

AMENDED IN ASSEMBLY JUNE 10, 2010  
AMENDED IN SENATE JANUARY 13, 2010  
AMENDED IN SENATE MAY 4, 2009  
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, *and to add Section 65583.3 to*, 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~~ *That law also* requires the local government to make a diligent effort to achieve public participation of all economic segments of the community in the development of the housing element. *Existing law defines "developmental disability" as a disability that originates before an individual attains 18 years of age, continues or may continue indefinitely, and constitutes a substantial disability for that individual. Existing law expressly includes specified disabling conditions within that definition.*

This bill would require, *as of the next planning period commencing after January 1, 2011*, the local government, as part of the above-described *diligent* effort, to obtain, assess, and analyze appropriate

information on the housing needs of individuals with ~~developmental disabilities~~ *a developmental disability* within the community. By expanding the duties of local jurisdictions in relation to the general plans, this bill would impose a state-mandated local program.

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. 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

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

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

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

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

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

1 (ii) Off-street parking based upon demonstrated need, provided  
2 that the standards do not require more parking for emergency  
3 shelters than for other residential or commercial uses within the  
4 same zone.

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

7 (iv) The provision of onsite management.

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

10 (vi) The length of stay.

11 (vii) Lighting.

12 (viii) Security during hours that the emergency shelter is in  
13 operation.

14 (B) The permit processing, development, and management  
15 standards applied under this paragraph shall not be deemed to be  
16 discretionary acts within the meaning of the California  
17 Environmental Quality Act (Division 13 (commencing with Section  
18 21000) of the Public Resources Code).

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

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

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

1 also demonstrate local efforts to remove governmental constraints  
2 that hinder the locality from meeting its share of the regional  
3 housing need in accordance with Section 65584 and from meeting  
4 the need for housing for persons with disabilities, supportive  
5 housing, transitional housing, and emergency shelters identified  
6 pursuant to paragraph (7). Transitional housing and supportive  
7 housing shall be considered a residential use of property, and shall  
8 be subject only to those restrictions that apply to other residential  
9 dwellings of the same type in the same zone.

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

14 (7) An analysis of any special housing needs, such as those of  
15 the elderly, persons with disabilities, ~~developmental disabilities a~~  
16 *developmental disability, as defined in Section 4512 of the Welfare*  
17 *and Institutions Code*, large families, farmworkers, families with  
18 female heads of households, and families and persons in need of  
19 emergency shelter. The need for emergency shelter shall be  
20 assessed based on annual and seasonal need. The need for  
21 emergency shelter may be reduced by the number of supportive  
22 housing units that are identified in an adopted 10-year plan to end  
23 chronic homelessness and that are either vacant or for which  
24 funding has been identified to allow construction during the  
25 planning period.

26 (8) An analysis of opportunities for energy conservation with  
27 respect to residential development. Cities and counties are  
28 encouraged to include weatherization and energy efficiency  
29 improvements as part of publicly subsidized housing rehabilitation  
30 projects. This may include energy efficiency measures that  
31 encompass the building envelope, its heating and cooling systems,  
32 and its electrical system.

33 (9) An analysis of existing assisted housing developments that  
34 are eligible to change from low-income housing uses during the  
35 next 10 years due to termination of subsidy contracts, mortgage  
36 prepayment, or expiration of restrictions on use. "Assisted housing  
37 developments," for the purpose of this section, shall mean  
38 multifamily rental housing that receives governmental assistance  
39 under federal programs listed in subdivision (a) of Section  
40 65863.10, state and local multifamily revenue bond programs,

1 local redevelopment programs, the federal Community  
2 Development Block Grant Program, or local in-lieu fees. “Assisted  
3 housing developments” shall also include multifamily rental units  
4 that were developed pursuant to a local inclusionary housing  
5 program or used to qualify for a density bonus pursuant to Section  
6 65916.

7 (A) The analysis shall include a listing of each development by  
8 project name and address, the type of governmental assistance  
9 received, the earliest possible date of change from low-income  
10 use, and the total number of elderly and nonelderly units that could  
11 be lost from the locality’s low-income housing stock in each year  
12 during the 10-year period. For purposes of state and federally  
13 funded projects, the analysis required by this subparagraph need  
14 only contain information available on a statewide basis.

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

22 (C) The analysis shall identify public and private nonprofit  
23 corporations known to the local government which have legal and  
24 managerial capacity to acquire and manage these housing  
25 developments.

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

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

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

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

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

1 single-room occupancy units, emergency shelters, and transitional  
2 housing.

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

22 (B) Where the inventory of sites, pursuant to paragraph (3) of  
23 subdivision (a), does not identify adequate sites to accommodate  
24 the need for groups of all household income levels pursuant to  
25 Section 65584, the program shall identify sites that can be  
26 developed for housing within the planning period pursuant to  
27 subdivision (h) of Section 65583.2. The identification of sites shall  
28 include all components specified in subdivision (b) of Section  
29 65583.2.

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

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



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

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

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

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

24 (7) Include an identification of the agencies and officials  
25 responsible for the implementation of the various actions and the  
26 means by which consistency will be achieved with other general  
27 plan elements and community goals.

28 (8) Include a diligent effort by the local government to achieve  
29 public participation of all economic segments of the community  
30 in the development of the housing element, and the program shall  
31 describe this effort. ~~As part of this diligent effort, the local  
32 government shall obtain, assess, and analyze appropriate  
33 information on the housing needs of individuals with  
34 developmental disabilities within the community.~~

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

1 year-round emergency shelter within two years of the beginning  
2 of the planning period.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (g) (1) If a local government fails to complete the rezoning by  
18 the deadline provided in subparagraph (A) of paragraph (1) of  
19 subdivision (c), as it may be extended pursuant to subdivision (f),  
20 except as provided in paragraph (2), a local government may not  
21 disapprove a housing development project, nor require a  
22 conditional use permit, planned unit development permit, or other  
23 locally imposed discretionary permit, or impose a condition that  
24 would render the project infeasible, if the housing development  
25 project (A) is proposed to be located on a site required to be  
26 rezoned pursuant to the program action required by that  
27 subparagraph; and (B) complies with applicable, objective general  
28 plan and zoning standards and criteria, including design review  
29 standards, described in the program action required by that  
30 subparagraph. Any subdivision of sites shall be subject to the  
31 Subdivision Map Act (*Division 2 (commencing with Section*  
32 *66410)*). Design review shall not constitute a “project” for purposes  
33 of Division 13 (commencing with Section 21000) of the Public  
34 Resources Code.

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

39 (A) The housing development project would have a specific,  
40 adverse impact upon the public health or safety unless the project

1 is disapproved or approved upon the condition that the project be  
2 developed at a lower density. As used in this paragraph, a “specific,  
3 adverse impact” means a significant, quantifiable, direct, and  
4 unavoidable impact, based on objective, identified written public  
5 health or safety standards, policies, or conditions as they existed  
6 on the date the application was deemed complete.

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

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

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

32 (h) An action to enforce the program actions of the housing  
33 element shall be brought pursuant to Section 1085 of the Code of  
34 Civil Procedure.

35 *SEC. 2. Section 65583.3 is added to the Government Code, to*  
36 *read:*

37 *65583.3. As of the next planning period commencing after*  
38 *January 1, 2011, a local government, as part of the diligent effort*  
39 *required by paragraph (8) of subdivision (c) of Section 65583,*  
40 *shall obtain, assess, and analyze appropriate information on the*

1 *housing needs of individuals with a developmental disability, as*  
2 *defined in Section 4512 of the Welfare and Institutions Code, within*  
3 *the community.*

4 ~~SEC. 2.~~

5 SEC. 3. If the Commission on State Mandates determines that  
6 this act contains costs mandated by the state, reimbursement to  
7 local agencies and school districts for those costs shall be made  
8 pursuant to Part 7 (commencing with Section 17500) of Division  
9 4 of Title 2 of the Government Code.

O