

Assembly Bill No. 369

CHAPTER 237

An act to amend Section 65589.5 of the Government Code, to amend Section 25395.20 of the Health and Safety Code, and to amend Sections 21080.10 and 21080.14 of the Public Resources Code, relating to housing.

[Approved by Governor September 4, 2001. Filed with Secretary of State September 4, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

AB 369, Dutra. Affordable housing development projects.

Existing law requires local agencies to make specified findings before disapproving or conditionally approving certain housing development projects affordable to very low, low-, or moderate-income households, as that term is defined, and authorizes a court to order compliance with that requirement.

This bill would delete the term "affordable" from those provisions and make the provisions applicable to housing for very low, low-, and moderate-income households. The bill would revise the provisions for enforcement to authorize the court to award specified costs and attorney fees.

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

SECTION 1. Section 65589.5 of the Government Code is amended to read:

65589.5. (a) The Legislature finds all of the following:

(1) The lack of housing is a critical problem that threatens the economic, environmental, and social quality of life in California.

(2) California housing has become the most expensive in the nation. The excessive cost of the state's housing supply is partially caused by activities and policies of many local governments that limit the approval of housing, increase the cost of land for housing, and require that high fees and exactions be paid by producers of housing.

(3) Among the consequences of those actions are discrimination against low-income and minority households, lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration.

(4) Many local governments do not give adequate attention to the economic, environmental, and social costs of decisions that result in



disapproval of housing projects, reduction in density of housing projects, and excessive standards for housing projects.

(b) It is the policy of the state that a local government not reject or make infeasible housing developments that contribute to meeting the housing need determined pursuant to this article without a thorough analysis of the economic, social, and environmental effects of the action and without complying with subdivision (d).

(c) The Legislature also recognizes that premature and unnecessary development of agricultural lands for urban uses continues to have adverse effects on the availability of those lands for food and fiber production and on the economy of the state. Furthermore, it is the policy of the state that development should be guided away from prime agricultural lands; therefore, in implementing this section, local jurisdictions should encourage, to the maximum extent practicable, in filling existing urban areas.

(d) A local agency shall not disapprove a housing development project for very low, low- or moderate-income households or condition approval in a manner that renders the project infeasible for development for the use of very low, low- or moderate-income households unless it makes written findings, based upon substantial evidence in the record, as to one of the following:

(1) The jurisdiction has adopted a housing element pursuant to this article that has been revised in accordance with Section 65588 and that is in substantial compliance with this article, and the development project is not needed for the jurisdiction to meet its share of the regional housing need for very low, low-, or moderate-income housing.

(2) The development project as proposed would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households. As used in this paragraph, a “specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

(3) The denial of the project or imposition of conditions is required in order to comply with specific state or federal law, and there is no feasible method to comply without rendering the development unaffordable to low- and moderate-income households.

(4) Approval of the development project would increase the concentration of lower income households in a neighborhood that already has a disproportionately high number of lower income households and there is no feasible method of approving the



development at a different site, including those sites identified pursuant to paragraph (1) of subdivision (c) of Section 65583, without rendering the development unaffordable to low- and moderate-income households.

(5) The development project is proposed on land zoned for agriculture or resource preservation that is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, or which does not have adequate water or wastewater facilities to serve the project.

(6) The development project is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete, and the jurisdiction has adopted a housing element pursuant to this article.

(e) Nothing in this section shall be construed to relieve the local agency from complying with the Congestion Management Program required by Chapter 2.6 (commencing with Section 65088) of Division 1 of Title 7 or the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code). Neither shall anything in this section be construed to relieve the local agency from making one or more of the findings required pursuant to Section 21081 of the Public Resources Code or otherwise complying with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(f) Nothing in this section shall be construed to prohibit a local agency from requiring the development project to comply with written development standards, conditions, and policies appropriate to, and consistent with, meeting the quantified objectives relative to the development of housing, as required in the housing element pursuant to subdivision (b) of Section 65583. Nothing in this section shall be construed to prohibit a local agency from imposing fees and other exactions otherwise authorized by law which are essential to provide necessary public services and facilities to the development project.

(g) This section shall be applicable to charter cities because the Legislature finds that the lack of housing is a critical statewide problem.

(h) The following definitions apply for the purposes of this section:

(1) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

(2) "Housing for very low, low-, or moderate-income households" means that either (A) at least 20 percent of the total units shall be sold or rented to lower income households, as defined in Section 50079.5 of the Health and Safety Code, or (B) 100 percent of the units shall be sold



or rented to moderate-income households as defined in Section 50093 of the Health and Safety Code, or middle-income households, as defined in Section 65008 of this code. Housing units targeted for lower income households shall be made available at a monthly housing cost that does not exceed 30 percent of 60 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the lower income eligibility limits are based. Housing units targeted for persons and families of moderate income shall be made available at a monthly housing cost that does not exceed 30 percent of 100 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the moderate income eligibility limits are based.

(3) “Area median income” means area median income as periodically established by the Department of Housing and Community Development pursuant to Section 50093 of the Health and Safety Code. The developer shall provide sufficient legal commitments to ensure continued availability of units for very low or low-income households in accordance with the provisions of this subdivision for 30 years.

(4) “Neighborhood” means a planning area commonly identified as such in a community’s planning documents, and identified as a neighborhood by the individuals residing and working within the neighborhood. Documentation demonstrating that the area meets the definition of neighborhood may include a map prepared for planning purposes which lists the name and boundaries of the neighborhood.

(5) “Disapprove the development project” includes any instance in which a local agency does either of the following:

(A) Votes on a proposed housing development project application and the application is disapproved.

(B) Fails to comply with the time periods specified in subparagraph (B) of paragraph (1) of subdivision (a) of Section 65950. An extension of time pursuant to Article 5 (commencing with Section 65950) shall be deemed to be an extension of time pursuant to this paragraph.

(i) If any city, county, or city and county denies approval or imposes restrictions, including a reduction of allowable densities or the percentage of a lot that may be occupied by a building or structure under the applicable planning and zoning in force at the time the application is deemed complete pursuant to Section 65943, that have a substantial adverse effect on the viability or affordability of a housing development for very low, low-, or moderate-income households, and the denial of the development or the imposition of restrictions on the development is the subject of a court action which challenges the denial, then the burden of proof shall be on the local legislative body to show that its decision is



consistent with the findings as described in subdivision (d) and that the findings are supported by substantial evidence in the record.

(j) When a proposed housing development project complies with applicable, objective general plan and zoning standards and criteria in effect at the time that the housing development project's application is determined to be complete, but the local agency proposes to disapprove the project or to approve it upon the condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by substantial evidence on the record that both of the following conditions exist:

(1) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

(2) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

(k) If in any action brought to enforce the provisions of this section, a court finds that the local agency disapproved a project or conditioned its approval in a manner rendering it infeasible for the development of housing for very low, low-, or moderate-income households without making the findings required by this section or without making sufficient findings supported by substantial evidence, the court shall issue an order or judgment compelling compliance with this section within 60 days, including, but not limited to, an order that the local agency take action on the development project. The court shall retain jurisdiction to ensure that its order or judgment is carried out and shall award reasonable attorney fees and costs of suit to the plaintiff or petitioner who proposed the housing development, except under extraordinary circumstances in which the court finds that awarding fees would not further the purposes of this section. If the court determines that its order or judgment has not been carried out within 60 days, the court may issue further orders as provided by law to ensure that the purposes and policies of this section are fulfilled.

(l) In any action, the record of the proceedings before the local agency shall be filed as expeditiously as possible and, notwithstanding Section 1094.6 of the Code of Civil Procedure, all or part of the record may be



filed (1) by the petitioner with the petition or petitioner's points and authorities, (2) by the respondent with respondent's points and authorities, (3) after payment of costs by the petitioner, or (4) as otherwise directed by the court. If the expense of preparing the record has been borne by the petitioner and the petitioner is the prevailing party, the expense shall be taxable as costs.

SEC. 2. Section 25395.20 of the Health and Safety Code is amended to read:

25395.20. (a) For purposes of this article, the following definitions shall apply:

(1) "Account" means the Cleanup Loans and Environmental Assistance to Neighborhoods Account established pursuant to subdivision (b).

(2) (A) "Brownfield" means property that meets all of the following conditions:

(i) It is located in an urbanized area.

(ii) It was previously the site of an economic activity that is no longer in operation at that location.

(iii) It has been vacant or has had no occupant engaged in year-round economically productive activities for a period of not less than the 12 months previous to the date of application for a loan pursuant to this article.

(B) "Brownfield" does not include any of the following:

(i) Property listed, or proposed for listing, on the National Priorities List pursuant to the federal act (42 U.S.C. Sec. 9605 (a)(8)(B)).

(ii) Property that is, or was, owned or operated by a department, agency, or instrumentality of the United States.

(iii) Property that will be the site of a contiguous expansion or improvement of an operating industrial or commercial facility.

(3) "Cleanup Loans and Environmental Assistance to Neighborhoods Program" or "CLEAN" means the loan program established by the department pursuant to Section 25395.22, to finance the performance of actions necessary to respond to the release or threatened release of hazardous material on an eligible property.

(4) "Economic activity" means a governmental activity, a commercial, agricultural, industrial, or not-for-profit enterprise, or other economic or business concern.

(5) "Eligible property" means a site that is either of the following:

(A) A brownfield.

(B) An underutilized property that is any of the following:

(i) A property described in clause (v) of subparagraph (D) of paragraph (11).



(ii) A property located in an enterprise zone established pursuant to the Enterprise Zone Act (Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code), in a project area for which a redevelopment plan has been approved pursuant to Article 4 (commencing with Section 33300) of Chapter 4 of Part 1 of Division 24, or in an eligible area, as determined by the Trade and Commerce Agency pursuant to paragraph (2) of subdivision (c) of Section 7072 of the Government Code.

(iii) A property, the redevelopment of which will result in any of the following:

(I) An increase in the number of full-time jobs that is at least 100 percent greater than the number of jobs provided by the economic activity located on the property before redevelopment occurred.

(II) An increase in property taxes paid to the local government that is at least 100 percent greater than the property taxes paid by the property owner before redevelopment occurred.

(III) Sales tax revenues to the local government that are sufficient to defray the costs of providing municipal services to the property after the redevelopment occurs.

(IV) Housing for very low, low-, or moderate-income households, as defined in paragraph (2) of subdivision (h) of Section 65589.5 of the Government Code.

(V) The construction of new or expanded school facilities, public day care centers, parks, or community recreational facilities.

(C) “Eligible property” does not include any of the following:

(i) Property listed or proposed for listing on the National Priorities List pursuant to the federal act (42 U.S.C. Sec. 9605 (a)(8)(B)).

(ii) Property that is, or was, owned or operated by a department, agency, or instrumentality of the United States.

(iii) Property that will be the site of a contiguous expansion or improvement of an operating industrial or commercial facility.

(6) (A) “Hazardous material” means a substance or waste that, because of its physical, chemical, or other characteristics, may pose a risk of endangering human health or safety or of degrading the environment. “Hazardous material” includes, but is not limited to, all of the following:

(i) A hazardous substance, as defined in Section 25281 or 25316, including the substances specified in Section 25317.

(ii) A hazardous waste, as defined in Section 25117.

(iii) A waste, as defined in Section 101075, or as defined in Section 13050 of the Water Code.



(B) “Hazardous material” does not include undisturbed naturally occurring hazardous material unless it will adversely affect the reasonable use of a property after response action is completed.

(7) “Investigating site contamination program” means the loan program established by the department pursuant to Section 25395.21 to conduct a preliminary endangerment assessment of an underutilized urban property.

(8) “No longer in operation” means an economic activity that is, or previously was, located on a property that is not conducting operations on the property of the type usually associated with the economic activity.

(9) “Project” means any response action, and the planned future development, included in an application for a loan pursuant to Section 25395.22.

(10) “Property” means real property, as defined in Section 658 of the Civil Code.

(11) “Underutilized property” means property that meets all of the following conditions:

(A) It is located in an urbanized area.

(B) An economic activity is conducted on the property.

(C) It is the subject of a proposal for development pursuant to this article.

(D) One of the following applies:

(i) The economic activity on the property is irregular or intermittent in nature and uses the property for productive purposes less than four months in any calendar year.

(ii) The economic activity on the property employs less than 25 percent of the property for productive purposes.

(iii) The structures, infrastructure, and other facilities on the property are antiquated, obsolete, or in such poor repair that they cannot be used for the purposes for which they were originally constructed and require replacement in order to implement the redevelopment proposal.

(iv) The economic activity conducted on the property is a parking facility or an activity that offers a similar marginal economic service and the facility or activity will be replaced when the property is redeveloped.

(v) The property is adjacent to one or more brownfields that are the subject of a project under this article and its inclusion in the project is necessary in order to ensure that the redevelopment of the brownfield or brownfields occurs.

(E) An underutilized property does not include any of the following:

(i) Property listed or proposed for listing on the National Priorities List pursuant to the federal act (42 U.S.C. Sec. 9605 (a)(8)(B)).

(ii) Property that is, or was, owned or operated by a department, agency, or instrumentality of the United States.



(iii) Property that will be the site of a contiguous expansion or improvement of an operating industrial or commercial facility.

(12) “Urbanized area” has the same meaning as set forth in paragraph (2) of subdivision (b) of Section 21080.7 of the Public Resources Code.

(b) The Cleanup Loans and Environmental Assistance to Neighborhoods Account is hereby established in the General Fund to provide low-interest loans to qualified applicants for the purpose of funding preliminary endangerment assessments and response actions at brownfields and underutilized properties located in the state pursuant to this article. All of the following moneys shall be deposited in the account:

(1) Funds appropriated by the Legislature for the purposes of this article.

(2) Notwithstanding Section 16475 of the Government Code, any interest earned upon money deposited into the account.

(3) Proceeds from loan repayments.

(4) Proceeds from the sale of property pursuant to this article that is the subject of foreclosure or its equivalent, as defined in subdivision (f) of Section 25548.1, and proceeds from the enforcement of any other security interest.

(c) (1) Except as provided in paragraph (2), notwithstanding Section 13340 of the Government Code, the money in the account is continuously appropriated without regard to fiscal years to the department for the purpose of providing loans pursuant to Sections 25395.21 and 25395.22.

(2) The money in the account may be expended by the department and the agency for the administration of this article only upon appropriation by the Legislature in the annual Budget Act or in another measure.

SEC. 3. Section 21080.10 of the Public Resources Code is amended to read:

21080.10. This division does not apply to any of the following:

(a) An extension of time, granted pursuant to Section 65361 of the Government Code, for the preparation and adoption of one or more elements of a city or county general plan.

(b) Actions taken by the Department of Housing and Community Development or the California Housing Finance Agency to provide financial assistance or insurance for the development and construction of residential housing for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, if the project which is the subject of the application for financial assistance or insurance will be reviewed pursuant to this division by another public agency.



(c) (1) Any development project which consists of the construction, conversion, or use of residential housing for agricultural employees, as defined in paragraph (2), that is affordable to lower-income households, as defined in Section 50079.5 of the Health and Safety Code, if there is no public financial assistance for the development project and the developer of the development project provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for lower-income households for a period of at least 15 years, or any development project that consists of the construction, conversion, or use of residential housing for agricultural employees, as defined in paragraph (2) that is housing for very low, low-, or moderate-income households, as defined in paragraph (2) of subdivision (h) of Section 65589.5 of the Government Code, if there is public financial assistance for the development project and the developer of the development project provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for low- and moderate-income households for a period of at least 15 years, if either type of development project meets all of the following requirements:

(A) (i) If the development project is proposed for an urbanized area, it is located on a project site which is adjacent, on at least two sides, to land that has been developed, and consists of not more than 45 units, or is housing for a total of 45 or fewer agricultural employees if the housing consists of dormitories, barracks, or other group living facilities.

(ii) If the development project is proposed for a nonurbanized area, it is located on a project site zoned for general agricultural use, and consists of not more than 20 units, or is housing for a total of 20 or fewer agricultural workers if the housing consists of dormitories, barracks, or other group living facilities.

(B) The development project is consistent with the jurisdiction's general plan as it existed on the date that the application was deemed complete.

(C) The development project is consistent with the zoning designation, as specified in the zoning ordinance as it existed on the date that the application was deemed complete, unless the zoning is inconsistent with the general plan because the local agency has not rezoned the property to bring it into conformity with the general plan.

(D) The development project site is not more than five acres in area, except that a project site located in an area with a population density of at least 1,000 persons per square mile shall not be more than two acres in area.

(E) The development project site can be adequately served by utilities.



(F) The development project site has no value as a wildlife habitat.

(G) The development project site is not included on any list of facilities and sites compiled pursuant to Section 65962.5 of the Government Code.

(H) The development project will not involve the demolition of, or any substantial adverse change, in any structure that is listed, or is determined to be eligible for listing, in the California Register of Historic Resources.

(2) As used in paragraph (1), “residential housing for agricultural employees” means housing accommodations for an agricultural employee, as defined in subdivision (b) of Section 1140.4 of the Labor Code.

(3) As used paragraph (1), “urbanized area” means either of the following:

(A) An area with a population density of at least 1,000 persons per square mile.

(B) An area with a population density of less than 1,000 persons per square mile that is identified as an urban area in a general plan adopted by a local government, and was not designated, on the date that the application was deemed complete, as an area reserved for future urban growth.

(4) This division shall apply to any development project described in this subdivision if a public agency which is carrying out or approving the development project determines that there is a reasonable possibility that the project, if completed, would have a significant effect on the environment due to unusual circumstances, or that the cumulative impact of successive projects of the same type in the same area over time would be significant.

SEC. 4. Section 21080.14 of the Public Resources Code is amended to read:

21080.14. (a) Except as provided in subdivision (c), this division does not apply to any development project that consists of the construction, conversion, or use of residential housing consisting of not more than 100 units in an urbanized area that is affordable to lower income households, as defined in Section 50079.5 of the Health and Safety Code, if the developer of the development project provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for lower income households for a period of at least 15 years, or that is housing for very low, low-, or moderate-income households, as defined in paragraph (2) of subdivision (h) of Section 65589.5 of the Government Code, if the developer of the development project provides sufficient legal commitments to the appropriate local agency to ensure the continued



availability and use of the housing units for low- and moderate-income households at monthly housing costs as determined pursuant to paragraph (2) of subdivision (h) of Section 65589.5 of the Government Code, the developer provides sufficient legal commitments to ensure continued availability of units for the lower income households for 30 years as provided in paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code, and the development project meets all of the following requirements:

(1) The development project is consistent with the jurisdiction's general plan or any applicable specific plan or local coastal program as it existed on the date that the application was deemed complete.

(2) The development project is consistent with the zoning designation, as specified in the zoning ordinance as it existed on the date that the application was deemed complete, unless the zoning is inconsistent with the general plan because the local agency has not rezoned the property to bring it into conformity with the general plan.

(3) The project site is an infill site that has been previously developed for urban uses, or the immediately contiguous properties surrounding the project site are, or previously have been, developed for urban uses.

(4) The project site is not more than five acres in area.

(5) The project site can be adequately served by utilities.

(6) The project site has no value as a wildlife habitat.

(7) The project site is not included on any list of facilities and sites compiled pursuant to Section 65962.5 of the Government Code.

(8) The project site is subject to an assessment prepared by a California registered environmental assessor to determine the presence of hazardous contaminants on the site and the potential for exposure of site occupants to significant health hazards from nearby properties and activities. If hazardous contaminants on the site are found, the contaminants shall be removed or any significant effects of those contaminants shall be mitigated to a level of insignificance. If the potential for exposure to significant health hazards from surrounding properties or activities is found to exist, the effects of the potential exposure shall be mitigated to a level of insignificance.

(9) The project will not involve the demolition of, or any substantial adverse change in, any district, landmark, object, building, structure, site, area, or place that is listed, or determined to be eligible for listing, in the California Register of Historical Resources.

(b) As used in subdivision (a), "urbanized area" means an area that has a population density of at least 1,000 persons per square mile.

(c) Notwithstanding subdivision (a), this division does apply to a development project described in subdivision (a) if there is a reasonable possibility that the development project would have a significant effect



on the environment or the residents of the development project due to unusual circumstances or due to related or cumulative impacts of reasonably foreseeable projects in the vicinity of the development project.

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93

