

AMENDED IN SENATE DECEMBER 17, 2009

SENATE BILL

No. 454

Introduced by Senator Lowenthal

February 26, 2009

~~An act to amend Section 14007.1 of the Government Code, relating to the Department of Transportation.~~ *An act to amend Sections 65863.10, 65863.11, and 65863.13 of the Government Code, relating to land use.*

LEGISLATIVE COUNSEL'S DIGEST

SB 454, as amended, Lowenthal. ~~Department of Transportation: Division of Rail.~~ *Land use: zoning regulations.*

The Planning and Zoning Law authorizes the legislative body of a city or county to adopt zoning ordinances regulating, among other things, the use of buildings, structures, and land as between industry, business, residences, open space, and other uses.

Existing law, until January 1, 2011, imposes notice and procedural requirements on an owner of specified types of government-subsidized rental housing regarding the owner's decision not to extend or renew participation in specified government-subsidized housing programs.

This bill would delete the repeal of these provisions, thereby extending their operation indefinitely.

~~Existing law creates the Division of Rail within the Department of Transportation.~~

~~This bill would make a nonsubstantive change to that provision.~~

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

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

1 SECTION 1. Section 65863.10 of the Government Code is
2 amended to read:

3 65863.10. (a) As used in this section, the following terms
4 have the following meaning:

5 (1) “Affected public entities” means the mayor of the city in
6 which the assisted housing development is located, or, if located
7 in an unincorporated area, the chair of the board of supervisors of
8 the county; the appropriate local public housing authority, if any;
9 and the Department of Housing and Community Development.

10 (2) “Affected tenant” means a tenant household residing in an
11 assisted housing development, as defined in paragraph (3), at the
12 time notice is required to be provided pursuant to this section, that
13 benefits from the government assistance.

14 (3) “Assisted housing development” means a multifamily rental
15 housing development that receives governmental assistance under
16 any of the following programs:

17 (A) New construction, substantial rehabilitation, moderate
18 rehabilitation, property disposition, and loan management set-aside
19 programs, or any other program providing project-based assistance,
20 under Section 8 of the United States Housing Act of 1937, as
21 amended (42 U.S.C. Sec. 1437f).

22 (B) The following federal programs:

23 (i) The Below-Market-Interest-Rate Program under Section
24 221(d)(3) of the National Housing Act (12 U.S.C. Sec. 1715 l(d)(3)
25 and (5)).

26 (ii) Section 236 of the National Housing Act (12 U.S.C. Sec.
27 1715z-1).

28 (iii) Section 202 of the Housing Act of 1959 (12 U.S.C. Sec.
29 1701q).

30 (C) Programs for rent supplement assistance under Section 101
31 of the Housing and Urban Development Act of 1965, as amended
32 (12 U.S.C. Sec. 1701s).

33 (D) Programs under Sections 514, 515, 516, 533, and 538 of
34 the Housing Act of 1949, as amended (42 U.S.C. Sec. 1485).

35 (E) Section 42 of the Internal Revenue Code.

36 (F) Section 142(d) of the Internal Revenue Code (tax-exempt
37 private activity mortgage revenue bonds).

1 (G) Section 147 of the Internal Revenue Code (Section
2 501(c)(3) bonds).

3 (H) Title I of the Housing and Community Development Act
4 of 1974, as amended (Community Development Block Grant
5 program).

6 (I) Title II of the Cranston-Gonzales National Affordable
7 Housing Act of 1990, as amended (HOME Investment Partnership
8 Program).

9 (J) Titles IV and V of the McKinney-Vento Homeless
10 Assistance Act of 1987, as amended, including the Department of
11 Housing and Urban Development's Supportive Housing Program,
12 Shelter Plus Care program, and surplus federal property disposition
13 program.

14 (K) Grants and loans made by the Department of Housing and
15 Community Development, including the Rental Housing
16 Construction Program, CHRP-R, and other rental housing finance
17 programs.

18 (L) Chapter 1138 of the Statutes of 1987.

19 (M) The following assistance provided by counties or cities in
20 exchange for restrictions on the maximum rents that may be
21 charged for units within a multifamily rental housing development
22 and on the maximum tenant income as a condition of eligibility
23 for occupancy of the unit subject to the rent restriction, as reflected
24 by a recorded agreement with a county or city:

25 (i) Loans or grants provided using tax increment financing
26 pursuant to the Community Redevelopment Law (Part 1
27 (commencing with Section 33000) of Division 24 of the Health
28 and Safety Code).

29 (ii) Local housing trust funds, as referred to in paragraph (3)
30 of subdivision (a) of Section 50843 of the Health and Safety Code.

31 (iii) The sale or lease of public property at or below market
32 rates.

33 (iv) The granting of density bonuses, or concessions or
34 incentives, including fee waivers, parking variances, or
35 amendments to general plans, zoning, or redevelopment project
36 area plans, pursuant to Chapter 4.3 (commencing with Section
37 65915).

38 Assistance pursuant to this subparagraph shall not include the
39 use of tenant-based Housing Choice Vouchers (Section 8(o) of the
40 United States Housing Act of 1937, 42 U.S.C. Sec. 1437f(o),

1 excluding subparagraph (13) relating to project-based assistance).
2 Restrictions shall not include any rent control or rent stabilization
3 ordinance imposed by a county, city, or city and county.

4 (4) “City” means a general law city, a charter city, or a city and
5 county.

6 (5) “Expiration of rental restrictions” means the expiration of
7 rental restrictions for an assisted housing development described
8 in paragraph (3) unless the development has other recorded
9 agreements restricting the rent to the same or lesser levels for at
10 least 50 percent of the units.

11 (6) “Low or moderate income” means having an income as
12 defined in Section 50093 of the Health and Safety Code.

13 (7) “Prepayment” means the payment in full or refinancing of
14 the federally insured or federally held mortgage indebtedness prior
15 to its original maturity date, or the voluntary cancellation of
16 mortgage insurance, on an assisted housing development described
17 in paragraph (3) that would have the effect of removing the current
18 rent or occupancy or rent and occupancy restrictions contained in
19 the applicable laws and the regulatory agreement.

20 (8) “Termination” means an owner’s decision not to extend or
21 renew its participation in a federal, state, or local government
22 subsidy program or private, nongovernmental subsidy program
23 for an assisted housing development described in paragraph (3),
24 either at or prior to the scheduled date of the expiration of the
25 contract, that may result in an increase in tenant rents or a change
26 in the form of the subsidy from project-based to tenant-based.

27 (9) “Very low income” means having an income as defined in
28 Section 50052.5 of the Health and Safety Code.

29 (b) (1) At least 12 months prior to the anticipated date of the
30 termination of a subsidy contract, the expiration of rental
31 restrictions, or prepayment on an assisted housing development,
32 the owner proposing the termination or prepayment of
33 governmental assistance or the owner of an assisted housing
34 development in which there will be the expiration of rental
35 restrictions shall provide a notice of the proposed change to each
36 affected tenant household residing in the assisted housing
37 development at the time the notice is provided and to the affected
38 public entities. An owner who meets the requirements of Section
39 65863.13 shall be exempt from providing that notice. The notice
40 shall contain all of the following:

1 (A) In the event of termination, a statement that the owner
2 intends to terminate the subsidy contract or rental restrictions upon
3 its expiration date, or the expiration date of any contract extension
4 thereto.

5 (B) In the event of the expiration of rental restrictions, a
6 statement that the restrictions will expire, and in the event of
7 prepayment, termination, or the expiration of rental restrictions
8 whether the owner intends to increase rents during the 12 months
9 following prepayment, termination, or the expiration of rental
10 restrictions to a level greater than permitted under Section 42 of
11 the Internal Revenue Code.

12 (C) In the event of prepayment, a statement that the owner
13 intends to pay in full or refinance the federally insured or federally
14 held mortgage indebtedness prior to its original maturity date, or
15 voluntarily cancel the mortgage insurance.

16 (D) The anticipated date of the termination, prepayment of the
17 federal or other program or expiration of rental restrictions, and
18 the identity of the federal or other program described in subdivision
19 (a).

20 (E) A statement that the proposed change would have the effect
21 of removing the current low-income affordability restrictions in
22 the applicable contract or regulatory agreement.

23 (F) A statement of the possibility that the housing may remain
24 in the federal or other program after the proposed date of
25 termination of the subsidy contract or prepayment if the owner
26 elects to do so under the terms of the federal government's or other
27 program operator's offer.

28 (G) A statement whether other governmental assistance will
29 be provided to tenants residing in the development at the time of
30 the termination of the subsidy contract or prepayment.

31 (H) A statement that a subsequent notice of the proposed
32 change, including anticipated changes in rents, if any, for the
33 development, will be provided at least six months prior to the
34 anticipated date of termination of the subsidy contract, or expiration
35 of rental restrictions, or prepayment.

36 (I) A statement of notice of opportunity to submit an offer to
37 purchase, as required in Section 65863.11.

38 (2) Notwithstanding paragraph (1), if an owner provides a copy
39 of a federally required notice of termination of a subsidy contract
40 or prepayment at least 12 months prior to the proposed change to

1 each affected tenant household residing in the assisted housing
2 development at the time the notice is provided and to the affected
3 public entities, the owner shall be deemed in compliance with this
4 subdivision, if the notice is in compliance with all federal laws.
5 However, the federally required notice does not satisfy the
6 requirements of Section 65863.11.

7 (c) (1) At least six months prior to the anticipated date of
8 termination of a subsidy contract, expiration of rental restrictions
9 or prepayment on an assisted housing development, the owner
10 proposing the termination or prepayment of governmental
11 assistance or the owner of an assisted housing development in
12 which there will be the expiration of rental restrictions shall provide
13 a notice of the proposed change to each affected tenant household
14 residing in the assisted housing development at the time the notice
15 is provided and to the affected public entities. An owner who meets
16 the requirements of Section 65863.13 shall be exempt from
17 providing that notice.

18 (2) The notice to the tenants shall contain all of the following:

19 (A) The anticipated date of the termination or prepayment of
20 the federal or other program, or the expiration of rental restrictions,
21 and the identity of the federal or other program, as described in
22 subdivision (a).

23 (B) The current rent and rent anticipated for the unit during the
24 12 months immediately following the date of the prepayment or
25 termination of the federal or other program, or expiration of rental
26 restrictions.

27 (C) A statement that a copy of the notice will be sent to the
28 city, county, or city and county, where the assisted housing
29 development is located, to the appropriate local public housing
30 authority, if any, and to the Department of Housing and Community
31 Development.

32 (D) A statement of the possibility that the housing may remain
33 in the federal or other program after the proposed date of subsidy
34 termination or prepayment if the owner elects to do so under the
35 terms of the federal government's or other program administrator's
36 offer or that a rent increase may not take place due to the expiration
37 of rental restrictions.

38 (E) A statement of the owner's intention to participate in any
39 current replacement subsidy program made available to the affected
40 tenants.

1 (F) The name and telephone number of the city, county, or city
2 and county, the appropriate local public housing authority, if any,
3 the Department of Housing and Community Development, and a
4 legal services organization, that can be contacted to request
5 additional written information about an owner’s responsibilities
6 and the rights and options of an affected tenant.

7 (3) In addition to the information provided in the notice to the
8 affected tenant, the notice to the affected public entities shall
9 contain information regarding the number of affected tenants in
10 the project, the number of units that are government assisted and
11 the type of assistance, the number of the units that are not
12 government assisted, the number of bedrooms in each unit that is
13 government assisted, and the ages and income of the affected
14 tenants. The notice shall briefly describe the owner’s plans for the
15 project, including any timetables or deadlines for actions to be
16 taken and specific governmental approvals that are required to be
17 obtained, the reason the owner seeks to terminate the subsidy
18 contract or prepay the mortgage, and any contacts the owner has
19 made or is making with other governmental agencies or other
20 interested parties in connection with the notice. The owner shall
21 also attach a copy of any federally required notice of the
22 termination of the subsidy contract or prepayment that was
23 provided at least six months prior to the proposed change. The
24 information contained in the notice shall be based on data that is
25 reasonably available from existing written tenant and project
26 records.

27 (d) The owner proposing the termination or prepayment of
28 governmental assistance or the owner of an assisted housing
29 development in which there will be the expiration of rental
30 restrictions shall provide additional notice of any significant
31 changes to the notice required by subdivision (c) within seven
32 business days to each affected tenant household residing in the
33 assisted housing development at the time the notice is provided
34 and to the affected public entities. “Significant changes” shall
35 include, but not be limited to, any changes to the date of
36 termination or prepayment, or expiration of rental restrictions or
37 the anticipated new rent.

38 (e) An owner who is subject to the requirements of this section
39 shall also provide a copy of any notices issued to existing tenants

1 pursuant to subdivision (b), (c), or (d) to any prospective tenant at
2 the time he or she is interviewed for eligibility.

3 (f) This section shall not require the owner to obtain or acquire
4 additional information that is not contained in the existing tenant
5 and project records, or to update any information in his or her
6 records. The owner shall not be held liable for any inaccuracies
7 contained in these records or from other sources, nor shall the
8 owner be liable to any party for providing this information.

9 (g) For purposes of this section, service of the notice to the
10 affected tenants, the city, county, or city and county, the appropriate
11 local public housing authority, if any, and the Department of
12 Housing and Community Development by the owner pursuant to
13 subdivisions (b) to (e), inclusive, shall be made by first-class mail
14 postage prepaid.

15 (h) Nothing in this section shall enlarge or diminish the
16 authority, if any, that a city, county, city and county, affected
17 tenant, or owner may have, independent of this section.

18 (i) If, prior to January 1, 2001, the owner has already accepted
19 a bona fide offer from a qualified entity, as defined in subdivision
20 (c) of Section 65863.11, and has complied with this section as it
21 existed prior to January 1, 2001, at the time the owner decides to
22 sell or otherwise dispose of the development, the owner shall be
23 deemed in compliance with this section.

24 (j) Injunctive relief shall be available to any party identified in
25 paragraph (1) or (2) of subdivision (a) who is aggrieved by a
26 violation of this section.

27 (k) The Director of Housing and Community Development
28 shall approve forms to be used by owners to comply with
29 subdivisions (b) and (c). Once the director has approved the forms,
30 an owner shall use the approved forms to comply with subdivisions
31 (b) and (c).

32 ~~(l) This section shall remain in effect only until January 1,~~
33 ~~2011, and as of that date is repealed, unless a later enacted statute,~~
34 ~~which is enacted on or before January 1, 2011, deletes or extends~~
35 ~~that date.~~

36 *SEC. 2. Section 65863.11 of the Government Code is amended*
37 *to read:*

38 65863.11. (a) Terms used in this section shall be defined as
39 follows:

1 (1) “Assisted housing development” and “development” mean
2 a multifamily rental housing development as defined in paragraph
3 (3) of subdivision (a) of Section 65863.10.

4 (2) “Owner” means an individual, corporation, association,
5 partnership, joint venture, or business entity that holds title to an
6 assisted housing development.

7 (3) “Tenant” means a tenant, subtenant, lessee, sublessee, or
8 other person legally in possession or occupying the assisted housing
9 development.

10 (4) “Tenant association” means a group of tenants who have
11 formed a nonprofit corporation, cooperative corporation, or other
12 entity or organization, or a local nonprofit, regional, or national
13 organization whose purpose includes the acquisition of an assisted
14 housing development and that represents the interest of at least a
15 majority of the tenants in the assisted housing development.

16 (5) “Low or moderate income” means having an income as
17 defined in Section 50093 of the Health and Safety Code.

18 (6) “Very low income” means having an income as defined in
19 Section 50105 of the Health and Safety Code.

20 (7) “Local nonprofit organizations” means not-for-profit
21 corporations organized pursuant to Division 2 (commencing with
22 Section 5000) of Title 1 of the Corporations Code, that have as
23 their principal purpose the ownership, development, or
24 management of housing or community development projects for
25 persons and families of low or moderate income and very low
26 income, and which have a broadly representative board, a majority
27 of whose members are community based and have a proven track
28 record of local community service.

29 (8) “Local public agencies” means housing authorities,
30 redevelopment agencies, or any other agency of a city, county, or
31 city and county, whether general law or chartered, which are
32 authorized to own, develop, or manage housing or community
33 development projects for persons and families of low or moderate
34 income and very low income.

35 (9) “Regional or national organizations” means not-for-profit,
36 charitable corporations organized on a multicounty, state, or
37 multistate basis that have as their principal purpose the ownership,
38 development, or management of housing or community
39 development projects for persons and families of low or moderate
40 income and very low income.

1 (10) “Regional or national public agencies” means multicounty,
2 state, or multistate agencies that are authorized to own, develop,
3 or manage housing or community development projects for persons
4 and families of low or moderate income and very low income.

5 (11) “Use restriction” means any federal, state, or local statute,
6 regulation, ordinance, or contract that, as a condition of receipt of
7 any housing assistance, including a rental subsidy, mortgage
8 subsidy, or mortgage insurance, to an assisted housing
9 development, establishes maximum limitations on tenant income
10 as a condition of eligibility for occupancy of the units within a
11 development, imposes any restrictions on the maximum rents that
12 could be charged for any of the units within a development; or
13 requires that rents for any of the units within a development be
14 reviewed by any governmental body or agency before the rents
15 are implemented.

16 (12) “Profit-motivated organizations and individuals” means
17 individuals or two or more persons organized pursuant to Division
18 1 (commencing with Section 100) of Title 1 of, Division 3
19 (commencing with Section 1200) of Title 1 of, or Division 1
20 (commencing with Section 15001) of Title 2 of, the Corporations
21 Code, that carry on as a business for profit.

22 (13) “Department” means the Department of Housing and
23 Community Development.

24 (14) “Offer to purchase” means an offer from a qualified or
25 nonqualified entity that is nonbinding on the owner.

26 (15) “Expiration of rental restrictions” has the meaning given
27 in paragraph (5) of subdivision (a) of Section 65863.10.

28 (b) An owner of an assisted housing development shall not
29 terminate a subsidy contract or prepay the mortgage pursuant to
30 Section 65863.10, unless the owner or its agent shall first have
31 provided each of the entities listed in subdivision (d) an opportunity
32 to submit an offer to purchase the development, in compliance
33 with subdivisions (g) and (h). An owner of an assisted housing
34 development in which there will be the expiration of rental
35 restrictions must also provide each of the entities listed in
36 subdivision (d) an opportunity to submit an offer to purchase the
37 development, in compliance with subdivisions (g) and (h). An
38 owner who meets the requirements of Section 65863.13 shall be
39 exempt from this requirement.

1 (c) An owner of an assisted housing development shall not sell,
2 or otherwise dispose of, the development at any time within the
3 five years prior to the expiration of rental restrictions or at any
4 time if the owner is eligible for prepayment or termination within
5 five years unless the owner or its agent shall first have provided
6 each of the entities listed in subdivision (d) an opportunity to
7 submit an offer to purchase the development, in compliance with
8 this section. An owner who meets the requirements of Section
9 65863.13 shall be exempt from this requirement.

10 (d) The entities to whom an opportunity to purchase shall be
11 provided include only the following:

12 (1) The tenant association of the development.

13 (2) Local nonprofit organizations and public agencies.

14 (3) Regional or national nonprofit organizations and regional
15 or national public agencies.

16 (4) Profit-motivated organizations or individuals.

17 (e) For the purposes of this section, to qualify as a purchaser
18 of an assisted housing development, an entity listed in subdivision
19 (d) shall do all of the following:

20 (1) Be capable of managing the housing and related facilities
21 for its remaining useful life, either by itself or through a
22 management agent.

23 (2) Agree to obligate itself and any successors in interest to
24 maintain the affordability of the assisted housing development for
25 households of very low, low, or moderate income for either a
26 30-year period from the date that the purchaser took legal
27 possession of the housing or the remaining term of the existing
28 federal government assistance specified in subdivision (a) of
29 Section 65863.10, whichever is greater. The development shall be
30 continuously occupied in the approximate percentages that those
31 households who have occupied that development on the date the
32 owner gave notice of intent or the approximate percentages
33 specified in existing use restrictions, whichever is higher. This
34 obligation shall be recorded prior to the close of escrow in the
35 office of the county recorder of the county in which the
36 development is located and shall contain a legal description of the
37 property, indexed to the name of the owner as grantor. An owner
38 that obligates itself to an enforceable regulatory agreement that
39 will ensure for a period of not less than 30 years that rents for units
40 occupied by low- and very low income households or that are

1 vacant at the time of executing a purchase agreement will conform
2 with restrictions imposed by Section 42(f) of the Internal Revenue
3 Code shall be deemed in compliance with this paragraph. In
4 addition, the regulatory agreement shall contain provisions
5 requiring the renewal of rental subsidies, should they be available,
6 provided that assistance is at a level to maintain the project's fiscal
7 viability.

8 (3) Local nonprofit organizations and public agencies shall
9 have no member among their officers or directorate with a financial
10 interest in assisted housing developments that have terminated a
11 subsidy contract or prepaid a mortgage on the development without
12 continuing the low-income restrictions.

13 (f) If an assisted housing development is not economically
14 feasible, as defined in paragraph (3) of subdivision (h) of Section
15 17058 of the Revenue and Taxation Code, a purchaser shall be
16 entitled to remove one or more units from the rent and occupancy
17 requirements as is necessary for the development to become
18 economically feasible, provided that once the development is again
19 economically feasible, the purchaser shall designate the next
20 available units as low-income units up to the original number of
21 those units.

22 (g) (1) If an owner decides to terminate a subsidy contract, or
23 prepay the mortgage pursuant to Section 65863.10, or sell or
24 otherwise dispose of the assisted housing development pursuant
25 to subdivision (b) or (c), or if the owner has an assisted housing
26 development in which there will be the expiration of rental
27 restrictions, the owner shall first give notice of the opportunity to
28 offer to purchase to each qualified entity on the list provided to
29 the owner by the department, in accordance with subdivision (o),
30 as well as to those qualified entities that directly contact the owner.
31 The notice of the opportunity to offer to purchase must be given
32 prior to or concurrently with the notice required pursuant to Section
33 65863.10 for a period of at least 12 months. The owner shall
34 contact the department to obtain the list of qualified entities. The
35 notice shall conform to the requirements of subdivision (h) and
36 shall be sent to the entities by registered or certified mail, return
37 receipt requested. The owner shall also post a copy of the notice
38 in a conspicuous place in the common area of the development.

39 (2) If the owner already has a bona fide offer to purchase from
40 an entity prior to January 1, 2001, at the time the owner decides

1 to sell or otherwise dispose of the development, the owner shall
2 not be required to comply with this subdivision. However, the
3 owner shall notify the department of this exemption and provide
4 the department a copy of the offer.

5 (h) The initial notice of a bona fide opportunity to submit an
6 offer to purchase shall contain all of the following:

7 (1) A statement that the owner will make available to each of
8 the type of entities listed in subdivision (d), within 15 business
9 days of receiving a request therefor, the terms of assumable
10 financing, if any; the terms of the subsidy contract, if any; and
11 proposed improvements to the property to be made by the owner
12 in connection with the sale, if any.

13 (2) A statement that each of the type of entities listed in
14 subdivision (d) has the right to purchase the development under
15 this section.

16 (3) A statement that the owner will make available to each of
17 the type of entities listed in subdivision (d), within 15 business
18 days of receiving a request therefor, itemized lists of monthly
19 operating expenses, capital improvements as determined by the
20 owner made within each of the two preceding calendar years, the
21 amount of project reserves, and copies of the two most recent
22 financial and physical inspection reports on the development, if
23 any, filed with the federal, state, or local agencies.

24 (4) A statement that the owner will make available to each of
25 the entities listed in subdivision (d), within 15 business days of a
26 request therefor, the most recent rent roll listing the rent paid for
27 each unit and the subsidy, if any, paid by a governmental agency
28 as of the date the notice of intent was made pursuant to Section
29 65863.10, and a statement of the vacancy rate at the development
30 for each of the two preceding calendar years.

31 (5) A statement that the owner has satisfied all notice
32 requirements pursuant to subdivision (b) of Section 65863.10,
33 unless the notice of opportunity to submit an offer to purchase is
34 delivered more than 12 months prior to the anticipated date of
35 termination, prepayment, or expiration of rental restrictions.

36 (i) If a qualified entity elects to purchase an assisted housing
37 development, it shall make a bona fide offer to purchase the
38 development. A qualified entity's bona fide offer to purchase shall
39 identify whether it is a tenant association, nonprofit organization,
40 public agency, or profit-motivated organizations or individuals

1 and shall certify, under penalty of perjury, that it is qualified
2 pursuant to subdivision (e). During the first 180 days from the date
3 of an owner's bona fide notice of the opportunity to submit an
4 offer to purchase, an owner shall accept a bona fide offer to
5 purchase only from a qualified entity. During this 180-day period,
6 the owner shall not accept offers from any other entity.

7 (j) When a bona fide offer to purchase has been made to an
8 owner, and the offer is accepted, a purchase agreement shall be
9 executed.

10 (k) Either the owner or the qualified entity may request that
11 the fair market value of the property, as a development, be
12 determined by an independent appraiser qualified to perform
13 multifamily housing appraisals, who shall be selected and paid by
14 the requesting party. All appraisers shall possess qualifications
15 equivalent to those required by the members of the Appraisers
16 Institute. This appraisal shall be nonbinding on either party with
17 respect to the sales price of the development offered in the bona
18 fide offer to purchase, or the acceptance or rejection of the offer.

19 (l) During the 180-day period following the initial 180-day
20 period required pursuant to subdivision (i), an owner may accept
21 an offer from a person or an entity that does not qualify under
22 subdivision (e). This acceptance shall be made subject to the owner
23 providing each qualified entity that made a bona fide offer to
24 purchase the first opportunity to purchase the development at the
25 same terms and conditions as the pending offer to purchase, unless
26 these terms and conditions are modified by mutual consent. The
27 owner shall notify in writing those qualified entities of the terms
28 and conditions of the pending offer to purchase, sent by registered
29 or certified mail, return receipt requested. The qualified entity shall
30 have 30 days from the date the notice is mailed to submit a bona
31 fide offer to purchase and that offer shall be accepted by the owner.
32 The owner shall not be required to comply with the provisions of
33 this subdivision if the person or the entity making the offer during
34 this time period agrees to maintain the development for persons
35 and families of very low, low, and moderate income in accordance
36 with paragraph (2) of subdivision (e). The owner shall notify the
37 department regarding how the buyer is meeting the requirements
38 of paragraph (2) of subdivision (e).

39 (m) This section shall not apply to any of the following: a
40 government taking by eminent domain or negotiated purchase; a

1 forced sale pursuant to a foreclosure; a transfer by gift, devise, or
2 operation of law; a sale to a person who would be included within
3 the table of descent and distribution if there were to be a death
4 intestate of an owner; or an owner who certifies, under penalty of
5 perjury, the existence of a financial emergency during the period
6 covered by the first right of refusal requiring immediate access to
7 the proceeds of the sale of the development. The certification shall
8 be made pursuant to subdivision (p).

9 (n) Prior to the close of escrow, an owner selling, leasing, or
10 otherwise disposing of a development to a purchaser who does not
11 qualify under subdivision (e) shall certify under penalty of perjury
12 that the owner has complied with all provisions of this section and
13 Section 65863.10. This certification shall be recorded and shall
14 contain a legal description of the property, shall be indexed to the
15 name of the owner as grantor, and may be relied upon by good
16 faith purchasers and encumbrances for value and without notice
17 of a failure to comply with the provisions of this section.

18 Any person or entity acting solely in the capacity of an escrow
19 agent for the transfer of real property subject to this section shall
20 not be liable for any failure to comply with this section unless the
21 escrow agent either had actual knowledge of the requirements of
22 this section or acted contrary to written escrow instructions
23 concerning the provisions of this section.

24 (o) The department shall undertake the following
25 responsibilities and duties:

26 (1) Maintain a form containing a summary of rights and
27 obligations under this section and make that information available
28 to owners of assisted housing developments as well as to tenant
29 associations, local nonprofit organizations, regional or national
30 nonprofit organizations, public agencies, and other entities with
31 an interest in preserving the state's subsidized housing.

32 (2) Compile, maintain, and update a list of entities in
33 subdivision (d) that have either contacted the department with an
34 expressed interest in purchasing a development in the subject area
35 or have been identified by the department as potentially having an
36 interest in participating in a right-of-first-refusal program. The
37 department shall publicize the existence of the list statewide. Upon
38 receipt of a notice of intent under Section 65863.10, the department
39 shall make the list available to the owner proposing the termination,
40 prepayment, or removal of government assistance or to the owner

1 of an assisted housing development in which there will be the
 2 expiration of rental restrictions. If the department does not make
 3 the list available at any time, the owner shall only be required to
 4 send a written copy of the opportunity to submit an offer to
 5 purchase notice to the qualified entities which directly contact the
 6 owner and to post a copy of the notice in the common area pursuant
 7 to subdivision (g).

8 (p) (1) The provisions of this section may be enforced either
 9 in law or in equity by any qualified entity entitled to exercise the
 10 opportunity to purchase and right of first refusal under this section,
 11 that has been adversely affected by an owner's failure to comply
 12 with this section.

13 (2) An owner may rely on the statements, claims, or
 14 representations of any person or entity that the person or entity is
 15 a qualified entity as specified in subdivision (d), unless the owner
 16 has actual knowledge that the purchaser is not a qualified entity.

17 (3) If the person or entity is not an entity as specified in
 18 subdivision (d), that fact, in the absence of actual knowledge as
 19 described in paragraph (2), shall not give rise to any claim against
 20 the owner for a violation of this section.

21 (q) It is the intent of the Legislature that the provisions of this
 22 section are in addition to, but not preemptive of, applicable federal
 23 laws governing the sale, or other disposition of a development that
 24 would result in either (1) a discontinuance of its use as an assisted
 25 housing development or (2) the termination or expiration of any
 26 low-income use restrictions that apply to the development.

27 ~~(r) This section shall remain in effect only until January 1,~~
 28 ~~2011, and as of that date is repealed, unless a later enacted statute,~~
 29 ~~which is enacted on or before January 1, 2011, deletes or extends~~
 30 ~~that date.~~

31 *SEC. 3. Section 65863.13 of the Government Code is amended*
 32 *to read:*

33 65863.13. (a) An owner shall not be required to provide a
 34 notice as required by Section 65863.10 or 65863.11 if all of the
 35 following conditions are contained in a regulatory agreement that
 36 has been or will be recorded against the property at the close of
 37 escrow of the sale of the property and the owner of the property
 38 complies with the requirements below during the escrow period:

39 (1) No low-income tenant whose rent was restricted and or
 40 subsidized and who resides in the development within 12 months

1 of the date that the rent restrictions are, or subsidy is, scheduled
2 to expire or terminate shall be involuntarily displaced on a
3 permanent basis as a result of the action by the owner unless the
4 tenant has breached the terms of the lease.

5 (2) The owner shall accept and fully utilize all renewals of
6 project-based assistance under Section 8 of the United States
7 Housing Act of 1937, if available, and if that assistance is at a level
8 to maintain the project's fiscal viability. The property shall be
9 deemed fiscally viable if the rents permitted under the terms of
10 the assistance are not less than the regulated rent levels established
11 pursuant to paragraph (7).

12 (3) The owner shall accept all enhanced Section 8 vouchers, if
13 the tenants receive them, and all other Section 8 vouchers for future
14 vacancies.

15 (4) The owner shall not terminate a tenancy of a low-income
16 household at the end of a lease term without demonstrating a breach
17 of the lease.

18 (5) The owner may, in selecting eligible applicants for
19 admission, utilize criteria that permit consideration of the amount
20 of income, as long as the owner adequately considers other factors
21 relevant to an applicant's ability to pay rent.

22 (6) For assisted housing developments described in paragraph
23 (3) of subdivision (a) of Section 65863.10, a new regulatory
24 agreement, consistent with this section, is recorded that restricts
25 the rents and incomes of the previously restricted units, except as
26 provided in paragraph (7), (8), or (9), to an equal or greater level
27 of affordability than previously required so that the units are
28 affordable to households at the same or a lower percentage of area
29 median income.

30 (7) For housing developments that have units with project-based
31 rental assistance upon the effective date of prepayment and
32 subsequently become unassisted by any form of rental assistance,
33 rents shall not exceed 30 percent of 60 percent of the area median
34 income. If any form of rental assistance is or becomes available,
35 the owner shall apply for and accept, if awarded, the rental
36 assistance. Rent and occupancy levels shall then be set in
37 accordance with federal regulations for the rental assistance
38 program.

39 (8) For units that do not have project-based rental assistance
40 upon the effective date of prepayment of a federally insured,

1 federally held, or formerly federally insured or held mortgage and
2 subsequently remain unassisted or become unassisted by any form
3 of rental assistance, rents shall not exceed the greater of (i) 30
4 percent of 50 percent of the area median income, or (ii) for projects
5 insured under Section 241(f) of the National Housing Act, the
6 regulated rents, expressed as a percentage of area median income.
7 If any form of rental assistance is or becomes available, the owner
8 shall apply for and accept, if awarded, the rental assistance. Rent
9 and occupancy levels shall then be set in accordance with federal
10 regulations governing the rental assistance program.

11 (9) If, upon the recordation of the new regulatory agreement,
12 any unit governed by regulatory agreement is occupied by a
13 household whose income exceeds the applicable limit, the rent for
14 that household shall not exceed 30 percent of that household's
15 adjusted income, provided that household's rent shall not be
16 increased by more than 10 percent annually.

17 (b) As used in this section, "regulatory agreement" means an
18 agreement with a governmental agency for the purposes of any
19 governmental program, which agreement applies to the
20 development that would be subject to the notice requirement in
21 Section 65863.10 and which obligates the owner and any
22 successors in interest to maintain the affordability of the assisted
23 housing development for households of very low, low, or moderate
24 income for the greater of the term of the existing federal, state, or
25 local government assistance specified in subdivision (a) of Section
26 65863.10 or 30 years.

27 (c) Section 65863.11 shall not apply to any development for
28 which the owner is exempt from the notice requirements of Section
29 65863.10 pursuant to this section.

30 ~~(d) This section shall remain in effect only until January 1,~~
31 ~~2011, and as of that date is repealed, unless a later enacted statute,~~
32 ~~that is enacted before January 1, 2011, deletes or extends that date.~~

33 ~~SECTION 1. Section 14007.1 of the Government Code is~~
34 ~~amended to read:~~

35 ~~14007.1. (a) There is in the Department of Transportation the~~
36 ~~Division of Rail, which is responsible for the development of a~~
37 ~~comprehensive rail passenger system and the preparation of the~~
38 ~~rail passenger development plan as required by Section 14036.~~

1 ~~(b) An undersecretary of the agency shall be assigned to give~~
2 ~~attention to rail matters to ensure that the rail passenger system~~
3 ~~and plan are carried out.~~

4 ~~(c) It is the intent of the Legislature that the commission give~~
5 ~~high priority to the implementation of the rail passenger system~~
6 ~~and plan.~~

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