

AMENDED IN SENATE APRIL 14, 2009

AMENDED IN SENATE APRIL 13, 2009

**SENATE BILL**

**No. 812**

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**Introduced by Senator Ashburn**

February 27, 2009

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

LEGISLATIVE COUNSEL'S DIGEST

SB 812, as amended, Ashburn. Developmental services: housing.

*The Planning and Zoning Law requires each city, county, or city and county to prepare and adopt a general plan for its jurisdiction that contains certain mandatory elements, including a housing element. Existing law requires the housing element to address and, where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing for persons with disabilities.*

*This bill would require the needs of persons with autism spectrum disorders to be assessed, in cooperation with specified groups, and to be specifically addressed in the housing element. By expanding the duties of local jurisdictions in relation to the general plans, this bill would impose a state-mandated local program.*

Under existing law, the Department of Housing and Community Development has various duties relating to goals and policy objectives concerning housing in the state.

This bill would require the department, with the cooperation of the State Department of Developmental Services, to prepare a report to the Legislature that evaluates and identifies the housing needs of persons who receive services from either the state department or a regional

center and who have been diagnosed with a disorder on the autism spectrum ~~spectrum~~ *an autism spectrum disorder.*

*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: ~~no~~ 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. These existing and projected needs shall include  
22    the locality’s share of the regional housing need in accordance  
23    with Section 65584. Local agencies shall calculate the subset of  
24    very low income households allotted under Section 65584 that  
25    qualify as extremely low income households. The local agency

1 may either use available census data to calculate the percentage  
2 of very low income households that qualify as extremely low  
3 income households or presume that 50 percent of the very low  
4 income households qualify as extremely low income households.  
5 The number of extremely low income households and very low  
6 income households shall equal the jurisdiction's allocation of very  
7 low income households pursuant to Section 65584.

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

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

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

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

39 (ii) Off-street parking based upon demonstrated need, provided  
40 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 (b) (1) A statement of the community's goals, quantified  
30 objectives, and policies relative to the maintenance, preservation,  
31 improvement, and development of housing.

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

1 that can be constructed, rehabilitated, and conserved over a  
2 five-year time period.

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

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

34 (A) Where the inventory of sites, pursuant to paragraph (3) of  
35 subdivision (a), does not identify adequate sites to accommodate  
36 the need for groups of all household income levels pursuant to  
37 Section 65584, rezoning of those sites, including adoption of  
38 minimum density and development standards, for jurisdictions  
39 with an eight-year housing element planning period pursuant to  
40 Section 65588, shall be completed no later than three years after

1 either the date the housing element is adopted pursuant to  
2 subdivision (f) of Section 65585 or the date that is 90 days after  
3 receipt of comments from the department pursuant to subdivision  
4 (b) of Section 65585, whichever is earlier, unless the deadline is  
5 extended pursuant to subdivision (f). Notwithstanding the  
6 foregoing, for a local government that fails to adopt a housing  
7 element within 120 days of the statutory deadline in Section 65588  
8 for adoption of the housing element, rezoning of those sites,  
9 including adoption of minimum density and development standards,  
10 shall be completed no later than three years and 120 days from the  
11 statutory deadline in Section 65588 for adoption of the housing  
12 element.

13 (B) Where the inventory of sites, pursuant to paragraph (3) of  
14 subdivision (a), does not identify adequate sites to accommodate  
15 the need for groups of all household income levels pursuant to  
16 Section 65584, the program shall identify sites that can be  
17 developed for housing within the planning period pursuant to  
18 subdivision (h) of Section 65583.2. The identification of sites shall  
19 include all components specified in subdivision (b) of Section  
20 65583.2.

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

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

32 (3) Address and, where appropriate and legally possible, remove  
33 governmental constraints to the maintenance, improvement, and  
34 development of housing, including housing for all income levels  
35 and housing for persons with disabilities. The program shall remove  
36 constraints to, and provide reasonable accommodations for housing  
37 designed for, intended for occupancy by, or with supportive  
38 services for, persons with disabilities. *The needs of persons with*  
39 *autism spectrum disorders shall be assessed in cooperation with*  
40 *the local regional centers, the Area Board on Developmental*

1 *Disabilities, and other relevant stakeholders and shall be*  
2 *specifically addressed.*

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

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

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

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

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

35 (2) The agreement shall allocate a portion of the new shelter  
36 capacity to each jurisdiction as credit towards its emergency shelter  
37 need, and each jurisdiction shall describe how the capacity was  
38 allocated as part of its housing element.

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

- 1 (A) How the joint facility will meet the jurisdiction’s emergency  
2 shelter need.
- 3 (B) The jurisdiction’s contribution to the facility for both the  
4 development and ongoing operation and management of the  
5 facility.
- 6 (C) The amount and source of the funding that the jurisdiction  
7 contributes to the facility.
- 8 (4) The aggregate capacity claimed by the participating  
9 jurisdictions in their housing elements shall not exceed the actual  
10 capacity of the shelter.
- 11 (e) Except as otherwise provided in this article, amendments to  
12 this article that alter the required content of a housing element  
13 shall apply to both of the following:
  - 14 (1) A housing element or housing element amendment prepared  
15 pursuant to subdivision (e) of Section 65588 or Section 65584.02,  
16 when a city, county, or city and county submits a draft to the  
17 department for review pursuant to Section 65585 more than 90  
18 days after the effective date of the amendment to this section.
  - 19 (2) Any housing element or housing element amendment  
20 prepared pursuant to subdivision (e) of Section 65588 or Section  
21 65584.02, when the city, county, or city and county fails to submit  
22 the first draft to the department before the due date specified in  
23 Section 65588 or 65584.02.
- 24 (f) The deadline for completing required rezoning pursuant to  
25 subparagraph (A) of paragraph (1) of subdivision (c) shall be  
26 extended by one year if the local government has completed the  
27 rezoning at densities sufficient to accommodate at least 75 percent  
28 of the sites for low- and very low income households and if the  
29 legislative body at the conclusion of a public hearing determines,  
30 based upon substantial evidence, that any of the following  
31 circumstances exist:
  - 32 (1) The local government has been unable to complete the  
33 rezoning because of the action or inaction beyond the control of  
34 the local government of any other state federal or local agency.
  - 35 (2) The local government is unable to complete the rezoning  
36 because of infrastructure deficiencies due to fiscal or regulatory  
37 constraints.
  - 38 (3) The local government must undertake a major revision to  
39 its general plan in order to accommodate the housing related

1 policies of a sustainable communities strategy or an alternative  
2 planning strategy adopted pursuant to Section 65080.

3 The resolution and the findings shall be transmitted to the  
4 department together with a detailed budget and schedule for  
5 preparation and adoption of the required rezonings, including plans  
6 for citizen participation and expected interim action. The schedule  
7 shall provide for adoption of the required rezoning within one year  
8 of the adoption of the resolution.

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

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

30 (A) The housing development project would have a specific,  
31 adverse impact upon the public health or safety unless the project  
32 is disapproved or approved upon the condition that the project be  
33 developed at a lower density. As used in this paragraph, a “specific,  
34 adverse impact” means a significant, quantifiable, direct, and  
35 unavoidable impact, based on objective, identified written public  
36 health or safety standards, policies, or conditions as they existed  
37 on the date the application was deemed complete.

38 (B) There is no feasible method to satisfactorily mitigate or  
39 avoid the adverse impact identified pursuant to paragraph (1), other  
40 than the disapproval of the housing development project or the

1 approval of the project upon the condition that it be developed at  
2 a lower density.

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

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

23 (h) An action to enforce the program actions of the housing  
24 element shall be brought pursuant to Section 1085 of the Code of  
25 Civil Procedure.

26 **SECTION 1.**

27 *SEC. 2.* The Department of Housing and Community  
28 Development, with the cooperation of the State Department of  
29 Developmental Services, shall prepare a report to the Legislature  
30 that evaluates and identifies the housing needs of persons who  
31 receive services from either the State Department of Developmental  
32 Services or a regional center and who have been diagnosed with  
33 ~~a disorder on the autism spectrum.~~ *an autism spectrum disorder.*

34 *SEC. 3.* *If the Commission on State Mandates determines that*  
35 *this act contains costs mandated by the state, reimbursement to*  
36 *local agencies and school districts for those costs shall be made*  
37 *pursuant to Part 7 (commencing with Section 17500) of Division*  
38 *4 of Title 2 of the Government Code.*

O