

TPAC STAFF REPORT

SUBJECT: State Housing Trailer Bill

MEETING DATE: August 1, 2019

AGENDA ITEM: 6

STAFF CONTACT: Michael Becker

RECOMMENDATION:

Receive a report on Housing Planning and Production Grants

DISCUSSION:

The adopted FY 2019-20 California Budget includes a new Local Government Planning Support Grants Program (Program). The Program is established for the purpose of providing regions and jurisdictions with one-time funding, including grants for planning activities to enable jurisdictions to meet the 6th Cycle of the Regional Housing Needs Assessment (RHNA). The Program will be administered by the California Department of Housing and Community Development (HCD). Under this new Program, funding will be allocated to mega-regions throughout the state. In the Central Coast, the funding will be allocated to a Central Coast Housing Working Group. SBCAG, working with the three other Councils of Governments (COGs) in the Central Coast mega-region, will need to select representatives to the Central Coast Housing Working Group who represent jurisdictions within Santa Barbara County. See attachment A for the bill's language.

Under the Program, HCD shall allocate \$250 million dollars to regions and local jurisdictions for technical assistance, preparation and adoption of planning documents, and process improvements to accelerate housing production and facilitate compliance to implement the 6th Cycle of the RHNA. Of this, \$125 million will go directly to local jurisdictions and the remaining \$125 million will go to regions. It is estimated that the Central Coast mega region will receive approximately \$8.5 million and roughly \$2.5 million will be available in Santa Barbara County.

Central Coast Region Grants

The COGs within the Central Coast region will select a COG to be the fiscal agent which will staff the Central Coast Housing Working Group. The working group must be composed of one supervisor from each county, and two city members from each county. The city members must represent one smaller and one larger city in the county. There are four COGs in the Central Coast Region: Association of Monterey Bay Area Governments (AMBAG), Council of San Benito County Governments (SBtCOG), San Luis Obispo County of Governments (SLOCOG) and SBCAG. Once formed, the Central Coast Housing Working Group shall notify all member cities and counties of its purpose, the composition of its members, its timeline for action and proposed meeting schedule. In the absence of agreement within the membership, HCD may select a fiscal agent for the multi-jurisdictional working group. HCD's decision shall be based on factors such as capacity and experience in administering programs. Staff from all four of the Central Coast COGs have met to discuss these new requirements and recommend that AMBAG serve as the fiscal agent.



In consultation with HCD, each mega-region shall establish priorities and use funds allocated to:

- Sub-allocate funds directly and equitably to local agencies or sub-regional entities in a grant program for planning that will accommodate and develop housing and infrastructure that will accelerate housing production in a way that aligns with state planning priorities, housing, transportation, equity and climate goals.
- Provide local agencies with technical assistance, planning, temporary staffing or consultant needs associated with updating local planning and zoning documents, expediting application processing and other actions to accelerate additional housing production.
- Update a housing element to comply with state law.
- Supporting enhanced local planning activities, and environmental analysis that will support housing development and location-efficient housing consistent with adopted regional plans, including sustainable communities strategies.
- Providing funding for the formation or augmentation of regional, subregional, or local housing trust funds.
- Develop an improved methodology for the distribution of the 6th Cycle RHNA to further the statutory objectives per Government Code 65584(d).

The region shall develop an education and outreach strategy to inform local agencies of the need and benefits of taking early action related to the 6th Cycle RHNA. By January 31, 2021, the Central Coast Housing Working Group must request all program funds and document strategies to meet housing goals.

Local Jurisdictions Grants

Of the total \$250 million available under this new Program, \$125 million shall be available directly for local jurisdictions to assist in planning or other activities related to meeting their 6th Cycle of the RHNA. Local jurisdictions may request an allocation of funds from HCD through July 1, 2020, which must identify specific strategies to meet their 6th Cycle of the RHNA and prepare to be effective at meeting their long-term housing goals, as well as promote sufficient supply of a range of housing types affordable to a variety of incomes.

Expenditures shall be limited to housing-related planning activities to promote and streamline development, including staffing or contracts. These activities include but are not limited to:

- Rezoning and encouraging development by updating planning documents and zoning ordinances, such as general plans, community plans, specific plans, sustainable communities' strategies, and local coastal programs.
- Completing environmental clearance to eliminate the need for project-specific review.
- Establishing Workforce Housing Opportunity Zones pursuant to Article 10.10 (commencing with Section 65620) of Chapter 3 of Division 1 of Title 7 of the Government Code or Housing Sustainability Districts pursuant to Chapter 11 (commencing with Section 66200) of Division 1 of Title 7 of the Government Code.
- Performing infrastructure planning, including for sewers, water systems, transit, roads, or other public facilities necessary to support new housing and new residents.
- Revamping local planning processes to speed up production.
- Creation or improvement of accessory dwelling unit ordinances.

Maximum grant amounts shall be set as follows, according to 2019 population estimates:

Locality Size	Population	Funding Maximum
Very Large	> 750,000	\$1,500,000
Large	300,000 – 749,000	\$750,000
Medium - Large	100,000 – 299,999	\$500,000
Medium	60,000 – 99,999	\$300,000
Small	20,000 – 59,999	\$150,000
Very Small	< 20,000	\$65,000

Housing Element Compliance & Long Term RHNA Reform

Compared to the May revision, the final budget bill does not link transportation funds to housing outcomes. However, new RHNA compliance enforcement measures are included.

Beginning July 1, 2019, the Attorney General, prior to bringing a suit to enforce compliance with the requirement for a jurisdiction to zone for sites adequate to accommodate its allocation of regional housing needs, must provide a city or county with written findings regarding the violation and offer two meetings to discuss the violation. If a court finds that a jurisdiction is out of compliance with this housing requirement, it can, after one year, impose fines ranging from \$10,000-\$100,000 per month. If a jurisdiction continues to fail to have a compliant housing element, these fines can be increased by a factor of three or six after specified timelines. If a jurisdiction fails to pay fines, the State Controller may intercept state and local funds due to the local agency if those funds are not constitutionally-protected.

It is critical that jurisdictions bring their housing elements in compliance with RHNA by zoning for the appropriate housing to avoid potential litigation from the Attorney General.

By December 31, 2022, HCD and the State Office of Planning and Research (OPR) shall develop a revised RHNA process and methodology to streamline housing development and address the housing shortage. This updated process will be submitted as a recommendation to the Legislature. It's unclear at this point what those changes and processes may entail.

Timeline

Local Government Planning Support Grants: Regional Funds

- To Be Determined – HCD releases guidelines and notice of funding availability.
- November 30, 2019 – Deadline to form the Central Coast Housing Working Group and assign a fiscal agent in order to secure regional housing planning grant funds.
- January 31, 2021 – Deadline to request Program funds and include a budget for the planning funds, amounts retained by the regional agency and any sub-allocations, identification of best practices at the regional and state level, a strategy for increasing adoption of best practices at the regional level where feasible, and an education and outreach strategy. HCD has 30 days to review the application and award regional funds.
- December 31, 2023 – Deadline for regions to expend funds.

- December 31, 2024 – Deadline for regions to submit final report on status of plans and use of planning grant funds.

Local Government Planning Support Grants: Local Jurisdictional Funds

- To Be Determined – HCD releases guidelines and notice of funding availability
- July 1, 2020 – Deadline for local jurisdictions to submit applications to secure jurisdictional housing planning grant funds.

State RHNA Update in 2022

- December 31, 2022 – Deadline for HCD and OPR to develop a revised RHNA process and methodology to streamline housing development and address the housing shortage. Revisions will be submitted to the legislature with recommendations.

Next Steps

SBCAG will continue to work the other Central Coast COGs to work out the details of the new multi-agency working group formation, including a charter, schedule, and draft outreach strategy. An item will be brought to the Board during its September meeting to approve the region's representation and to support AMBAG as the fiscal agent

ATTACHMENT:

- A. Trailer Bill

ATTACHMENT A

Housing Planning and Production Grants Draft Trailer Bill Language

Section 1. Chapter X (commencing with Section XXXXX) is added to Part X of Division XX of the Health and Safety Code, to read:

CHAPTER X. Housing Planning and Progress Grants

XXXXX. Definitions. For purposes of this chapter:

- (a) "Council of governments" means a single or multicounty council created by a joint powers agreement pursuant to Chapter 5 (commencing with Section 6500) of Division 1 of Title 1 that prepares an allocation plan pursuant to Sections 65584.04 and 65584.05 of the Government Code.
- (b) "Department" means the California Department of Housing and Community Development.
- (c) "Completed Entitlement" means a housing development or project which has received all the required land use approvals or entitlements necessary for the issuance of a building permit. This means that there is no additional action, including environmental review or appeals, required to be eligible to apply and obtain a building permit.
- (d) "Housing element" or "element" means the housing element of the community's general plan, as required pursuant to this article and subdivision (c) of Section 65302.
- (e) "Jurisdiction" means a city, county, city and county, school district, county office of education, or a combination of these entities.
- (f) "Low-income unit" means units restricted to low-income households, as defined by 80 percent of the county area median income.
- (g) "Market rate unit" means units not restricted to low-income households, as defined by 80 percent of the county area median income.
- (h) "Program" means the Housing Planning and Progress Grants program.
- (i) "Regional Housing Needs Assessment" means the housing goals identified for each locality pursuant to Article 10.6 of Chapter 3 of Division 1 of Title 7 of the Government Code.
- (j) "Annual Progress Report" means reports required to be submitted to the Department under Section 65400 of the Government Code.

XXXXX.1. Program framework.

- (a) The Local Government Planning Support Grants program is hereby established for the purpose of providing regions and jurisdictions with one-time funding, including grants for planning activities to enable jurisdictions to meet the Sixth Cycle of the Regional Housing Needs Assessment.
- (b) The Department shall administer the program.
- (c) The Department's decision to approve or deny an application or request for funding from a regional government and the determination of the amount of funding to be provided shall be final.
- (d) The Department shall maintain records of the following:
 - (1) The number of applications for program funding received by the Department.
 - (2) The number of applications for program funding denied by the Department.
 - (3) The name of each recipient of program funds.
- (e) The Department may carry out the program through the issuance of forms, guidelines, and one or more notices of funding availability as necessary to exercise the powers and perform the duties conferred or imposed on it by this chapter. Any forms, guidelines and notice of funding availability issued pursuant to this section shall not be subject to the rulemaking provisions of

the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

XXXXX.2. Planning grants.

(a) Upon appropriation by the Legislature, the Department shall allocate two hundred and fifty million dollars (\$250,000,000) to regions and jurisdictions for technical assistance, preparation and adoption of planning documents, and process improvements to accelerate housing production and facilitate compliance to implement the Sixth Cycle of the Regional Housing Needs Assessment.

(b)(1) Of the amount described in paragraph (a), one hundred and twenty-five million (\$125,000,000) shall be available to regions as identified in paragraphs (A) through (G).

(A) Association of Bay Area Governments, representing the counties of Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma.

(B) Sacramento Area Council of Governments, representing the counties of El Dorado, Placer, Sacramento, Sutter, Yolo, and Yuba.

(C) San Diego Association of Governments representing San Diego County.

(D) Southern California Association of Governments, representing counties of Imperial, Los Angeles, Orange, Riverside, San Bernardino, and Ventura.

(E) A central coast multi-agency working group consisting of the association of Monterey Bay Area Governments, San Luis Obispo Council of Governments, and Santa Barbara Association of Governments, representing the counties of Monterey, San Benito, San Luis Obispo, Santa Barbara, and Santa Cruz.

(F) A San Joaquin Valley multi-agency working group consisting of Fresno Council of Governments, Kern Council of Governments, Kings County Association of Governments, Madera County Transportation Commission, Merced County Association of Governments, San Joaquin Association of Governments, Stanislaus Council of Governments and the Tulare County Association of Governments, representing the counties of Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus, and Tulare.

(G) Cities, counties, and councils of governments of the following counties: Alpine, Amador, Butte, Calaveras, Colusa, Glenn, Del Norte, Humboldt, Inyo, Lake, Lassen, Mariposa, Modoc, Mendocino, Mono, Nevada, Plumas, Shasta, Sierra, Siskiyou, Tehama, Tuolumne, and Trinity. These jurisdictions may directly apply to the Department for funds.

(2) Allocations pursuant to this subdivision shall be made to these regions on behalf of all the jurisdictions they represent. The amount of these allocations shall be calculated according to population estimates consistent with the methodology identified in subdivision (c) and provided in total to each region. In consultation with the Department, each region may determine appropriate use of funds or sub-allocations within its boundaries to appropriately address its unique housing and planning priorities.

(3) The following provisions apply to the multi-agency working groups identified in subparagraph (E) and (F) of subdivision (b)(1).

(A) Prior to November 30, 2019, the central coast and San Joaquin Valley regions shall form a multi-jurisdictional working group comprised of one county representative from each county, and two city representatives nominated by the city selection committee that represents a larger city and a smaller city within each county. At least one of the three representatives from each county must also serve on the board of the council of governments or commission identified in subdivision (b)(1). The multi-jurisdictional working group shall select a council of governments to serve as the fiscal agent and identify staff to assist the work

of the group. Once formed, the multi-jurisdictional working group shall notify all member cities and counties of its purpose pursuant to this section, the composition of its members, its timeline for action and proposed meeting schedule. The Department may select a fiscal agent for the multi-jurisdictional working group in the absence of agreement within the membership. The Department's decision shall be based on factors such as capacity and experience in administering programs.

(B) In recognition of the unique challenge in developing a process through a multi-agency working group, eight million dollars (\$8,000,000) from the amount identified in paragraph (a) shall be provided to a multiagency working group that does not form a smaller multi-jurisdictional working group under subparagraph (b)(1). Of this amount, 25 percent shall be set aside for the central coast multi-agency working group and 75 percent shall be set aside for the San Joaquin Valley multiagency working group.

(4) In consultation with the Department, a region shall establish priorities and use funds allocated to:

(A) Sub-allocate funds directly and equitably to local agencies or sub-regional entities in a grant program for planning that will accommodate and develop housing and infrastructure that will accelerate housing production in a way that aligns with state planning priorities, housing, transportation, equity, and climate goals.

(B) Provide local agencies with technical assistance, planning, temporary staffing or consultant needs associated with updating local planning and zoning documents, expediting application processing and other actions to accelerate additional housing production.

(C) Update a housing element to comply with state law.

(D) Supporting enhanced local planning activities, and environmental analysis that will support housing development and location-efficient housing consistent with adopted regional plans, including sustainable communities strategies.

(E) Providing funding for the formation or augmentation of a regional, sub regional, or local housing trust funds.

(F) Develop an improved methodology for the distribution of the Sixth Cycle Regional Housing Needs Assessment to further the statutory objectives per Government Code 65584(d).

(5) Beginning September 15, 2019 and by no later than January 31, 2020, a region may request funds pursuant to paragraph (1). The Department shall have 30 days to review a request for funds pursuant to this paragraph and provide comments. A region shall incorporate comments as appropriate to achieve the goals of this Program. Following approval, the Department shall disburse corresponding funds, provided that no more than 50% of the allocation of a region shall be awarded before the Department receives, reviews, and approves the region's action plan report.

(i) The cities, counties, and councils of governments identified in (b)(1)(G) may apply directly to the Department for use of the funds pursuant to this subdivision.

(6) By December 31, 2019, regions may request funds to organize and partner with and make suballocations to jurisdictions to promote sufficient housing supply, including but not limited to implementing this subdivision. The Department shall have 30 days to review a request for funds pursuant to this paragraph, and following approval disburse corresponding funds, provided that no more than 50% of the allocation of a region shall be awarded before the Department receives and reviews the region's action plan pursuant to paragraph (8) of this subdivision.

(7) The region shall develop an education and outreach strategy to inform local agencies of the need and benefits of taking early action related to the sixth cycle regional needs allocation. The council of governments shall also survey member cities and counties to identify how to expend the funds among the uses identified in subsection (1) and develop the regional action plan in subsection (8). The outreach effort must also include at least two public workshops, but may also include other strategies designed to produce information and data the council of governments deems relevant.

(8) By December 31, 2020, the regions must submit an action plan to the Department that identifies specific strategies that jurisdictions within the region have implemented or plan to implement to meet their housing goals. The action plan must include the following components:

(A) A general overview of regional economic, demographic, environmental, socioeconomic equity, and market conditions that are affecting housing availability and accessibility

(B) An allocation budget for the funds provided in subdivision (1)

(C) A section that identifies best practices and process improvements from within or outside the region that promote sufficient supply of a range of housing types affordable to a variety of incomes, including policies and programs that create additional development certainty, reduce regulatory barriers, and other strategies that have been shown to increase housing development.

(D) A mechanism for the region to report on the results and successes of the progress of jurisdictions in developing early action items, including a summary of any building permits or certificates of occupancy, or other completed entitlement that have been issued by a local jurisdiction,

(E) The amounts retained by the region and any sub-allocations to jurisdictions.

(9) At least 90 days before submission to the Department, an action plan shall be submitted for a 30-day comment period to the respective boards of supervisors and city councils within the region, with its contents explained to the affected local jurisdictions via webinar or in at least two public workshops.

(A) After considering written comments, the council of governments shall make any changes deemed necessary and submit a final action plan to respective boards of supervisors and city councils within the region and to the Department.

(10) The Department shall have 60 days to review action plans submitted by regions and provide approval or in the event the Department does not approve the report they must provide written findings and the region shall have the opportunity to amend and resubmit with a Department review period of no greater than 45 days. The Department shall disburse any remaining funds pursuant to paragraph (1) to regions, following approval of their action plan pursuant to paragraph (8) of this subdivision.

(11) Expenditures shall be limited to housing-related planning activities. These activities include but are not limited to:

(A) Technical assistance in improving housing permitting processes, tracking systems, and planning tools

(B) Facilitating technical assistance between jurisdictions

(C) Establishing regional housing trust funds

(D) Developing local or regional policies to link transportation funds to housing outcomes

(E) Performing infrastructure planning, including for sewers, water systems, transit, roads, or other public facilities necessary to support new housing and new residents

(F) Performing feasibility studies to determine the most efficient locations to site housing, consistent with section 65041.1 of the Government Code

(G) Performing feasibility studies for affordable housing projects on surplus property owned by school districts or county offices of education

(c) Of this amount, one hundred and twenty-five million (\$125,000,000) shall be available directly for jurisdictions to assist in planning or other activities related to meeting their Sixth Cycle of the Regional Housing Needs Assessment.

(1) Jurisdictions are eligible for funds under this paragraph if they demonstrate a commitment to participate in the development of their regional action plan. By December 31, 2019, the Department shall disburse funds to jurisdictions pursuant to paragraph (2). If the jurisdiction is in a region that does not submit a plan pursuant to paragraph (8) of subdivision (b), the jurisdiction must submit a plan to the Department that identifies specific strategies to meet their Sixth Cycle of the Regional Housing Needs Assessment and prepare to be effective at meeting their long-term housing goals, as well as promote sufficient supply of a range of housing types affordable to a variety of incomes.

(2) Maximum grant amounts shall be set as follows, according to population estimates as of January 1, 2019 posted on the Department of Finance Internet Web site:

(A) One million and five hundred thousand dollars (\$1,500,000) to very large localities (with populations over 750,000).

(B) Seven hundred and fifty thousand dollars (\$750,000) to large localities (with populations between 300,000 and 749,999 inclusive).

(C) Five hundred thousand dollars (\$500,000) to medium to large localities (with populations between 100,000 and 299,999, inclusive).

(D) Three hundred thousand dollars (\$300,000) to medium localities (with populations between 60,000 and 99,999, inclusive).

(E) One hundred and fifty thousand dollars (\$150,000) to small localities (with populations between 20,000 and 59,999, inclusive)

(F) Sixty five thousand dollars (\$65,000) to very small localities (with populations under 20,000).

(3) Expenditures shall be limited to housing-related planning activities to promote and streamline development, including staffing or contracts. These activities include but are not limited to:

(A) Any other uses eligible under paragraph (4) of subsection (b).

(B) Rezoning and encouraging development by updating planning documents and zoning ordinances, such as general plans, community plans, specific plans, sustainable communities' strategies, and local coastal programs.

(C) Completing environmental clearance to eliminate the need for project-specific review.

(D) Establishing Workforce Housing Opportunity Zones pursuant to Article 10.10 (commencing with Section 65620) of Chapter 3 of Division 1 of Title 7 of the Government Code or Housing Sustainability Districts pursuant to Chapter 11 (commencing with Section 66200) of Division 1 of Title 7 of the Government Code.

(E) Revamping local planning processes to speed up production.

(F) Creation or improvement of accessory dwelling unit ordinances.

(d) Of the amount appropriated in subsection (a) of XXXX.2, five percent of the funds shall be set aside for program administration, including state operations expenditures and technical assistance, as well as expenditures by councils of government and the regional entities receiving funding.

XXXXX.3. Investments in Infrastructure.

(a) Upon appropriation by the Legislature, five hundred million dollars (\$500,000,000) shall be allocated to the Infill Infrastructure Grant program administered by the Department, pursuant to Sections 53545.12 and 53545.13.

(1) In addition to the conditions described Section 53545.13(c), the qualifying infill area or qualifying infill project shall meet all of the following conditions:

(A) Be located in a city, county, or city and county that has a compliant housing element.

(B) Be located in a city, county, or city and county that, at the time of application, has submitted its annual progress reports for 2018 through the most recently required annual progress reports.

(C) Be a joint application between a city, county, or city and county and a developer to build infrastructure that supports the development of mixed income housing.

(b) Of the amount appropriated in subsection (a) of XXXX.3, five percent of the funds shall be set aside for program administration, including state operations expenditures and technical assistance, as well as expenditures by councils of government and the regional entities receiving funding.

XXXXX.4. Timelines.

(a) (1) The Department shall make award determinations and issue a notice of funding availability for the planning grants available pursuant to section XXXXX.2 no later than August 15, 2019.

(2) Regions can apply for planning grants pursuant to section XXXXX.2 no later than December 31, 2020, and the Department shall have 30 days to review applications before issuing awards.

(3) Jurisdictions can apply for planning grants pursuant to section XXXXX.2 no later than December 31, 2019.

(4) Regions shall submit their action plans pursuant to section XXXXX.2 no later than December 31, 2020, and make such action plans available publicly on an internet website.

(5) By March 1st, 2022, and every year thereafter regions shall complete an evaluation of progress made by jurisdictions in implementing yearly action plan goals pursuant to subparagraph (x) of paragraph (x) of subdivision (x) section XXXXX.2 and make these evaluations available publicly on an internet website.

(5) Jurisdictions and regions shall expend planning grant allocations no later than January 1, 2022.

(6) Regions shall report status of their action plans and all uses of planning grant funds to the Department no later than December 31, 2022. Status of the action plan must include an evaluation of jurisdiction actions taken in support of the plan, including which actions had greatest impact on housing production.

(7) Jurisdictions shall report all uses of planning grant funds to the Department no later than March 1, 2022.

(b) The Department may request additional information, as needed, to meet other applicable reporting or audit requirements.

(c) The Department may monitor expenditures and activities of an applicant, as the Department deems necessary, to ensure compliance with program requirements.

(d) The Department may, as it deems appropriate or necessary, request the repayment of funds from an applicant, or pursue any other remedies available to it by law for failure to comply with program requirements.

XXXXX.5. Long-term reform.

(a) It is the intent of the Legislature to revamp the existing Regional Housing Needs Assessment process pursuant to section 65584 of the Government Code, to accomplish the following objectives:

- (1) Creating a fair, transparent, and objective process for identifying housing needs across the state.
- (2) Strategically planning for housing growth according to statewide priorities consistent with section 65041.1 of the Government Code, and expected future need for housing at all income levels.
- (3) Encouraging increased development to address the state's housing affordability issues.
- (4) Improving compliance and outcomes through incentives and enforcement.

(b) By December 31, 2022, the Department, in collaboration with the Office of Planning and Research, shall propose, after engaging in stakeholder participation, an improved Regional Housing Needs Allocation process and methodology that promotes and streamlines housing development and substantially addresses California's housing shortage. The Department may appoint a third-party consultant to facilitate a comprehensive review of the current Regional Housing Needs Allocation process and methodology.

(c) (1) By December 31, 2022, the Department, in collaboration with the California State Transportation Agency and the Office of Planning and Research, shall propose, after engaging in stakeholder participation, opportunities to link transportation and other non-housing funding, including funds available pursuant to paragraph (2) of subdivision (h) of section 2032 of the Streets and Highways Code, with statutorily required housing goals, including but not limited to housing element and annual progress report compliance, and policies that support meeting of housing goals, and integrated housing and transportation planning. The recommendations proposed may be implemented administratively or proposed to the Legislature for statutory change, as applicable.

(2) To aid the implementation of paragraph (1), beginning July 1, 2023, funds available pursuant to paragraph (2) of subdivision (h) of section 2032 of the Streets and Highways Code may be withheld from any jurisdiction that does not have a compliant housing element and has not zoned or entitled for its annual housing goals, pursuant to its most-recent Regional Housing Needs Allocation. Any forms and guidelines issued pursuant to this subdivision shall not be subject to the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) or Part 1 of Division 3 of Title 2 of the Government Code).

(3) By May 1, 2023, and annually thereafter, the Department shall report to the Controller a list of cities and counties with funds to be withheld from the following fiscal year's apportionment pursuant to paragraph (2). The Controller shall reapportion any withheld funds under paragraph (2) to all cities and counties that do not have funds withheld for that fiscal year, pursuant to the formula in clauses (i) and (ii) of subparagraph (C) of paragraph (3) of subdivision (a) of Section 2103 of the Streets and Highways Code.