

AMENDED IN ASSEMBLY MAY 30, 2002

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

(Principal coauthors: Assembly Members Lowenthal and Wiggins)

(Coauthors: Senators Burton, Haynes, and Monteith)

February 23, 2001

~~An act to amend Sections 65584, 65587, and 65589.3 of, and to add Section 65585.5 to, the Government Code, relating to general plans.~~
An act to amend Sections 65582, 65585, and 65588 of, to add Sections 65584.1, 65584.2, 65584.3, 65584.4, 65584.5, and 65585.5 to, and to repeal and add Section 65584 of, 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 revise the procedures for determining shares of regional housing needs.

(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 revise the procedures for the submission and review of the draft housing element. It would also require the court Controller to levy a penalty not to exceed specified amounts based on the population of the fine of an unspecified amount upon a city, county, or city and county if specified conditions are met. 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.

(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. By imposing additional duties upon local officials this bill would impose a state-mandated local program.

@@@ (3) *The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.*

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no-yes.

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

1 SECTION 1. ~~Section 65584 of the Government Code is~~
2 SECTION 1. *Section 65582 of the Government Code is*
3 *amended to read:*
4 65582. As used in this article:

1 (a) “Community,” “locality,” “local government,” or
2 “jurisdiction” means a city, city and county, or county.

3 (b) “Council of governments” means a single or multiconty
4 council created by a joint powers agreement pursuant to Chapter
5 5 (commencing with Section 6500) of Division 1 of Title 1.

6 (c) “Department” means the Department of Housing and
7 Community Development.

8 (d) *“Existing and projected regional housing need” means a
9 projection developed for regional and local planning purposes to
10 represent the reasonably anticipated demand for housing within a
11 region during the planning period.*

12 (e) “Housing element” or “element” means the housing
13 element of the community’s general plan, as required pursuant to
14 this article and subdivision (c) of Section 65302.

15 (f)

16 (f) “Low- and moderate-income households” means persons
17 and families of low or moderate incomes as defined by Section
18 50093 of the Health and Safety Code.

19 SEC. 2. *Section 65584 of the Government Code is repealed.*

20 65584. (a) For purposes of subdivision (a) of Section 65583,
21 the share of a city or county of the regional housing needs includes
22 that share of the housing need of persons at all income levels within
23 the area significantly affected by a general plan of the city or
24 county. The distribution of regional housing needs shall, based
25 upon available data, take into consideration market demand for
26 housing, employment opportunities, the availability of suitable
27 sites and public facilities, commuting patterns, type and tenure of
28 housing need, the loss of units contained in assisted housing
29 developments, as defined in paragraph (8) of subdivision (a) of
30 Section 65583, that changed to non-low income use through
31 mortgage prepayment, subsidy contract expirations, or
32 termination of use restrictions, and the housing needs of
33 farmworkers. The distribution shall seek to reduce the
34 concentration of lower income households in cities or counties that
35 already have disproportionately high proportions of lower income
36 households. Based upon population projections produced by the
37 Department of Finance and regional population forecasts used in
38 preparing regional transportation plans, and in consultation with
39 each council of governments, the Department of Housing and
40 Community Development shall determine the regional share of the

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

1 governments and the subregional entity that sets forth the process,
2 timing, and other terms and conditions of that delegation of
3 responsibility.

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

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

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

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

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

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

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

1 methodology, and local geological and topographical 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 grants 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 the department indicates that the proposed
10 revision is inconsistent with the regional housing need, the city or
11 county shall use the share that was originally determined by the
12 council 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 that 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 to interested parties for any additional
20 costs caused by the amendments made to subdivision (e) by
21 Chapter 1684 of the Statutes of 1984 reducing from 45 to 7 days
22 the time within which materials and data shall be made available
23 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. 3. Section 65584 is added to the Government Code, to
30 read:

31 65584. (a) For purposes of subdivision (a) of Section 65583,
32 the share of a city or county of the regional housing needs shall
33 include that share of the housing need of persons at all income
34 levels within the area significantly affected by the general plan of
35 the city or county. While it is the intent of the Legislature that cities,
36 counties, and city and county should undertake all necessary
37 actions to encourage, promote, and facilitate the development of
38 housing to accommodate the entire regional housing need, it is
39 recognized, however, that future housing production may not equal
40 regional housing needs established for planning purposes.

1 (b) *The Department of Housing and Community Development, 2 in consultation with each council of governments, shall determine 3 each region's existing and projected housing need pursuant to 4 Section 65584.1 at least two years prior to the scheduled revision 5 required pursuant to Section 65588. The appropriate council of 6 governments, or for cities and counties without a council of 7 governments, the department, shall adopt a final regional housing 8 need plan that allocates a share of the regional housing need to 9 each city, county, or city and county at least one year prior to the 10 scheduled revision for the region required by Section 65588. The 11 allocation plan prepared by a council of governments shall be 12 prepared pursuant to Sections 65584.4 and 65584.5 with the 13 advice of the department. Notwithstanding any other provision of 14 law, the due dates for the determinations of the department or for 15 the councils of governments, respectively, regarding the regional 16 housing need may be extended by not more than 60 days if the 17 extension will enable access to more recent critical population or 18 housing data from a pending or recent release of the United States 19 Census Bureau or the Department of Finance. If the due date for 20 the determination of the department or the council of governments 21 is extended for this reason, the department shall extend the 22 corresponding housing element revision deadline pursuant to 23 Section 65588 by not more than 60 days.*

24 (c) *During the period between the final acceptance of a 25 regional housing need allocation plan by the department and the 26 due date of the subsequent allocation plan for the next planning 27 cycle, the council of governments, or the department for cities and 28 counties without a council of governments, shall reduce the share 29 of regional housing needs of a county if all of the following 30 conditions are met:*

31 (1) *One or more cities within the county agree to increase its 32 share or their shares in an amount that will make up for the 33 reduction.*

34 (2) *The transfer of shares shall only occur between a county 35 and cities within that county.*

36 (3) *The county's share of low-income and very low income 37 housing shall be reduced only in proportion to the amount by 38 which the county's share of moderate- and above 39 moderate-income housing is reduced.*



1 (4) *The council of governments or the department, whichever
2 assigned the county's share, shall have authority over the approval
3 of the proposed reduction, taking into consideration the criteria
4 that were used to make the initial allocation of the county's share.*

5 (d) (1) *Except as provided in paragraph (2), any ordinance,
6 policy, or standard of a city or county that directly limits, by
7 number or location, the population or population growth rate, the
8 building permits that may be issued for residential construction,
9 or limits for a set period of time the number of buildable lots that
10 may be developed for residential purposes, shall not be a
11 justification for a determination or a reduction in the share of a city
12 or county of the regional housing need.*

13 (2) *Paragraph (1) does not apply to any city or county that
14 imposes a moratorium on residential construction for a specified
15 period of time in order to preserve and protect the public health
16 and safety. If a moratorium is in effect, the city or county shall,
17 prior to a revision pursuant to subdivision (c), adopt findings that
18 specifically describe the threat to the public health and safety and
19 the reasons why construction of the number of units specified as its
20 share of the regional housing need would prevent the mitigation of
21 that threat.*

22 (e) *Notwithstanding any other provision of law, determinations
23 made by the department, a council of governments, or a city or
24 county pursuant to Sections 65584.1, 65584.2, 65584.4, or
25 65584.5 shall be exempt from the California Environmental
26 Quality Act (Division 13 (commencing with Section 21000) of the
27 Public Resources Code).*

28 SEC. 4. Section 65584.1 is added to the Government Code, to
29 read:

30 65584.1. (a) *For the fourth and subsequent revision of the
31 housing element pursuant to Section 65588, the Department of
32 Housing and Community Development, in consultation with each
33 council of governments, shall determine the existing and projected
34 need for housing for each region in the following manner:*

35 (b) *The Department of Finance and each council of
36 governments shall both prepare population forecasts for the
37 region. The council of governments shall use the population
38 forecast developed for the preparation of regional transportation
39 plans prorated to the appropriate planning period. If the total
40 regional population forecast for the planning period, developed by*

1 *the council of governments and used for the preparation of the*
2 *regional transportation plan, is within a range of 3 percent of the*
3 *total regional population forecast for the planning period over the*
4 *same time period by the Department of Finance, then the*
5 *population forecast developed by the council of governments shall*
6 *be the basis from which the department determines the existing and*
7 *projected need for housing in the region. If the difference between*
8 *the total population growth projected by the council of*
9 *governments and the total population growth projected for the*
10 *region by the Department of Finance is greater than 3 percent, then*
11 *the department and the council of governments, in consultation*
12 *with the Department of Finance, shall meet to discuss variances*
13 *in methodology used for population projections and seek*
14 *agreement on a population projection for the region to be used as*
15 *a basis for determining the existing and projected housing need for*
16 *the region. If no agreement is reached, then the population*
17 *projection for the region shall be the population forecast for the*
18 *region prepared by the Department of Finance as modified by the*
19 *Department of Finance as a result of discussions with the*
20 *department and the council of governments.*

21 (c) (1) *At least 26 months prior to the housing element due date*
22 *pursuant to Section 65588 and prior to developing the existing and*
23 *projected housing need for a region, the department shall meet and*
24 *consult with the council of governments regarding the assumptions*
25 *and methodology to be used by the department to determine the*
26 *region's housing needs. The council of governments shall provide*
27 *data assumptions from the council's projections, including, if*
28 *available, the following data for the region:*

29 (A) *Anticipated household growth associated with projected*
30 *population increase.*

31 (B) *Household size data and trends in household size.*

32 (C) *The rate of household formation, or headship rates, based*
33 *on age, gender, ethnicity, or other established demographic*
34 *measures.*

35 (D) *The vacancy rates in existing housing stock, and the*
36 *vacancy rates for healthy housing market functioning and regional*
37 *mobility, as well as housing replacement needs.*

38 (E) *Other characteristics of the composition of the projected*
39 *population.*



1 (2) The department may accept or reject the information
2 provided by the council of governments or modify its own
3 assumptions or methodology based on this information. After
4 consultation with the council of governments, the department shall
5 make determinations in writing on the assumptions and
6 methodology it will use, including the assumptions for each of the
7 factors listed in subparagraphs (A) to (E), inclusive, of paragraph
8 (1), and shall provide these determinations to the council of
9 governments.

10 (d) (1) The department shall develop a draft of the region's
11 existing and projected housing needs based upon the assumptions
12 and methodology determined pursuant to subdivision (b) and shall
13 thereafter notify the council of governments. After consultation
14 with the council of governments, the department shall make a
15 determination of the region's existing and projected housing
16 needs. Within 30 days following notice of the determination from
17 the department, the council of governments may file an objection
18 to the department's determination of the region's existing and
19 projected housing need with the department.

20 (2) The objection shall be based on either of the following:
21 (A) The department failed to base its determination on the
22 population projection for the region established pursuant to
23 subdivision (a).

24 (B) The regional housing need determined by the department
25 is not a reasonable application of the methodology and
26 assumptions determined pursuant to subdivision (b).

27 (3) If a council of governments files an objection pursuant to
28 this subdivision and includes with the objection a proposed
29 alternative determination of its regional housing need, it shall also
30 include documentation of its basis for the alternative
31 determination. Within 45 days of receiving an objection filed
32 pursuant to this section, the department shall consider the
33 objection and make a final written determination that includes an
34 explanation of the basis for the determination.

35 (e) The determinations of the department pursuant to this
36 section shall be subject to judicial review pursuant to Section ____
37 of the Code of Civil Procedure.

38 SEC. 5. Section 65584.2 is added to the Government Code, to
39 read:

1 65584.2. (a) For cities and counties without a council of
2 governments, the department shall determine and distribute the
3 existing and projected housing need, in accordance with Section
4 65584.1 and this section. If the department determines that a
5 county or counties, supported by a resolution adopted by the board
6 or boards of supervisors, and a majority of cities within the county
7 or counties representing a majority of the population of the county,
8 possess the capability and resources and agreed to accept the
9 responsibility, with respect to its jurisdiction, for the distribution
10 of the regional housing needs, the department shall delegate this
11 responsibility to the cities and county or counties.

12 (b) The distribution of regional housing needs shall, based
13 upon available data and in consultation with the cities and
14 counties, take into consideration market demand for housing, the
15 distribution of household growth within the county assumed in the
16 regional transportation plan where applicable, employment
17 opportunities and commuting patterns, the availability of suitable
18 sites and public facilities, agreements between a county and cities
19 in a county to direct growth towards incorporated areas of the
20 county, or other considerations as may be requested by the affected
21 cities or counties and agreed to by the department. As part of the
22 allocation of the regional housing need, the department shall
23 provide each city and county with data describing the assumptions
24 and methodology used in calculating its share of the regional
25 housing need. The distribution of the regional housing need shall
26 seek to reduce the concentration of additional capacity for lower
27 income households allocated to cities or counties that already
28 have disproportionately high proportions of lower income
29 households.

30 (c) Within 90 days following the department's determination of
31 a draft distribution of the regional need to the cities and the county,
32 a city or county may propose to revise the determination of its share
33 of the regional housing need in accordance with criteria set forth
34 in the draft distribution. The proposed revised share shall be based
35 upon comparable data available for all affected jurisdictions, and
36 accepted planning methodology, and shall be supported by
37 adequate documentation.

38 (d) (1) Within 60 days after the end of the 90-day time period
39 for the revision by the cities or county, the department shall accept
40 the proposed revision, modify its earlier determination, or indicate

1 why the proposed revision is inconsistent with the regional housing
2 need.

3 (2) If the department does not accept the proposed revision,
4 then the city or county shall have the right to request a public
5 hearing to review the determination within 30 days.

6 (3) The city or county shall be notified within 30 days by
7 certified mail, return receipt requested, of at least one public
8 hearing regarding the determination.

9 (4) The date of the hearing shall be at least 30 days from the
10 date of the notification.

11 (5) Before making its final determination, the department shall
12 consider all comments received and shall include a written
13 response to each request for revision received from a city or county.

14 (e) If the department accepts the proposed revision or modifies
15 its earlier determination, the city or county shall use that share. If
16 the department grants a revised allocation pursuant to subdivision
17 (d), the department shall ensure that the total regional housing
18 need is maintained. The department's final determination shall be
19 in writing and shall include information explaining how its action
20 is consistent with of this section. If the department indicates that
21 the proposed revision is inconsistent with the regional housing
22 need, the city or county shall use the share that was originally
23 determined by the department. The department, within its final
24 determination, may adjust the allocation of a city or county that
25 was not the subject of a request for revision of the draft
26 distribution.

27 (f) The department shall issue a final regional housing need
28 allocation for all cities and counties within 45 days of the
29 completion of the 60-day period.

30 (g) The determination of the department shall be subject to
31 review pursuant to Section ____ of the Code of Civil Procedure.

32 SEC. 6. Section 65584.3 is added to the Government Code, to
33 read:

34 65584.3. (a) At least two years prior to the scheduled
35 revision required by Section 65588, cities and a county, or
36 counties, may form a subregional entity for the purpose of
37 allocation of the subregion's existing and projected need for
38 housing among its members in accordance with the allocation
39 methodology established pursuant to Section 65584.4. The
40 purpose of establishing a subregion shall be to recognize the

1 *community of interest and mutual challenges and opportunities for*
2 *providing housing within a subregion. A subregion formed*
3 *pursuant to this section may include a single county and each of*
4 *the cities in that county, or any other combination of*
5 *geographically contiguous local governments, and shall be*
6 *approved by the adoption of a resolution by each of the local*
7 *governments in the subregion as well as by the council of*
8 *governments. All decisions of the subregion shall be approved by*
9 *vote of the county or counties, if any, and the majority of the cities*
10 *with the majority of population within a county or as provided for*
11 *in rules adopted by the local governments comprising the*
12 *subregion. Upon formation of the subregional entity, the entity*
13 *shall notify the council of governments of this formation.*

14 (b) *Following the determination of regional housing needs*
15 *pursuant to Section 65584, the council of governments shall*
16 *provide a subregion with its share of the regional housing need,*
17 *and delegate responsibility for providing allocations to cities and*
18 *a county or counties in the subregion to a subregional entity*
19 *formed pursuant to subdivision (a), a joint powers authority*
20 *established pursuant to Chapter 5 (commencing with Section*
21 *6500) of Division 7 of Title 1, or the governing body of a*
22 *subregional entity established by the council of governments, in*
23 *accordance with an agreement entered into between the council of*
24 *governments and the subregional entity that sets forth the process,*
25 *timing, and other terms and conditions of that delegation of*
26 *responsibility.*

27 SEC. 7. Section 65584.4 is added to the Government Code, to
28 read:

29 65584.4. (a) *At least two years prior to a scheduled revision*
30 *required by Section 65588, each council of governments shall*
31 *develop a proposed methodology for distributing the existing and*
32 *projected regional housing need to cities, counties, and*
33 *subregions, where applicable pursuant to this section.*

34 (b) (1) *Each council of governments shall conduct a survey of*
35 *each of its member jurisdictions to request, at a minimum,*
36 *information on both of the following:*

37 (A) *The jurisdiction's existing jobs and housing relationship.*
38 (B) *Opportunities and constraints to developing additional*
39 *housing and job opportunities in the jurisdiction.*

1 (2) *The information provided by a local government pursuant
2 to this section, shall be used, to the extent possible, by the council
3 of governments as source information for the development of the
4 methodology developed pursuant to this section.*

5 (3) *If the council of governments does not issue the survey
6 required pursuant to this section, a city, county, or city and county
7 may submit information related to the items listed in paragraph
8 (1).*

9 (c) *The proposed methodology, along with any relevant
10 underlying data and assumptions, and an explanation of how
11 information gathered from local governments pursuant to
12 subdivision (b) has been used to develop the proposed
13 methodology, and how each of the factors listed in this subdivision
14 is incorporated into the methodology shall be distributed to all
15 cities, counties, subregions, and members of the public who have
16 made a written request for the proposed methodology. A council
17 of governments for a region with a population of 1,000,000 or
18 more shall conduct three public hearings over a period of no less
19 than 90 days to receive oral and written comments on the proposed
20 methodology. A council of governments for a region with a
21 population of less than 1,000,000 shall conduct at least one public
22 hearing to receive oral and written comments on the proposed
23 methodology. To the extent that sufficient data is available from
24 local governments or other sources, each council of governments
25 shall include the following factors to develop the methodology that
26 allocates regional housing needs while continuing to take into
27 consideration the information submitted pursuant to subdivision
28 (b):*

29 (1) *The share of regional housing needs allocated to the local
30 government in previous planning periods, and the number of
31 housing units in each income category approved in the prior
32 planning period. Information developed from this factor shall be
33 used to promote a fair distribution between those jurisdictions that
34 have historically approved housing development applications in
35 conformance with their share of the regional need, and those
36 jurisdictions that have not.*

37 (2) *The promotion of an intraregional balance between jobs
38 and housing.*

39 (3) *The distribution of household growth assumed for purposes
40 of regional transportation plans and opportunities to maximize the*

1 use of public transportation and existing transportation
2 infrastructure.

3 (4) The availability of land suitable for urban development or
4 for conversion to residential use, the availability of underutilized
5 land, and opportunities for infill development and increased
6 residential densities.

7 (5) The market demand for housing.

8 (6) The loss of units contained in assisted housing
9 developments, as defined in paragraph (8) of subdivision (a) of
10 Section 65583, that changed to non-low-income use through
11 mortgage prepayment, subsidy contract expirations, or
12 termination of use restrictions, and the housing needs of
13 farmworkers.

14 (7) Lands preserved or protected from urban development
15 under existing federal or state programs, or both, designed to
16 protect open space, farmland, environmental habitats, and natural
17 resources on a long-term basis.

18 (8) Federal or state laws, regulations, or regulatory actions
19 that preclude the jurisdiction from providing necessary
20 infrastructure for additional development during the planning
21 period.

22 (9) Agreements between a county and cities in a county to direct
23 growth towards incorporated areas of the county.

24 (10) County policies to preserve prime agricultural land, as
25 defined pursuant to Section 56064, within an unincorporated area.

26 (11) Any other factors adopted by the council of governments.

27 (d) The council of governments shall assign the factors in
28 subdivision (c) a numerical weight in accordance with the
29 priorities of the council of governments. The distribution shall seek
30 to reduce overconcentrations of lower income households in cities
31 or counties that already have disproportionately high proportions
32 of lower income households. Any ordinance, policy, or standard of
33 a city or county that directly limits, by number or location, the
34 population or population growth rate, the building permits that
35 may be issued for residential construction, or limits for a set period
36 of time the number of buildable lots that may be developed for
37 residential purposes, shall not be a justification for a
38 determination or a reduction in the share of a city or county of the
39 regional housing need.

1 (e) In addition to the factors identified pursuant to subdivision
2 (c), the council of government shall identify any existing local,
3 regional, or state incentives, such as a priority for funding, or
4 other incentives, available to those local governments that are
5 willing to accept a share of the regional housing need that exceeds
6 the share that would be otherwise allocated to those local
7 governments pursuant to the methodology established by the
8 council of governments.

9 (f) Following the conclusion of the 90-day public comment
10 period on the proposed allocation methodology, each council of
11 governments shall adopt a final regional housing need allocation
12 methodology within 60 days.

13 SEC. 8. Section 65584.5 is added to the Government Code, to
14 read:

15 65584.5. (a) At least one and one-half years prior to the
16 scheduled revision required by Section 65588, each council of
17 governments shall distribute a draft allocation of regional housing
18 needs to each local government and subregion, where applicable.
19 The draft allocation shall include the underlying data and
20 methodology on which the allocation is based. It is the intent of the
21 Legislature that the draft allocation should be distributed prior to
22 the completion of the update of the applicable regional
23 transportation plan. The draft allocation shall distribute to
24 localities within the region the entire regional share of housing
25 need determined pursuant Section 65584.1.

26 (b) Within 60 days following receipt of the draft allocation, a
27 local government that is not part of a subregion, or the subregion,
28 as applicable, may request a revision of its share of the regional
29 housing need in accordance with the factors and information
30 described in subdivision (c) of Section 65584.4, including any
31 information submitted by the local government to the council of
32 governments pursuant to subdivision (b) of that section. The
33 request for a revised share shall be based upon comparable data
34 available for all affected jurisdictions and accepted planning
35 methodology, and supported by adequate documentation.

36 (c) Within 60 days after the request submitted pursuant to
37 subdivision (b), the council of governments shall accept the
38 proposed revision, modify its earlier determination, or indicate,
39 based upon the information and methodology described in Section

1 65584.4, why the proposed revision is inconsistent with the
2 regional housing need.

3 (d) If the council of governments does not accept the proposed
4 revised share, the local government, or subregion if applicable
5 may appeal its draft allocation based upon either or both of the
6 following criteria:

7 (1) The council of governments failed to adequately consider
8 the information submitted pursuant to subdivision (b) of Section
9 65584.4, or a significant and unforeseen change in circumstances
10 has occurred in the local jurisdiction that merits a revision of the
11 information submitted pursuant to that subdivision.

12 (2) The council of governments failed to determine its share of
13 the regional housing need in accordance with the information
14 described in, and the methodology established by the council of
15 government, pursuant to Section 65584.4.

16 (e) The council of governments shall conduct public hearings
17 to hear all appeals within 60 days of the date established by the
18 council of government to file appeals. The city or county, or
19 subregion if applicable, shall be notified within 15 days by
20 certified mail, return receipt requested, of at least one public
21 hearing regarding the determination. The date of the hearing shall
22 be at least 30 days from the date of the notification. Before taking
23 action on an appeal, the council of governments shall consider all
24 comments, recommendations, and available data based on
25 accepted planning methodologies submitted by the appellant. The
26 council of government's final action on an appeal shall be in
27 writing and shall include information and other evidence
28 explaining how its action is consistent with the provisions of this
29 article. The council of government's final action on an appeal may
30 require the council of governments to adjust the allocation of a
31 local government that is not the subject of an appeal.

32 (f) The council of governments shall issue a proposed final
33 allocation within 45 days of the completion of the 60-day period
34 for hearing appeals. The proposed final allocation plan shall
35 include responses to all comments received on the proposed draft
36 allocation and reasons for any significant revisions included in the
37 final allocation.

38 (g) In the proposed final allocation plan, the council of
39 governments shall adjust allocations to subregions and to local
40 governments based upon the results of the appeals process

1 specified in this section. If the adjustments total 7 percent or less
2 of the regional housing need determined pursuant to Section
3 65584.1, then the council of governments shall distribute the
4 adjustments proportionally to all subregions or local
5 governments. If the adjustments total more than 7 percent of the
6 regional housing need, then the council of governments shall
7 develop a methodology to distribute the adjustments that are
8 greater than the 7 percent that has been distributed proportionally
9 to local governments and subregions. In no event shall the total
10 distribution of housing needs equal less than the regional housing
11 need, as determined pursuant to Section 65584.1. Two or more
12 local governments may agree to an alternate distribution of
13 appealed housing allocations between the affected local
14 governments.

15 (h) Within 60 days of the issuance of the proposed final
16 allocation plan pursuant to subdivision (g), each subregion
17 established pursuant to Section 65584.3, shall provide the council
18 of governments with its allocation of regional housing needs
19 within the subregion adopted by the county and the majority of
20 cities within the region with the majority of the population.
21 Allocations agreed to within a subregion may differ from the draft
22 allocations assigned local governments pursuant to this section,
23 but in no event shall the total allocation in the subregion equal less
24 than the total housing need allocated to the subregion pursuant to
25 subdivision (a) of Section 65584.5. If the council of governments
26 finds that the proposed allocation plan submitted by the subregion
27 does not equal the total housing need allocated to the subregion,
28 or if the subregion has not submitted an allocation within 60 days,
29 then the council of governments shall allocate the housing needs
30 to the individual local governments within the subregion to ensure
31 that total regional housing need is allocated.

32 (i) Within 45 days of receiving proposed subregional
33 allocations pursuant to subdivision (h), the council of
34 governments shall hold a public hearing to adopt a final allocation
35 plan. The council of governments shall have final authority to
36 determine the distribution of the region's existing and projected
37 housing need as determined pursuant to Section 65584.1. Within
38 60 days of adoption by the council of governments, the department
39 shall determine whether or not the final allocation plan is
40 consistent with the existing and projected housing need for the

1 region, as determined pursuant to Section 65584.1. The
2 department may revise the determination of the council of
3 governments if necessary to obtain this consistency. The
4 determination of the council of governments shall be subject to
5 judicial review pursuant to Section 1094.5 of the Code of Civil
6 Procedure.

7 SEC. 9. Section 65585 of the Government Code is amended to
8 read:

9 65585. (a) ~~In the preparation of its housing element, each city~~
10 ~~and county shall consider the guidelines adopted by the~~
11 ~~department pursuant to Section 50459 of the Health and Safety~~
12 ~~Code. Those guidelines shall be advisory to each city or county in~~
13 ~~the preparation of its housing element.~~

14 (b) A city, county, or city and county shall make a diligent effort
15 to achieve public participation of all economic segments of the
16 community, including persons with special housing needs, in the
17 development of the housing element. At least 180 days prior to the
18 submission of a draft housing element or amendment to the
19 department, a city, county, or city and county shall issue a notice
20 of preparation and a request for public participation and, at a
21 minimum, shall distribute the notice to all of the following:

22 (1) Any person or organization that has requested notice.
23 (2) Any person or organization that is on the department's list
24 for distribution of correspondence.

25 (3) Any person or organization that, if known to the city, county,
26 or city and county, is likely to help achieve the public participation
27 of all economic segments of the community, including persons with
28 special housing needs.

29 (b) During the preparation of the draft housing element or
30 amendment, the city, county, or city and county shall hold at least
31 two public workshops, at least one of which is held on an evening
32 or weekend, and conduct any other outreach activities necessary
33 to achieve the public participation of all economic segments of the
34 community and of persons with special housing needs, including,
35 but not limited to, task forces, forums, and surveys.

36 (c) At least 90 days prior to the submission of a draft element
37 or amendment to the department, the city, county, or city and
38 county shall issue a notice of completion of the proposed draft,
39 requesting comments from all interested parties within 30 days.
40 The city, county, or city and county shall make copies of the

1 proposed draft available to the public for loan upon request and,
2 if the city, county, or city and county maintains a Web site, on the
3 Internet. After the comment period, the city, county, or city and
4 county shall consider all comments and issue a revised draft and
5 response to comments and a notice of public hearing on the
6 proposed draft at least 15 days prior to the hearing for
7 consideration of the adoption of the draft housing element.

8 (d) At least 90–120 days prior to adoption of its housing
9 element, or at least 60–90 days prior to the adoption of an
10 amendment to this element, the planning agency shall submit a
11 draft element or draft amendment to the department. *The city,*
12 county, or city and county shall attach an explanation of the efforts
13 to obtain public participation, a summary of all comments
14 received, and the response of the city, county, or city and county to
15 the comments when it submits the draft element or amendment to
16 the department for review. The department shall review the draft
17 and report its written findings to the planning agency within 90
18 120 days of its receipt of the draft in the case of an adoption or
19 within 60–90 days of its receipt in the case of a draft amendment.

20 (e)

21 (e) *The department shall include in its report the information*
22 *that supports and explains each of its written findings. If the city,*
23 *county, or city and county proposes changes to the draft element*
24 *or draft amendment while either is under review by the department,*
25 *the city, county, or city and county shall immediately send copies*
26 *of the proposed changes in writing to all parties who commented*
27 *orally at a public forum or hearing or in writing on the draft*
28 *element or amendment. In its written findings, the department*
29 *shall determine whether the draft element or draft amendment*
30 *substantially complies with the requirements of this article.*

31 (f) In the preparation of its findings, the department may
32 consult with any public agency, group, or person. The department
33 shall receive and consider any written comments from any public
34 agency, group, or person regarding the draft ~~or adopted~~ element or
35 amendment under review, *but if the jurisdiction has complied with*
36 *all the requirements of this section, the department shall not*
37 *consider comments from any public agency, group, or person*
38 *unless the comments directly relate to comments that were raised*
39 *to the jurisdiction prior to the submission of the draft element or*
40 *amendment, the comments concern changes to the draft element or*

1 amendments that were made after the public hearing, or the
2 comments are made as a result of new information that was not
3 publicly available prior to the public hearing.

4 (d) In its written findings, the department shall determine
5 whether the draft element or draft amendment substantially
6 complies with the requirements of this article.

7 (e)

8 (g) Prior to the adoption of its draft element or draft
9 amendment, the legislative body shall consider the findings made
10 by the department. If the department's findings are not available
11 within the time limits set by this section, the legislative body may
12 act without them. *The department shall provide the city, county, or*
13 *city and county with a copy of any comments received and a list of*
14 *who was consulted by the department.*

15 (f)

16 (h) If the department finds that the draft element or draft
17 amendment does not substantially comply with the requirements
18 of this article, the legislative body shall take one of the following
19 actions:

20 (1) Change the draft element or draft amendment to
21 substantially comply with the requirements of this article. *The*
22 *legislative body shall hold a public hearing on the proposed*
23 *changes and consider and respond to comments received on any*
24 *proposed changes to the draft element or amendment. At least 21*
25 *days prior to this hearing, the jurisdiction shall circulate any*
26 *proposed changes to the draft element or amendment to all parties*
27 *who commented on the development of the draft element or*
28 *amendment or who have requested notice of proposed changes.*
29 *The city, county, or city and county shall attach a copy of any*
30 *comments received and its response when it submits the element or*
31 *amendment to the department for review.*

32 (2) Adopt the draft element or draft amendment without
33 changes. *The legislative body shall consider and respond to*
34 *comments received from the public on the element or amendment*
35 *or the department's findings and shall attach a copy of any*
36 *comments received and the response of the city, county, or city and*
37 *county when it submits the element or amendment to the*
38 *department for review.* The legislative body shall include in its
39 resolution of adoption written findings which explain the reasons
40 the legislative body believes that the draft element or draft

1 amendment substantially complies with the requirements of this
2 article despite the findings of the department.

3 (g) ~~Promptly following~~

4 (i) Within 14 days of the adoption of its element or amendment,
5 the planning agency shall submit a copy to the department.

6 (h)

7 (j) The department shall, within 90–60 days, review adopted
8 housing elements or amendments and report its findings to the
9 ~~planning agency~~ city, county, or city and county. In the preparation
10 of its findings, the department may consult with any public agency,
11 group, or person. The department shall receive and consider any
12 written comments from any public agency, group, or person
13 regarding the adopted element or amendment under review, but if
14 the jurisdiction has complied with all the requirements of this
15 section, the department shall not consider comments from any
16 public agency, group, or person unless the comments directly
17 relate to comments that were raised to the jurisdiction prior to the
18 adoption of the element or amendment, the comments concern
19 changes to the element or amendment that were not circulated at
20 least 21 days prior to adoption, or the comments are made as a
21 result of new information that was not publicly available prior to
22 adoption of the element or amendment. In its written findings, the
23 department shall determine whether the element or amendment
24 substantially complies with the requirements of this article. The
25 department shall include in its report the information that supports
26 and explains each of its written findings.

27 (k) (1) A city, county, or city and county shall implement, by the
28 date specified in the housing element, each action included in the
29 housing element's schedule of actions as required by subdivision
30 (c) of Section 65583. The city, county, or city and county shall
31 report on the status of all of these actions in the annual general
32 plan implementation report required pursuant to Section 65400.
33 Except as provided in paragraph (2), and after providing at least
34 60 days written notice to the city, county, or city and county, the
35 department may rescind any earlier finding of substantial
36 compliance of a housing element or amendment if the annual
37 general plan implementation report required pursuant to Section
38 65400 fails to demonstrate, in the report or by the absence of a
39 report, that each action included in the housing element's schedule
40 of actions that is critical to the availability of adequate sites or to

1 addressing governmental constraints and upon which the
2 department has conditioned a finding of substantial compliance
3 has been fully implemented within 90 days of the date specified in
4 the adopted element.

5 (2) The department shall not rescind any earlier finding of
6 substantial compliance if the city, county, or city and county
7 demonstrates, and the department accepts, based on substantial
8 evidence, that the city, county, or city and county has taken
9 alternative actions that make the implementation of the original
10 actions unnecessary to meet the requirements of this article, and
11 these alternative actions substantially achieve the same objectives
12 of the original actions. The annual report submitted by the city,
13 county, or city and county shall identify those specific actions that
14 demonstrate compliance with this subdivision.

15 (l) Within 45 days of the department's report of its findings to
16 city, county, or city and county pursuant to subdivision (h) or a
17 rescission of a determination of substantial compliance pursuant
18 to subdivision (i), the city, county, or city and county may subject
19 the finding or determination to judicial review pursuant to Section
20 _____ of the Code of Civil Procedure. At the same time that the city,
21 county, or city and county serves the department with the action,
22 the city, county, or city and county shall simultaneously serve by
23 mail, pursuant to Section 1013 of the Code of Civil Procedure, a
24 copy of the action on all parties who are on the department's list
25 for distribution of correspondence and on all parties who
26 commented on the element or amendment. The hearing on the
27 action shall be held within 90 days of the date of the filing of the
28 petition, and the court shall issue a final decision within 30 days
29 of the conclusion of the hearing. Any interested party may
30 intervene in the action. If in any action brought pursuant to this
31 subdivision, a court finds for the plaintiff, the court shall issue an
32 order or judgment compelling the department to revise its finding
33 or determination in compliance with this article within 60 days. If
34 the court upholds the department's finding or determination, the
35 court shall order the city, county, or city and county to adopt within
36 120 days a housing element or amendment that the department
37 determines to be in substantial compliance with this article. The
38 court shall retain jurisdiction to ensure that its order or judgment
39 is carried out. Actions filed pursuant to Section 65587 or 65751
40 shall be consolidated with the action authorized by this section.

1 SEC. 10. Section 65585.5 is added to the Government Code,
2 to read:

3 65585.5. (a) The Controller shall levy a fine on a city, county,
4 or city and county if any of the following conditions are met:

5 (1) The city, county, or city and county has failed to submit an
6 adopted housing element or amendment to the department within
7 six months of the deadline established by Section 65588.

8 (2) The department has determined that the adopted housing
9 element or amendment of the city, county, or city and county does
10 not substantially comply with the requirements of this article and
11 the city, county, or city and county has not subjected the
12 determination to judicial review within 45 days as specified in
13 subdivision (l) of Section 65585.

14 (3) The department has rescinded a determination of
15 substantial compliance pursuant to subdivision (i) of Section
16 65585 and the city, county, or city and county has not subjected the
17 rescission to judicial review within 45 days as specified in
18 subdivision (j) of Section 65585.

19 (4) The city, county, or city and county has subjected the
20 department's determination or rescission to judicial review
21 pursuant to subdivision (j) of Section 65585, the court has upheld
22 the department's determination or rescission and the city, county,
23 or city and county has not adopted within 120 days a housing
24 element that the department finds is in substantial compliance with
25 this article. The filing of a notice of appeal of the court's decision
26 shall not stay the levy or collection of the fine, provided that if the
27 Court of Appeals overturns the trial court's decision, the fines
28 collected shall be returned to the city, county, or city and county.

29 (5) A court has determined that the housing element or
30 amendment does not substantially comply with the requirements of
31 this article. The filing of a notice of appeal of the court's decision
32 shall not stay the levy or collection of the fine. If the Court of
33 Appeals overturns the trial court's decision, the fines collected
34 shall be returned to the city, county, or city and county.

35 (b) The fine levied by the Controller shall be \$_____.

36 (c) Any penalties shall accrue to the Housing Supply Account,
37 which is hereby created in the Housing Rehabilitation Loan Fund
38 established by Section 50661 of the Health and Safety Code.
39 Notwithstanding Section 50661 of the Health and Safety Code, no
40 money in the Housing Supply Account shall be expended except

1 upon appropriation by the Legislature in the annual Budget Act or
2 other legislation. Funds in the account shall be used for the
3 purposes of providing assistance to multifamily rental housing
4 developments pursuant to the Multifamily Housing Program
5 established by Chapter 6.7 (commencing with Section 50675) of
6 Part 2 of Division 31 of the Health and Safety Code in the
7 respective region which includes the fined jurisdiction.

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

13 (e) If a city, county, or city and county, fails to remit to the
14 Controller the full amount of any fine levied pursuant to this
15 section within 30 days, the Controller shall deduct the unpaid
16 amount from the subsequent monthly allocation of funds due to the
17 city, county, or city and county pursuant to Section 11005 of the
18 Revenue and Taxation Code.

19 (f) The remedies prescribed by this section are in addition to
20 any other remedy provided under law.

21 SEC. 11. Section 65588 of the Government Code is amended
22 to read:

23 65588. (a) Each local government shall review its housing
24 element as frequently as appropriate to evaluate all of the
25 following:

26 (1) The appropriateness of the housing goals, objectives, and
27 policies in contributing to the attainment of the state housing goal.

28 (2) The effectiveness of the housing element in attainment of
29 the community's housing goals and objectives.

30 (3) The progress of the city, county, or city and county in
31 implementation of the housing element.

32 (b) The housing element shall be revised as appropriate, but not
33 less than every five-six years, to reflect the results of this periodic
34 review.

35 (c) The review and revision of housing elements required by
36 this section shall take into account any low- or moderate-income
37 housing provided or required pursuant to Section 65590.

38 (d) The review pursuant to subdivision (c) shall include, but
39 need not be limited to, the following:

1 (1) The number of new housing units approved for
2 construction within the coastal zone after January 1, 1982.

3 (2) The number of housing units for persons and families of
4 low or moderate income, as defined in Section 50093 of the Health
5 and Safety Code, required to be provided in new housing
6 developments either within the coastal zone or within three miles
7 of the coastal zone pursuant to Section 65590.

8 (3) The number of existing residential dwelling units occupied
9 by persons and families of low or moderate income, as defined in
10 Section 50093 of the Health and Safety Code, that have been
11 authorized to be demolished or converted since January 1, 1982,
12 in the coastal zone.

13 (4) The number of residential dwelling units for persons and
14 families of low or moderate income, as defined in Section 50093
15 of the Health and Safety Code, that have been required for
16 replacement or authorized to be converted or demolished as
17 identified in paragraph (3). The location of the replacement units,
18 either onsite, elsewhere within the locality's jurisdiction within the
19 coastal zone, or within three miles of the coastal zone within the
20 locality's jurisdiction, shall be designated in the review.

21 (e) Notwithstanding subdivision (b) or the date of adoption of
22 the housing elements previously in existence, the dates of revisions
23 for the housing element shall be modified as follows:

24 (1) Local governments within the regional jurisdiction of the
25 Southern California Association of Governments: December 31,
26 2000, for the third revision, and June 30, 2005, for the fourth
27 revision.

28 (2) Local governments within the regional jurisdiction of the
29 Association of Bay Area Governments: December 31, 2001, for
30 the third revision, and June 30, 2006, for the fourth revision.

31 (3) Local governments within the regional jurisdiction of the
32 Council of Fresno County Governments, the Kern County Council
33 of Governments, and the Sacramento Area Council of
34 Governments: June 30, 2002, for the third revision, and June 30,
35 2007, for the fourth revision.

36 (4) Local governments within the regional jurisdiction of the
37 Association of Monterey Bay Area Governments: December 31,
38 2002, for the third revision, and June 30, 2007, for the fourth
39 revision.

1 (5) Local governments within the regional jurisdiction of the
2 San Diego Association of Governments: December 31, 1999, for
3 the third revision cycle ending June 30, 1999, and June 30, 2004,
4 for the fourth revision.

5 (6) All other local governments: December 31, 2003, for the
6 third revision, and June 30, 2008, for the fourth revision.

7 (7) Subsequent revisions shall be completed not less often than
8 at five-year intervals following the fourth revision.

9 (1) Local governments within the regional jurisdiction of the
10 Southern California Association of Governments: December 31,
11 2006, and every six years thereafter.

12 (2) Local governments within the regional jurisdiction of the
13 Association of Bay Area Governments: December 31, 2008, and
14 every six years thereafter.

15 (3) Local governments within the regional jurisdiction of the
16 Council of Fresno County Governments, the Kern County Council
17 of Governments, the Association of Monterey Bay Area
18 Governments and the Sacramento Area Council of Governments:
19 June 30, 2002, for the third revision, December 31, 2007, for the
20 fourth revision and every six years thereafter.

21 (4) Local governments within the regional jurisdiction of the
22 San Diego Association of Governments: December 31, 2005, and
23 every six years thereafter.

24 (5) All other local governments within a council of
25 governments: December 31, 2003, and every six years thereafter.

26 (6) All other local governments: December 31, 2004, and every
27 six years thereafter.

28 (7) Subsequent revisions shall be completed not less often than
29 at six-year intervals following the fourth revision.

30 (f) It is the intent of the amendments made to this section in the
31 2001–02 Legislative Session to coordinate the determination of
32 regional housing needs with the triennial update of the regional
33 transportation plan pursuant to Section 134 of Title 23 of the
34 United States Code. Any council of governments that is required
35 by statute to update its transportation plan every four years, may
36 elect to either (1) adopt the update to its transportation plan on a
37 three-year basis, or (2) continue with the four-year update cycle,
38 but adopt an amended update in mid-cycle to coordinate with the
39 regional housing need update at six-year intervals.

1 SEC. 12. Notwithstanding Section 17610 of the Government
2 Code, if the Commission on State Mandates determines that this
3 act contains costs mandated by the state, reimbursement to local
4 agencies and school districts for those costs shall be made
5 pursuant to Part 7 (commencing with Section 17500) of Division
6 4 of Title 2 of the Government Code. If the statewide cost of the
7 claim for reimbursement does not exceed one million dollars
8 (\$1,000,000), reimbursement shall be made from the State
9 Mandates Claims Fund.

10 amended to read:

11 65584. (a) For purposes of subdivision (a) of Section 65583,
12 the share of a city or county of the regional housing needs includes
13 that share of the housing need of persons at all income levels within
14 the area significantly affected by a general plan of the city or
15 county. The distribution of regional housing needs shall, based
16 upon available data, take into consideration market demand for
17 housing, employment opportunities, the availability of suitable
18 sites and public facilities, commuting patterns, type and tenure of
19 housing need, the loss of units contained in assisted housing
20 developments, as defined in paragraph (8) of subdivision (a) of
21 Section 65583, that changed to non low income use through
22 mortgage prepayment, subsidy contract expirations, or
23 termination of use restrictions, and the housing needs of
24 farmworkers. The distribution shall seek to reduce the
25 concentration of lower income households in cities or counties
26 which already have disproportionately high proportions of lower
27 income households. Based upon population projections produced
28 by the Department of Finance and regional population forecasts
29 used in preparing regional transportation plans, and in
30 consultation with each council of governments, the Department of
31 Housing and Community Development shall determine the
32 regional share of the statewide housing need at least two years
33 prior to the second revision, and all subsequent revisions as
34 required pursuant to Section 65588. Based upon data provided by
35 the department relative to the statewide need for housing, each
36 council of governments shall determine the existing and projected
37 housing need for its region. Within 30 days following notification
38 of this determination, the department shall ensure that this
39 determination is consistent with the statewide housing need. The
40 department may revise the determination of the council of

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

39 (b) For areas with no council of governments, the department
40 shall determine housing market areas and define the regional

1 housing need for cities and counties within these areas pursuant to
2 the provisions for the distribution of regional housing needs in
3 subdivision (a). If the department determines that a city or county
4 possesses the capability and resources and has agreed to accept the
5 responsibility, with respect to its jurisdiction, for the identification
6 and determination of housing market areas and regional housing
7 needs, the department shall delegate this responsibility to the cities
8 and counties within these areas.

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

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

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

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

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

32 (D) Before making its final determination, the council of
33 governments or the department, as the case may be, shall consider
34 comments, recommendations, available data, accepted planning
35 methodology, and local geological and topographic restraints on
36 the production of housing.

37 (3) If the council of governments or the department accepts the
38 proposed revision or modifies its earlier determination, the city or
39 county shall use that share. If the council of governments or the
40 department grant a revised allocation pursuant to paragraph (1),

1 the council of governments or the department shall ensure that the
2 current total housing need is maintained. If the council of
3 governments or department indicates that the proposed revision is
4 inconsistent with the regional housing need, the city or county
5 shall use the share which was originally determined by the council
6 of governments or the department.

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

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

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

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

18 (C) The county's share of low income and very low income
19 housing shall be reduced only in proportion to the amount by
20 which the county's share of moderate and above
21 moderate income housing is reduced.

22 (D) The council of governments or the department, whichever
23 assigned the county's share, shall have authority over the approval
24 of the proposed reduction, taking into consideration the criteria of
25 subdivision (a).

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

32 (d) (1) Except as provided in paragraph (2), any ordinance,
33 policy, or standard of a city or county that directly limits, by
34 number, the building permits that may be issued for residential
35 construction, or limits for a set period of time the number of
36 buildable lots that may be developed for residential purposes, shall
37 not be a justification for a determination or a reduction in the share
38 of a city or county of the regional housing need.

39 (2) Paragraph (1) does not apply to any city or county that
40 imposes a moratorium on residential construction for a specified

1 period of time in order to preserve and protect the public health and
2 safety. If a moratorium is in effect, the city or county shall, prior
3 to a revision pursuant to subdivision (e), adopt findings that
4 specifically describe the threat to the public health and safety and
5 the reasons why construction of the number of units specified as
6 its share of the regional housing need would prevent the mitigation
7 of that threat.

8 (e) Any authority to review and revise the share of a city or
9 county of the regional housing need granted under this section
10 shall not constitute authority to revise, approve, or disapprove the
11 manner in which the share of the city or county of the regional
12 housing need is implemented through its housing program.

13 (f) A fee may be charged interested parties for any additional
14 costs caused by the amendments made to subdivision (e) by
15 Chapter 1684 of the Statutes of 1984 reducing from 45 to seven
16 days the time within which materials and data shall be made
17 available to interested parties.

18 (g) Determinations made by the department, a council of
19 governments, or a city or county pursuant to this section are
20 exempt from the California Environmental Quality Act, Division
21 13 (commencing with Section 21000) of the Public Resources
22 Code.

23 SEC. 2. Section 65587 of the Government Code is amended
24 to read:

25 65587. (a) Each city, county, or city and county shall bring its
26 housing element, as required by subdivision (c) of Section 65302,
27 into conformity with the requirements of this article on or before
28 October 1, 1981, and the deadlines set by Section 65588. Except
29 as specifically provided in subdivision (b) of Section 65361, the
30 Director of Planning and Research shall not grant an extension of
31 time from these requirements.

32 (b) Any action brought by any interested party to review the
33 conformity with the provisions of this article of any housing
34 element or portion thereof or revision thereto shall be brought
35 pursuant to Section 1085 of the Code of Civil Procedure; the
36 court's review of compliance with the provisions of this article
37 shall extend to whether the housing element or portion thereof or
38 revision thereto substantially complies with the requirements of
39 this article. If a court finds that any housing element or portion
40 thereof does not substantially comply with the requirements of this

1 article, the court, in addition to any other remedy allowed by law,
2 may award the plaintiff reasonable attorney's fees and costs and
3 shall levy a penalty not to exceed the following amounts:

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

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

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

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

15 (5) One million five hundred thousand dollars (\$1,500,000) for
16 a city, county, or city and county with a population greater than
17 1,000,000.

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

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

1 SEC. 3. Section 65589.3 of the Government Code is amended
2 to read:

3 65589.3. (a) In any action filed on or after January 1, 1991,
4 taken to challenge the validity of a housing element, there shall be
5 a rebuttable presumption of the validity of the element or
6 amendment if, pursuant to Section 65585, the department has
7 found that the element or amendment substantially complies with
8 the requirements of this article.

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

15 SEC. 4. Section 65585.5 is added to the Government Code, to
16 read:

17 65585.5. (a) The Controller shall reduce by the percentages
18 specified in subdivision (b) the monthly allocation of funds
19 dispersed pursuant to subdivision (d), (e), or (f) of Section 2104
20 and Sections 2105, 2106, and 2107 of the Streets and Highways
21 Code to any city, county, or city and county that meets both of the
22 following criteria:

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

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

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

38 (2) The allocation shall be reduced by 40 percent for a city,
39 county, or city and county that meets the criteria of subdivision (a)
40 and whose third or subsequent revision of its housing element has

1 not been found by the department to be in substantial compliance
2 within one year of the deadline established by Section 65588.

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

8 (e) Any funds withheld from a city, county, or city and county
9 pursuant to this section shall be held in an escrow account and
10 disbursed to the city, county, or city and county when the
11 department determines pursuant to Section 65585 that the city,
12 county, or city and county is in substantial compliance with the
13 requirements of this article.

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

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

26