

AMENDED IN SENATE MAY 24, 2001

AMENDED IN SENATE MAY 8, 2001

AMENDED IN SENATE APRIL 24, 2001

AMENDED IN SENATE MARCH 27, 2001

SENATE BILL

No. 910

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

February 23, 2001

An act to amend Sections ~~65587~~ 65584, 65587, and 65589.3 of, and to add Section 65585.5 to, the Government Code, relating to general plans.

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. *★ One part of the housing element is an assessment of housing needs and an inventory of resources and constraints relevant to meeting those needs. The assessment includes the locality's share of regional housing needs. That share is determined by the appropriate council of governments, subject to revision by the Department of Housing and Community Development.*

This bill would provide that, for a council of governments whose members have a combined population of more than 10,000,000, a resolution to adopt the allocation of regional housing need shall be

approved by a majority of voting members from each county on the governing board.

(2) *Under existing law, a city, county, or 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 authorize a court, on a finding that there is not substantial compliance, to award the plaintiff reasonable attorney's fees and costs and require the court to levy a penalty not to exceed specified amounts based on the population of the city, county, or city and county. The bill would provide that all penalties shall accrue to the Housing Supply Account, which the bill would create in the Housing Rehabilitation Loan Fund, and that no money in that account shall be expended except upon appropriation by the Legislature.

(2)—

(3) 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 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 whose third or subsequent revision of its housing element is not in substantial compliance with state law or that during the previous housing element cycle did not adopt a housing element determined by the department to



be in substantial compliance with state law, and to hold the money in an escrow account until the department determines there is substantial compliance. 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: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

1 SECTION 1. *Section 65584 of the Government Code is*
2 *amended to read:*
3 65584. (a) For purposes of subdivision (a) of Section 65583,
4 the share of a city or county of the regional housing needs includes
5 that share of the housing need of persons at all income levels within
6 the area significantly affected by a general plan of the city or
7 county. The distribution of regional housing needs shall, based
8 upon available data, take into consideration market demand for
9 housing, employment opportunities, the availability of suitable
10 sites and public facilities, commuting patterns, type and tenure of
11 housing need, the loss of units contained in assisted housing
12 developments, as defined in paragraph (8) of subdivision (a) of
13 Section 65583, that changed to non-low-income use through
14 mortgage prepayment, subsidy contract expirations, or
15 termination of use restrictions, and the housing needs of
16 farmworkers. The distribution shall seek to reduce the
17 concentration of lower income households in cities or counties
18 which already have disproportionately high proportions of lower
19 income households. Based upon population projections produced
20 by the Department of Finance and regional population forecasts
21 used in preparing regional transportation plans, and in
22 consultation with each council of governments, the Department of
23 Housing and Community Development shall determine the
24 regional share of the statewide housing need at least two years
25 prior to the second revision, and all subsequent revisions as
26 required pursuant to Section 65588. Based upon data provided by
27 the department relative to the statewide need for housing, each



1 council of governments shall determine the existing and projected
2 housing need for its region. Within 30 days following notification
3 of this determination, the department shall ensure that this
4 determination is consistent with the statewide housing need. The
5 department may revise the determination of the council of
6 governments if necessary to obtain this consistency. The
7 appropriate council of governments shall determine the share for
8 each city or county consistent with the criteria of this subdivision
9 and with the advice of the department subject to the procedure
10 established pursuant to subdivision (c) at least one year prior to the
11 second revision, and at five-year intervals following the second
12 revision pursuant to Section 65588. *For a council of governments*
13 *whose members have a combined population of more than*
14 *10,000,000 persons, a resolution to adopt the allocation of*
15 *regional housing need shall be approved by a majority of voting*
16 *members from each county on the governing board.* The council
17 of governments shall submit to the department information
18 regarding the assumptions and methodology to be used in
19 allocating the regional housing need. As part of the allocation of
20 the regional housing need, the council of governments, or the
21 department pursuant to subdivision (b), shall provide each city and
22 county with data describing the assumptions and methodology
23 used in calculating its share of the regional housing need. The
24 department shall submit to each council of governments
25 information regarding the assumptions and methodology to be
26 used in allocating the regional share of the statewide housing need.
27 As part of its determination of the regional share of the statewide
28 housing need, the department shall provide each council of
29 governments with data describing the assumptions and
30 methodology used in calculating its share of the statewide housing
31 need. The councils of governments shall provide each city and
32 county with the department's information. The council of
33 governments shall provide a subregion with its share of the
34 regional housing need, and delegate responsibility for providing
35 allocations to cities and a county or counties in the subregion to a
36 subregional entity if this responsibility is requested by a county
37 and all cities in the county, a joint powers authority established
38 pursuant to Chapter 5 (commencing with Section 6500) of
39 Division 7 of Title 1, or the governing body of a subregional
40 agency established by the council of governments, in accordance



1 with an agreement entered into between the council of
2 governments and the subregional entity that sets forth the process,
3 timing, and other terms and conditions of that delegation of
4 responsibility.

5 (b) For areas with no council of governments, the department
6 shall determine housing market areas and define the regional
7 housing need for cities and counties within these areas pursuant to
8 the provisions for the distribution of regional housing needs in
9 subdivision (a). If the department determines that a city or county
10 possesses the capability and resources and has agreed to accept the
11 responsibility, with respect to its jurisdiction, for the identification
12 and determination of housing market areas and regional housing
13 needs, the department shall delegate this responsibility to the cities
14 and counties within these areas.

15 (c) (1) Within 90 days following a determination of a council
16 of governments pursuant to subdivision (a), or the department's
17 determination pursuant to subdivision (b), a city or county may
18 propose to revise the determination of its share of the regional
19 housing need in accordance with the considerations set forth in
20 subdivision (a). The proposed revised share shall be based upon
21 available data and accepted planning methodology, and supported
22 by adequate documentation.

23 (2) Within 60 days after the time period for the revision by the
24 city or county, the council of governments or the department, as
25 the case may be, shall accept the proposed revision, modify its
26 earlier determination, or indicate, based upon available data and
27 accepted planning methodology, why the proposed revision is
28 inconsistent with the regional housing need.

29 (A) If the council of governments or the department, as the case
30 may be, does not accept the proposed revision, then the city or
31 county shall have the right to request a public hearing to review the
32 determination within 30 days.

33 (B) The city or county shall be notified within 30 days by
34 certified mail, return receipt requested, of at least one public
35 hearing regarding the determination.

36 (C) The date of the hearing shall be at least 30 days from the
37 date of the notification.

38 (D) Before making its final determination, the council of
39 governments or the department, as the case may be, shall consider
40 comments, recommendations, available data, accepted planning



1 methodology, and local geological and topographic restraints on
2 the production of housing.

3 (3) If the council of governments or the department accepts the
4 proposed revision or modifies its earlier determination, the city or
5 county shall use that share. If the council of governments or the
6 department grant a revised allocation pursuant to paragraph (1),
7 the council of governments or the department shall ensure that the
8 current total housing need is maintained. If the council of
9 governments or department indicates that the proposed revision is
10 inconsistent with the regional housing need, the city or county
11 shall use the share which was originally determined by the council
12 of governments or the department.

13 (4) The determination of the council of governments or the
14 department, as the case may be, shall be subject to judicial review
15 pursuant to Section 1094.5 of the Code of Civil Procedure.

16 (5) The council of governments or the department shall reduce
17 the share of regional housing needs of a county if all of the
18 following conditions are met:

19 (A) One or more cities within the county agree to increase its
20 share or their shares in an amount which will make up for the
21 reduction.

22 (B) The transfer of shares shall only occur between a county
23 and cities within that county.

24 (C) The county's share of low-income and very low income
25 housing shall be reduced only in proportion to the amount by
26 which the county's share of moderate- and above
27 moderate-income housing is reduced.

28 (D) The council of governments or the department, whichever
29 assigned the county's share, shall have authority over the approval
30 of the proposed reduction, taking into consideration the criteria of
31 subdivision (a).

32 (6) The housing element shall contain an analysis of the factors
33 and circumstances, with all supporting data, justifying the
34 revision. All materials and data used to justify any revision shall
35 be made available upon request by any interested party within
36 seven days upon payment of reasonable costs of reproduction
37 unless the costs are waived due to economic hardship.

38 (d) (1) Except as provided in paragraph (2), any ordinance,
39 policy, or standard of a city or county that directly limits, by
40 number, the building permits that may be issued for residential



1 construction, or limits for a set period of time the number of
2 buildable lots that may be developed for residential purposes, shall
3 not be a justification for a determination or a reduction in the share
4 of a city or county of the regional housing need.

5 (2) Paragraph (1) does not apply to any city or county that
6 imposes a moratorium on residential construction for a specified
7 period of time in order to preserve and protect the public health and
8 safety. If a moratorium is in effect, the city or county shall, prior
9 to a revision pursuant to subdivision (c), adopt findings that
10 specifically describe the threat to the public health and safety and
11 the reasons why construction of the number of units specified as
12 its share of the regional housing need would prevent the mitigation
13 of that threat.

14 (e) Any authority to review and revise the share of a city or
15 county of the regional housing need granted under this section
16 shall not constitute authority to revise, approve, or disapprove the
17 manner in which the share of the city or county of the regional
18 housing need is implemented through its housing program.

19 (f) A fee may be charged interested parties for any additional
20 costs caused by the amendments made to subdivision (c) by
21 Chapter 1684 of the Statutes of 1984 reducing from 45 to seven
22 days the time within which materials and data shall be made
23 available to interested parties.

24 (g) Determinations made by the department, a council of
25 governments, or a city or county pursuant to this section are
26 exempt from the California Environmental Quality Act, Division
27 13 (commencing with Section 21000) of the Public Resources
28 Code.

29 *SEC. 2.* Section 65587 of the Government Code is amended
30 to read:

31 65587. (a) Each city, county, or city and county shall bring its
32 housing element, as required by subdivision (c) of Section 65302,
33 into conformity with the requirements of this article on or before
34 October 1, 1981, and the deadlines set by Section 65588. Except
35 as specifically provided in subdivision (b) of Section 65361, the
36 Director of Planning and Research shall not grant an extension of
37 time from these requirements.

38 (b) Any action brought by any interested party to review the
39 conformity with the provisions of this article of any housing
40 element or portion thereof or revision thereto shall be brought

1 pursuant to Section 1085 of the Code of Civil Procedure; the
2 court's review of compliance with the provisions of this article
3 shall extend to whether the housing element or portion thereof or
4 revision thereto substantially complies with the requirements of
5 this article. If a court finds that any housing element or portion
6 thereof does not substantially comply with the requirements of this
7 article, the court, in addition to any other remedy allowed by law,
8 may award the plaintiff reasonable attorney's fees and costs and
9 shall levy a penalty not to exceed the following amounts:

10 (1) One hundred thousand dollars (\$100,000) for a city, county,
11 or city and county with a population less than or equal to 100,000.

12 (2) Two hundred fifty thousand dollars (\$250,000) for a city,
13 county, or city and county with a population greater than 100,000
14 and less than or equal to 250,000.

15 (3) Five hundred thousand dollars (\$500,000) for a city,
16 county, or city and county with a population greater than 250,000
17 and less than or equal to 500,000.

18 (4) One million dollars (\$1,000,000) for a city, county, or city
19 and county with a population greater than 500,000 and less than
20 or equal to 1,000,000.

21 (5) One million five hundred thousand dollars (\$1,500,000) for
22 a city, county, or city and county with a population greater than
23 1,000,000.

24 For the purposes of this section, the population of a county shall
25 only include the population residing in unincorporated areas. Any
26 penalties shall accrue to the Housing Supply Account, which is
27 hereby created in the Housing Rehabilitation Loan Fund
28 established by Section 50661 of the Health and Safety Code for the
29 purposes of the Multifamily Housing Program established by
30 Chapter 6.7 (commencing with Section 50675) of Part 2 of
31 Division 31 of the Health and Safety Code. Notwithstanding
32 Section 50661 of the Health and Safety Code, no money in the
33 Housing Supply Account shall be expended except upon
34 appropriation by the Legislature in the annual Budget Act or other
35 legislation.

36 (c) If a court finds that an action of a city, county, or city and
37 county, which is required to be consistent with its general plan,
38 does not comply with its housing element, the city, county, or city
39 and county shall bring its action into compliance within 60 days.
40 However, the court shall retain jurisdiction throughout the period

1 for compliance to enforce its decision. Upon the court's
2 determination that the 60-day period for compliance would place
3 an undue hardship on the city, county, or city and county, the court
4 may extend the time period for compliance by an additional 60
5 days.

6 ~~SEC. 2.—~~

7 *SEC. 3.* Section 65589.3 of the Government Code is amended
8 to read:

9 65589.3. (a) In any action filed on or after January 1, 1991,
10 taken to challenge the validity of a housing element, there shall be
11 a rebuttable presumption of the validity of the element or
12 amendment if, pursuant to Section 65585, the department has
13 found that the element or amendment substantially complies with
14 the requirements of this article.

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

21 ~~SEC. 3.—~~

22 *SEC. 4.* Section 65585.5 is added to the Government Code, to
23 read:

24 65585.5. (a) The Controller shall reduce by the percentages
25 specified in subdivision (b) the monthly allocation of funds
26 dispersed pursuant to subdivision (d), (e), or (f) of Section 2104
27 and Sections 2105, 2106, and 2107 of the Streets and Highways
28 Code to any city, county, or city and county that meets both of the
29 following criteria:

30 (1) For the third or subsequent revision of its housing element,
31 the city, county, or city and county has not adopted a housing
32 element that the Department of Housing and Community
33 Development has determined pursuant to Section 65585 to be in
34 substantial compliance with the requirements of this article.

35 (2) The city, county, or city and county, during the previous
36 housing element cycle, did not adopt a housing element that the
37 Department of Housing and Community Development has
38 determined pursuant to Section 65585 to be in substantial
39 compliance with the requirements of this article.

1 (b) (1) The allocation shall be reduced by 20 percent for a city,
2 county, or city and county that meets the criteria of subdivision (a)
3 and whose third or subsequent revision of its housing element has
4 not been found by the department to be in substantial compliance
5 within 180 days of the deadline established by Section 65588.

6 (2) The allocation shall be reduced by 40 percent for a city,
7 county, or city and county that meets the criteria of subdivision (a)
8 and whose third or subsequent revision of its housing element has
9 not been found by the department to be in substantial compliance
10 within one year of the deadline established by Section 65588.

11 (3) The allocation shall be reduced by 60 percent for a city,
12 county, or city and county that meets the criteria of subdivision (a)
13 and whose third or subsequent revision of its housing element has
14 not been found by the department to be in substantial compliance
15 within two years of the deadline established by Section 65588.

16 (c) Any funds withheld from a city, county, or city and county
17 pursuant to this section shall be held in an escrow account and
18 disbursed to the city, county, or city and county when the
19 department determines pursuant to Section 65585 that the city,
20 county, or city and county is in substantial compliance with the
21 requirements of this article.

22 (d) For the purposes of this section, an adopted housing
23 element that has been self-certified pursuant to Section 65585.1
24 shall be deemed to have been approved by the department, unless
25 a court finds that the jurisdiction's housing element does not
26 substantially comply with this article.

27 (e) The department shall report to the Controller by the 20th
28 day of the month a list of cities, counties, and cities and counties
29 that, as of the 15th day of that month, meet both of the criteria
30 described in paragraphs (1) and (2) of subdivision (a). The
31 department shall also report the deadline date for the third or
32 subsequent housing element revision established in Section 65588
33 for each respective jurisdiction on that list.

