

AMENDED IN ASSEMBLY AUGUST 16, 2010

AMENDED IN ASSEMBLY JUNE 28, 2010

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

Introduced by Senator Ashburn

February 27, 2009

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. That law also requires the housing element to contain an analysis of any special housing needs. 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 the local government to include in the special housing needs analysis, needs of individuals with 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:~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. 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

1 subdivision (b) of Section 50105 and Section 50106 of the Health
2 and Safety Code. These existing and projected needs shall include
3 the locality's share of the regional housing need in accordance
4 with Section 65584. Local agencies shall calculate the subset of
5 very low income households allotted under Section 65584 that
6 qualify as extremely low income households. The local agency
7 may either use available census data to calculate the percentage
8 of very low income households that qualify as extremely low
9 income households or presume that 50 percent of the very low
10 income households qualify as extremely low income households.
11 The number of extremely low income households and very low
12 income households shall equal the jurisdiction's allocation of very
13 low income households pursuant to Section 65584.

14 (2) An analysis and documentation of household characteristics,
15 including level of payment compared to ability to pay, housing
16 characteristics, including overcrowding, and housing stock
17 condition.

18 (3) An inventory of land suitable for residential development,
19 including vacant sites and sites having potential for redevelopment,
20 and an analysis of the relationship of zoning and public facilities
21 and services to these sites.

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

1 that a local government may apply written, objective standards
2 that include all of the following:

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

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

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

11 (iv) The provision of onsite management.

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

14 (vi) The length of stay.

15 (vii) Lighting.

16 (viii) Security during hours that the emergency shelter is in
17 operation.

18 (B) The permit processing, development, and management
19 standards applied under this paragraph shall not be deemed to be
20 discretionary acts within the meaning of the California
21 Environmental Quality Act (Division 13 (commencing with Section
22 21000) of the Public Resources Code).

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

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

37 (5) An analysis of potential and actual governmental constraints
38 upon the maintenance, improvement, or development of housing
39 for all income levels, including the types of housing identified in
40 paragraph (1) of subdivision (c), and for persons with disabilities

1 as identified in the analysis pursuant to paragraph (7), including
2 land use controls, building codes and their enforcement, site
3 improvements, fees and other exactions required of developers,
4 and local processing and permit procedures. The analysis shall
5 also demonstrate local efforts to remove governmental constraints
6 that hinder the locality from meeting its share of the regional
7 housing need in accordance with Section 65584 and from meeting
8 the need for housing for persons with disabilities, supportive
9 housing, transitional housing, and emergency shelters identified
10 pursuant to paragraph (7). Transitional housing and supportive
11 housing shall be considered a residential use of property, and shall
12 be subject only to those restrictions that apply to other residential
13 dwellings of the same type in the same zone.

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

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

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

37 (9) An analysis of existing assisted housing developments that
38 are eligible to change from low-income housing uses during the
39 next 10 years due to termination of subsidy contracts, mortgage
40 prepayment, or expiration of restrictions on use. “Assisted housing

1 developments,” for the purpose of this section, shall mean
2 multifamily rental housing that receives governmental assistance
3 under federal programs listed in subdivision (a) of Section
4 65863.10, state and local multifamily revenue bond programs,
5 local redevelopment programs, the federal Community
6 Development Block Grant Program, or local in-lieu fees. “Assisted
7 housing developments” shall also include multifamily rental units
8 that were developed pursuant to a local inclusionary housing
9 program or used to qualify for a density bonus pursuant to Section
10 65916.

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

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

26 (C) The analysis shall identify public and private nonprofit
27 corporations known to the local government which have legal and
28 managerial capacity to acquire and manage these housing
29 developments.

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

1 not been legally obligated for other purposes and which could be
2 available for use in preserving assisted housing developments.

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

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

16 (c) A program which sets forth a schedule of actions during the
17 planning period, each with a timeline for implementation, which
18 may recognize that certain programs are ongoing, such that there
19 will be beneficial impacts of the programs within the planning
20 period, that the local government is undertaking or intends to
21 undertake to implement the policies and achieve the goals and
22 objectives of the housing element through the administration of
23 land use and development controls, the provision of regulatory
24 concessions and incentives, the utilization of appropriate federal
25 and state financing and subsidy programs when available, and the
26 utilization of moneys in a low- and moderate-income housing fund
27 of an agency if the locality has established a redevelopment project
28 area pursuant to the Community Redevelopment Law (Division
29 24 (commencing with Section 33000) of the Health and Safety
30 Code). In order to make adequate provision for the housing needs
31 of all economic segments of the community, the program shall do
32 all of the following:

33 (1) Identify actions that will be taken to make sites available
34 during the planning period with appropriate zoning and
35 development standards and with services and facilities to
36 accommodate that portion of the city's or county's share of the
37 regional housing need for each income level that could not be
38 accommodated on sites identified in the inventory completed
39 pursuant to paragraph (3) of subdivision (a) without rezoning, and
40 to comply with the requirements of Section 65584.09. Sites shall

1 be identified as needed to facilitate and encourage the development
2 of a variety of types of housing for all income levels, including
3 multifamily rental housing, factory-built housing, mobilehomes,
4 housing for agricultural employees, supportive housing,
5 single-room occupancy units, emergency shelters, and transitional
6 housing.

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

26 (B) Where the inventory of sites, pursuant to paragraph (3) of
27 subdivision (a), does not identify adequate sites to accommodate
28 the need for groups of all household income levels pursuant to
29 Section 65584, the program shall identify sites that can be
30 developed for housing within the planning period pursuant to
31 subdivision (h) of Section 65583.2. The identification of sites shall
32 include all components specified in subdivision (b) of Section
33 65583.2.

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

1 feasibility of the development of farmworker housing for low- and
2 very low income households.

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

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

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

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

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

29 (7) Include an identification of the agencies and officials
30 responsible for the implementation of the various actions and the
31 means by which consistency will be achieved with other general
32 plan elements and community goals.

33 (8) Include a diligent effort by the local government to achieve
34 public participation of all economic segments of the community
35 in the development of the housing element, and the program shall
36 describe this effort.

37 (d) (1) A local government may satisfy all or part of its
38 requirement to identify a zone or zones suitable for the
39 development of emergency shelters pursuant to paragraph (4) of
40 subdivision (a) by adopting and implementing a multijurisdictional

1 agreement, with a maximum of two other adjacent communities,
2 that requires the participating jurisdictions to develop at least one
3 year-round emergency shelter within two years of the beginning
4 of the planning period.

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

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

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

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

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

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

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

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

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

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

1 based upon substantial evidence, that any of the following
2 circumstances exist:

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

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

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

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

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

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

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

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

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

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

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

37 ~~SEC. 2.—If the Commission on State Mandates determines that~~
38 ~~this act contains costs mandated by the state, reimbursement to~~
39 ~~local agencies and school districts for those costs shall be made~~

1 pursuant to Part 7 (commencing with Section 17500) of Division
2 4 of Title 2 of the Government Code.

3 *SEC. 2. No reimbursement is required by this act pursuant to*
4 *Section 6 of Article XIII B of the California Constitution because*
5 *a local agency or school district has the authority to levy service*
6 *charges, fees, or assessments sufficient to pay for the program or*
7 *level of service mandated by this act, within the meaning of Section*
8 *17556 of the Government Code.*

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