

AMENDED IN ASSEMBLY AUGUST 31, 2007

AMENDED IN ASSEMBLY JULY 2, 2007

AMENDED IN ASSEMBLY JUNE 19, 2007

AMENDED IN ASSEMBLY JUNE 13, 2007

AMENDED IN SENATE MARCH 19, 2007

AMENDED IN SENATE MARCH 8, 2007

AMENDED IN SENATE JANUARY 22, 2007

**SENATE BILL**

**No. 2**

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**Introduced by Senator Cedillo**

December 4, 2006

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An act to amend Sections 65582, 65583, and 65589.5 of the Government Code, relating to local planning.

LEGISLATIVE COUNSEL'S DIGEST

SB 2, as amended, Cedillo. Local planning.

(1) The Planning and Zoning Law requires the housing element of the general plan of a city, county, or city and county to contain, among other things, an assessment of housing needs, including an inventory of land suitable for residential development, and a program with a 5-year schedule of actions that the local government is undertaking or intends to undertake to implement the goals and objectives of the housing element. This program is also required to identify adequate sites with zoning that permits owner-occupied and multifamily residential use by right, including the development of farmworker housing for low- and very low income households.

This bill would add emergency shelters ~~and rental multifamily residential development~~ to these provisions, as specified, and would add provisions ~~by which~~ *to the housing element that would require a local government may* to identify a zone or zones where emergency shelters ~~under these provisions~~ are allowed as a permitted use without a conditional use or other discretionary permit. The bill would also *authorize a local government to satisfy all or part of this requirement by adopting and implementing a multijurisdictional agreement, as specified,* and would delete multifamily residential use from these provisions. By increasing the duties of local public officials, the bill would create a state-mandated local program.

(2) 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 add supportive housing, transitional housing, and emergency shelters to these provisions and would revise the conditions upon which a disapproval or a conditional approval of ~~a housing development project~~ or an emergency shelter is based. The bill would define supportive housing and transitional housing. By increasing the duties of local public officials, the bill would impose a state-mandated local program.

(3) The bill would also make other technical and conforming changes to these provisions.

(4) 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 no reimbursement is required by this act for a specified reason.

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. The Legislature finds and declares all of the  
2 following:

1 (a) Homelessness is a statewide problem that affects many cities  
2 and counties. There are an estimated 360,000 homeless individuals  
3 and families in California. In some counties, like Los Angeles, an  
4 estimated 254,000 men, women, and children experience  
5 homelessness over the course of each year. Some of the causes of  
6 homelessness are mental illness, substance abuse, prison release,  
7 and lack of affordable housing.

8 (b) Because homelessness affects people of all races, gender,  
9 age, and geographic location there is a growing need for every city  
10 and county to plan for the location of adequate emergency shelters.  
11 Many people experiencing homelessness, primarily youth and  
12 single individuals, need shelter but also have a need for residential  
13 substance abuse and mental health services.

14 (c) The lack or shortage of emergency shelters for homeless  
15 individuals and families in cities and counties across the state leads  
16 to the concentration of services in inner cities and poor  
17 communities, like the skid row area in downtown Los Angeles.

18 (d) In order to ensure access to services in every city and county  
19 for homeless individuals and families, it is important that cities  
20 and counties plan for these services to address the special needs  
21 and circumstances of this threatened population.

22 (e) It is the responsibility of cities and counties to plan and  
23 identify areas for emergency shelters. Cities and counties should  
24 include this as part of their planning process and locate emergency  
25 shelters where most appropriate in their community. The state  
26 should not dictate where these emergency shelters should be  
27 located.

28 (f) It is the responsibility of the Legislature to promote strong  
29 communities and ensure that housing and residential services are  
30 available in all communities.

31 SEC. 2. Section 65582 of the Government Code is amended  
32 to read:

33 65582. As used in this article, the following definitions apply:

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

36 (b) “Council of governments” means a single or multicounty  
37 council created by a joint powers agreement pursuant to Chapter  
38 5 (commencing with Section 6500) of Division 1 of Title 1.

39 (c) “Department” means the Department of Housing and  
40 Community Development.

1 (d) “Emergency shelter” has the same meaning as defined in  
2 subdivision (e) of Section 50801 of the Health and Safety Code.

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

6 (f) “Supportive housing” has the same meaning as defined in  
7 subdivision (b) of Section 50675.14 of the Health and Safety Code.

8 (g) “Transitional housing” has the same meaning as defined in  
9 subdivision (h) of Section 50675.2 of the Health and Safety Code.

10 SEC. 3. Section 65583 of the Government Code is amended  
11 to read:

12 65583. The housing element shall consist of an identification  
13 and analysis of existing and projected housing needs and a  
14 statement of goals, policies, quantified objectives, financial  
15 resources, and scheduled programs for the preservation,  
16 improvement, and development of housing. The housing element  
17 shall identify adequate sites for housing, including rental housing,  
18 factory-built housing, mobilehomes, and emergency shelters, and  
19 shall make adequate provision for the existing and projected needs  
20 of all economic segments of the community. The element shall  
21 contain all of the following:

22 (a) An assessment of housing needs and an inventory of  
23 resources and constraints relevant to the meeting of these needs.  
24 The assessment and inventory shall include all of the following:

25 (1) An analysis of population and employment trends and  
26 documentation of projections and a quantification of the locality’s  
27 existing and projected housing needs for all income levels,  
28 including extremely low income households, as defined in  
29 subdivision (b) of Section 50105 and Section 50106 of the Health  
30 and Safety Code. These existing and projected needs shall include  
31 the locality’s share of the regional housing need in accordance  
32 with Section 65584. Local agencies shall calculate the subset of  
33 very low income households allotted under Section 65584 that  
34 qualify as extremely low income households. The local agency  
35 may either use available census data to calculate the percentage  
36 of very low income households that qualify as extremely low  
37 income households or presume that 50 percent of the very low  
38 income households qualify as extremely low income households.  
39 The number of extremely low income households and very low

1 income households shall equal the jurisdiction's allocation of very  
2 low income households pursuant to Section 65584.

3 (2) An analysis and documentation of household characteristics,  
4 including level of payment compared to ability to pay, housing  
5 characteristics, including overcrowding, and housing stock  
6 condition.

7 (3) An inventory of land suitable for residential development,  
8 including vacant sites and sites having potential for redevelopment,  
9 and an analysis of the relationship of zoning and public facilities  
10 and services to these sites.

11 (4) (A) The identification of a zone or zones where emergency  
12 shelters are allowed as a permitted use without a conditional use  
13 or other discretionary permit. The identified zone or zones shall  
14 include sufficient capacity to accommodate the need for emergency  
15 shelter identified in paragraph (7), ~~provided except~~ that each local  
16 government ~~demonstrates that the identified zone or zones shall~~  
17 *identify a zone or zones that* can accommodate at least one  
18 *year-round* emergency shelter. If the local government cannot  
19 identify a zone or zones with sufficient capacity, the local  
20 government shall *include a program to* amend its zoning ordinance  
21 to meet the requirements of this paragraph ~~prior to or concurrent~~  
22 ~~with~~ *within one year of* the adoption of the housing element. The  
23 local government may identify additional zones where emergency  
24 shelters are permitted with a conditional use permit. The local  
25 government shall also demonstrate that existing or proposed permit  
26 processing, development, and management standards are objective  
27 and encourage and facilitate the development of, or conversion to,  
28 emergency shelters. Emergency shelters may only be subject to  
29 those development and management standards that apply to  
30 residential or commercial development within the same zone except  
31 that a local government may apply written, objective standards  
32 that include all of the following:

33 (i) The maximum number of beds or persons permitted to be  
34 served nightly by the facility.

35 (ii) Off-street parking *based upon demonstrated need*, provided  
36 that the standards do not require more parking for emergency  
37 shelters than for other residential or commercial uses within the  
38 same zone ~~based upon demonstrated need~~.

39 (iii) The size and location of ~~client~~ exterior and interior onsite  
40 waiting and *client* intake areas.

- 1 (iv) The provision of onsite management.  
2 (v) The proximity to other emergency shelters, provided that  
3 emergency shelters are not required to be more than 300 feet apart.  
4 (vi) The length of stay.  
5 (vii) Lighting.  
6 (viii) Security during hours that the emergency shelter is in  
7 operation.
- 8 (B) The permit processing, development, and management  
9 standards applied under this paragraph shall not be deemed to be  
10 discretionary acts within the meaning of the California  
11 Environmental Quality Act (Division 13 (commencing with Section  
12 21000) of the Public Resources Code).
- 13 *(C) A local government that can demonstrate to the satisfaction*  
14 *of the department the existence of one or more emergency shelters*  
15 *either within its jurisdiction or pursuant to a multijurisdictional*  
16 *agreement that can accommodate that jurisdiction's need for*  
17 *emergency shelter identified in paragraph (7) may comply with*  
18 *the zoning requirements of subparagraph (A) by identifying a zone*  
19 *or zones where new emergency shelters are allowed with a*  
20 *conditional use permit.*
- 21 *(D) A local government with an existing ordinance or*  
22 *ordinances that comply with this paragraph shall not be required*  
23 *to take additional action to identify zones for emergency shelters.*  
24 *The housing element must only describe how existing ordinances,*  
25 *policies, and standards are consistent with the requirements of*  
26 *this paragraph.*
- 27 (5) An analysis of potential and actual governmental constraints  
28 upon the maintenance, improvement, or development of housing  
29 for all income levels, including the types of housing identified in  
30 paragraph (1) of subdivision (c), and for persons with disabilities  
31 as identified in the analysis pursuant to paragraph (6), including  
32 land use controls, building codes and their enforcement, site  
33 improvements, fees and other exactions required of developers,  
34 and local processing and permit procedures. The analysis shall  
35 also demonstrate local efforts to remove governmental constraints  
36 that hinder the locality from meeting its share of the regional  
37 housing need in accordance with Section 65584 and from meeting  
38 the need for housing for persons with disabilities, supportive  
39 housing, transitional housing, and emergency shelters identified  
40 pursuant to paragraph (6). Transitional housing and supportive

1 housing shall be considered a residential use of property, and shall  
2 be subject only to those restrictions that apply to other ~~multifamily~~  
3 ~~dwellings~~ *residential dwellings of the same type* in the same zone.

4 (6) An analysis of potential and actual nongovernmental  
5 constraints upon the maintenance, improvement, or development  
6 of housing for all income levels, including the availability of  
7 financing, the price of land, and the cost of construction.

8 (7) An analysis of any special housing needs, such as those of  
9 the elderly, persons with disabilities, large families, farmworkers,  
10 families with female heads of households, and families and persons  
11 in need of emergency shelter. *The need for emergency shelter shall*  
12 *be assessed based on annual and seasonal need. The need for*  
13 *emergency shelter may be reduced by the number of supportive*  
14 *housing units that are identified in an adopted 10-year plan to end*  
15 *chronic homelessness and that are either vacant or for which*  
16 *funding has been identified to allow construction during the*  
17 *planning period.*

18 (8) An analysis of opportunities for energy conservation with  
19 respect to residential development.

20 (9) An analysis of existing assisted housing developments that  
21 are eligible to change from low-income housing uses during the  
22 next 10 years due to termination of subsidy contracts, mortgage  
23 prepayment, or expiration of restrictions on use. “Assisted housing  
24 developments,” for the purpose of this section, shall mean  
25 multifamily rental housing that receives governmental assistance  
26 under federal programs listed in subdivision (a) of Section  
27 65863.10, state and local multifamily revenue bond programs,  
28 local redevelopment programs, the federal Community  
29 Development Block Grant Program, or local in-lieu fees. “Assisted  
30 housing developments” shall also include multifamily rental units  
31 that were developed pursuant to a local inclusionary housing  
32 program or used to qualify for a density bonus pursuant to Section  
33 65916.

34 (A) The analysis shall include a listing of each development by  
35 project name and address, the type of governmental assistance  
36 received, the earliest possible date of change from low-income use  
37 and the total number of elderly and nonelderly units that could be  
38 lost from the locality’s low-income housing stock in each year  
39 during the 10-year period. For purposes of state and federally

1 funded projects, the analysis required by this subparagraph need  
2 only contain information available on a statewide basis.

3 (B) The analysis shall estimate the total cost of producing new  
4 rental housing that is comparable in size and rent levels, to replace  
5 the units that could change from low-income use, and an estimated  
6 cost of preserving the assisted housing developments. This cost  
7 analysis for replacement housing may be done aggregately for  
8 each five-year period and does not have to contain a  
9 project-by-project cost estimate.

10 (C) The analysis shall identify public and private nonprofit  
11 corporations known to the local government which have legal and  
12 managerial capacity to acquire and manage these housing  
13 developments.

14 (D) The analysis shall identify and consider the use of all federal,  
15 state, and local financing and subsidy programs which can be used  
16 to preserve, for lower income households, the assisted housing  
17 developments, identified in this paragraph, including, but not  
18 limited to, federal Community Development Block Grant Program  
19 funds, tax increment funds received by a redevelopment agency  
20 of the community, and administrative fees received by a housing  
21 authority operating within the community. In considering the use  
22 of these financing and subsidy programs, the analysis shall identify  
23 the amounts of funds under each available program which have  
24 not been legally obligated for other purposes and which could be  
25 available for use in preserving assisted housing developments.

26 (b) (1) A statement of the community’s goals, quantified  
27 objectives, and policies relative to the maintenance, preservation,  
28 improvement, and development of housing.

29 (2) It is recognized that the total housing needs identified  
30 pursuant to subdivision (a) may exceed available resources and  
31 the community’s ability to satisfy this need within the content of  
32 the general plan requirements outlined in Article 5 (commencing  
33 with Section 65300). Under these circumstances, the quantified  
34 objectives need not be identical to the total housing needs. The  
35 quantified objectives shall establish the maximum number of  
36 housing units by income category, including extremely low income,  
37 that can be constructed, rehabilitated, and conserved over a  
38 five-year time period.

39 (c) A program which sets forth a five-year schedule of actions  
40 the local government is undertaking or intends to undertake to

1 implement the policies and achieve the goals and objectives of the  
2 housing element through the administration of land use and  
3 development controls, the provision of regulatory concessions and  
4 incentives, and the utilization of appropriate federal and state  
5 financing and subsidy programs when available and the utilization  
6 of moneys in a low- and moderate-income housing fund of an  
7 agency if the locality has established a redevelopment project area  
8 pursuant to the Community Redevelopment Law (Division 24  
9 (commencing with Section 33000) of the Health and Safety Code).  
10 In order to make adequate provision for the housing needs of all  
11 economic segments of the community, the program shall do all of  
12 the following:

13 (1) Identify actions that will be taken to make sites available  
14 during the planning period of the general plan with appropriate  
15 zoning and development standards and with services and facilities  
16 to accommodate that portion of the city's or county's share of the  
17 regional housing need for each income level that could not be  
18 accommodated on sites identified in the inventory completed  
19 pursuant to paragraph (3) of subdivision (a) without rezoning, and  
20 to comply with the requirements of Section 65584.09. Sites shall  
21 be identified as needed to facilitate and encourage the development  
22 of a variety of types of housing for all income levels, including  
23 multifamily rental housing, factory-built housing, mobilehomes,  
24 housing for agricultural employees, supportive housing,  
25 single-room occupancy units, emergency shelters, and transitional  
26 housing.

27 (A) Where the inventory of sites, pursuant to paragraph (3) of  
28 subdivision (a), does not identify adequate sites to accommodate  
29 the need for groups of all household income levels pursuant to  
30 Section 65584, the program shall identify sites that can be  
31 developed for housing within the planning period pursuant to  
32 subdivision (h) of Section 65583.2.

33 (B) Where the inventory of sites pursuant to paragraph (3) of  
34 subdivision (a) does not identify adequate sites to accommodate  
35 the need for farmworker housing, the program shall provide for  
36 sufficient sites to meet the need with zoning that permits  
37 farmworker housing use by right, including density and  
38 development standards that could accommodate and facilitate the  
39 feasibility of the development of farmworker housing for low- and  
40 very low income households.

1 (2) Assist in the development of adequate housing to meet the  
2 needs of extremely low, very low, low-, and moderate-income  
3 households.

4 (3) Address and, where appropriate and legally possible, remove  
5 governmental constraints to the maintenance, improvement, and  
6 development of housing, including housing for all income levels  
7 and housing for persons with disabilities. The program shall remove  
8 constraints to, and provide reasonable accommodations for housing  
9 designed for, intended for occupancy by, or with supportive  
10 services for, persons with disabilities.

11 (4) Conserve and improve the condition of the existing  
12 affordable housing stock, which may include addressing ways to  
13 mitigate the loss of dwelling units demolished by public or private  
14 action.

15 (5) Promote housing opportunities for all persons regardless of  
16 race, religion, sex, marital status, ancestry, national origin, color,  
17 familial status, or disability.

18 (6) Preserve for lower income households the assisted housing  
19 developments identified pursuant to paragraph (9) of subdivision  
20 (a). The program for preservation of the assisted housing  
21 developments shall utilize, to the extent necessary, all available  
22 federal, state, and local financing and subsidy programs identified  
23 in paragraph (9) of subdivision (a), except where a community has  
24 other urgent needs for which alternative funding sources are not  
25 available. The program may include strategies that involve local  
26 regulation and technical assistance.

27 (7) The program shall include an identification of the agencies  
28 and officials responsible for the implementation of the various  
29 actions and the means by which consistency will be achieved with  
30 other general plan elements and community goals. The local  
31 government shall make a diligent effort to achieve public  
32 participation of all economic segments of the community in the  
33 development of the housing element, and the program shall  
34 describe this effort.

35 *(d) (1) A local government may satisfy all or part of its*  
36 *requirement to identify a zone or zones suitable for the development*  
37 *of emergency shelters pursuant to paragraph (4) of subdivision*  
38 *(a) by adopting and implementing a multijurisdictional agreement,*  
39 *with a maximum of two other adjacent communities, that requires*  
40 *the participating jurisdictions to develop at least one year-round*

1 *emergency shelter within two years of the beginning of the planning*  
2 *period.*

3 (2) *The agreement shall allocate a portion of the new shelter*  
4 *capacity to each jurisdiction as credit towards its emergency*  
5 *shelter need, and each jurisdiction shall describe how the capacity*  
6 *was allocated as part of its housing element.*

7 (3) *Each member jurisdiction of a multijurisdictional agreement*  
8 *shall describe in its housing element all of the following:*

9 (A) *How the joint facility will meet the jurisdiction's emergency*  
10 *shelter need.*

11 (B) *The jurisdiction's contribution to the facility for both the*  
12 *development and ongoing operation and management of the*  
13 *facility.*

14 (C) *The amount and source of the funding that the jurisdiction*  
15 *contributes to the facility.*

16 (4) *The aggregate capacity claimed by the participating*  
17 *jurisdictions in their housing elements shall not exceed the actual*  
18 *capacity of the shelter.*

19 ~~(d)~~

20 (e) *Except as otherwise provided in this article, amendments to*  
21 *this article that alter the required content of a housing element*  
22 *shall apply to both of the following:*

23 (1) *A housing element or housing element amendment prepared*  
24 *pursuant to subdivision (e) of Section 65588 or Section 65584.02,*  
25 *when a city, county, or city and county submits a draft to the*  
26 *department for review pursuant to Section 65585 more than 90*  
27 *days after the effective date of the amendment to this section.*

28 (2) *Any housing element or housing element amendment*  
29 *prepared pursuant to subdivision (e) of Section 65588 or Section*  
30 *65584.02, when the city, county, or city and county fails to submit*  
31 *the first draft to the department before the due date specified in*  
32 *Section 65588 or 65584.02.*

33 SEC. 4. Section 65589.5 of the Government Code is amended  
34 to read:

35 65589.5. (a) The Legislature finds and declares all of the  
36 following:

37 (1) The lack of housing, including emergency shelters, is a  
38 critical problem that threatens the economic, environmental, and  
39 social quality of life in California.

1 (2) California housing has become the most expensive in the  
2 nation. The excessive cost of the state’s housing supply is partially  
3 caused by activities and policies of many local governments that  
4 limit the approval of housing, increase the cost of land for housing,  
5 and require that high fees and exactions be paid by producers of  
6 housing.

7 (3) Among the consequences of those actions are discrimination  
8 against low-income and minority households, lack of housing to  
9 support employment growth, imbalance in jobs and housing,  
10 reduced mobility, urban sprawl, excessive commuting, and air  
11 quality deterioration.

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

16 (b) It is the policy of the state that a local government not reject  
17 or make infeasible housing developments, including emergency  
18 shelters, that contribute to meeting the need determined pursuant  
19 to this article without a thorough analysis of the economic, social,  
20 and environmental effects of the action and without complying  
21 with subdivision (d).

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

30 (d) A local agency shall not disapprove a housing development  
31 project, including farmworker housing as defined in subdivision  
32 (d) of Section 50199.50 of the Health and Safety Code, for very  
33 low, low-, or moderate-income households, or an emergency  
34 shelter, or condition approval in a manner that renders the project  
35 infeasible for development for the use of very low, low-, or  
36 moderate-income households, or an emergency shelter, including  
37 through the use of design review standards, unless it makes written  
38 findings, based upon substantial evidence in the record, as to one  
39 of the following:

1 (1) The jurisdiction has adopted a housing element pursuant to  
2 this article that has been revised in accordance with Section 65588,  
3 is in substantial compliance with this article, and the jurisdiction  
4 has met or exceeded its share of the regional housing need  
5 allocation pursuant to Section 65584 for the planning period for  
6 the income category proposed for the housing development project,  
7 provided that any disapproval or conditional approval shall not be  
8 based on any of the reasons prohibited by Section 65008. If the  
9 housing development project includes a mix of income categories,  
10 and the jurisdiction has not met or exceeded its share of the regional  
11 housing need for one or more of those categories, then this  
12 paragraph shall not be used to disapprove or conditionally approve  
13 the project. The share of the regional housing need met by the  
14 jurisdiction shall be calculated consistently with the forms and  
15 definitions that may be adopted by the Department of Housing and  
16 Community Development pursuant to Section 65400. In the case  
17 of an emergency shelter, the jurisdiction shall have met or exceeded  
18 the need for emergency shelter, as identified pursuant to paragraph  
19 (7) of subdivision (a) of Section 65583. Any disapproval or  
20 conditional approval pursuant to this paragraph shall be in  
21 accordance with applicable law, rule, or standards.

22 (2) The development project or emergency shelter as proposed  
23 would have a specific, adverse impact upon the public health or  
24 safety, and there is no feasible method to satisfactorily mitigate or  
25 avoid the specific adverse impact without rendering the  
26 development unaffordable to low- and moderate-income  
27 households or rendering the development of the emergency shelter  
28 financially infeasible. As used in this paragraph, a “specific,  
29 adverse impact” means a significant, quantifiable, direct, and  
30 unavoidable impact, based on objective, identified written public  
31 health or safety standards, policies, or conditions as they existed  
32 on the date the application was deemed complete. Inconsistency  
33 with the zoning ordinance or general plan land use designation  
34 shall not constitute a specific, adverse impact upon the public  
35 health or safety.

36 (3) The denial of the project or imposition of conditions is  
37 required in order to comply with specific state or federal law, and  
38 there is no feasible method to comply without rendering the  
39 development unaffordable to low- and moderate-income

1 households or rendering the development of the emergency shelter  
2 financially infeasible.

3 (4) The development project or emergency shelter is proposed  
4 on land zoned for agriculture or resource preservation that is  
5 surrounded on at least two sides by land being used for agricultural  
6 or resource preservation purposes, or which does not have adequate  
7 water or wastewater facilities to serve the project.

8 (5) The development project or emergency shelter is inconsistent  
9 with both the jurisdiction’s zoning ordinance and general plan land  
10 use designation as specified in any element of the general plan as  
11 it existed on the date the application was deemed complete, and  
12 the jurisdiction has adopted a revised housing element in  
13 accordance with Section 65588 that is in substantial compliance  
14 with this article.

15 (A) This paragraph cannot be utilized to disapprove or  
16 conditionally approve a housing development project if the  
17 development project is proposed on a site that is identified as  
18 suitable or available for very low, low-, or moderate-income  
19 households in the jurisdiction’s housing element, and consistent  
20 with the density specified in the housing element, even though it  
21 is inconsistent with both the jurisdiction’s zoning ordinance and  
22 general plan land use designation.

23 (B) If the local agency has failed to identify in the inventory of  
24 land in its housing element sites that can be developed for housing  
25 within the planning period and that are sufficient to provide for  
26 the jurisdiction’s share of the regional housing need for all income  
27 levels pursuant to Section 65584, then this paragraph shall not be  
28 utilized to disapprove or conditionally approve a housing  
29 development project proposed for a site designated in any element  
30 of the general plan for residential uses or designated in any element  
31 of the general plan for commercial uses if residential uses are  
32 permitted or conditionally permitted within commercial  
33 designations. In any action in court, the burden of proof shall be  
34 on the local agency to show that its housing element does identify  
35 adequate sites with appropriate zoning and development standards  
36 and with services and facilities to accommodate the local agency’s  
37 share of the regional housing need for the very low and low-income  
38 categories.

39 (C) If the local agency has failed to identify a zone or zones  
40 where emergency shelters are allowed as a permitted use without

1 a conditional use or other discretionary permit, has failed to  
2 demonstrate that the identified zone or zones include sufficient  
3 capacity to ~~reasonably~~ accommodate the need for emergency  
4 shelter identified in paragraph (7) of subdivision (a) of Section  
5 65583, or has failed to demonstrate that the identified zone or  
6 zones can ~~realistically~~ accommodate at least one emergency shelter  
7 ~~of a feasible size~~, as required by paragraph (4) of subdivision (a)  
8 of Section 65583, then this paragraph shall not be utilized to  
9 disapprove or conditionally approve an emergency shelter proposed  
10 for a site designated in any element of the general plan for  
11 industrial, commercial, or multifamily residential uses. In any  
12 action in court, the burden of proof shall be on the local agency to  
13 show that its housing element does satisfy the requirements of  
14 paragraph (4) of subdivision (a) of Section 65583.

15 (e) Nothing in this section shall be construed to relieve the local  
16 agency from complying with the Congestion Management Program  
17 required by Chapter 2.6 (commencing with Section 65088) of  
18 Division 1 of Title 7 or the California Coastal Act (Division 20  
19 (commencing with Section 30000) of the Public Resources Code).  
20 Neither shall anything in this section be construed to relieve the  
21 local agency from making one or more of the findings required  
22 pursuant to Section 21081 of the Public Resources Code or  
23 otherwise complying with the California Environmental Quality  
24 Act (Division 13 (commencing with Section 21000) of the Public  
25 Resources Code).

26 (f) (1) Nothing in this section shall be construed to prohibit a  
27 local agency from requiring the development project to comply  
28 with objective, quantifiable, written development standards,  
29 conditions, and policies appropriate to, and consistent with, meeting  
30 the jurisdiction's share of the regional housing need pursuant to  
31 Section 65584. However, the development standards, conditions,  
32 and policies shall be applied to facilitate and accommodate  
33 development at the density permitted on the site and proposed by  
34 the development.

35 (2) Nothing in this section shall be construed to prohibit a local  
36 agency from requiring an emergency shelter project to comply  
37 with objective, quantifiable, written development standards,  
38 conditions, and policies that are consistent with paragraph (4) of  
39 subdivision (a) of Section 65583 and appropriate to, and consistent  
40 with, meeting the jurisdiction's need for emergency shelter, as

1 identified pursuant to paragraph (7) of subdivision (a) of Section  
2 65583. However, the development standards, conditions, and  
3 policies shall be applied by the local agency to facilitate and  
4 accommodate the development of the emergency shelter project.

5 (3) This section does not prohibit a local agency from imposing  
6 fees and other exactions otherwise authorized by law that are  
7 essential to provide necessary public services and facilities to the  
8 development project or emergency shelter.

9 (g) This section shall be applicable to charter cities because the  
10 Legislature finds that the lack of housing, including emergency  
11 shelter, is a critical statewide problem.

12 (h) The following definitions apply for the purposes of this  
13 section:

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

17 (2) “Housing development project” means a use consisting of  
18 any of the following:

19 (A) Residential units only.

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

27 (C) Transitional housing or supportive housing.

28 (3) “Housing for very low, low-, or moderate-income  
29 households” means that either (A) at least 20 percent of the total  
30 units shall be sold or rented to lower income households, as defined  
31 in Section 50079.5 of the Health and Safety Code, or (B) 100  
32 percent of the units shall be sold or rented to moderate-income  
33 households as defined in Section 50093 of the Health and Safety  
34 Code, or middle-income households, as defined in Section 65008  
35 of this code. Housing units targeted for lower income households  
36 shall be made available at a monthly housing cost that does not  
37 exceed 30 percent of 60 percent of area median income with  
38 adjustments for household size made in accordance with the  
39 adjustment factors on which the lower income eligibility limits  
40 are based. Housing units targeted for persons and families of

1 moderate income shall be made available at a monthly housing  
2 cost that does not exceed 30 percent of 100 percent of area median  
3 income with adjustments for household size made in accordance  
4 with the adjustment factors on which the moderate-income  
5 eligibility limits are based.

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

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

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

17 (B) Fails to comply with the time periods specified in  
18 subparagraph (B) of paragraph (1) of subdivision (a) of Section  
19 65950. An extension of time pursuant to Article 5 (commencing  
20 with Section 65950) shall be deemed to be an extension of time  
21 pursuant to this paragraph.

22 (i) If any city, county, or city and county denies approval or  
23 imposes restrictions, including design changes, a reduction of  
24 allowable densities or the percentage of a lot that may be occupied  
25 by a building or structure under the applicable planning and zoning  
26 in force at the time the application is deemed complete pursuant  
27 to Section 65943, that have a substantial adverse effect on the  
28 viability or affordability of a housing development for very low,  
29 low-, or moderate-income households, and the denial of the  
30 development or the imposition of restrictions on the development  
31 is the subject of a court action which challenges the denial, then  
32 the burden of proof shall be on the local legislative body to show  
33 that its decision is consistent with the findings as described in  
34 subdivision (d) and that the findings are supported by substantial  
35 evidence in the record.

36 (j) When a proposed housing development project complies  
37 with applicable, objective general plan and zoning standards and  
38 criteria, including design review standards, in effect at the time  
39 that the housing development project’s application is determined  
40 to be complete, but the local agency proposes to disapprove the

1 project or to approve it upon the condition that the project be  
2 developed at a lower density, the local agency shall base its  
3 decision regarding the proposed housing development project upon  
4 written findings supported by substantial evidence on the record  
5 that both of the following conditions exist:

6 (1) The housing development project would have a specific,  
7 adverse impact upon the public health or safety unless the project  
8 is disapproved or approved upon the condition that the project be  
9 developed at a lower density. As used in this paragraph, a “specific,  
10 adverse impact” means a significant, quantifiable, direct, and  
11 unavoidable impact, based on objective, identified written public  
12 health or safety standards, policies, or conditions as they existed  
13 on the date the application was deemed complete.

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

19 (k) The applicant or any person who would be eligible to apply  
20 for residency in the development or emergency shelter may bring  
21 an action to enforce this section. If in any action brought to enforce  
22 the provisions of this section, a court finds that the local agency  
23 disapproved a project or conditioned its approval in a manner  
24 rendering it infeasible for the development of an emergency shelter,  
25 or housing for very low, low-, or moderate-income households,  
26 including farmworker housing, without making the findings  
27 required by this section or without making sufficient findings  
28 supported by substantial evidence, the court shall issue an order  
29 or judgment compelling compliance with this section within 60  
30 days, including, but not limited to, an order that the local agency  
31 take action on the development project or emergency shelter. The  
32 court shall retain jurisdiction to ensure that its order or judgment  
33 is carried out and shall award reasonable attorney’s fees and costs  
34 of suit to the plaintiff or petitioner who proposed the housing  
35 development or emergency shelter, except under extraordinary  
36 circumstances in which the court finds that awarding fees would  
37 not further the purposes of this section. If the court determines that  
38 its order or judgment has not been carried out within 60 days, the  
39 court may issue further orders as provided by law to ensure that  
40 the purposes and policies of this section are fulfilled, including,

1 but not limited to, an order to vacate the decision of the local  
2 agency, in which case the application for the project, as constituted  
3 at the time the local agency took the initial action determined to  
4 be in violation of this section, along with any standard conditions  
5 determined by the court to be generally imposed by the local  
6 agency on similar projects, shall be deemed approved unless the  
7 applicant consents to a different decision or action by the local  
8 agency.

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

25 (m) Any action brought to enforce the provisions of this section  
26 shall be brought pursuant to Section 1094.5 of the Code of Civil  
27 Procedure, and the local agency shall prepare and certify the record  
28 of proceedings in accordance with subdivision (c) of Section 1094.6  
29 of the Code of Civil Procedure no later than 30 days after the  
30 petition is served, provided that the cost of preparation of the record  
31 shall be borne by the local agency. Upon entry of the trial court's  
32 order, a party shall, in order to obtain appellate review of the order,  
33 file a petition within 20 days after service upon it of a written  
34 notice of the entry of the order, or within such further time not  
35 exceeding an additional 20 days as the trial court may for good  
36 cause allow. If the local agency appeals the judgment of the trial  
37 court, the local agency shall post a bond, in an amount to be  
38 determined by the court, to the benefit of the plaintiff if the plaintiff  
39 is the project applicant.

1 (n) In any action, the record of the proceedings before the local  
2 agency shall be filed as expeditiously as possible and,  
3 notwithstanding Section 1094.6 of the Code of Civil Procedure or  
4 subdivision (m) of this section, all or part of the record may be  
5 prepared (1) by the petitioner with the petition or petitioner’s points  
6 and authorities, (2) by the respondent with respondent’s points and  
7 authorities, (3) after payment of costs by the petitioner, or (4) as  
8 otherwise directed by the court. If the expense of preparing the  
9 record has been borne by the petitioner and the petitioner is the  
10 prevailing party, the expense shall be taxable as costs.

11 (o) This section shall be known, and may be cited, as the  
12 Housing Accountability Act.

13 SEC. 5. No reimbursement is required by this act pursuant to  
14 Section 6 of Article XIII B of the California Constitution because  
15 a local agency or school district has the authority to levy service  
16 charges, fees, or assessments sufficient to pay for the program or  
17 level of service mandated by this act, within the meaning of Section  
18 17556 of the Government Code.