

The Rocket Docket: New Legislation Expedites Housing Litigation and Adds Stiff Penalties

California's 2025 housing legislation included the enactment of two bills intended to strengthen the enforcement of "housing reform law." These bills simultaneously increase the incentive to bring suit, increase penalties applied to local governments, and prioritize housing-related suits on court dockets. One of them, AB 712, guarantees attorney's fees to the prevailing applicant-plaintiff in any suit brought to enforce housing laws, something that had previously only been available in suits arising from the denial of a housing development project. The other, SB 808, prioritizes courts' scheduling of actions brought to challenge the denial of a permit or other entitlement to a housing development project, and imposes strict and tight deadlines for litigating these cases.

AB 712ⁱ

AB 712 increases the incentives for housing developers to bring suit against local agencies to enforce compliance with "housing reform law," and increases the penalties applied to local agencies who do not comply with advice from the Department of Housing and Community Development (HCD) or the Attorney General (AG) and lose in court.

AB 712 defines "housing reform law" very broadly, essentially covering the gamut of state and local legislation relating to housing development. It reads:

Housing reform law means any law or regulation, or provision of any law or regulation, that establishes or facilitates rights, safeguards, streamlining benefits, time limitations, or other protections for the benefit of applicants for housing development projects, or restricts, proscribes, prohibits, or otherwise imposes any procedural or substantive limitation on a public

agency for the benefit of a housing development project.

AB 712 guarantees an award of reasonable attorney's fees and costs to a developer applicant who prevails in a suit against a public agency to enforce any one or more of this very broad set of laws. Such a guarantee of fees had only previously been available for a limited set of laws, particularly the Housing Accountability Act and density bonus law. Furthermore, AB 712 prohibits public agencies from requiring indemnification from developer applicants for actions brought by the applicant or others alleging violations of a housing reform law.

AB 712 also imposes mandatory fines of \$10,000 per unit, or \$50,000 if the project has four or fewer units, on local agencies who (1) receive written advice from either the AG or HCD that its decision, action or inaction constitutes a violation of a specific housing reform law, and (2) are defeated in litigation brought by an applicant for a substantially similar violation. Any fines imposed increase to \$50,000 per unit, or \$250,000 minimum, if the local agency has violated the same housing reform law within the same planning period or if the agency's housing element is not in substantial compliance with State Housing Law.ⁱⁱ

However, to activate these fines, the plaintiff must provide written notice to the local agency of its intent to bring suit, the factual elements of the dispute, and the legal theory forming the basis for its allegations at least 60 days before commencing suit. If this notice is provided, any applicable statute of limitations is extended for 60 days from the date of notice. This provides an opportunity for agencies to modify their actions if faced with large fines.

SB 808ⁱⁱⁱ

Seeking to prioritize and accelerate the litigation of lawsuits allegedly impeding housing development, the Legislature passed SB 808 to declare that, at both the trial and appellate levels, actions reviewing the denial of a permit or other entitlement for a housing development project "shall be given preference *over all other civil actions*." (emphasis added.)

In addition, SB 808 creates a cause of action and sets the trial schedule for writ actions brought by a development applicant, the AG or HCD to challenge the denial of a permit or other entitlement for a housing development project. In such actions:

1. The court shall set a hearing for review of the petition for writ of mandate no later than 45 calendar days from the date the petition is filed;
2. The petitioner shall lodge the record of proceedings with the court no later than 15 calendar days before the writ hearing; and
3. The court shall render a decision on the writ petition no later than 30 calendar days after the matter is submitted or 75 calendar days after the date the petition is filed.

This is a very fast timeline, even for writ litigation, which is designed to be relatively expeditious. In fact, the Judicial Council of California opposed SB 808 on the ground that it establishes an unreasonably expedited judicial process. While the bill permits a presiding judge to request temporary assignment of judicial officers, it does not provide any funding to fill this need; the courts are already strained to adequately staff the existing demand for court resources.

Indeed, in its final floor analysis, the State Assembly recognized the potentially problematic nature of the strict time limits set by SB 808.^{iv} It noted that the California Constitution recognizes an explicit separation of powers among the three branches of government, and the Supreme Court has heretofore only upheld legislative mandates to the judiciary that do not defeat or materially impair its constitutional function. Strict deadlines such as those in SB 808 have previously been attenuated in the CEQA context by use of the language "to the extent feasible." It remains unclear whether the Legislature has constitutional authority to impose such strict time limits on the judiciary.

SB 808 also declares that, for actions brought under this section, if the applicant so requests, the record of administrative proceedings on a housing development application shall be prepared by the local agency concurrently with the proceedings, and the costs of such preparation shall be borne by the local agency.

What Do These New Laws Mean for Local Governments?

AB 712 substantially increases the risks to local governments if they receive a "Letter of Technical Advice" or "Notice of Violation" from HCD or the AG in regard to a housing development. If housing developers are unhappy with local actions, they frequently approach HCD to request such a letter. If HCD agrees that the local agency's proposed action conflicts with state law, its letters frequently indicate that the proposed action may violate Housing Element law. If the Housing Element is not in compliance with State Housing law, fines increase to \$50,000 per unit.

Also, lawsuits challenging housing decisions may become more frequent because developers are now being given funding for

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attorney's fees and priority in court to challenge any denial. Finally, local governments may experience a higher quotient of applicants requesting preparation of administrative records during the underlying proceedings on housing development applications, as SB 808 does not limit these requests only to those applications that are eventually denied.

What Do These New Laws Mean for Housing Developers?

Housing developers now have two new sticks in their arsenal to apply pressure on local governments throughout the permit application process. The ability and access to challenge a local

ⁱ Adds Government Code § 65914.2.

ⁱⁱ If HCD decertifies an agency's housing element, it will no longer be in compliance with State Housing Law, unless a court disagrees.

agency's application or interpretation of State or local housing law, especially if supported by a letter from HCD or the AG, has never been this broad, nor this swift or economically feasible. Affordable and market-rate housing developers in particular stand to gain substantial leverage in negotiations with local governments, as AB 712 and SB 808 make all laws incentivizing housing privately enforceable and potentially cost-free.

ⁱⁱⁱ Adds Civil Code §§ 46 and 1094.9.

^{iv} Assembly Floor Analysis of SB 808 (Caballero), Sep. 2, 2025.

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