

Introduced by Senator Ducheny

February 24, 2006

An act to amend Section 65589.5 of the Government Code, and to amend Section 17021.6 of the Health and Safety Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

SB 1802, as amended, Ducheny. Farmworker housing.

~~(1) The Planning and Zoning Law requires that a local agency not disapprove a housing development project, including farmworker housing, for very low, low-, or moderate-income households or condition its approval, including through the use of design review standards, in a manner that renders the project infeasible for development for those households unless it makes written findings, based upon substantial evidence in the record, as to one of a number of specified conditions.~~

~~This bill would revise the conditions upon which a disapproval or a conditional approval of the housing development project is based.~~

~~(2)~~

~~(1) The Employee Housing Act deems employee housing consisting of no more than 12 beds in a group quarters or 12 units or spaces designed for use by a single family or household, an agricultural land use for designated purposes.~~

~~This bill would revise this number to no more than 24 36 beds in a group quarters or 12 units or spaces, as specified above. By increasing the duties of local public officials, the bill would impose a state-mandated local program.~~

~~(3)~~

(2) 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.

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: yes.

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~~
9 ~~partially caused by activities and policies of many local~~
10 ~~governments that limit the approval of housing, increase the cost~~
11 ~~of land for housing, and require that high fees and exactions be~~
12 ~~paid by producers of 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~~
23 ~~reject 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~~

1 environmental effects of the action and without complying with
2 subdivision (d):

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

12 (d) A local agency shall not disapprove a housing
13 development project, including farmworker housing as defined in
14 subdivision (d) of Section 50199.50 of the Health and Safety
15 Code, for very low, low-, or moderate-income households or
16 condition approval, including through the use of design review
17 standards, in a manner that renders the project infeasible for
18 development for the use of very low, low-, or moderate-income
19 households unless it makes written findings, based upon
20 substantial evidence in the record, as to one of the following:

21 (1) The jurisdiction has adopted a housing element pursuant to
22 this article that has been revised in accordance with Section
23 65588, is in substantial compliance with this article, and the
24 jurisdiction has met or exceeded its share of the regional housing
25 need allocation pursuant to Section 65584 for the planning period
26 for the income category proposed for the housing development
27 project, provided that any disapproval or conditional approval
28 shall not be based on any of the reasons prohibited by Section
29 65008. If the housing development project includes a mix of
30 income categories, and the jurisdiction has not met or exceeded
31 its share of the regional housing need for one or more of those
32 categories, then this paragraph shall not be used to disapprove or
33 conditionally approve the project. The share of the regional
34 housing need met by the jurisdiction shall be calculated
35 consistently with the forms and definitions that may be adopted
36 by the Department of Housing and Community Development
37 pursuant to Section 65400. Any disapproval or conditional
38 approval pursuant to this paragraph shall be in accordance with
39 applicable law, rule, or standards.

1 ~~(2) The development project as proposed would have a~~
2 ~~specific, adverse impact upon the public health or safety, and~~
3 ~~there is no feasible method to satisfactorily mitigate or avoid the~~
4 ~~specific adverse impact without rendering the development~~
5 ~~unaffordable to low- and moderate-income households. As used~~
6 ~~in this paragraph, a “specific, adverse impact” means a~~
7 ~~significant, quantifiable, direct, and unavoidable impact, based~~
8 ~~on objective, identified written public health or safety standards;~~
9 ~~policies, or conditions as they existed on the date the application~~
10 ~~was deemed complete. Inconsistency with the zoning ordinance~~
11 ~~or general plan land use designation shall not constitute a~~
12 ~~specific, adverse impact upon the public health or safety.~~

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

18 ~~(4) The development project is proposed on land zoned for~~
19 ~~agriculture or resource preservation that is surrounded on at least~~
20 ~~two sides by land being used for agricultural or resource~~
21 ~~preservation purposes, or which does not have adequate water or~~
22 ~~wastewater facilities to serve the project. This paragraph cannot~~
23 ~~be utilized to disapprove or conditionally approve a housing~~
24 ~~development that will consist of housing for agricultural~~
25 ~~employees, as defined in subdivision (b) of Section 1140.4 of the~~
26 ~~Labor Code, that is developed on land zoned for agricultural use~~
27 ~~pursuant to Section 21159.22 of the Public Resources Code, or~~
28 ~~designated as an agricultural preserve pursuant to Section~~
29 ~~51230.2.~~

30 ~~(5) The development project is inconsistent with both the~~
31 ~~jurisdiction’s zoning ordinance and general plan land use~~
32 ~~designation as specified in any element of the general plan as it~~
33 ~~existed on the date the application was deemed complete, and the~~
34 ~~jurisdiction has adopted a revised housing element in accordance~~
35 ~~with Section 65588 that is in substantial compliance with this~~
36 ~~article.~~

37 ~~(A) This paragraph cannot be utilized to disapprove or~~
38 ~~conditionally approve a housing development project if the~~
39 ~~development project is proposed on a site that is identified as~~
40 ~~suitable or available for very low, low-, or moderate-income~~

1 households in the jurisdiction's housing element, and consistent
2 with the density specified in the housing element, even though it
3 is inconsistent with both the jurisdiction's zoning ordinance and
4 general plan land use designation.

5 (B) If the local agency has failed, in accordance with Section
6 65583.2, to identify in the inventory of land in its housing
7 element sites that can be developed for housing within the
8 planning period and that are sufficient to provide for the
9 jurisdiction's share of the regional housing need for all income
10 levels pursuant to Section 65584, then this paragraph shall not be
11 utilized to disapprove or conditionally approve a housing
12 development project proposed for a site designated in any
13 element of the general plan for residential uses or designated in
14 any element of the general plan for commercial uses if residential
15 uses are permitted or conditionally permitted within commercial
16 designations. In any action in court, the burden of proof shall be
17 on the local agency to show that its housing element does
18 identify adequate sites with appropriate zoning and development
19 standards and with services and facilities to accommodate the
20 local agency's share of the regional housing need for the very
21 low and low-income categories.

22 (C) This paragraph cannot be utilized to disapprove or
23 conditionally approve a housing development that will consist of
24 housing for agricultural employees, as defined in subdivision (b)
25 of Section 1140.4 of the Labor Code, that is developed on land
26 zoned for agricultural use pursuant to Section 21159.22 of the
27 Public Resources Code, or designated as an agricultural preserve
28 pursuant to Section 51230.2.

29 (e) This section does not relieve the local agency from
30 complying with the Congestion Management Program required
31 by Chapter 2.6 (commencing with Section 65088) of Division 1
32 of Title 7 or the California Coastal Act (Division 20
33 (commencing with Section 30000) of the Public Resources
34 Code). This section also does not relieve the local agency from
35 making one or more of the findings required pursuant to Section
36 21081 of the Public Resources Code or otherwise complying
37 with the California Environmental Quality Act (Division 13
38 (commencing with Section 21000) of the Public Resources
39 Code).

1 (f) ~~This section does not prohibit a local agency from requiring~~
2 ~~the development project to comply with objective, quantifiable,~~
3 ~~written development standards, conditions, and policies~~
4 ~~appropriate to, and consistent with, meeting the jurisdiction's~~
5 ~~share of the regional housing need pursuant to Section 65584.~~
6 ~~However, the development standards, conditions, and policies~~
7 ~~shall be applied to facilitate and accommodate development at~~
8 ~~the density permitted on the site and proposed by the~~
9 ~~development project. This section does not prohibit a local~~
10 ~~agency from imposing fees and other exactions otherwise~~
11 ~~authorized by law that are essential to provide necessary public~~
12 ~~services and facilities to the development project.~~

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

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

18 (1) ~~“Feasible” means capable of being accomplished in a~~
19 ~~successful manner within a reasonable period of time, taking into~~
20 ~~account economic, environmental, social, and technological~~
21 ~~factors.~~

22 (2) ~~“Housing development project” means a use consisting of~~
23 ~~either of the following:~~

24 (A) ~~Residential units only.~~

25 (B) ~~Mixed-use developments consisting of residential and~~
26 ~~nonresidential uses in which nonresidential uses are limited to~~
27 ~~neighborhood commercial uses and to the first floor of buildings~~
28 ~~that are two or more stories. As used in this paragraph,~~
29 ~~“neighborhood commercial” means small-scale general or~~
30 ~~specialty stores that furnish goods and services primarily to~~
31 ~~residents of the neighborhood.~~

32 (3) ~~“Housing for very low, low-, or moderate-income~~
33 ~~households” means that either (A) at least 20 percent of the total~~
34 ~~units shall be sold or rented to lower income households, as~~
35 ~~defined in Section 50079.5 of the Health and Safety Code, or (B)~~
36 ~~100 percent of the units shall be sold or rented to~~
37 ~~moderate-income households as defined in Section 50093 of the~~
38 ~~Health and Safety Code, or middle-income households, as~~
39 ~~defined in Section 65008 of this code. Housing units targeted for~~
40 ~~lower income households shall be made available at a monthly~~

1 housing cost that does not exceed 30 percent of 60 percent of
2 area median income with adjustments for household size made in
3 accordance with the adjustment factors on which the lower
4 income eligibility limits are based. Housing units targeted for
5 persons and families of moderate income shall be made available
6 at a monthly housing cost that does not exceed 30 percent of 100
7 percent of area median income with adjustments for household
8 size made in accordance with the adjustment factors on which the
9 moderate income eligibility limits are based.

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

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

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

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

28 (B) Fails to comply with the time periods specified in
29 subparagraph (B) of paragraph (1) of subdivision (a) of Section
30 65950. An extension of time pursuant to Article 5 (commencing
31 with Section 65950) shall be deemed to be an extension of time
32 pursuant to this paragraph.

33 (i) If any city, county, or city and county denies approval or
34 imposes restrictions, including design changes, a reduction of
35 allowable densities or the percentage of a lot that may be
36 occupied by a building or structure under the applicable planning
37 and zoning in force at the time the application is deemed
38 complete pursuant to Section 65943, that have a substantial
39 adverse effect on the viability or affordability of a housing
40 development for very low, low-, or moderate-income households,

~~1 and the denial of the development or the imposition of
2 restrictions on the development is the subject of a court action
3 which challenges the denial, then the burden of proof shall be on
4 the local legislative body to show that its decision is consistent
5 with the findings as described in subdivision (d) and that the
6 findings are supported by substantial evidence in the record.~~

~~7 (j) When a proposed housing development project complies
8 with applicable, objective general plan and zoning standards and
9 criteria, including design review standards, in effect at the time
10 that the housing development project's application is determined
11 to be complete, but the local agency proposes to disapprove the
12 project or to approve it upon the condition that the project be
13 developed at a lower density, the local agency shall base its
14 decision regarding the proposed housing development project
15 upon written findings supported by substantial evidence on the
16 record that both of the following conditions exist:~~

~~17 (1) The housing development project would have a specific,
18 adverse impact upon the public health or safety unless the project
19 is disapproved or approved upon the condition that the project be
20 developed at a lower density. As used in this paragraph, a
21 "specific, adverse impact" means a significant, quantifiable,
22 direct, and unavoidable impact, based on objective, identified
23 written public health or safety standards, policies, or conditions
24 as they existed on the date the application was deemed complete.~~

~~25 (2) There is no feasible method to satisfactorily mitigate or
26 avoid the adverse impact identified pursuant to paragraph (1);
27 other than the disapproval of the housing development project or
28 the approval of the project upon the condition that it be
29 developed at a lower density.~~

~~30 (k) The applicant or any person who would be eligible to
31 apply for residency in the development may bring an action to
32 enforce this section. If in any action brought to enforce the
33 provisions of this section, a court finds that the local agency
34 disapproved a project or conditioned its approval in a manner
35 rendering it infeasible for the development of housing for very
36 low, low, or moderate-income households, including
37 farmworker housing, without making the findings required by
38 this section or without making sufficient findings supported by
39 substantial evidence, the court shall issue an order or judgment
40 compelling compliance with this section within 60 days,~~

1 including, but not limited to, an order that the local agency take
2 action on the development project. The court shall retain
3 jurisdiction to ensure that its order or judgment is carried out and
4 shall award reasonable attorney's fees and costs of suit to the
5 plaintiff or petitioner who proposed the housing development,
6 except under extraordinary circumstances in which the court
7 finds that awarding fees would not further the purposes of this
8 section. If the court determines that its order or judgment has not
9 been carried out within 60 days, the court may issue further
10 orders as provided by law to ensure that the purposes and policies
11 of this section are fulfilled, including, but not limited to, an order
12 to vacate the decision of the local agency, in which case the
13 application for the project, as constituted at the time the local
14 agency took the initial action determined to be in violation of this
15 section, along with any standard conditions determined by the
16 court to be generally imposed by the local agency on similar
17 projects, shall be deemed approved unless the applicant consents
18 to a different decision or action by the local agency.

19 (l) If the court finds that the local agency (1) acted in bad faith
20 when it disapproved or conditionally approved the housing
21 development in violation of this section and (2) failed to carry
22 out the court's order or judgment within 60 days as described in
23 paragraph (k), the court in addition to any other remedies
24 provided by this section, may impose fines upon the local agency
25 that the local agency shall be required to deposit into a housing
26 trust fund. Fines shall not be paid from funds that are already
27 dedicated for affordable housing, including, but not limited to,
28 redevelopment or low- and moderate-income housing funds and
29 federal HOME and CDBG funds. The local agency shall commit
30 the money in the trust fund within five years for the sole purpose
31 of financing newly constructed housing units affordable to
32 extremely low, very low, or low-income households. For
33 purposes of this section, "bad faith" shall mean an action that is
34 frivolous or otherwise entirely without merit.

35 (m) Any action brought to enforce the provisions of this
36 section shall be brought pursuant to Section 1094.5 of the Code
37 of Civil Procedure, and the local agency shall prepare and certify
38 the record of proceedings in accordance with subdivision (c) of
39 Section 1094.6 of the Code of Civil Procedure no later than 30
40 days after the petition is served, provided that the cost of

1 preparation of the record shall be borne by the local agency.
2 Upon entry of the trial court's order, a party shall, in order to
3 obtain appellate review of the order, file a petition within 20 days
4 after service upon it of a written notice of the entry of the order,
5 or within such further time not exceeding an additional 20 days
6 as the trial court may for good cause allow. If the local agency
7 appeals the judgment of the trial court, the local agency shall post
8 a bond, in an amount to be determined by the court, to the benefit
9 of the plaintiff if the plaintiff is the project applicant.

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

21 ~~SEC. 2.~~

22 *SECTION 1.* Section 17021.6 of the Health and Safety Code
23 is amended to read:

24 17021.6. (a) The owner of any employee housing who has
25 qualified or intends to qualify for a permit to operate pursuant to
26 this part may invoke this section.

27 (b) Any employee housing consisting of no more than ~~24~~ 36
28 beds in a group quarters or 12 units or spaces designed for use by
29 a single family or household shall be deemed an agricultural land
30 use designation for the purposes of this section. For the purpose
31 of all local ordinances, employee housing shall not be deemed a
32 use that implies that the employee housing is an activity that
33 differs in any other way from an agricultural use. No conditional
34 use permit, zoning variance, or other zoning clearance shall be
35 required of this employee housing that is not required of any
36 other agricultural activity in the same zone. The permitted
37 occupancy in employee housing in an agricultural zone shall
38 include agricultural employees who do not work on the property
39 where the employee housing is located.

1 (c) Except as otherwise provided in this part, employee
2 housing consisting of no more than ~~24~~ 36 beds in a group
3 quarters or 12 units or spaces designed for use by a single family
4 or household shall not be subject to any business taxes, local
5 registration fees, use permit fees, or other fees to which other
6 agricultural activities in the same zone are not likewise subject.
7 This subdivision does not forbid the imposition of local property
8 taxes, fees for water services and garbage collection, fees for
9 normal inspections, local bond assessments, and other fees,
10 charges, and assessments to which other agricultural activities in
11 the same zone are likewise subject. Neither the State Fire
12 Marshal nor any local public entity shall charge any fee to the
13 owner, operator, or any resident for enforcing fire inspection
14 regulation pursuant to state law or regulation or local ordinance,
15 with respect to ~~employee housing that serves 24 or fewer~~
16 ~~persons.~~ *employee housing consisting of no more than 36 beds in*
17 *a group quarters or 12 units or spaces designed for use by a*
18 *single family or household.*

19 (d) For the purposes of any contract, deed, or covenant for the
20 transfer of real property, employee housing consisting of no more
21 than ~~24~~ 36 beds in a group quarters or 12 units or spaces
22 designed for use by a single family or household shall be
23 considered an agricultural use of property, notwithstanding any
24 disclaimers to the contrary. For purposes of this section,
25 “employee housing” includes employee housing defined in
26 subdivision (b) of Section 17008, even if the housing
27 accommodations or property are not located in a rural area, as
28 defined by Section 50101.

29 (e) The Legislature hereby declares that it is the policy of this
30 state that each county and city shall permit and encourage the
31 development and use of sufficient numbers and types of
32 employee housing facilities as are commensurate with local need.
33 This section shall apply equally to any charter city, general law
34 city, county, city and county, district, and any other local public
35 entity.

36 (f) If any owner who invokes the provisions of this section
37 fails to maintain a permit to operate pursuant to this part
38 throughout the first 10 consecutive years following the issuance
39 of the original certificate of occupancy, both of the following
40 shall occur:

1 (1) The enforcement agency shall notify the appropriate local
2 government entity.

3 (2) The public agency that has waived any taxes, fees,
4 assessments, or charges for employee housing pursuant to this
5 section may recover the amount of those taxes, fees, assessments,
6 or charges from the landowner, less 10 percent of that amount for
7 each year that a valid permit has been maintained.

8 (g) Subdivision (f) shall not apply to an owner of any
9 prospective, planned, or unfinished employee housing facility
10 who has applied to the appropriate state and local public entities
11 for a permit to construct or operate pursuant to this part prior to
12 January 1, 1996.

13 ~~SEC. 3.~~

14 *SEC. 2.* If the Commission on State Mandates determines that
15 this act contains costs mandated by the state, reimbursement to
16 local agencies and school districts for those costs shall be made
17 pursuant to Part 7 (commencing with Section 17500) of Division
18 4 of Title 2 of the Government Code.