale for this inequitable treatment of CCA customers versus their IOU counterparts.

The PCIA is set annually in the IOUs' Energy Resource Recovery Account (ERRA) proceedings. It includes above-market costs related to power supply commitments that the IOUs made many years ago. These include Utility-Owned Generation (e.g. nuclear, natural gas, hydroelectric plants) and long-term renewable energy contracts with third parties. The PCIA is derived from the utility's Indifference Amount, which is updated annually in each IOU's ERRA proceeding. The Indifference Amount is the difference in the target year between the cost of the IOU's supply portfolio and the market value of the IOU's supply portfolio.

Proponents argue that the PUC issued a decision in 2018 that recognized that utilities need incentives to manage their PCIA portfolios more aggressively and initiated a Working Group 3 (WG3) phase of the proceeding to focus on portfolio optimization and cost reduction so that only unavoidable costs are recovered through the PCIA. The WG3 phase "offers the promise of meaningful progress toward reducing the levels of above-market costs going forward," the CPUC said.

CalCCA, Southern California Edison, and Commercial Energy – filed a proposal with the PUC in February 2020 that sought to require utilities to optimize their energy portfolios by more actively managing contracts and increase transparency into the PCIA process in order to save customer costs.

The WG3 proposal puts forth a number of ways IOUs can more actively manage their portfolios to reduce above-market costs. Under the proposal, load-serving entities (LSEs) would have access to products in IOUs' PCIA portfolios through allocations, market offers, and assignments of product attributes. The proposal also provides a framework to facilitate reductions in total PCIA portfolio costs through buy-outs/buy-downs or other types of transactions. SB 612 (Portantino) appears to be based on the WG3 proposal.

Status of Legislation
SB 612 is currently in the Senate Rules Committee awaiting referral to a policy committee.

Support
California Community Choice Association (CalCCA)

Opposition
None listed at this time.

Attachment 2

AMENDED IN SENATE MARCH 9, 2021

SENATE BILL No. 612

Introduced by Senator Portantino
(Coauthors: Senators Allen, Becker, McGuire, and Wiener)
(Coauthors: Assembly Members Bauer-Kahan, Berman, Bloom, Boerner Horvath, *Chiu,* Kalra, Lee, Levine, Mullin, *Muratsuchi, Robert Rivas,* Stone, *Ting,* and Wood)

February 18, 2021

~~An act relating to electricity.~~ *An act to amend Section 454.5 of, and to add Section 366.4 to, the Public Utilities Code, relating to electricity.*

LEGISLATIVE COUNSEL'S DIGEST

SB 612, as amended, Portantino. ~~Electrical corporations: allocation of legacy resources.~~ *Electrical corporations and other load-serving entities: allocation of legacy resources.*

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations. Existing law authorizes the commission to fix the rates and charges for every public utility and requires that those rates and charges be just and reasonable.

Existing law requires the commission to authorize and facilitate direct transactions between electric service providers and retail end-use customers, but suspends direct transactions except as expressly authorized. Existing law expressly requires the commission to authorize direct transactions for nonresidential end-use customers, subject to an annual maximum allowable total kilowatthour limit established, as specified, for each electrical corporation, to be achieved following a now-completed 3-to-5-year phase-in period. Existing law requires the commission, on or before June 1, 2019, to issue an order specifying,

among other things, an increase in the annual maximum allowable total kilowatthour limit by 4,000 gigawatthours and to apportion that increase among the service territories of the electrical corporations. Existing law requires the commission, by June 1, 2020, to provide the Legislature with recommendations on the adoption and implementation of a 2nd direct transactions reopening schedule and requires that the commission make specified findings with respect to those recommendations, including that the recommendations do not cause undue shifting of costs to bundled service customers of an electrical corporation or to direct transaction customers.

Existing law authorizes a community choice aggregator to aggregate the electrical load of interested electricity consumers within its boundaries and requires a community choice aggregator to file an implementation plan with the Public Utilities Commission in order for the commission to determine a cost-recovery mechanism to be imposed on the community choice aggregator to prevent a shifting of costs to an electrical corporation's bundled customers. Existing law requires that the bundled retail customers of an electrical corporation not experience any cost increase as a result of the implementation of a community choice aggregator program and requires the commission to ensure that the departing load does not experience any cost increases as a result of an allocation of costs that were not incurred on behalf of the departing load.

Pursuant to existing law, the commission has adopted decisions and orders imposing certain costs on customers of an electrical corporation that depart from receiving bundled electrical service from an electrical corporation to instead receive electric service from an electric service provider or a community choice aggregator.

This bill would require an electrical corporation, by July 1, 2022, and by each July 1 thereafter, to annually offer, for the following year, an allocation of each product, as defined, arising from legacy resources, as defined, to its bundled customers and to other load-serving entities, defined to include electric service providers and community choice aggregators, serving departing-load customers, as defined, who bear cost responsibility for those resources. The bill would authorize a load-serving entity within the service territory of the electrical corporation to elect to receive all or a portion of the vintaged proportional share of products allocated to its end-use customers and, if so, require it to pay to the electrical corporation the commission-established market price benchmark for the vintage

proportional share of products received. The bill would require that an electrical corporation offer any products allocated to departing-load customers that a load-serving entity declines to elect to receive in the wholesale market in an annual solicitation and require that all revenues received through the annual solicitation be credited toward reducing any nonbypassable charge for all distribution customers of the electrical corporation. The bill would require the commission to recognize and account for the value of all products in the electrical corporation's legacy resource portfolio in determining any nonbypassable charge to be paid by departing-load customers.

Existing law requires that the commission review and accept, modify, or reject a procurement plan for each electrical corporation in accordance with specified elements, incentive mechanisms, and objectives, except that an electrical corporation that serves less than 500,000 electric retail customers within the state may file with the commission a request for exemption from the requirement to file a procurement plan and the commission is required to grant the exemption upon a showing of good cause. Existing law requires that an approved procurement plan eliminate the need for after-the-fact reasonableness reviews of an electrical corporation's actions in compliance with the plan, but authorizes the commission to establish a regulatory process to verify and ensure that each contract entered into pursuant to an approved plan was administered in accordance with the terms of the contract, and contract disputes that may arise are reasonably resolved.

This bill would require an electrical corporation with a commission-approved plan to conduct a request for offers on January 1, 2023, and by January 1 of each odd-numbered year thereafter, from any party to an existing electricity purchase agreement, at that party's full discretion, to modify the agreement to reduce the electrical corporation's total procurement costs on a present value basis over the remaining life of the contract and that is recovered from both bundled and departing-load customers. The bill would require an electrical corporation to publicly report the results of the request for offers in its annual proceeding for review of contract administration established by the commission pursuant to the above-described authorization. The bill would require the commission to determine in its annual proceeding for review of contract administration, if the electrical corporation's actions or inactions in response to the request for offers were reasonable and in the interest of bundled and departing load customers.

Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because the provisions of this bill would be a part of the act and because a violation of an order or decision of the commission implementing its requirements would be a crime, the bill would impose a state-mandated local program by creating a new crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations. Existing law authorizes a community choice aggregator to aggregate the electrical load of interested electricity consumers within its boundaries and requires a community choice aggregator to file an implementation plan with the Public Utilities Commission in order for the commission to determine a cost recovery mechanism to be imposed on the community choice aggregator to prevent a shifting of costs to an electrical corporation's bundled customers. Existing law requires that the bundled retail customers of an electrical corporation not experience any cost increase as a result of the implementation of a community choice aggregator program and requires the commission to ensure that the departing load does not experience any cost increases as a result of an allocation of costs that were not incurred on behalf of the departing load. Pursuant to existing law, the commission has adopted decisions and orders imposing certain costs on customers of an electrical corporation that depart from receiving bundled service from the electrical corporation to instead receive electricity from an electric service provider or a community choice aggregator.~~

~~This bill would state the intent of the Legislature to enact subsequent legislation related to public utilities that would ensure fair and equal access to the benefits of legacy resources held in investor-owned utility portfolios and address the management of these resources to maximize value for all customers.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ *yes*. State-mandated local program: ~~no~~ *yes*.

The people of the State of California do enact as follows:

SECTION 1. Section 366.4 is added to the Public Utilities Code, to read:

366.4. (a) For purposes of this section, the following terms have the following meanings:

(1) "Departing-load customer" means a customer of an electrical corporation that departs from receiving electric service from an electrical corporation to instead receive electric service from another load-serving entity.

(2) "Legacy resource" means any generation resource or agreement to purchase electricity for delivery to end-use customers in California that was procured by an electrical corporation solely on behalf of the electrical corporation's end-use customers it served at the time of procurement and that is eligible for recovery to prevent cost shifting among the customers of load-serving entities.

(3) "Load-serving entity" has the same meaning as defined in Section 380.

(4) "Product" means electrical resources procured to meet the resource adequacy requirements of Section 380, electrical resources procured to meet the requirements of the California Renewables Portfolio Standard Program (Article 16 (commencing with Section 399.11)), electrical resources that do not emit greenhouse gases, and any new generating attributes identified after January 1, 2021, that have regulatory compliance or other identified market value.

(5) "Vintage" means the cost responsibility allocated by the commission, for purposes of legacy resource cost responsibility, to departing-load customers, which the commission allocates to those departing-load customers corresponding to the year the customer departs receiving electric service from the electrical corporation.

(b) (1) By July 1, 2022, and by each July 1 thereafter, the commission shall require an electrical corporation to annually offer, for the following year, an allocation of each product arising from legacy resources to its bundled customers and to other load-serving entities serving departing-load customers who bear cost responsibility for those resources.

(2) The electrical corporation shall offer this allocation in an amount up to each customer's proportional share of legacy resources in the customer's vintage, as determined by the commission.

(3) The electrical corporation shall offer the products for a term and in a manner that maximizes the value of the legacy resources.

(c) (1) A load-serving entity within the service territory of the electrical corporation may elect to receive all or a portion of the vintaged proportional share of products allocated to its end-use customers and shall pay to the electrical corporation the commission-established market price benchmark for the vintage proportional share of products received.

(2) The electrical corporation shall offer to load-serving entities serving departing-load customers within its service territory the same long-term renewable portfolio standard value available to bundled customers by offering an allocation of eligible renewable portfolio standard resources with a remaining term of at least 10 years for a term equal to the proportionate share of the remaining term of the eligible renewable energy resources. These allocated resources shall count toward a load-serving entity's long-term procurement requirement pursuant to subdivision (b) of Section 399.13.

(3) To enable a load-serving entity to effectively align its supply with its customers' requirements, the electrical corporation shall, at a minimum, provide each load-serving entity electing to receive an allocation the following information for each allocated product:

(A) Not less than seven months before the beginning of the production year, the most recent three-year historical production data for the allocated products and the estimated annual production profile by vintage and resource type in all hours.

(B) Within 15 days following the end of each production month, actual production data for the prior month.

(d) (1) An electrical corporation shall offer any products allocated to departing-load customers that a load-serving entity declines to elect to receive pursuant to subdivision (c) in the wholesale market in an annual solicitation. All revenues received through the annual solicitation shall be credited toward reducing any nonbypassable charge for all distribution customers of the electrical corporation.

(2) The commission shall recognize and account for the value of all products in the electrical corporation's legacy resource portfolio in determining any nonbypassable charge to be paid by departing-load customers.

SEC. 2. Section 454.5 of the Public Utilities Code is amended to read:

454.5. (a) The commission shall specify the allocation of electricity, including quantity, characteristics, and duration of electricity delivery, that the Department of Water Resources shall provide under its power purchase agreements to the customers of each electrical corporation, which shall be reflected in the electrical corporation's proposed procurement plan. Each electrical corporation shall file a proposed procurement plan with the commission not later than 60 days after the commission specifies the allocation of electricity. The proposed procurement plan shall specify the date that the electrical corporation intends to resume procurement of electricity for its retail customers, consistent with its obligation to serve. After the commission's adoption of a procurement plan, the commission shall allow not less than 60 days before the electrical corporation resumes procurement pursuant to this section.

(b) An electrical corporation's proposed procurement plan shall include, but not be limited to, all of the following:

(1) An assessment of the price risk associated with the electrical corporation's portfolio, including any utility-retained generation, existing power purchase and exchange contracts, and proposed contracts or purchases under which an electrical corporation will procure electricity, electricity demand reductions, and electricity-related products and the remaining open position to be served by spot market transactions.

(2) A definition of each electricity product, electricity-related product, and procurement-related financial product, including support and justification for the product type and amount to be procured under the plan.

(3) The duration of the plan.

(4) The duration, timing, and range of quantities of each product to be procured.

(5) A competitive procurement process under which the electrical corporation may request bids for procurement-related

services, including the format and criteria of that procurement process.

(6) An incentive mechanism, if any incentive mechanism is proposed, including the type of transactions to be covered by that mechanism, their respective procurement benchmarks, and other parameters needed to determine the sharing of risks and benefits.

(7) The upfront standards and criteria by which the acceptability and eligibility for rate recovery of a proposed procurement transaction will be known by the electrical corporation before execution of the transaction. This shall include an expedited approval process for the commission's review of proposed contracts and subsequent approval or rejection of a contract. The electrical corporation shall propose alternative procurement choices in the event a contract is rejected.

(8) Procedures for updating the procurement plan.

(9) A showing that the procurement plan will achieve the following:

(A) The electrical corporation, in order to fulfill its unmet resource needs, shall procure resources from eligible renewable energy resources in an amount sufficient to meet its procurement requirements pursuant to the California Renewables Portfolio Standard Program (Article 16 (commencing with Section 399.11) of Chapter 2.3).

(B) The electrical corporation shall create or maintain a diversified procurement portfolio consisting of both short-term and long-term electricity and electricity-related and demand reduction products.

(C) (i) The electrical corporation shall first meet its unmet resource needs through all available energy efficiency and demand reduction resources that are cost effective, reliable, and feasible.

(ii) In determining the availability of cost-effective, reliable, and feasible demand reduction resources, the commission shall consider the findings regarding technically and economically achievable demand reduction in the Demand Response Potential Study required pursuant to Commission Order D.14-12-024, to the extent those findings are not superseded by other demand reduction studies conducted by academic institutions or government agencies, and to the extent that any demand reduction is consistent with commission policy.

(D) (i) The electrical corporation, in soliciting bids for new gas-fired generating units, shall actively seek bids for resources that are not gas-fired generating units located in communities that suffer from cumulative pollution burdens, including, but not limited to, high emission levels of toxic air contaminants, criteria air pollutants, and greenhouse gases.

(ii) In considering bids for, or negotiating contracts for, new gas-fired generating units, the electrical corporation shall provide greater preference to resources that are not gas-fired generating units located in communities that suffer from cumulative pollution burdens, including, but not limited to, high emission levels of toxic air contaminants, criteria air pollutants, and greenhouse gases.

(iii) This subparagraph does not apply to contracts signed by an electrical corporation and approved by the commission before January 1, 2017.

(10) The electrical corporation's risk management policy, strategy, and practices, including specific measures of price stability.

(11) A plan to achieve appropriate increases in diversity of ownership and diversity of fuel supply of nonutility electrical generation.

(12) A mechanism for recovery of reasonable administrative costs related to procurement in the generation component of rates.

(c) The commission shall review and accept, modify, or reject each electrical corporation's procurement plan and any amendments or updates to the plan. The commission shall ensure that the plan contains the elements required by this section, including the elements described in subparagraphs (C) and (D) of paragraph (9) of subdivision (b). The commission's review shall consider each electrical corporation's individual procurement situation, and shall give strong consideration to that situation in determining which one or more of the features set forth in this subdivision shall apply to that electrical corporation. A procurement plan approved by the commission shall contain one or more of the following features, provided that the commission may not approve a feature or mechanism for an electrical corporation if it finds that the feature or mechanism would impair the restoration of an electrical corporation's creditworthiness or would lead to a deterioration of an electrical corporation's creditworthiness:

(1) A competitive procurement process under which the electrical corporation may request bids for procurement-related services. The commission shall specify the format of that procurement process, as well as criteria to ensure that the auction process is open and adequately subscribed. Any purchases made in compliance with the commission-authorized process shall be recovered in the generation component of rates.

(2) An incentive mechanism that establishes a procurement benchmark or benchmarks and authorizes the electrical corporation to procure from the market, subject to comparing the electrical corporation's performance to the commission-authorized benchmark or benchmarks. The incentive mechanism shall be clear, achievable, and contain quantifiable objectives and standards. The incentive mechanism shall contain balanced risk and reward incentives that limit the risk and reward of an electrical corporation.

(3) Upfront achievable standards and criteria by which the acceptability and eligibility for rate recovery of a proposed procurement transaction will be known by the electrical corporation before the execution of the bilateral contract for the transaction. The commission shall provide for expedited review and either approve or reject the individual contracts submitted by the electrical corporation to ensure compliance with its procurement plan. To the extent the commission rejects a proposed contract pursuant to this criteria, the commission shall designate alternative procurement choices obtained in the procurement plan that will be recoverable for ratemaking purposes.

(d) A procurement plan approved by the commission shall accomplish each of the following objectives:

(1) Enable the electrical corporation to fulfill its obligation to serve its customers at just and reasonable rates.

(2) Eliminate the need for after-the-fact reasonableness reviews of an electrical corporation's actions in compliance with an approved procurement plan, including resulting electricity procurement contracts, practices, and related expenses. However, the commission may establish a regulatory process to verify and ensure that each contract was administered in accordance with the terms of the contract, and contract disputes that may arise are reasonably resolved.

(3) Ensure timely recovery of prospective procurement costs incurred pursuant to an approved procurement plan. The

commission shall establish rates based on forecasts of procurement costs adopted by the commission, actual procurement costs incurred, or a combination thereof, as determined by the commission. The commission shall establish power procurement balancing accounts to track the differences between recorded revenues and costs incurred pursuant to an approved procurement plan. The commission shall review the power procurement balancing accounts, not less than semiannually, and shall adjust rates or order refunds, as necessary, to promptly amortize a balancing account, according to a schedule determined by the commission. Until January 1, 2006, the commission shall ensure that any overcollection or undercollection in the power procurement balancing account does not exceed 5 percent of the electrical corporation's actual recorded generation revenues for the prior calendar year excluding revenues collected for the Department of Water Resources. The commission shall determine the schedule for amortizing the overcollection or undercollection in the balancing account to ensure that the 5-percent threshold is not exceeded. After January 1, 2006, this adjustment shall occur when deemed appropriate by the commission consistent with the objectives of this section.

(4) Moderate the price risk associated with serving its retail customers, including the price risk embedded in its long-term supply contracts, by authorizing an electrical corporation to enter into financial and other electricity-related product contracts.

(5) Provide for just and reasonable rates, with an appropriate balancing of price stability and price level in the electrical corporation's procurement plan.

(e) The commission shall provide for the periodic review and prospective modification of an electrical corporation's procurement plan.

(f) The commission may engage an independent consultant or advisory service to evaluate risk management and strategy. The reasonable cost of any consultant or advisory service is a reimbursable expense and eligible for funding pursuant to Section 631.

(g) The commission shall adopt appropriate procedures to ensure the confidentiality of any market sensitive information submitted in an electrical corporation's proposed procurement plan or resulting from or related to its approved procurement plan,

including, but not limited to, proposed or executed power purchase agreements, data request responses, or consultant reports, or any combination of these, provided that the Public Advocate's Office of the Public Utilities Commission and other consumer groups that are nonmarket participants shall be provided access to this information under confidentiality procedures authorized by the commission.

(h) Each electrical corporation with an approved plan shall conduct a request for offers from any party to an existing electricity purchase agreement, at that party's full discretion, to modify the agreement to reduce the electrical corporation's total procurement costs on a present value basis over the remaining life of the contract and that is recovered from both bundled and departing-load customers, as defined in Section 366.4. Each electrical corporation shall issue a request for offer on January 1, 2023, and by January 1 of each odd-numbered year thereafter. The electrical corporation shall publicly report the results of the request for offers in its annual proceeding for review of contract administration pursuant to paragraph (2) of subdivision (d), identifying the total cost savings to customers, without disclosing competitively sensitive price information for individual contracts. The commission shall determine in its annual proceeding for review of contract administration pursuant to paragraph (2) of subdivision (d) if the electrical corporation's actions or inactions in response to the request for offers were reasonable and in the interest of bundled and departing load customers.

~~(h)~~

(i) This section does not alter, modify, or amend the commission's oversight of affiliate transactions under its rules and decisions or the commission's existing authority to investigate and penalize an electrical corporation's alleged fraudulent activities, or to disallow costs incurred as a result of gross incompetence, fraud, abuse, or similar grounds. This section does not expand, modify, or limit the Energy Commission's existing authority and responsibilities as set forth in Sections 25216, 25216.5, and 25323 of the Public Resources Code.

~~(i)~~

(j) An electrical corporation that serves less than 500,000 electric retail customers within the state may file with the commission a

request for exemption from this section, which the commission shall grant upon a showing of good cause.

~~(j)~~

(k) (1) Before its approval pursuant to Section 851 of any divestiture of generation assets owned by an electrical corporation on or after September 24, 2002, the commission shall determine the impact of the proposed divestiture on the electrical corporation's procurement rates and shall approve a divestiture only to the extent it finds, taking into account the effect of the divestiture on procurement rates, that the divestiture is in the public interest and will result in net ratepayer benefits.

(2) Any electrical corporation's procurement necessitated as a result of the divestiture of generation assets on or after September 24, 2002, shall be subject to the mechanisms and procedures set forth in this section only if its actual cost is less than the recent historical cost of the divested generation assets.

(3) Notwithstanding paragraph (2), the commission may deem proposed procurement eligible to use the procedures in this section upon its approval of asset divestiture pursuant to Section 851.

~~(k)~~

(l) The commission shall direct electrical corporations to include in their proposed procurement plans the integration costs described and determined pursuant to clause (v) of subparagraph (A) of paragraph (5) of subdivision (a) of Section 399.13.

~~(l)~~

(m) Before approving an electrical corporation's contract for any new gas-fired generating unit, the commission shall require the electrical corporation to demonstrate compliance with its approved procurement plan.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

~~SECTION 1. It is the intent of the Legislature to enact subsequent legislation related to public utilities that would ensure~~

~~fair and equal access to the benefits of legacy resources held in investor-owned utility portfolios and address the management of these resources to maximize value for all customers.~~

O

Item B-9

CITY OF BEVERLY HILLS

POLICY AND MANAGEMENT

MEMORANDUM

TO: City Council Liaison/Legislative/Lobby Committee

FROM: Cynthia Owens, Policy and Management Analyst

DATE: March 22, 2021

SUBJECT: Senate Bill 679 (Hertzberg) - Los Angeles County: housing development: financing

ATTACHMENTS:
1. Summary Memo – SB 679
2. Bill Text – SB 679

The City Council has historically taken positions on proposed federal and state legislation of interest to Beverly Hills because of the City's location, economy, programs, and policies through the adoption of a Legislative Platform.

Senate Bill 679 - Los Angeles County: housing development: financing (SB 679) involves a policy matter that does not have a nexus to the City's adopted Legislative Platform language.

The City's state lobbyist, Shaw Yoder Antwih Schmelzer & Lange, provided a summary memo for SB 679 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of SB 679, the Liaisons may recommend the following actions:

1) Oppose SB 679;
2) Support SB 679;
3) Oppose unless Amended;
4) Support if Amended;
5) Remain neutral; or
6) Provide other direction to City staff.

Should the Liaisons recommend a position then the item will be placed on a future City Council agenda for concurrence.

Attachment 1

Shaw
Yoder
Antwih
Schmelzer
& Lange

1415 L Street
Suite 1000
Sacramento
CA, 95814
916-446-4656

March 15, 2021

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw Yoder Antwih Schmelzer & Lange
Priscilla Quiroz, Legislative Advocate, Shaw Yoder Antwih Schmelzer & Lange

Re: SB 679 (Hertzberg) Los Angeles County: housing development: financing

Summary

Establishes the Los Angeles County Regional Housing Finance Act to increase affordable housing in Los Angeles County by providing for enhanced funding and technical assistance for renter protections, affordable housing preservation, and new affordable housing production. Specifically, this bill:

1. Los Angeles County is facing the extent of the housing affordability crisis in Los Angeles County, the disproportionate impact on Black, Brown and low income residents, the magnitude of need within the region and the need for a regional approach towards meeting funding needs for production of affordable housing.

2. Establishes the Los Angeles County Affordable Housing Solutions Agency (Agency) with jurisdiction throughout Los Angeles County.

3. Specifies that the purpose of the Agency is to increase affordable housing in Los Angeles County by providing for significantly enhanced funding and technical assistance at a regional level for renter protections, affordable housing preservation, and new affordable housing production of 100 percent affordable housing for households earning 120 percent of the appropriate area median income or below, with financing priority on the lowest levels of affordability.

4. Declares the Legislature's intent that the Agency complement and supplement existing efforts by cities, counties, districts, and other local, regional, and state entities, related to addressing the goals described in this title.

5. Specifies that the Agency shall be governed by a board composed of 13 voting members from Los Angeles County, representative of the diverse cities and unincorporated communities across the county.

6. Vests the Authority with various powers, including:
    a. Placement of funding measures to raise and allocate funds on the ballot in Los Angeles County and its incorporated cities, in accordance with applicable constitutional requirements. Proceeds could be used to fund affordable housing projects within its jurisdiction of cities in Los Angeles County for purpose of preserving and enhancing existing housing, funding renter protection programs,

and financing new construction of housing developments that are 100 percent affordable to households earning 120 percent of the relevant area median income or below, with a priority on the lowest levels of affordability.

b. Apply for and receive grants from federal and state agencies.
c. Incur and issue indebtedness and assess fees on any debt issuance and loan products for reinvestment of fees and loan repayments in affordable housing production and preservation.
d. Solicit and accept gifts, fees, grants, and other allocations from public and private entities.
e. Deposit or invest moneys of the agency in banks or financial institutions in the state.
f. Sue and be sued, except as otherwise provided by law, in all actions and proceedings, in all courts and tribunals of competent jurisdiction.
g. Enter into and carry out contracts, engage counsel and other professional services, enter into joint powers agreements.
h. Hire staff, define their qualifications and duties, and provide a schedule of compensation for the performance of their duties.
i. Assemble parcels and lease, purchase, or otherwise acquire land for housing development.
j. Collect data on housing production and monitor progress on meeting regional and state housing goals.
k. Provide support and technical assistance to local governments in relation to producing and preserving affordable housing.
l. Provide public information about the agency's housing programs and policies.
m. Any other express or implied powers necessary to carry out the intent and purposes of this title.

7. Requires the Los Angeles County Board of Supervisors to call a special election if the Agency takes action to propose a funding measure for public vote. Requires that the special election be consolidated with the next regularly scheduled statewide election and that the measure shall be submitted to the voters of Los Angeles County.

8. Requires the Agency to reimburse the County of Los Angeles for the costs incurred by the county elections official related to preparing, analyzing, translating and submitting the measure to the voters with any eligible funds transferred to the agency.

9. Requires the Agency to provide regular audits of the agency's accounts and records, maintain accounting records and report accounting transactions in accordance with generally accepted accounting principles (GAAP) for both public reporting purposes and for reporting of activities to the Controller.

10. Requires the Agency to provide annual financial reports and make copies of the annual financial reports available to the public.

Existing Law

Existing law provides for the establishment of various special districts that may support and finance housing development, including affordable housing special beneficiary districts that are authorized to promote affordable housing development with certain property tax revenues that a city or county would otherwise be entitled to receive.

Existing law, the San Francisco Bay Area Regional Housing Finance Act, establishes the Bay Area Housing Finance Authority to raise, administer, and allocate funding for affordable housing

in the San Francisco Bay area, as defined, and provide technical assistance at a regional level for tenant protection, affordable housing preservation, and new affordable housing production.

Background

Housing in California has long been more expensive than most of the rest of the country. While many factors have a role in driving California's high housing costs, the most important is the significant shortage of housing. Today, an average California home costs 2.5 times the national average. California's average monthly rent is about 50 percent higher than the rest of the country. This crisis is a long time in the making, the culmination of decades of shortfalls in housing construction. Though the exact number of new housing units California needs to build to address housing affordability is uncertain, the general magnitude is enormous. And just as the crisis has taken decades to develop, it will take many years or decades to correct.

State housing laws set requirements for local planning and land use. In particular, every city and county in California is required to develop a general plan that outlines the community's vision of future development. One component of the general plan is the housing element, which outlines a long-term plan for meeting the community's existing and projected housing needs as determined by the state. The housing element demonstrates how the community plans to accommodate its "fair share" of its region's housing needs. To do so, each community (1) establishes an inventory of sites designated for new housing that is sufficient to accommodate its fair share and (2) identifies regulatory barriers to housing development and proposes strategies to address those barriers. State law generally requires cities and counties to update their housing elements every eight years.

HCD is responsible for reviewing every local government's housing element to determine whether it complies with state housing law. In 2017, several bills were enacted that increased HCD's accountability and enforcement authority to review any action or inaction by a local government that HCD determines is inconsistent with state housing element laws or the local jurisdiction's own adopted housing element.

The Governor's 2021-22 budget includes several major proposals related to housing. The Governor proposes $500 million one-time General Fund for the IIG Program administered by HCD. This new funding would focus on projects with a high percentage of environmental remediation costs. In addition, the administration also proposes to make it easier for smaller jurisdictions (counties with a population below 250,000) to qualify for funding. Of the $500 million, the Governor requests early action from the Legislature to authorize $250 million in 2020-21.

In addition to the $100 million annually that the state makes available for housing tax credits, the Governor's budget proposes $500 million for tax credits to builders of rental housing affordable to low-income households. This is the third consecutive year in which the Governor has proposed a one-time expansion of the state's housing tax credit, for a total of $1.5 billion in tax credits. As with the prior expansions, up to $200 million would be available for the development of mixed-income housing projects.

The Governor also proposes $11.7 million in one-time funding from the State General Fund to trial courts for the implementation of eviction protection laws. The administration anticipates an increase in eviction cases (known as unlawful detainers) and small claims filings when the statutory protections expire, resulting in new workload for trial courts.

Status of Legislation

SB 679 is currently in the Senate Rules Committee pending referral.

Support
None listed at this time.

Opposition
None listed at this time.

Attachment 2

AMENDED IN SENATE MARCH 9, 2021

SENATE BILL No. 679

Introduced by Senator Hertzberg

February 19, 2021

~~An act to amend Section 65000 of the Government Code, relating to land use.~~ *An act to add Title 6.9 (commencing with Section 64700) to the Government Code, relating to housing.*

LEGISLATIVE COUNSEL'S DIGEST

SB 679, as amended, Hertzberg. ~~General plans.~~ *Los Angeles County: housing development: financing.*

Existing law provides for the establishment of various special districts that may support and finance housing development, including affordable housing special beneficiary districts that are authorized to promote affordable housing development with certain property tax revenues that a city or county would otherwise be entitled to receive.

Existing law, the San Francisco Bay Area Regional Housing Finance Act, establishes the Bay Area Housing Finance Authority to raise, administer, and allocate funding for affordable housing in the San Francisco Bay area, as defined, and provide technical assistance at a regional level for tenant protection, affordable housing preservation, and new affordable housing production.

This bill, the Los Angeles County Regional Housing Finance Act, would establish the Los Angeles County Affordable Housing Solutions Agency and would state that the agency's purpose is to increase affordable housing in Los Angeles County by providing for significantly enhanced funding and technical assistance at a regional level for renter protections, affordable housing preservation, and new affordable housing production, as specified. The bill would require a board

composed of 13 voting members from Los Angeles County, as specified, to govern the agency. The bill would require the board to provide for regular audits of the agency's accounts and records and to provide for financial reports. The bill would include findings that the provisions proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities within Los Angeles County, including charter cities.

The bill would authorize the agency to, among other things, incur and issue indebtedness, and place on the ballot in Los Angeles County and its incorporated cities funding measures, in accordance with applicable constitutional requirements, to raise and allocate funds to the County of Los Angeles, the cities in Los Angeles County, and other public agencies and affordable housing projects within its jurisdiction for purposes of preserving and enhancing existing housing, funding renter protection programs, and financing new construction of housing developments, as specified.

This bill would make legislative findings and declarations as to the necessity of a special statute for Los Angeles County.

By adding to the duties of local officials with respect to elections procedures for revenue measures on behalf of the authority, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

~~The Planning and Zoning Law, among other things, requires the legislative body of each county and city to adopt a comprehensive, long-term general plan for the physical development of the county or city and of any land outside its boundaries that relates to its planning, and provides for the adoption and administration of zoning laws, ordinances, rules, and regulations by counties and cities.~~

~~This bill would make a nonsubstantive change to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ *yes*. State-mandated local program: ~~no~~ *yes*.

The people of the State of California do enact as follows:

SECTION 1. Title 6.9 (commencing with Section 64700) is added to the Government Code, to read:

TITLE 6.9. LOS ANGELES COUNTY AFFORDABLE HOUSING SOLUTIONS AGENCY

PART 1. FORMATION OF THE LOS ANGELES COUNTY AFFORDABLE HOUSING SOLUTIONS AGENCY AND GENERAL POWERS

Chapter 1. General Provisions

64700. This title shall be known, and may be cited, as the Los Angeles County Regional Housing Finance Act.

64701. The Legislature finds and declares the following:

(a) Los Angeles County is facing the most significant housing crisis in the region's history, as tens of thousands of residents are living in overcrowded housing, being pushed out of their homes, spending hours driving every day to and from work, one paycheck away from an eviction, or experiencing homelessness.

(b) The impacts of Los Angeles County's affordable housing crisis are disproportionately being borne by Black, Brown, and low-income residents.

(c) Los Angeles County faces this crisis because, as a region, it has failed to produce enough housing at all income levels, particularly at the lowest levels of affordability, preserve affordable housing, protect existing residents from displacement, and address the housing issue throughout the county in a comprehensive fashion.

(d) Housing costs have dramatically outpaced wage growth, and an average two-bedroom apartment in Los Angeles County requires a household income of $41.96 per hour.

(e) The housing crisis in Los Angeles County is regional in nature and too great to be addressed individually by the county's 88 incorporated cities on their own, especially in the context of ambitious Regional Housing Needs Assessments goals—341,000 affordable units in the sixth cycle, which the county as a whole in on track to produce 25,000.

(f) Seventy-nine percent of extremely low income households in Los Angeles County are paying more than half of their income on housing costs compared to just 3 percent of moderate income households.

(g) However, the current process is anything but regional; instead each city and the county is each responsible for their own decisions around housing financing and renter protection programs.

(h) Based on the most recent regional housing needs assessment cycle, Los Angeles County faces an annual gap of 39,375 units between what is being created and what is needed to achieve the sixth cycle affordable housing countywide goals.

(i) A multistakeholder countywide agency is necessary to help address the affordable housing crisis in Los Angeles County by delivering resources and technical assistance at a regional scale, including:

(1) Generating new dedicated regional funding for critical capital and other supports for affordable housing developments across Los Angeles County.

(2) Providing staff support to local jurisdictions that require capacity or technical assistance to expedite the preservation and production of housing.

(3) Funding renter programs and services, such as emergency rental assistance and access to counsel, thereby relieving local jurisdictions of this cost and responsibility and supporting a unified countywide approach.

(4) Assembling parcels, acquiring land, and supporting community land trusts for the purpose of building affordable housing.

(5) Monitoring and reporting on progress at a regional scale.

64702. For purposes of this title:

(a) "Agency" means the Los Angeles County Affordable Housing Solutions Agency established pursuant to Section 64710.

(b) "Board" means the governing board of the Los Angeles County Affordable Housing Solutions Agency.

(c) "Los Angeles County" means the entire area within the territorial boundary of the County of Los Angeles.

64703. The Legislature finds and declares that providing a regional financing mechanism for affordable housing development, preservation, and renter protections in Los Angeles County, as

described in this section and Section 64701, is a matter of statewide concern and is not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, this title applies to all cities within the County of Los Angeles, including charter cities.

Chapter 2. The Los Angeles County Affordable Housing Solutions Agency and Governing Board

64710. (a) The Los Angeles County Affordable Housing Solutions Agency is hereby established with jurisdiction extending throughout Los Angeles County.

(b) The formation and jurisdictional boundaries of the agency are not subject to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Division 3 (commencing with Section 56000) of Title 5).

(c) The agency's purpose is to increase affordable housing in Los Angeles County by providing for significantly enhanced funding and technical assistance at a regional level for renter protections, affordable housing preservation, and new affordable housing production of 100 percent affordable housing for households earning 120 percent of the appropriate area median income or below, with financing priority on the lowest levels of affordability.

(d) It is the intent of the Legislature that the agency complement and supplement existing efforts by cities, counties, districts, and other local, regional, and state entities, related to addressing the goals described in this title.

64711. (a) The agency shall be governed by a board composed of 13 voting members from Los Angeles County, representative of the diverse cities and unincorporated communities across the county.

(b) The board shall select from its members a chair, who shall preside over meetings of the board, and a vice chair from its members, who shall preside in the absence of the chair.

(c) (1) A member of the board may receive a per diem for each board meeting that the member attends. The board shall set the amount of that per diem for a member's attendance, but that amount shall not exceed one hundred dollars ($100) per meeting.

A member shall not receive a payment for more than two meetings in a calendar month.

(2) A member may waive a payment of per diem authorized by this subdivision.

(d) (1) Members of the board are subject to Article 2.4 (commencing with Section 53234) of Chapter 2 of Part 1 of Division 2 of Title 5.

(2) The agency shall be subject to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5), the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and the Political Reform Act of 1974 (Title 9 (commencing with Section 81000.)).

64712. A member of the board shall exercise independent judgment on behalf of the interests of the residents, the property owners, and the public in furthering the intent and purposes of this title.

64713. (a) The board shall hold its first meeting at a time and place within Los Angeles County fixed by the chair of the board.

(b) After the first meeting described in subdivision (a), the board shall hold meetings at times and places determined by the board.

64714. (a) The board may make and enforce rules and regulations necessary for governing the board, the preservation of order, and the transaction of business.

(b) In exercising the powers and duties conferred on the agency by this title, the board may act by ordinance or resolution.

Chapter 3. Powers of the Los Angeles County Affordable Housing Solutions Agency

64720. In implementing this title, the agency may do all of the following:

(a) Place on the ballot in Los Angeles County and its incorporated cities funding measures, in accordance with applicable constitutional requirements, to raise and allocate funds to the County of Los Angeles, the cities in Los Angeles County, and other public agencies and affordable housing projects within its jurisdiction for purposes of preserving and enhancing existing housing, funding renter protection programs, and financing new construction of housing developments that are 100 percent

affordable to households earning 120 percent of the relevant area median income or below, with a priority on the lowest levels of affordability.

(b) Apply for and receive grants from federal and state agencies.

(c) Incur and issue indebtedness and assess fees on any debt issuance and loan products for reinvestment of fees and loan repayments in affordable housing production and preservation.

(d) Solicit and accept gifts, fees, grants, and other allocations from public and private entities.

(e) Deposit or invest moneys of the agency in banks or financial institutions in the state.

(f) Sue and be sued, except as otherwise provided by law, in all actions and proceedings, in all courts and tribunals of competent jurisdiction.

(g) Engage counsel and other professional services.

(h) Enter into and perform all necessary contracts.

(i) Enter into joint powers agreements pursuant to the Joint Exercise of Powers Act (Chapter 5 (commencing with Section 6500) of Division 7 of Title 1).

(j) Hire staff, define their qualifications and duties, and provide a schedule of compensation for the performance of their duties.

(k) Assemble parcels and lease, purchase, or otherwise acquire land for housing development.

(l) Collect data on housing production and monitor progress on meeting regional and state housing goals.

(m) Provide support and technical assistance to local governments in relation to producing and preserving affordable housing.

(n) Provide public information about the agency's housing programs and policies.

(o) Any other express or implied powers necessary to carry out the intent and purposes of this title.

64721. (a) If the agency proposes a measure pursuant to subdivision (a) of Section 64720 that will generate revenues, the board of supervisors of Los Angeles County shall call a special election on the measure. The special election shall be consolidated with the next regularly scheduled statewide election and the measure shall be submitted to the voters of Los Angeles County.

(b) (1) For the purpose of placement of a measure on the ballot, the agency is a district, as defined in Section 317 of the Elections

Code. Except as otherwise provided in this section, a measure proposed by the agency that requires voter approval shall be submitted to the voters of Los Angeles County, as determined by the agency, in accordance with the provisions of the Elections Code applicable to districts, including the provisions of Chapter 4 (commencing with Section 9300) of Division 9 of the Elections Code.

(2) Because the agency has no revenues as of the operative date of this section, the appropriations limit for the agency shall be originally established based on receipts from the initial measure that would generate revenues for the agency pursuant to subdivision (a), and that establishment of an appropriations limit shall not be deemed a change in an appropriations limit for purposes of Section 4 of Article XIII B of the California Constitution.

(c) (1) Notwithstanding Section 10520 of the Elections Code, for any election at which the agency proposes a measure pursuant to subdivision (a) of Section 64720 that would generate revenues, the agency shall reimburse the County of Los Angeles for the incremental costs incurred by the county elections official related to submitting the measure to the voters with any eligible funds transferred to the agency.

(2) For purposes of this subdivision, "incremental costs" include all of the following:

(A) The cost to prepare, review, and revise the impartial analysis of the measure.

(B) The cost to prepare a translation of ballot materials into a language other than English by the county.

(C) The additional costs that exceed the costs incurred for other election races or ballot measures, if any, appearing on the same ballot in Los Angeles County, including both of the following:

(i) The printing and mailing of ballot materials.

(ii) The canvass of the vote regarding the measure pursuant to Division 15 (commencing with Section 15000) of the Elections Code.

Chapter 4. Financial Provisions

64730. The board shall provide for regular audits of the agency's accounts and records, shall maintain accounting records,

and shall report accounting transactions in accordance with generally accepted accounting principles adopted by the Governmental Accounting Standards Board of the Financial Accounting Foundation for both public reporting purposes and for reporting of activities to the Controller.

64731. The board shall provide for annual financial reports. The board shall make copies of the annual financial reports available to the public.

SEC. 2. The Legislature finds and declares that a special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the uniquely severe shortage of available funding and resources for the development and preservation of affordable housing and the particularly acute nature of the housing crisis within Los Angeles County.

SEC. 3. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

~~SECTION 1. Section 65000 of the Government Code is amended to read:~~

~~65000. This title shall be known and may be cited as the Planning and Zoning Law.~~

O

Item B-10

CITY OF BEVERLY HILLS

POLICY AND MANAGEMENT

MEMORANDUM

TO: City Council Liaison/Legislative/Lobby Committee

FROM: Cynthia Owens, Policy and Management Analyst

DATE: March 22, 2021

SUBJECT: Senate Bill 765 (Stern) - Accessory dwelling units: setbacks

ATTACHMENTS:
1. Summary Memo – SB 765
2. Bill Text – SB 765

The City Council has historically taken positions on proposed federal and state legislation of interest to Beverly Hills because of the City's location, economy, programs, and policies through the adoption of a Legislative Platform.

Senate Bill 765 - Accessory dwelling units: setbacks (SB 765) involves a policy matter that may not have a nexus to the City's adopted Legislative Platform language.

The City's state lobbyist, Shaw Yoder Antwih Schmelzer & Lange, provided a summary memo for SB 765 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of SB 765, the Liaisons may recommend the following actions:

1) Oppose SB 765;
2) Support SB 765;
3) Oppose unless Amended;
4) Support if Amended;
5) Remain neutral; or
6) Provide other direction to City staff.

Should the Liaisons recommend a position then the item will be placed on a future City Council agenda for concurrence.

Attachment 1

Shaw
Yoder
Antwih
Schmelzer
& Lange

1415 L Street
Suite 1000
Sacramento
CA, 95814
916-446-4656

March 16, 2021

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw Yoder Antwih Schmelzer & Lange
Priscilla Quiroz, Legislative Advocate, Shaw Yoder Antwih Schmelzer & Lange

Re: SB 765 (Stern) Accessory dwelling unit: setback

Introduction and Background

On February 19, Senator Stern introduced SB 765, which would authorize local governments to determine side and rear setbacks for accessory dwelling units (ADUs), subject to certain conditions. Specifically, this bill:

- Amends the state's ADU reform legislation by deleting the prohibition in the state legislation on local agency setbacks for ADUs of more than four feet from side and rear lot lines.
- Provides that the rear and side yard setback requirements for ADUs may be set by the local agency. If the local agency's setback requirements make the building of the ADU infeasible, for instance due to topographical restrictions, an applicant could submit a request to the local agency for an alternative rear and side yard setback requirement.
- Specifies that if the local agency did not have an accessory dwelling unit ordinance as of January 1, 2020, the applicable rear and side yard setback requirement is 4 feet.

Existing Law

1. Provides that if a locality adopts an ADU ordinance in areas zoned for single family or multifamily, it must do all of the following:
    a. Designate areas where ADUs may be permitted.
    b. Impose certain standards on ADUs such as parking and size requirements.
    c. Prohibit an ADU from exceeding the allowable density for the lot.
    d. Require ADUs to comply with certain requirements such as setbacks.
2. Requires ministerial approval of an ADU permit within 120 days.
3. Allows a locality to establish minimum and maximum unit sizes for both attached and detached ADUs.
4. Restricts the parking standards a locality may impose on an ADU.
5. Allows a local agency to require that an applicant be an owner-occupant or that the property be used for rentals of terms longer than 30 days.

6. Provides that an ADU shall not be considered by a local agency, special district, or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, including water and sewer service.
7. Requires a local agency to submit a copy of its ADU ordinance to the Department of Housing and Community Development (HCD) within 60 days of adopting it and authorizes HCD to review and comment on the ordinance.

Status of Legislation
SB 765 has been referred to Senate Housing Committee.

Support
None listed at this time.

Opposition
None listed at this time.

Attachment 2

SENATE BILL No. 765

Introduced by Senator Stern
(Principal coauthor: Assembly Member Friedman)

February 19, 2021

An act to amend Section 65852.2 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

SB 765, as introduced, Stern. Accessory dwelling units: setbacks.

The Planning and Zoning Law, among other things, provides for the creation of accessory dwelling units by local ordinance, or, if a local agency has not adopted an ordinance, by ministerial approval, in accordance with specified standards and conditions. Existing law prohibits a local agency's accessory dwelling unit ordinance from imposing a setback requirement of more than 4 feet from the side and rear lot lines for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.

This bill would remove the above-described prohibition on a local agency's accessory dwelling unit ordinance, and would instead provide that the rear and side yard setback requirements for accessory dwelling units may be set by the local agency. The bill would authorize an accessory dwelling unit applicant to submit a request to the local agency for an alternative rear and side yard setback requirement if the local agency's setback requirements make the building of the accessory dwelling unit infeasible. The bill would prohibit any rear and side yard setback requirements established pursuant to these provisions from being greater than those in effect as of January 1, 2020. The bill would specify that if the local agency did not have an accessory dwelling unit

ordinance as of January 1, 2020, the applicable rear and side yard setback requirement is 4 feet.

By requiring local agencies to review an applicant's request for an alternative rear and side yard setback requirement, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 65852.2 of the Government Code, as amended by Section 3.5 of Chapter 198 of the Statutes of 2020, is amended to read:

65852.2. (a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use. The ordinance shall do all of the following:

(A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety. A local agency that does not provide water or sewer services shall consult with the local water or sewer service provider regarding the adequacy of water and sewer services before designating an area where accessory dwelling units may be permitted.

(B) (i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources. These standards shall not include requirements on minimum lot size.

(ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.

(C) Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(D) Require the accessory dwelling units to comply with all of the following:

(i) The accessory dwelling unit may be rented separate from the primary residence, but may not be sold or otherwise conveyed separate from the primary residence.

(ii) The lot is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.

(iii) The accessory dwelling unit is either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling.

(iv) If there is an existing primary dwelling, the total floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing primary dwelling.

(v) The total floor area for a detached accessory dwelling unit shall not exceed 1,200 square feet.

(vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.

(vii) No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling ~~unit, and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.~~ *unit.*

(viii) (I) Rear and side yard setback requirements for accessory dwelling units shall be established by the local agency, except as otherwise provided in clause (vii) and this clause.

(II) An applicant for an accessory dwelling unit may submit a request to the local agency for an alternative rear and side yard

setback requirement based upon specific site topographical conditions if the local agency's setback requirements make the building of the accessory dwelling unit infeasible. The local agency may approve the request upon making a finding that the alternative setback is necessary to make the building of the accessory dwelling unit feasible and the alternative setback requirement adjusts the setback requirement only to the extent necessary to accommodate the accessory dwelling unit.

(III) In no event shall the local agency's rear and side yard setback requirements be greater than those in effect as of January 1, 2020.

(IV) If the local agency did not have an accessory dwelling unit ordinance as of January 1, 2020, the rear and side yard setback requirement shall be four feet.

~~(viii)~~

(ix) Local building code requirements that apply to detached dwellings, as appropriate.

~~(ix)~~

(x) Approval by the local health officer where a private sewage disposal system is being used, if required.

~~(x)~~

(xi) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway.

(II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions.

(III) This clause shall not apply to an accessory dwelling unit that is described in subdivision (d).

~~(xi)~~

(xii) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the local agency shall not require that those offstreet parking spaces be replaced.

~~(xii)~~

(xiii) Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) A permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered and approved ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits. The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall be considered without discretionary review or hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not acted upon the completed application within 60 days, the application shall be deemed approved. A local agency may charge a fee to reimburse it for costs incurred to implement this paragraph, including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.

(4) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. If a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units,

unless and until the agency adopts an ordinance that complies with this section.

(5) No other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit under this subdivision.

(6) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be used or imposed, including any owner-occupant requirement, except that a local agency may require that the property be used for rentals of terms longer than 30 days.

(7) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.

(8) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(b) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives an application for a permit to create an accessory dwelling unit pursuant to this subdivision, the local agency shall approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a). The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the

permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not acted upon the completed application within 60 days, the application shall be deemed approved.

(c) (1) Subject to paragraph (2), a local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units.

(2) Notwithstanding paragraph (1), a local agency shall not establish by ordinance any of the following:

(A) A minimum square footage requirement for either an attached or detached accessory dwelling unit that prohibits an efficiency unit.

(B) A maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than either of the following:

(i) 850 square feet.

(ii) 1,000 square feet for an accessory dwelling unit that provides more than one bedroom.

(C) Any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit that is at least 16 feet in height ~~with four-foot side and rear yard setbacks~~ to be constructed in compliance with all other local development standards.

(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:

(1) The accessory dwelling unit is located within one-half mile walking distance of public transit.

(2) The accessory dwelling unit is located within an architecturally and historically significant historic district.

(3) The accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.

(4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.

(5) When there is a car share vehicle located within one block of the accessory dwelling unit.

(e) (1) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following:

(A) One accessory dwelling unit and one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:

(i) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.

(ii) The space has exterior access from the proposed or existing single-family dwelling.

(iii) The side and rear setbacks are sufficient for fire and safety.

(iv) The junior accessory dwelling unit complies with the requirements of Section 65852.22.

(B) One detached, new construction, accessory dwelling unit ~~that does not exceed four-foot side and rear yard setbacks~~ for a lot with a proposed or existing single-family dwelling. The accessory dwelling unit may be combined with a junior accessory dwelling unit described in subparagraph (A). A local agency may impose the following conditions on the accessory dwelling unit:

(i) A total floor area limitation of not more than 800 square feet.

(ii) A height limitation of 16 feet.

(C) (i) Multiple accessory dwelling units within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.

(ii) A local agency shall allow at least one accessory dwelling unit within an existing multifamily dwelling and shall allow up to 25 percent of the existing multifamily dwelling units.

(D) Not more than two accessory dwelling units that are located on a lot that has an existing multifamily dwelling, but are detached from that multifamily dwelling and are subject to a height limit of 16 ~~feet and four-foot rear yard and side setbacks.~~ *feet.*

(2) A local agency shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of nonconforming zoning conditions.

(3) The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence.

(4) A local agency shall require that a rental of the accessory dwelling unit created pursuant to this subdivision be for a term longer than 30 days.

(5) A local agency may require, as part of the application for a permit to create an accessory dwelling unit connected to an onsite wastewater treatment system, a percolation test completed within the last five years, or, if the percolation test has been recertified, within the last 10 years.

(6) Notwithstanding subdivision (c) and paragraph (1) a local agency that has adopted an ordinance by July 1, 2018, providing for the approval of accessory dwelling units in multifamily dwelling structures shall ministerially consider a permit application to construct an accessory dwelling unit that is described in paragraph (1), and may impose standards including, but not limited to, design, development, and historic standards on said accessory dwelling units. These standards shall not include requirements on minimum lot size.

(f) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).

(2) An accessory dwelling unit shall not be considered by a local agency, special district, or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, including water and sewer service,

unless the accessory dwelling unit was constructed with a new single-family dwelling.

(3) (A) A local agency, special district, or water corporation shall not impose any impact fee upon the development of an accessory dwelling unit less than 750 square feet. Any impact fees charged for an accessory dwelling unit of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.

(B) For purposes of this paragraph, "impact fee" has the same meaning as the term "fee" is defined in subdivision (b) of Section 66000, except that it also includes fees specified in Section 66477. "Impact fee" does not include any connection fee or capacity charge charged by a local agency, special district, or water corporation.

(4) For an accessory dwelling unit described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge, unless the accessory dwelling unit was constructed with a new single-family home.

(5) For an accessory dwelling unit that is not described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its square feet or the number of its drainage fixture unit (DFU) values, as defined in the Uniform Plumbing Code adopted and published by the International Association of Plumbing and Mechanical Officials, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.

(h) (1) A local agency shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption. After

adoption of an ordinance, the department may submit written findings to the local agency as to whether the ordinance complies with this section.

(2) (A) If the department finds that the local agency's ordinance does not comply with this section, the department shall notify the local agency and shall provide the local agency with a reasonable time, no longer than 30 days, to respond to the findings before taking any other action authorized by this section.

(B) The local agency shall consider the findings made by the department pursuant to subparagraph (A) and shall do one of the following:

(i) Amend the ordinance to comply with this section.

(ii) Adopt the ordinance without changes. The local agency shall include findings in its resolution adopting the ordinance that explain the reasons the local agency believes that the ordinance complies with this section despite the findings of the department.

(3) (A) If the local agency does not amend its ordinance in response to the department's findings or does not adopt a resolution with findings explaining the reason the ordinance complies with this section and addressing the department's findings, the department shall notify the local agency and may notify the Attorney General that the local agency is in violation of state law.

(B) Before notifying the Attorney General that the local agency is in violation of state law, the department may consider whether a local agency adopted an ordinance in compliance with this section between January 1, 2017, and January 1, 2020.

(i) The department may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, and standards set forth in this section. The guidelines adopted pursuant to this subdivision are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.

(j) As used in this section, the following terms mean:

(1) "Accessory dwelling unit" means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or

will be situated. An accessory dwelling unit also includes the following:

(A) An efficiency unit.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(2) "Accessory structure" means a structure that is accessory and incidental to a dwelling located on the same lot.

(3) "Efficiency unit" has the same meaning as defined in Section 17958.1 of the Health and Safety Code.

(4) "Living area" means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.

(5) "Local agency" means a city, county, or city and county, whether general law or chartered.

(6) "Nonconforming zoning condition" means a physical improvement on a property that does not conform with current zoning standards.

(7) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

(8) "Proposed dwelling" means a dwelling that is the subject of a permit application and that meets the requirements for permitting.

(9) "Public transit" means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.

(10) "Tandem parking" means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.

(k) A local agency shall not issue a certificate of occupancy for an accessory dwelling unit before the local agency issues a certificate of occupancy for the primary dwelling.

(*l*) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.

(m) A local agency may count an accessory dwelling unit for purposes of identifying adequate sites for housing, as specified in

subdivision (a) of Section 65583.1, subject to authorization by the department and compliance with this division.

(n) In enforcing building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code for an accessory dwelling unit described in paragraph (1) or (2) below, a local agency, upon request of an owner of an accessory dwelling unit for a delay in enforcement, shall delay enforcement of a building standard, subject to compliance with Section 17980.12 of the Health and Safety Code:

(1) The accessory dwelling unit was built before January 1, 2020.

(2) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.

(o) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.

SEC. 2. Section 65852.2 of the Government Code, as amended by Section 4.5 of Chapter 198 of the Statutes of 2020, is amended to read:

65852.2. (a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use. The ordinance shall do all of the following:

(A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety. A local agency that does not provide water or sewer services shall consult with the local water or sewer service provider regarding the adequacy of water and sewer services before designating an area where accessory dwelling units may be permitted.

(B) (i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the

California Register of Historic Resources. These standards shall not include requirements on minimum lot size.

(ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.

(C) Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(D) Require the accessory dwelling units to comply with all of the following:

(i) The accessory dwelling unit may be rented separate from the primary residence, but may not be sold or otherwise conveyed separate from the primary residence.

(ii) The lot is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.

(iii) The accessory dwelling unit is either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling.

(iv) If there is an existing primary dwelling, the total floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing primary dwelling.

(v) The total floor area for a detached accessory dwelling unit shall not exceed 1,200 square feet.

(vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.

(vii) No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling ~~unit, and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.~~ *unit.*

(viii) (I) Rear and side yard setback requirements for accessory dwelling units shall be established by the local agency, except as otherwise provided in clause (vii) and this clause.

(II) An applicant for an accessory dwelling unit may submit a request to the local agency for an alternative rear and side yard setback requirement based upon specific site topographical conditions if the local agency's setback requirements make the building of the accessory dwelling unit infeasible. The local agency may approve the request upon making a finding that the alternative setback is necessary to make the building of the accessory dwelling unit feasible and the alternative setback requirement adjusts the setback requirement only to the extent necessary to accommodate the accessory dwelling unit.

(III) In no event shall the local agency's rear and side yard setback requirements be greater than those in effect as of January 1, 2020.

(IV) If the local agency did not have an accessory dwelling unit ordinance as of January 1, 2020, the rear and side yard setback requirement shall be four feet.

~~(viii)~~

(ix) Local building code requirements that apply to detached dwellings, as appropriate.

~~(ix)~~

(x) Approval by the local health officer where a private sewage disposal system is being used, if required.

~~(x)~~

(xi) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway.

(II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions.

(III) This clause shall not apply to an accessory dwelling unit that is described in subdivision (d).

~~(xi)~~

(xii) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory

dwelling unit or converted to an accessory dwelling unit, the local agency shall not require that those offstreet parking spaces be replaced.

~~(xii)~~

(xiii) Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) A permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered and approved ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits. The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall be considered without discretionary review or hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not acted upon the completed application within 60 days, the application shall be deemed approved. A local agency may charge a fee to reimburse it for costs incurred to implement this paragraph, including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.

(4) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. If a local agency has an existing

accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.

(5) No other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit under this subdivision.

(6) (A) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be used or imposed except that, subject to subparagraph (B), a local agency may require an applicant for a permit issued pursuant to this subdivision to be an owner-occupant or that the property be used for rentals of terms longer than 30 days.

(B) Notwithstanding subparagraph (A), a local agency shall not impose an owner-occupant requirement on an accessory dwelling unit permitted between January 1, 2020, to January 1, 2025, during which time the local agency was prohibited from imposing an owner-occupant requirement.

(7) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.

(8) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(b) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives an application for a permit to create an accessory dwelling unit pursuant to this subdivision, the local agency shall approve or disapprove the application ministerially without

discretionary review pursuant to subdivision (a). The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not acted upon the completed application within 60 days, the application shall be deemed approved.

(c) (1) Subject to paragraph (2), a local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units.

(2) Notwithstanding paragraph (1), a local agency shall not establish by ordinance any of the following:

(A) A minimum square footage requirement for either an attached or detached accessory dwelling unit that prohibits an efficiency unit.

(B) A maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than either of the following:

(i) 850 square feet.

(ii) 1,000 square feet for an accessory dwelling unit that provides more than one bedroom.

(C) Any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit that is at least 16 feet in height ~~with four-foot side and rear yard setbacks~~ to be constructed in compliance with all other local development standards.

(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:

(1) The accessory dwelling unit is located within one-half mile walking distance of public transit.

(2) The accessory dwelling unit is located within an architecturally and historically significant historic district.

(3) The accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.

(4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.

(5) When there is a car share vehicle located within one block of the accessory dwelling unit.

(e) (1) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following:

(A) One accessory dwelling unit and one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:

(i) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.

(ii) The space has exterior access from the proposed or existing single-family dwelling.

(iii) The side and rear setbacks are sufficient for fire and safety.

(iv) The junior accessory dwelling unit complies with the requirements of Section 65852.22.

(B) One detached, new construction, accessory dwelling unit ~~that does not exceed four-foot side and rear yard setbacks~~ for a lot with a proposed or existing single-family dwelling. The accessory dwelling unit may be combined with a junior accessory dwelling

unit described in subparagraph (A). A local agency may impose the following conditions on the accessory dwelling unit:

(i) A total floor area limitation of not more than 800 square feet.

(ii) A height limitation of 16 feet.

(C) (i) Multiple accessory dwelling units within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.

(ii) A local agency shall allow at least one accessory dwelling unit within an existing multifamily dwelling and shall allow up to 25 percent of the existing multifamily dwelling units.

(D) Not more than two accessory dwelling units that are located on a lot that has an existing multifamily dwelling, but are detached from that multifamily dwelling and are subject to a height limit of 16 ~~feet and four-foot rear yard and side setbacks.~~ *feet.*

(2) A local agency shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of nonconforming zoning conditions.

(3) The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence.

(4) A local agency may require owner occupancy for either the primary dwelling or the accessory dwelling unit on a single-family lot, subject to the requirements of paragraph (6) of subdivision (a).

(5) A local agency shall require that a rental of the accessory dwelling unit created pursuant to this subdivision be for a term longer than 30 days.

(6) A local agency may require, as part of the application for a permit to create an accessory dwelling unit connected to an onsite wastewater treatment system, a percolation test completed within the last five years, or, if the percolation test has been recertified, within the last 10 years.

(7) Notwithstanding subdivision (c) and paragraph (1) a local agency that has adopted an ordinance by July 1, 2018, providing for the approval of accessory dwelling units in multifamily dwelling structures shall ministerially consider a permit application to construct an accessory dwelling unit that is described in paragraph (1), and may impose standards including, but not limited

to, design, development, and historic standards on said accessory dwelling units. These standards shall not include requirements on minimum lot size.

(f) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).

(2) An accessory dwelling unit shall not be considered by a local agency, special district, or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, including water and sewer service, unless the accessory dwelling unit was constructed with a new single-family dwelling.

(3) (A) A local agency, special district, or water corporation shall not impose any impact fee upon the development of an accessory dwelling unit less than 750 square feet. Any impact fees charged for an accessory dwelling unit of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.

(B) For purposes of this paragraph, "impact fee" has the same meaning as the term "fee" is defined in subdivision (b) of Section 66000, except that it also includes fees specified in Section 66477. "Impact fee" does not include any connection fee or capacity charge charged by a local agency, special district, or water corporation.

(4) For an accessory dwelling unit described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge, unless the accessory dwelling unit was constructed with a new single-family dwelling.

(5) For an accessory dwelling unit that is not described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its square feet or the number of

its drainage fixture unit (DFU) values, as defined in the Uniform Plumbing Code adopted and published by the International Association of Plumbing and Mechanical Officials, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.

(h) (1) A local agency shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption. After adoption of an ordinance, the department may submit written findings to the local agency as to whether the ordinance complies with this section.

(2) (A) If the department finds that the local agency's ordinance does not comply with this section, the department shall notify the local agency and shall provide the local agency with a reasonable time, no longer than 30 days, to respond to the findings before taking any other action authorized by this section.

(B) The local agency shall consider the findings made by the department pursuant to subparagraph (A) and shall do one of the following:

(i) Amend the ordinance to comply with this section.

(ii) Adopt the ordinance without changes. The local agency shall include findings in its resolution adopting the ordinance that explain the reasons the local agency believes that the ordinance complies with this section despite the findings of the department.

(3) (A) If the local agency does not amend its ordinance in response to the department's findings or does not adopt a resolution with findings explaining the reason the ordinance complies with this section and addressing the department's findings, the department shall notify the local agency and may notify the Attorney General that the local agency is in violation of state law.

(B) Before notifying the Attorney General that the local agency is in violation of state law, the department may consider whether a local agency adopted an ordinance in compliance with this section between January 1, 2017, and January 1, 2020.

(i) The department may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, and standards set forth

in this section. The guidelines adopted pursuant to this subdivision are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.

(j) As used in this section, the following terms mean:

(1) "Accessory dwelling unit" means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated. An accessory dwelling unit also includes the following:

(A) An efficiency unit.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(2) "Accessory structure" means a structure that is accessory and incidental to a dwelling located on the same lot.

(3) "Efficiency unit" has the same meaning as defined in Section 17958.1 of the Health and Safety Code.

(4) "Living area" means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.

(5) "Local agency" means a city, county, or city and county, whether general law or chartered.

(6) "Nonconforming zoning condition" means a physical improvement on a property that does not conform with current zoning standards.

(7) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

(8) "Proposed dwelling" means a dwelling that is the subject of a permit application and that meets the requirements for permitting.

(9) "Public transit" means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.

(10) "Tandem parking" means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.

(k) A local agency shall not issue a certificate of occupancy for an accessory dwelling unit before the local agency issues a certificate of occupancy for the primary dwelling.

(*l*) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.

(m) A local agency may count an accessory dwelling unit for purposes of identifying adequate sites for housing, as specified in subdivision (a) of Section 65583.1, subject to authorization by the department and compliance with this division.

(n) In enforcing building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code for an accessory dwelling unit described in paragraph (1) or (2) below, a local agency, upon request of an owner of an accessory dwelling unit for a delay in enforcement, shall delay enforcement of a building standard, subject to compliance with Section 17980.12 of the Health and Safety Code:

(1) The accessory dwelling unit was built before January 1, 2020.

(2) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.

(o) This section shall become operative on January 1, 2025.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

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Item B-11

CITY OF BEVERLY HILLS

POLICY AND MANAGEMENT

MEMORANDUM

TO: City Council Liaison/Legislative/Lobby Committee

FROM: Cynthia Owens, Policy and Management Analyst

DATE: March 22, 2021

SUBJECT: Senate Bill 809 (Allen) - Multijurisdictional regional agreements: housing element

ATTACHMENTS:
1. Summary Memo – SB 809
2. Bill Text – SB 809

The City Council has historically taken positions on proposed federal and state legislation of interest to Beverly Hills because of the City's location, economy, programs, and policies through the adoption of a Legislative Platform.

Senate Bill 809 - Multijurisdictional regional agreements: housing element (SB 809) involves a policy matter that may not have a nexus to the City's adopted Legislative Platform language.

The City's state lobbyist, Shaw Yoder Antwih Schmelzer & Lange, provided a summary memo for SB 809 to the City (Attachment 1) and will provide a verbal update to the City Council Liaison/Legislative/Lobby Committee.

After discussion of SB 809, the Liaisons may recommend the following actions:

1) Oppose SB 809;
2) Support SB 809;
3) Oppose unless Amended;
4) Support if Amended;
5) Remain neutral; or
6) Provide other direction to City staff.

Should the Liaisons recommend a position then the item will be placed on a future City Council agenda for concurrence.

Attachment 1

Shaw
Yoder
Antwih
Schmelzer
& Lange

1415 L Street
Suite 1000
Sacramento
CA, 95814
916-446-4656

March 16, 2021

To: Cindy Owens, City of Beverly Hills

From: Andrew K. Antwih, Partner, Shaw Yoder Antwih Schmelzer & Lange
Priscilla Quiroz, Legislative Advocate, Shaw Yoder Antwih Schmelzer & Lange

Re: SB 809 (Allen) Multijurisdictional regional agreements: housing element.

Summary

Authorize a city or county to satisfy part of its requirement to identify zones suitable for residential development by adopting and implementing a multijurisdictional regional agreement. Specifically this bill would:

- Require the multijurisdictional regional agreement to clearly establish the jurisdiction that is contributing suitable land for residential development and the jurisdiction or jurisdictions that are contributing funding for that development.
- Require that a multijurisdictional regional agreement be between 2 or more cities or counties that are located within the same county or within adjacent counties.
- Require a jurisdiction that is a party to a multijurisdictional regional agreement under this proposal to provide specified information in its housing element, including how the multijurisdictional regional agreement will satisfy the jurisdiction's housing need for a designated income level.
- Prohibit the jurisdictions that are a party to a multijurisdictional regional agreement from claiming an aggregate capacity in an amount greater than the actual capacity created by the housing development subject to the agreement.
- Specify that the bill's provisions would repeal these provisions on January 1, 2030.

Status of Legislation

The bill is currently in Senate Rules Committee awaiting referral to a policy committee.

Support

None listed at this time.

Opposition

None listed at this time.

Attachment 2

AMENDED IN SENATE MARCH 10, 2021

SENATE BILL No. 809

Introduced by Senator Allen
(Principal coauthor: Assembly Member Eduardo Garcia)

February 19, 2021

An act ~~relating to regional housing trusts.~~ *to add and repeal Section 65583.4 of the Government Code, relating to land use.*

LEGISLATIVE COUNSEL'S DIGEST

SB 809, as amended, Allen. ~~Regional housing trusts.~~ *Multijurisdictional regional agreements: housing element.*

The Planning and Zoning Law requires each county and city to adopt a comprehensive, long-term general plan for its physical development, and the development of certain lands outside its boundaries, that includes, among other mandatory elements, a housing element. Existing law requires that the housing element include, among other things, an inventory of land suitable and available for residential development that identifies sites that can be developed for housing within the planning period and that are sufficient to provide for the jurisdiction's share of the regional housing need for all income levels, as specified.

This bill would authorize a city or county to satisfy part of its requirement to identify zones suitable for residential development by adopting and implementing a multijurisdictional regional agreement. The bill would require the multijurisdictional regional agreement to clearly establish the jurisdiction that is contributing suitable land for residential development and the jurisdiction or jurisdictions that are contributing funding for that development. The bill would require that a multijurisdictional regional agreement be between 2 or more cities

or counties that are located within the same county or within adjacent counties.

This bill would require a jurisdiction that is a party to a multijurisdictional regional agreement under these provisions to provide specified information in its housing element, including how the multijurisdictional regional agreement will satisfy the jurisdiction's housing need for a designated income level. The bill would prohibit the jurisdictions that are a party to a multijurisdictional regional agreement from claiming an aggregate capacity in an amount greater than the actual capacity created by the housing development subject to the agreement.

The bill would repeal these provisions on January 1, 2030.

The bill would include findings that changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

~~The Joint Exercise of Powers Act authorizes 2 or more public agencies, by agreement, to form a joint powers authority to exercise any power common to the contracting parties, as specified. Existing law authorizes the agreement to set forth the manner by which the joint powers authority will be governed.~~

~~This bill would state the intent of the Legislature to enact legislation that would require all local governments to participate in a regional housing trust fund.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ *yes*. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 65583.4 is added to the Government Code, to read:

65583.4. (a) A city or county may satisfy part of its requirement to identify zones suitable for residential development pursuant to paragraph (3) of subdivision (a) of Section 65583 by adopting and implementing a multijurisdictional regional agreement as provided in this subdivision.

(b) (1) A multijurisdictional regional agreement adopted and implemented pursuant to this section shall clearly establish the jurisdiction that is contributing suitable land for residential development and the jurisdiction or jurisdictions that are contributing funding for that development.

(2) A multijurisdictional regional agreement subject to this section shall be between two or more cities that are located within the same county, between two or more cities within adjacent counties, or between adjacent counties and any city within those counties.

(c) Each jurisdiction that is a party to a multijurisdictional regional agreement shall describe in its housing element both of the following:

(1) How the multijurisdictional regional agreement will satisfy the jurisdiction's housing need for a designated income level. No more than ½ of the development capacity resulting from the agreement shall be given to a single jurisdiction as credit towards its housing needs.

(2) The jurisdiction's contribution to a housing development pursuant to the multijurisdictional regional agreement, including the amount and source of the funding that the jurisdiction contributes.

(d) The jurisdictions that are a party to a multijurisdictional regional agreement shall not claim an aggregate capacity in an amount greater than the actual capacity created by the housing development subject to the multijurisdictional regional agreement in the jurisdiction's housing element.

(e) The Legislature finds and declares that this section addresses a matter of statewide concern rather than a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, this section applies to all cities, including charter cities.

(f) This section shall remain in effect only until January 1, 2030, and as of that date is repealed.

~~SECTION 1. It is the intent of the Legislature to enact legislation that would require all local governments to participate in a regional housing trust fund.~~

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