

AMENDED IN SENATE MARCH 27, 2001

SENATE BILL

No. 910

**Introduced by ~~Senators Dunn, Burton, Haynes, and Monteith~~
Senator Dunn
(*Coauthors: Senators Burton, Haynes, and Monteith*)**

February 23, 2001

An act to amend Sections 65587 and 65589.3 of, *and to add Section 65585.5 to*, the Government Code, relating to general plans, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 910, as amended, Dunn. General plans: housing elements.

(1) Existing law requires each city, county, or city and county to prepare and adopt a general plan for its jurisdiction that contains certain mandatory elements, including a housing element. A city, county, a city and county is required to submit a draft housing element or draft amendment to its housing element to the Department of Housing and Community Development for a determination of whether the draft complies with state law governing housing elements. Existing law, until June 30, 2009, exempts any local government within the jurisdiction of the San Diego Association of Governments from this review requirement if it instead submits to the department with its housing element a self-certification of compliance with state law. In an action brought by any party to review the conformity of a housing element with applicable state law, a court review shall extend to whether the housing element, or portion thereof or revision thereto, substantially complies with that law.

This bill would require a court, on a finding that there is not substantial compliance, to award the plaintiff reasonable attorney's fees

and costs and to levy a penalty not to exceed \$1,000 per unit of the total projected housing need for the jurisdiction. The bill would provide that all penalties shall accrue to the Housing Rehabilitation Loan Fund. Because all money in this fund is continuously appropriated to the Department of Housing and Community Development for specified purposes, this bill would make an appropriation.

(2) Existing law provides that, in any action filed on or after January 1, 1991, challenging the validity of a housing element, there shall be a rebuttable presumption of the validity of the element or amendment if the Department of Housing and Community Development has found that the element or amendment substantially complies with the applicable law.

This bill would provide that, in any action filed on or after January 1, 2002, challenging the validity of a housing element, there shall be a rebuttable presumption of nonvalidity of the element or amendment if the department has found that the element or amendment does not substantially comply.

~~This bill would declare the intent of the Legislature to withhold unidentified state funding from~~ *require the Controller to reduce by specified percentages the monthly allocation of funds disbursed under various fuel tax laws to any city, county, or city and county that does not have a whose third or subsequent revision of its housing element is not in substantial compliance with state law and to redistribute the money to those cities, counties, or cities and counties whose housing elements are in compliance in the following month. The bill would require the department to report to the Controller monthly a list of noncompliant jurisdictions.* The bill would state that, for the purposes of this provision, an authorized self-certification of a housing element shall be deemed to have been approved by the department *unless a court finds that jurisdiction's housing element does not substantially comply with state law.*

Vote: ²/₃. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

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

- 1 SECTION 1. Section 65587 of the Government Code is
- 2 amended to read:
- 3 65587. (a) Each city, county, or city and county shall bring its
- 4 housing element, as required by subdivision (c) of Section 65302,



1 into conformity with the requirements of this article on or before
2 October 1, 1981, and the deadlines set by Section 65588. Except
3 as specifically provided in subdivision (b) of Section 65361, the
4 Director of Planning and Research shall not grant an extension of
5 time from these requirements.

6 (b) Any action brought by any interested party to review the
7 conformity with the provisions of this article of any housing
8 element or portion thereof or revision thereto shall be brought
9 pursuant to Section 1085 of the Code of Civil Procedure; the
10 court's review of compliance with the provisions of this article
11 shall extend to whether the housing element or portion thereof or
12 revision thereto substantially complies with the requirements of
13 this article. If a court finds that any housing element or portion
14 thereof does not substantially comply with the requirements of this
15 article, the court, in addition to any other remedy allowed by law,
16 shall award the plaintiff reasonable attorney's fees and costs and
17 shall levy a penalty not to exceed one thousand dollars (\$1,000) per
18 unit of the total projected housing need for the jurisdiction as
19 identified pursuant to Section 65584. Any penalties shall accrue to
20 the Housing Rehabilitation Loan Fund established by Section
21 50661 of the Health and Safety Code.

22 (c) If a court finds that an action of a city, county, or city and
23 county, which is required to be consistent with its general plan,
24 does not comply with its housing element, the city, county, or city
25 and county shall bring its action into compliance within 60 days.
26 However, the court shall retain jurisdiction throughout the period
27 for compliance to enforce its decision. Upon the court's
28 determination that the 60-day period for compliance would place
29 an undue hardship on the city, county, or city and county, the court
30 may extend the time period for compliance by an additional 60
31 days.

32 SEC. 2. Section 65589.3 of the Government Code is amended
33 to read:

34 65589.3. (a) In any action filed on or after January 1, 1991,
35 taken to challenge the validity of a housing element, there shall be
36 a rebuttable presumption of the validity of the element or
37 amendment if, pursuant to Section 65585, the department has
38 found that the element or amendment substantially complies with
39 the requirements of this article.



1 (b) In any action filed on or after January 1, 2002, taken to
2 challenge the validity of a housing element, there shall be a
3 rebuttable presumption of the nonvalidity of the element or
4 amendment if, pursuant to Section 65585, the department has
5 found that the element or amendment does not substantially
6 comply with the requirements of this article.

7 ~~SEC. 3.—It is the intent of the Legislature that a percentage of~~
8 *SEC. 3. Section 65585.5 is added to the Government Code, to*
9 *read:*

10 *65585.5. (a) The Controller shall reduce by the following*
11 *percentages the monthly allocation of funds dispersed pursuant to*
12 *subdivision (d), (e), or (f) of Section 2104 and Sections 2105, 2106,*
13 *and 2107 of the Streets and Highways Code to any city, county, or*
14 *city and county unless the city, county, or city and county has an*
15 *adopted housing element that the Department of Housing and*
16 *Community Development has determined pursuant to Section*
17 *65585 to be in substantial compliance with the requirements of this*
18 *article:*

19 *(1) The allocation shall be reduced by 20 percent for a city,*
20 *county, or city and county whose third or subsequent revision of its*
21 *housing element has not been found by the department to be in*
22 *substantial compliance within 180 days of the deadline established*
23 *by Section 65588.*

24 *(2) The allocation shall be reduced by 40 percent for a city,*
25 *county, or city and county whose third or subsequent revision of its*
26 *housing element has not been found by the department to be in*
27 *substantial compliance within one year of the deadline established*
28 *by Section 65588.*

29 *(3) The allocation shall be reduced by 60 percent for a city,*
30 *county, or city and county whose third or subsequent revision of its*
31 *housing element has not been found by the department to be in*
32 *substantial compliance within two years of the deadline*
33 *established by Section 65588.*

34 *(b) Any funds withheld from a city, county, or city and county*
35 *pursuant to this section shall be added to the total pool of funds to*
36 *be allocated and disbursed in the following month.*

37 *(c) For the purposes of this section, an adopted housing*
38 *element that has been self-certified pursuant to Section 65585.1*
39 *shall be deemed to have been approved by the department, unless*



1 *a court finds that the jurisdiction's housing element does not*
2 *substantially comply with this article.*

3 *(d) The department shall report to the Controller by the 20th*
4 *day of the month a list of cities, counties, and cities and counties*
5 *whose third or subsequent housing element revisions, as of the 15th*
6 *day of that month, have not been determined by the department to*
7 *be in substantial compliance with the requirements of this article.*
8 *The department shall also report the deadline date for the third or*
9 *subsequent housing element revision established in Section 65588*
10 *for each respective jurisdiction on that list.*

11 ~~an ongoing source of state funding shall be withheld from any city,~~
12 ~~county, or city and county that does not have an adopted housing~~
13 ~~element that the Department of Housing and Community~~
14 ~~Development has determined pursuant to Section 65585 of the~~
15 ~~Government Code to be in substantial compliance with the~~
16 ~~requirements of Article 10.6 (commencing with Section 65580) of~~
17 ~~Chapter 3 of Division 1 of Title 7 of the Government Code. It is~~
18 ~~further the intent of the Legislature to redistribute in the following~~
19 ~~month any withheld funds among all cities, counties, and cities and~~
20 ~~counties whose housing elements the department has determined~~
21 ~~to be in compliance with state law. For the purposes of this section,~~
22 ~~a housing element that has been self-certified pursuant to Section~~
23 ~~65585.1 of the Government Code shall be deemed to have been~~
24 ~~approved by the department.~~

