



## Senator Josh Becker, 13<sup>th</sup> Senate District

### SB 457

#### **SUMMARY**

SB 457 prevents the misuse of the Builder's Remedy while continuing to provide strong incentives for cities to develop and adopt compliant housing elements on a timely basis.

#### **PROBLEM**

Currently, a housing element is not considered compliant until the date on which it is deemed compliant by the California Department of Housing and Community Development (HCD) or a court, even if the agency adopted the housing element, without any change in substance well before that date. This puts the agency at the mercy of HCD's workload and timeline for reviewing housing elements.

In addition, existing law allows a developer to secure rights to the Builder's Remedy simply by filing a preliminary application with minimal detail. Developers may substantially change the project described in a preliminary application, so long as the density and floor area do not change by more than 20 percent. While this flexibility is not normally problematic, in combination with the Builder's Remedy, which allows a developer to bypass all zoning and general plan regulations, it means the project described in a preliminary application has very little meaning.

Taken together, these conditions allow some developers to file hasty, preliminary applications as placeholders to claim Builder's Remedy protections, even after an agency has adopted all of the analyses, policies, and programs that are later determined to satisfy state law. This strays beyond the purpose of the Builder's Remedy to provide developers with relief when an agency's land use policies do not comply with state requirements. Instead, it permits developers to proceed with projects that may not comply with local policies and programs that have met the state's high standards for both fair housing and overall housing production.

#### **CURRENT LAW**

Provides that for purposes of a local agency's approval, conditional approval, or disapproval of a housing development project, a housing element or amendment shall be considered in substantial compliance with housing element law only if the element or amendment was in substantial compliance as determined by HCD or a court of competent jurisdiction.

The Builder's Remedy prohibits a local government from denying a housing development project that includes a percentage of units set aside for affordable housing for a period of 55 years for rental units, and 45 years for ownership.

#### **THIS BILL**

SB 457 would ensure that agencies are treated equitably and that their exposure to the Builder's Remedy is not dependent on HCD's review timelines. It will ensure that agencies are not penalized after they have committed to a compliant housing element and that they are able to enforce the policies contained in their compliant housing element.

This bill would also clarify that the Builder's Remedy is available only to developers that demonstrate a serious commitment to a Builder's Remedy project by requiring a complete application to be filed before the agency adopts a housing element later determined to be compliant by HCD or a court.

#### **SUPPORT**

None on file.

#### **OPPOSE**

None on file.

#### **FOR MORE INFORMATION**

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