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# SENATE COMMITTEE ON GOVERNANCE AND FINANCE

Senator Anna M. Caballero, Chair

2023 - 2024 Regular

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**Bill No:** AB 309  
**Author:** Lee  
**Version:** 5/1/23  
**Consultant:** Grinnell

**Hearing Date:** 7/12/23  
**Tax Levy:** No  
**Fiscal:** Yes

## *THE SOCIAL HOUSING ACT*

*Enacts the Social Housing Act, which creates the California Housing Authority for the purpose of developing social housing for all California residents, under the direction of the California Housing Authority Board.*

### **Background**

**California’s Housing Crisis.** California faces a severe housing shortage. A variety of factors have contributed to the lack of housing production. Recent reports by the Legislative Analyst’s Office and others point to local approval processes as a major factor. They argue local governments control most of the decisions about where, when, and how to build new housing, and those governments are quick to respond to vocal community members who may not want new neighbors. The building industry also points to the California Environmental Quality Act as an impediment, and housing advocates note a lack of a dedicated source of funds for affordable housing.

A major cause of the housing crisis is the mismatch between the supply and demand for housing. The Statewide Housing Plan adopted by the Department of Housing and Community Development in 2022 found California needs approximately 2.5 million units of housing, including one million units affordable to lower income households, to address this mismatch over the next eight years. That would require production of over 300,000 units a year, including over 120,000 units a year of housing affordable to lower income households. However, production in the past decade has lagged at under 100,000 units per year – including less than 10,000 units of affordable housing per year.

**Social Housing.** The Assembly Select Committee on Social Housing held an informational hearing on October 20, 2021, where Rob Weiner from the California Coalition for Rural Housing shared the Organization for Economic Cooperation and Development (OECD) definition of social housing as: “the stock of residential rental accommodations provided at sub-market prices and allocated according to specific rules rather than according to market mechanisms.” According to the Senate Housing Committee, another variation of social housing involves making accommodations available to all individuals regardless of their household income. In particular, Vienna, Austria is often held up as an example of a large city with widespread mixed-income social housing and an estimated 40% of the city’s housing stock is social housing. In the Viennese model, higher income households pay market rate rents which then subsidize the below market rents for lower-income households, referred to as “cross-subsidization.”

**Planning and zoning.** The Planning and Zoning Law requires every county and city to adopt a general plan that sets out planned uses for all of the area covered by the plan. A general plan must include specified mandatory “elements,” including a housing element that establishes the locations and densities of housing, among other requirements. Cities’ and counties’ major land use decisions—including most zoning ordinances and other aspects of development permitting—must be consistent with their general plans.

State law also imposes numerous requirements on the housing element of a general plan. A local government’s housing element must allow for enough housing to be produced to meet the jurisdiction’s regional housing need allocation (RHNA) for several income bands: very low, low, moderate, and above moderate households. The Department of Housing and Community Development (HCD) reviews and certifies housing elements as compliant with state law and also reviews their zoning ordinances for consistency with the approved housing element.

While the RHNA process requires local governments to plan to address housing needs in their jurisdictions, it does not mean housing will actually get built. California, along with the rest of the country, generally relies on the private sector to develop its affordable housing stock. A number of factors affect housing development and government subsidies are generally needed for housing projects with affordable units for low-income and very low-income households to be economically viable.

**General obligation bonds.** When public agencies issue bonds, they essentially borrow money from investors, who provide cash in exchange for the agencies’ commitment to repay the principal amount of the bond plus interest in the future. Bonds are usually either revenue bonds, which repay investors out of revenue generated from the project the agency buys with bond proceeds or from a specific dedicated revenue source, or general obligation (GO) bonds, which the public agency pays out of general revenues and are guaranteed by its full faith and credit.

Section One of Article XVI of the California Constitution and the state’s General Obligation Bond Law guide the issuance of the state’s GO debt. The Constitution allows the Legislature to place general obligation bonds on the ballot for specific purposes with a two-thirds vote of the Assembly and Senate. Voters also can place bonds on the ballot by initiative, as they have for parks, water projects, high-speed rail, and stem cell research, among others. Either way, general obligation bonds must be ratified by majority vote of the state’s electorate. Unlike local general obligation bonds, approval by the state’s electorate does not automatically trigger an increased tax to repay the bond. The Constitution commits the state to repay investors from general revenues above all other claims, except payments to public education.

The author wants to create a new state agency to construct and manage social housing.

### **Proposed Law**

Assembly Bill 309 enacts the Social Housing Act, which creates the California Housing Authority as an independent entity in state government for the purpose of developing social housing for all California residents, under the direction of the California Housing Authority Board.

The measure defines “social housing”: as:

- Housing units owned by the California Housing Authority, a public entity, a local housing authority, or a mission-driven not-for-profit private entity.
- Where the social housing development contains housing units that accommodate a mix of household income ranges, including extremely low income, very low income, low income, moderate income, and above moderate income.
- Residents of housing units are afforded, at a minimum, all protections granted to tenants with tenancies in private property, including protection against termination without just cause or for any discriminatory, retaliatory, or other arbitrary reason, and are afforded due process prior to being subject to eviction procedures, among others.
- The units are protected for the duration of their useful life from being sold or transferred to a private for-profit entity or a public-private partnership.
- Where residents of the housing units have the right to participate directly and meaningfully in decision-making affecting the operation and management of their housing units.

**California Housing Authority.** AB 309 creates the California Housing Authority (Authority) with the core mission to produce and acquire social housing developments to eliminate the gap between housing production and RHNA targets, and to preserve affordable housing. The bill charges the Authority to implement and operate the social housing program, and grants it all necessary powers to do so, including contracting with property managers to manage its properties so long as they meet standards on responsiveness to resident needs prescribed by the authority, and rules regarding resident rights and protections, or be subject to termination of employment.

The bill requires the Authority to prepare, publish, adopt, and submit to the Governor and the Legislature an annual business plan, as well as a draft business plan at least 60 days prior to the publication of the plan for public review and comment, which must also be submitted to the Governor and the Legislature. The measure requires the business plan to include:

- A description of the type of projects the Authority is producing or acquiring and the proposed timeline, estimated costs, and funding sources.
- A projection of the expected residents, income levels, and other demographic data.
- An estimate and description of the anticipated funds the Authority intends to leverage to fund the construction and operation activities, and the Authority’s level of confidence for obtaining each type of funding.
- Any written agreements with public or private entities, such as technical assistance agreements.

The bill also directs the Authority to submit to the Legislature an analysis on the effect of its developments on gentrification on or before December 31 each year. The analysis must be subject to public comment and considered by the California Housing Authority Board for future decision-making. The Authority must also provide an annual update to the Legislature on or before December 31 of each year its progress, which must include relevant resident statistics once social housing developments owned by the Authority are occupied.

**California Housing Authority Board.** AB 309 forms the California Housing Authority Board, comprised of:

- Four Governor appointees, including experts in housing development and finance, housing construction, property maintenance, as well as an appointee without specific qualifications.
- An appointee of the Speaker of the Assembly.
- An appointee of the Senate Committee on Rules.
- Three representatives of the residents. Before the Authority owns housing, these representatives are appointed by the Speaker of the Assembly, the Senate Committee on Rules, and the Governor, after each consults with advocates for tenants' rights in the course of making their respective selections. After the Authority owns housing, the representatives are elected by vote of all social housing residents who reside in units owned by the Authority.

All appointees serve at the pleasure of their appointing authority. The Board is subject to the Bagley-Keene Open Public Meetings Act.

AB 309 establishes the Board's duties to:

- Establish a strategy to achieve the core goal of eliminating the gap between housing production and acquisition and regional housing needs assessment targets;
- Set objectives and performance targets designed to achieve its strategies;
- Monitor and assess the degree of the Authority's success in achieving its objectives and performance targets;
- Exercise exclusive hiring and firing power over an executive officer;
- Establish and monitor performance measures for the executive officer and an associated succession plan;
- Approve the annual budget prepared by the executive officer;
- Foster a culture and set of values consistent with the short-term, medium-term, and long-term goals of the Authority;
- Integrate risk management into the authority's strategic planning process;
- Notify the Governor and the Legislature of unanticipated and sizable risks facing the Authority in meeting its objectives;
- Adopt and amend regulations, which must include election procedures for resident board positions;
- Following an initial trial period, create and make public an annual business plan;
- Hold biannual meetings with resident governance councils.

The measure sets the Authority's executive director's powers and duties to:

- Manage the day-to-day operations of the authority in accordance with the strategy, delegations, business plans, and policies of the board and the bill.
- Employ and manage staff, including establishing, promoting, and maintaining a positive organizational culture that effectively aligns with the values and employment principles of the Authority.
- Transform the strategic plans of the Board into action.

- Ensure the effectiveness of the Authority’s operational systems, including financial management, human resource management, information systems management, risk management, communications, marketing, fund raising, asset management, and reporting.
- Ensure the Board is kept informed of changes to gubernatorial directives, relevant legislation and changes in law, and other critical information relating to the Board’s functions and powers.
- Ensure compliance with applicable law and governmental policies.
- Maintain effective communication and cooperation with external stakeholders in collaboration with the chair of the Board.
- Provide advice and information to the Board on any material issues concerning strategy, finance, reporting obligations, or other important matters that arise.
- Prepare the annual business plan, including organizational performance targets, for Board approval.
- Interact with and, where appropriate, report to the Governor and the Legislature.
- Additional responsibilities as determined by the Board.

**Resident Governance Councils.** AB 309 requires each multifamily social housing development owned by the Authority to form a governance council, capped at 10% of the overall population of the multifamily development. The bill sets as the powers and responsibilities for each governance council:

- Host regular meetings to gather feedback and perspective of residents.
- Provide the resident perspective to property management.
- Represent the interests of the development in biannual meetings with the Board.
- Determine how to spend the development’s allotted annual budget for common room amenities and social events.
- Participate in the approval of renovation projects.
- Other responsibilities as determined by the Board.

**Social Housing Program.** AB 309 states the Authority seeks to achieve revenue neutrality over the long term, and specifically to recuperate the cost of development and operations over the life of its properties through mechanisms that maximize the number of Californians who can be housed without experiencing rent burden, such as rent cross-subsidization or cost rent. The Authority must develop regional target percentages for extremely low income, very low income, and low income housing that seek to maximize low income housing within the constraints of long-term revenue neutrality and maintaining sufficient operational, maintenance, and capital reserves. The bill requires the methodology for low income housing maximization in each development region to be explained at a Board meeting and subject to public comment.

The bill directs the Authority to prioritize development of property with the following characteristics:

- Vacant parcels.
- Underutilized parcels or redevelopment of underutilized parcels without affordability covenants or rent-controlled units.
- Surplus public properties.
- Parcels near transit.

If the development of a property requires the rehabilitation or demolition of covenanted affordable units, the bill requires the new development to include a greater number of affordable units by income group than the previous property. If the development of a property requires the removal of residents from the property, the authority must cover the temporary relocation costs of these residents, as defined. Any displaced former resident may have the right to live in the new social housing property for their previous rent for the period of one year, or the Authority's established rent for the resident's income level, whichever is lower.

The Authority must make an annual determination of the required amount of social housing units by determining the gap between the previous year's RHNA targets for each income range, as determined by HCD, and housing construction data submitted by jurisdictions to HCD, updated annually. The Authority makes the determination annually using each local government's data beginning on January 1, 2027. The Authority then splits the very low income RHNA allocation into extremely low income and very low income allocations based on the latest available census or official survey data for the relevant jurisdiction.

The bill then authorizes the Authority to construct at least the required number of units to meet the gap between the previous year's very low income, low-income, moderate-income, and above moderate-income housing unit construction. The Authority may conduct ground-up construction and rehabilitation of existing structures.

The bill allows the Authority to use two different leasing models, the rental model and the ownership model, as specified, and sets policies for housing developments as well as eligibility and residence requirements for potential tenants. The Authority must use a lottery to select residents to be offered social housing, structured by income categories, with separate selection results for each category. However, any residents who were displaced due to the construction of the Authority's social housing are offered social housing without needing to enter the lottery.

The Authority can dedicate building space to commercial use and lease the space to qualifying small businesses and nonprofit corporations, pursuant to requirements it establishes. The bill directs the state to gift public lands to the Authority for social housing development purposes when appropriate; however, in the absence of suitable state-owned parcels, the Authority can purchase municipal, county, other local jurisdiction, and private lands, according to the following priorities:

- Parcels with affordability covenants or rent control units in danger of losing affordability status, in order to preserve affordable housing stock.
- Parcels at risk of becoming unaffordable or at the end of their affordability covenants.
- Underutilized parcels or redevelopment of underutilized parcels with affordability covenants or rent-controlled units.
- Surplus public properties.
- Parcels near transit.

However, the Authority must accept a local jurisdiction's preference for a project parcel when:

- The parcel allows the authority to meet the jurisdiction's regional housing needs assessments goals,
- The parcel does not exceed the cost of all suitable alternative sites by more than 2%, and
- The parcel offers comparable community amenities to all suitable alternatives.

The bill requires the Authority to seek input from the local jurisdiction's city council, board of supervisors, or planning agency, regarding any development's:

- Specific site.
- Number of stories.
- Number of units.
- Development timeline.

**Financing.** AB 309 creates the Social Housing Revolving Loan Fund within the State Treasury to be used, upon appropriation by the Legislature, to provide zero-interest loans for the purpose of constructing housing to accommodate a mix of household incomes. The measure allows the Authority to issue revenue bonds in any principal amount the agency determines necessary to provide sufficient funds for financing social housing developments, the payment of interest on these bonds, the establishment of reserves to secure the bonds, and costs to issue the bonds. The measure also requires the Authority to provide for regular audits of its accounts and records, maintain accounting records and report accounting transactions in accordance with generally accepted accounting principles

The measure defines several terms, and makes legislative findings and declarations supporting its purpose, including to provide financing for the activities of the authority through the issuance of general obligations bonds.

### **State Revenue Impact**

No estimate.

### **Comments**

1. Purpose of the bill. According to the author, "Housing is too expensive for millions of Californians. More than two in five households are considered rent burdened and spend over 30% of their income on housing, and more than one in five households spend over 50% of their income on housing. Over 97% of cities and counties haven't produced enough affordable housing, and existing strategies to address the lack of affordable housing have not been nearly enough to meet demand. Social housing is an important tool to ensure housing is affordable to people of all income levels. Social housing is publicly backed, self-sustaining housing that accommodates a mix of household income ranges. Housing is protected from being sold to a private for-profit entity for the duration of its life, and residents are granted the same protections as tenants in private property, if not more. Many countries throughout the world have successful social housing programs, and in the US, there are social housing developments such as in Montgomery County, Maryland using a similar model. Social Housing is how we provide and realize housing as a human right."

2. Feasible? State law establishes HCD, the California Housing Finance Agency, as well as the California Tax Credit Allocation Committee in the Office of the State Treasurer, and charges each with specific powers and responsibilities to implement the state's housing policies and programs. AB 309 creates a new state agency outside the control of the Governor and the Legislature to acquire property, construct housing, and manage multi-unit housing properties in any jurisdiction of the state that falls short of its RHNA goals. During a time when the state is struggling to hire qualified individuals for currently budgeted positions, the bill would create a

new authority to perform several complex tasks not currently performed at a similar scale in any state agency. In addition to administrative, legal, accounting, and other standard state agency tasks, the Authority would need to employ professionals with expertise on real estate acquisition, complex construction project management, and housing management and maintenance at state employee salary levels generally below private sector compensation for similar skills.

Additionally, the measure contains neither an appropriation nor a revenue source to meet either start-up costs or its ongoing property acquisition and housing construction program. While the measure grants the Authority significant powers to acquire property and construct housing to meet the state's dire affordable housing crisis, the Committee may wish to consider whether the bill can be feasibly implemented at a time when existing state agencies are struggling to hire people with the necessary skills to do this work.

3. Governance. The California Constitution allows cities and counties to “make and enforce within its limits, all local, police, sanitary and other ordinances and regulations not in conflict with general laws.” It is from this fundamental power (commonly called the police power) that cities and counties derive their authority to regulate behavior to preserve the health, safety, and welfare of the public—including land use authority. However, as a state entity, any project undertaken by AB 309's authority would not be subject to local land use restrictions unless the measure explicitly stated otherwise. While the Authority can only build in jurisdictions that fall short of meeting its RHNA goals, and must accept local preferences in some cases, given the scale of the social housing projects contemplated by the bill, the Committee may wish to consider whether local agencies should have approval authority over any design standards, density requirements, height limitations, parking requirements, or other development standard of the bill's social housing projects.

4. Finance. As mentioned above, AB 309 contains neither an appropriation nor a revenue source to meet its start-up costs or ongoing operations. While the measure allows the Authority to issue revenue bonds at amounts sufficient to pay for its social housing program, it's unlikely investors will purchase bonds at reasonable interest rates until the Authority can generate sufficient net revenues to make payments of bond principal and interest.

5. Potential property tax revenue loss? Section One of Article XIII of the California Constitution provides that all property is taxable and shall be assessed at the same percentage of fair market value, unless explicitly exempted by the Constitution or federal law. Property owned by a state or local government is generally exempt from taxation. Should AB 309's Authority acquire property currently on the tax rolls, it will become exempt, which would reduce property tax revenues for local agencies. However, these revenues may be offset to the extent that occupants of Authority-owned property are subject to possessory interest taxes, which apply to a private leasehold or other private possessory interest on publicly-owned property. While the State Board of Equalization has opined that low-income tenants in government-owned housing should not be considered to have a taxable possessory interests, social housing residents of higher incomes will likely be subject to possessory interest taxes.

6. Step by step. AB 309 establishes a new, independent state agency with significant powers to own land as well as construct and manage housing. The Committee may wish to consider amending the measure to implement the bill's goals as a pilot program, including, among others:

- Specifying that while social housing developments are owned by the state, they must be managed by non-state entities subject to the measure's current tenant protections.
- Placing the program under an existing state agency.



- Capping the number of social housing developments.
- Detailing any ability for local agencies to impose design review standards or measures to mitigate specific, adverse, health and safety impacts.

7. Eminent domain? Opponents of AB 309 are concerned that the bill’s Authority could use the power of eminent domain to take private property to use for social housing projects. While the measure does not expressly grant this power to the Authority, it does grant it all necessary powers to implement and operate the social housing program.

8. Related legislation. AB 309 is almost identical AB 2053 (Lee), which failed passage in the Committee last year. Additionally, the Legislature has considered two other measures related to AB 309:

- SB 555 (Wahab), which enacts the Stable Affordable Housing Act of 2023 (Act) for the purposes of planning for the development of social housing through a mix of acquisition and new production. The Assembly Housing and Community Development Committee approved the measure, and it is currently pending in the Assembly Appropriations Committee.
- SB 584 (Limon), which creates a 15% state short-term rental (STR) occupancy tax to be collected, as specified, and allocates the funds for the construction, acquisition and rehabilitation of labor force housing and renter protection programs. The measure is pending in the Assembly Housing and Community Development Committee.

9. Incoming! The Senate Rules Committee ordered a double-referral of SB 1032. The Senate Housing Committee approved the bill by a vote of 9 to 2 on June 20<sup>th</sup>. The Senate Governance and Finance Committee will consider the bill as the committee of second reference

**Assembly Actions**

Assemble Housing and Community Development Committee:	5-2
Assembly Appropriations Committee:	11-4
Assembly Floor:	55-16

**Support and Opposition** (7/7/23)

Support: East Bay for Everyone (Sponsor)  
 James Coleman - South San Francisco City Councilmember  
 Sean Elo-Rivera - City of San Diego Councilmember  
 Zach Hilton - City of Gilroy Council Member  
 Afscme  
 California Apartment Association  
 California Labor Federation, Afl-cio  
 California School Employees Association  
 California Yimby  
 Common Ground California  
 Culver City Democratic Club  
 Davis College Democrats  
 Greenbelt Alliance

Indivisible CA Statestrong  
Santa Cruz County  
Santa Monica Democratic Club

Opposition: Affordable Housing Network of Santa Clara County  
Alliance of Californians for Community Empowerment (ACCE) Action  
California Assessors' Association  
California Association of Realtors  
City of Norwalk  
City of Thousand Oaks  
Fieldstead and Company, INC.  
Housing Contractors of California  
League of California Cities  
National Association of Social Workers, California Chapter  
Public Advocates  
Sacred Heart Community Service  
San Francisco Tenants Union  
Sf Council of Community Housing Organizations  
Sonoma Valley Housing Group

**-- END --**