

AMENDED IN ASSEMBLY JUNE 20, 2002

AMENDED IN ASSEMBLY JUNE 12, 2002

AMENDED IN ASSEMBLY MAY 29, 2002

AMENDED IN SENATE APRIL 10, 2002

SENATE BILL

No. 1721

Introduced by Senator Soto

February 21, 2002

An act to amend Section 65589.5 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

SB 1721, as amended, Soto. Land use: farmworker housing.

Existing law requires local agencies to make specified findings before disapproving or conditionally approving housing development projects for very low, low- or moderate-income households and subjects local agencies to court action if the required specified findings are not made, or the local agency's decision is inconsistent with those findings and the findings are not supported by substantial evidence.

This bill would apply these provisions to a local agency using design review standards to disapprove or render infeasible a housing development project, including farmworker housing.

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

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

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

3 65589.5. (a) The Legislature finds and declares all of the
4 following:

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

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

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

18 (4) Many local governments do not give adequate attention to
19 the economic, environmental, and social costs of decisions that
20 result in disapproval of housing projects, reduction in density of
21 housing projects, and excessive standards for housing projects.

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

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

36 (d) A local agency ~~may~~ *shall* not disapprove a housing
37 development project, including farmworker housing as defined in
38 subdivision (d) of Section 50199.50 of the Health and Safety



1 Code, for very low, low- or moderate-income households or
2 condition approval, including through the use of design review
3 standards, in a manner that renders the project infeasible for
4 development for the use of very low, low- or moderate-income
5 households unless it makes written findings, based upon
6 substantial evidence in the record, as to one of the following:

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

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

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

28 (4) Approval of the development project would increase the
29 concentration of lower income households in a neighborhood that
30 already has a disproportionately high number of lower income
31 households and there is no feasible method of approving the
32 development at a different site, including those sites identified
33 pursuant to paragraph (1) of subdivision (c) of Section 65583,
34 without rendering the development unaffordable to low- and
35 moderate-income households.

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



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

6 (e) Nothing in this section shall be construed to relieve the local
7 agency from complying with the Congestion Management
8 Program required by Chapter 2.6 (commencing with Section
9 65088) of Division 1 of Title 7 or the California Coastal Act
10 (Division 20 (commencing with Section 30000) of the Public
11 Resources Code). Neither shall anything in this section be
12 construed to relieve the local agency from making one or more of
13 the findings required pursuant to Section 21081 of the Public
14 Resources Code or otherwise complying with the California
15 Environmental Quality Act (Division 13 (commencing with
16 Section 21000) of the Public Resources Code).

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

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

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

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

36 (2) “Housing for very low, low-, or moderate-income
37 households” means that either (A) at least 20 percent of the total
38 units shall be sold or rented to lower income households, as
39 defined in Section 50079.5 of the Health and Safety Code, or (B)
40 100 percent of the units shall be sold or rented to moderate-income



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

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

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

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

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

32 (B) Fails to comply with the time periods specified in
33 subparagraph (B) of paragraph (1) of subdivision (a) of Section
34 65950. An extension of time pursuant to Article 5 (commencing
35 with Section 65950) shall be deemed to be an extension of time
36 pursuant to this paragraph.

37 (i) If any city, county, or city and county denies approval or
38 imposes restrictions, including design changes, a reduction of
39 allowable densities or the percentage of a lot that may be occupied
40 by a building or structure under the applicable planning and zoning



1 in force at the time the application is deemed complete pursuant
2 to Section 65943, that have a substantial adverse effect on the
3 viability or affordability of a housing development for very low,
4 low-, or moderate-income households, and the denial of the
5 development or the imposition of restrictions on the development
6 is the subject of a court action which challenges the denial, then the
7 burden of proof shall be on the local legislative body to show that
8 its decision is consistent with the findings as described in
9 subdivision (d) and that the findings are supported by substantial
10 evidence in the record.

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

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

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

34 (k) If in any action brought to enforce the provisions of this
35 section, a court finds that the local agency disapproved a project
36 or conditioned its approval in a manner rendering it infeasible for
37 the development of housing for very low, low-, or
38 moderate-income households, including farmworker housing,
39 without making the findings required by this section or without
40 making sufficient findings supported by substantial evidence, the



1 court shall issue an order or judgment compelling compliance with
2 this section within 60 days, including, but not limited to, an order
3 that the local agency take action on the development project. The
4 court shall retain jurisdiction to ensure that its order or judgment
5 is carried out and shall award reasonable attorney fees and costs of
6 suit to the plaintiff or petitioner who proposed the housing
7 development, except under extraordinary circumstances in which
8 the court finds that awarding fees would not further the purposes
9 of this section. If the court determines that its order or judgment
10 has not been carried out within 60 days, the court may issue further
11 orders as provided by law to ensure that the purposes and policies
12 of this section are fulfilled.

13 (l) In any action, the record of the proceedings before the local
14 agency shall be filed as expeditiously as possible and,
15 notwithstanding Section 1094.6 of the Code of Civil Procedure, all
16 or part of the record may be filed (1) by the petitioner with the
17 petition or petitioner's points and authorities, (2) by the respondent
18 with respondent's points and authorities, (3) after payment of costs
19 by the petitioner, or (4) as otherwise directed by the court. If the
20 expense of preparing the record has been borne by the petitioner
21 and the petitioner is the prevailing party, the expense shall be
22 taxable as costs.

