

Introduced by Senator Strickland

February 25, 2009

An act to amend Section 65583 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

SB 326, as introduced, Strickland. Land use: housing element.

(1) The Planning and Zoning Law requires each city, county, and city and county to prepare and adopt a general plan that contains certain mandatory elements, including a housing element that analyzes existing and projected housing needs and includes a statement of goals, quantified objectives, policies, financial resources, and scheduled programs for the maintenance, preservation, improvement, and development of housing. The Department of Housing and Community Development is required to calculate the existing and projected regional housing need, as specified.

This bill would additionally require the housing element to include as part of the analysis of existing and projected housing needs, a quantification of the locality's existing and projected foreclosure rate and its impact on housing needs and inventory. The assessment of housing needs and an inventory of resources and constraints would be suspended until an unspecified date, by which time the 2010 Census data will be available for use by the department and local governments. The Department of Housing and Community Development would be required to establish, no later than an unspecified date, a methodology to account for foreclosures in the department's determination of a region's housing need. By adding to the duties of local officials, this bill would impose a state-mandated local program.

(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 65583 of the Government Code is
2 amended to read:

3 65583. The housing element shall consist of an identification
4 and analysis of existing and projected housing needs and a
5 statement of goals, policies, quantified objectives, financial
6 resources, and scheduled programs for the preservation,
7 improvement, and development of housing. The housing element
8 shall identify adequate sites for housing, including rental housing,
9 factory-built housing, mobilehomes, and emergency shelters, and
10 shall make adequate provision for the existing and projected needs
11 of all economic segments of the community. The element shall
12 contain all of the following:

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

16 (1) An analysis of population and employment trends and
17 documentation of projections and a quantification of the locality's
18 existing and projected housing needs for all income levels,
19 including extremely low income households, as defined in
20 subdivision (b) of Section 50105 and Section 50106 of the Health
21 and Safety Code, *and a quantification of the locality's existing*
22 *and projected foreclosure rate and its impact on housing needs*
23 *and inventory*. These existing and projected needs shall include
24 the locality's share of the regional housing need in accordance
25 with Section 65584. Local agencies shall calculate the subset of
26 very low income households allotted under Section 65584 that
27 qualify as extremely low income households. The local agency
28 may either use available census data to calculate the percentage

1 of very low income households that qualify as extremely low
2 income households or presume that 50 percent of the very low
3 income households qualify as extremely low income households.
4 The number of extremely low income households and very low
5 income households shall equal the jurisdiction's allocation of very
6 low income households pursuant to Section 65584.

7 (2) An analysis and documentation of household characteristics,
8 including level of payment compared to ability to pay, housing
9 characteristics, including overcrowding, and housing stock
10 condition.

11 (3) An inventory of land suitable for residential development,
12 including vacant sites and sites having potential for redevelopment,
13 and an analysis of the relationship of zoning and public facilities
14 and services to these sites.

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

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

38 (ii) Off-street parking based upon demonstrated need, provided
39 that the standards do not require more parking for emergency

1 shelters than for other residential or commercial uses within the
2 same zone.

3 (iii) The size and location of exterior and interior onsite waiting
4 and client intake areas.

5 (iv) The provision of onsite management.

6 (v) The proximity to other emergency shelters, provided that
7 emergency shelters are not required to be more than 300 feet apart.

8 (vi) The length of stay.

9 (vii) Lighting.

10 (viii) Security during hours that the emergency shelter is in
11 operation.

12 (B) The permit processing, development, and management
13 standards applied under this paragraph shall not be deemed to be
14 discretionary acts within the meaning of the California
15 Environmental Quality Act (Division 13 (commencing with Section
16 21000) of the Public Resources Code).

17 (C) A local government that can demonstrate to the satisfaction
18 of the department the existence of one or more emergency shelters
19 either within its jurisdiction or pursuant to a multijurisdictional
20 agreement that can accommodate that jurisdiction's need for
21 emergency shelter identified in paragraph (7) may comply with
22 the zoning requirements of subparagraph (A) by identifying a zone
23 or zones where new emergency shelters are allowed with a
24 conditional use permit.

25 (D) A local government with an existing ordinance or ordinances
26 that comply with this paragraph shall not be required to take
27 additional action to identify zones for emergency shelters. The
28 housing element must only describe how existing ordinances,
29 policies, and standards are consistent with the requirements of this
30 paragraph.

31 (5) An analysis of potential and actual governmental constraints
32 upon the maintenance, improvement, or development of housing
33 for all income levels, including the types of housing identified in
34 paragraph (1) of subdivision (c), and for persons with disabilities
35 as identified in the analysis pursuant to paragraph (7), including
36 land use controls, building codes and their enforcement, site
37 improvements, fees and other exactions required of developers,
38 and local processing and permit procedures. The analysis shall
39 also demonstrate local efforts to remove governmental constraints
40 that hinder the locality from meeting its share of the regional

1 housing need in accordance with Section 65584 and from meeting
2 the need for housing for persons with disabilities, supportive
3 housing, transitional housing, and emergency shelters identified
4 pursuant to paragraph (7). Transitional housing and supportive
5 housing shall be considered a residential use of property, and shall
6 be subject only to those restrictions that apply to other residential
7 dwellings of the same type in the same zone.

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

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

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

24 (9) An analysis of existing assisted housing developments that
25 are eligible to change from low-income housing uses during the
26 next 10 years due to termination of subsidy contracts, mortgage
27 prepayment, or expiration of restrictions on use. "Assisted housing
28 developments," for the purpose of this section, shall mean
29 multifamily rental housing that receives governmental assistance
30 under federal programs listed in subdivision (a) of Section
31 65863.10, state and local multifamily revenue bond programs,
32 local redevelopment programs, the federal Community
33 Development Block Grant Program, or local in-lieu fees. "Assisted
34 housing developments" shall also include multifamily rental units
35 that were developed pursuant to a local inclusionary housing
36 program or used to qualify for a density bonus pursuant to Section
37 65916.

38 (A) The analysis shall include a listing of each development by
39 project name and address, the type of governmental assistance
40 received, the earliest possible date of change from low-income use

1 and the total number of elderly and nonelderly units that could be
2 lost from the locality's low-income housing stock in each year
3 during the 10-year period. For purposes of state and federally
4 funded projects, the analysis required by this subparagraph need
5 only contain information available on a statewide basis.

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

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

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

29 *(10) The assessment of housing needs and an inventory of*
30 *resources and constraints is suspended until _____, by which time*
31 *the 2010 Census data will be available for use by the department*
32 *and local governments in conducting the analysis pursuant to*
33 *paragraph (1). Additionally, no later than _____, the department*
34 *shall establish a methodology to account for foreclosures in the*
35 *department's determination of a region's housing need.*

36 (b) (1) A statement of the community's goals, quantified
37 objectives, and policies relative to the maintenance, preservation,
38 improvement, and development of housing.

39 (2) It is recognized that the total housing needs identified
40 pursuant to subdivision (a) may exceed available resources and

1 the community's ability to satisfy this need within the content of
2 the general plan requirements outlined in Article 5 (commencing
3 with Section 65300). Under these circumstances, the quantified
4 objectives need not be identical to the total housing needs. The
5 quantified objectives shall establish the maximum number of
6 housing units by income category, including extremely low income,
7 that can be constructed, rehabilitated, and conserved over a
8 five-year time period.

9 (c) A program which sets forth a schedule of actions during the
10 planning period, each with a timeline for implementation, which
11 may recognize that certain programs are ongoing, such that there
12 will be beneficial impacts of the programs within the planning
13 period, that the local government is undertaking or intends to
14 undertake to implement the policies and achieve the goals and
15 objectives of the housing element through the administration of
16 land use and development controls, the provision of regulatory
17 concessions and incentives, and the utilization of appropriate
18 federal and state financing and subsidy programs when available
19 and the utilization of moneys in a low- and moderate-income
20 housing fund of an agency if the locality has established a
21 redevelopment project area pursuant to the Community
22 Redevelopment Law (Division 24 (commencing with Section
23 33000) of the Health and Safety Code). In order to make adequate
24 provision for the housing needs of all economic segments of the
25 community, the program shall do all of the following:

26 (1) Identify actions that will be taken to make sites available
27 during the planning period of the general plan with appropriate
28 zoning and development standards and with services and facilities
29 to accommodate that portion of the city's or county's share of the
30 regional housing need for each income level that could not be
31 accommodated on sites identified in the inventory completed
32 pursuant to paragraph (3) of subdivision (a) without rezoning, and
33 to comply with the requirements of Section 65584.09. Sites shall
34 be identified as needed to facilitate and encourage the development
35 of a variety of types of housing for all income levels, including
36 multifamily rental housing, factory-built housing, mobilehomes,
37 housing for agricultural employees, supportive housing,
38 single-room occupancy units, emergency shelters, and transitional
39 housing.

(A) Where the inventory of sites, pursuant to paragraph (3) of subdivision (a), does not identify adequate sites to accommodate the need for groups of all household income levels pursuant to Section 65584, rezoning of those sites, including adoption of minimum density and development standards, for jurisdictions with an eight-year housing element planning period pursuant to Section 65588, shall be completed no later than three years after either the date the housing element is adopted pursuant to subdivision (f) of Section 65585 or the date that is 90 days after receipt of comments from the department pursuant to subdivision (b) of Section 65585, whichever is earlier, unless the deadline is extended pursuant to subdivision (f). Notwithstanding the foregoing, for a local government that fails to adopt a housing element within 120 days of the statutory deadline in Section 65588 for adoption of the housing element, rezoning of those sites, including adoption of minimum density and development standards, shall be completed no later than three years and 120 days from the statutory deadline in Section 65588 for adoption of the housing element.

(B) Where the inventory of sites, pursuant to paragraph (3) of subdivision (a), does not identify adequate sites to accommodate the need for groups of all household income levels pursuant to Section 65584, the program shall identify sites that can be developed for housing within the planning period pursuant to subdivision (h) of Section 65583.2. The identification of sites shall include all components specified in subdivision (b) of Section 65583.2.

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

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

(3) Address and, where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and

1 development of housing, including housing for all income levels
2 and housing for persons with disabilities. The program shall remove
3 constraints to, and provide reasonable accommodations for housing
4 designed for, intended for occupancy by, or with supportive
5 services for, persons with disabilities.

6 (4) Conserve and improve the condition of the existing
7 affordable housing stock, which may include addressing ways to
8 mitigate the loss of dwelling units demolished by public or private
9 action.

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

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

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

30 (d) (1) A local government may satisfy all or part of its
31 requirement to identify a zone or zones suitable for the
32 development of emergency shelters pursuant to paragraph (4) of
33 subdivision (a) by adopting and implementing a multijurisdictional
34 agreement, with a maximum of two other adjacent communities,
35 that requires the participating jurisdictions to develop at least one
36 year-round emergency shelter within two years of the beginning
37 of the planning period.

38 (2) The agreement shall allocate a portion of the new shelter
39 capacity to each jurisdiction as credit towards its emergency shelter

1 need, and each jurisdiction shall describe how the capacity was
2 allocated as part of its housing element.

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

5 (A) How the joint facility will meet the jurisdiction's emergency
6 shelter need.

7 (B) The jurisdiction's contribution to the facility for both the
8 development and ongoing operation and management of the
9 facility.

10 (C) The amount and source of the funding that the jurisdiction
11 contributes to the facility.

12 (4) The aggregate capacity claimed by the participating
13 jurisdictions in their housing elements shall not exceed the actual
14 capacity of the shelter.

15 (e) Except as otherwise provided in this article, amendments to
16 this article that alter the required content of a housing element
17 shall apply to both of the following:

18 (1) A housing element or housing element amendment prepared
19 pursuant to subdivision (e) of Section 65588 or Section 65584.02,
20 when a city, county, or city and county submits a draft to the
21 department for review pursuant to Section 65585 more than 90
22 days after the effective date of the amendment to this section.

23 (2) Any housing element or housing element amendment
24 prepared pursuant to subdivision (e) of Section 65588 or Section
25 65584.02, when the city, county, or city and county fails to submit
26 the first draft to the department before the due date specified in
27 Section 65588 or 65584.02.

28 (f) The deadline for completing required rezoning pursuant to
29 subparagraph (A) of paragraph (1) of subdivision (c) shall be
30 extended by one year if the local government has completed the
31 rezoning at densities sufficient to accommodate at least 75 percent
32 of the sites for low- and very low income households and if the
33 legislative body at the conclusion of a public hearing determines,
34 based upon substantial evidence, that any of the following
35 circumstances exist:

36 (1) The local government has been unable to complete the
37 rezoning because of the action or inaction beyond the control of
38 the local government of any other state federal or local agency.

1 (2) The local government is unable to complete the rezoning
2 because of infrastructure deficiencies due to fiscal or regulatory
3 constraints.

4 (3) The local government must undertake a major revision to
5 its general plan in order to accommodate the housing related
6 policies of a sustainable communities strategy or an alternative
7 planning strategy adopted pursuant to Section 65080.

8 The resolution and the findings shall be transmitted to the
9 department together with a detailed budget and schedule for
10 preparation and adoption of the required rezonings, including plans
11 for citizen participation and expected interim action. The schedule
12 shall provide for adoption of the required rezoning within one year
13 of the adoption of the resolution.

14 (g) (1) If a local government fails to complete the rezoning by
15 the deadline provided in subparagraph (A) of paragraph (1) of
16 subdivision (c), as it may be extended pursuant to subdivision (f),
17 except as provided in paragraph (2), a local government may not
18 disapprove a housing development project, nor require a
19 conditional use permit, planned unit development permit, or other
20 locally imposed discretionary permit, or impose a condition that
21 would render the project infeasible, if the housing development
22 project (A) is proposed to be located on a site required to be
23 rezoned pursuant to the program action required by that
24 subparagraph; and (B) complies with applicable, objective general
25 plan and zoning standards and criteria, including design review
26 standards, described in the program action required by that
27 subparagraph. Any subdivision of sites shall be subject to the
28 Subdivision Map Act. Design review shall not constitute a “project”
29 for purposes of Division 13 (commencing with Section 21000) of
30 the Public Resources Code.

31 (2) A local government may disapprove a housing development
32 described in paragraph (1) if it makes written findings supported
33 by substantial evidence on the record that both of the following
34 conditions exist:

35 (A) The housing development project would have a specific,
36 adverse impact upon the public health or safety unless the project
37 is disapproved or approved upon the condition that the project be
38 developed at a lower density. As used in this paragraph, a “specific,
39 adverse impact” means a significant, quantifiable, direct, and
40 unavoidable impact, based on objective, identified written public

1 health or safety standards, policies, or conditions as they existed
2 on the date the application was deemed complete.

3 (B) There is no feasible method to satisfactorily mitigate or
4 avoid the adverse impact identified pursuant to paragraph (1), other
5 than the disapproval of the housing development project or the
6 approval of the project upon the condition that it be developed at
7 a lower density.

8 (3) The applicant or any interested person may bring an action
9 to enforce this subdivision. If a court finds that the local agency
10 disapproved a project or conditioned its approval in violation of
11 this subdivision, the court shall issue an order or judgment
12 compelling compliance within 60 days. The court shall retain
13 jurisdiction to ensure that its order or judgment is carried out. If
14 the court determines that its order or judgment has not been carried
15 out within 60 days, the court may issue further orders to ensure
16 that the purposes and policies of this subdivision are fulfilled. In
17 any such action, the city, county, or city and county shall bear the
18 burden of proof.

19 (4) For purposes of this subdivision, “housing development
20 project” means a project to construct residential units for which
21 the project developer provides sufficient legal commitments to the
22 appropriate local agency to ensure the continued availability and
23 use of at least 49 percent of the housing units for very low, low-,
24 and moderate-income households with an affordable housing cost
25 or affordable rent, as defined in Section 50052.5 or 50053 of the
26 Health and Safety Code, respectively, for the period required by
27 the applicable financing.

28 (h) An action to enforce the program actions of the housing
29 element shall be brought pursuant to Section 1085 of the Code of
30 Civil Procedure.

31 SEC. 2. If the Commission on State Mandates determines that
32 this act contains costs mandated by the state, reimbursement to
33 local agencies and school districts for those costs shall be made
34 pursuant to Part 7 (commencing with Section 17500) of Division
35 4 of Title 2 of the Government Code.