

**ASSEMBLY BILL**

**No. 1220**

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**Introduced by Assembly Member Alejo**  
(Principal coauthor: Senator Steinberg)  
**(Coauthor: Assembly Member Cedillo)**

February 18, 2011

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An act to amend Sections 65009, 65589.3, and 65755 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 1220, as introduced, Alejo. Land use and planning: cause of actions: time limitations.

(1) The Planning and Zoning Law requires an action or proceeding against local zoning and planning decisions of a legislative body to be commenced and the legislative body to be served within a year of accrual of the cause of action, if it meets certain requirements. Where the action or proceeding is brought in support of or to encourage or facilitate the development of housing that would increase the community's supply of affordable housing, a cause of action accrues 60 days after notice is filed or the legislative body takes a final action in response to the notice, whichever occurs first.

This bill would authorize the notice to be filed any time within 5 years after a specified action pursuant to existing law. The bill would declare the intent of the Legislature that its provisions modify a specified court opinion. The bill would also provide that in that specified action or proceeding, no remedy pursuant to specified provisions of law abrogate, impair, or otherwise interfere with the full exercise of the rights and protections granted to a tentative map application or a developer, as prescribed.

(2) The Planning and Zoning law establishes a rebuttable presumption, in any action filed on or after January 1, 1991, taken to challenge the validity of a housing element, of the validity of a housing element or amendment if the Department of Housing and Community Development has found that the element or amendment substantially complies with specified provisions of existing law.

This bill would provide that in any action brought against a city, county, or city and county to challenge the adequacy of a housing element, if a court finds that the adopted housing element or amended housing element for the current planning period substantially complies with specified provisions, the element or amendment be deemed to satisfy any condition of a state-administered housing grant program requiring a department finding of housing element compliance.

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

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

1 SECTION 1. It is the intent of the Legislature in enacting  
2 Section 2 of this act to modify the court’s opinion in Urban Habitat  
3 Program v. City of Pleasanton (2008) 164 Cal.App.4th 1561, with  
4 respect to the interpretation of Section 65009 of the Government  
5 Code.

6 SEC. 2. Section 65009 of the Government Code is amended  
7 to read:

8 65009. (a) (1) The Legislature finds and declares that there  
9 currently is a housing crisis in California and it is essential to  
10 reduce delays and restraints upon expeditiously completing housing  
11 projects.

12 (2) The Legislature further finds and declares that a legal action  
13 or proceeding challenging a decision of a city, county, or city and  
14 county has a chilling effect on the confidence with which property  
15 owners and local governments can proceed with projects. Legal  
16 actions or proceedings filed to attack, review, set aside, void, or  
17 annul a decision of a city, county, or city and county pursuant to  
18 this division, including, but not limited to, the implementation of  
19 general plan goals and policies that provide incentives for  
20 affordable housing, open-space and recreational opportunities, and  
21 other related public benefits, can prevent the completion of needed

1 developments even though the projects have received required  
2 governmental approvals.

3 (3) The purpose of this section is to provide certainty for  
4 property owners and local governments regarding decisions made  
5 pursuant to this division.

6 (b) (1) In an action or proceeding to attack, review, set aside,  
7 void, or annul a finding, determination, or decision of a public  
8 agency made pursuant to this title at a properly noticed public  
9 hearing, the issues raised shall be limited to those raised in the  
10 public hearing or in written correspondence delivered to the public  
11 agency prior to, or at, the public hearing, except where the court  
12 finds either of the following:

13 (A) The issue could not have been raised at the public hearing  
14 by persons exercising reasonable diligence.

15 (B) The body conducting the public hearing prevented the issue  
16 from being raised at the public hearing.

17 (2) If a public agency desires the provisions of this subdivision  
18 to apply to a matter, it shall include in any public notice issued  
19 pursuant to this title a notice substantially stating all of the  
20 following: “If you challenge the (nature of the proposed action)  
21 in court, you may be limited to raising only those issues you or  
22 someone else raised at the public hearing described in this notice,  
23 or in written correspondence delivered to the (public entity  
24 conducting the hearing) at, or prior to, the public hearing.”

25 (3) The application of this subdivision to causes of action  
26 brought pursuant to subdivision (d) applies only to the final action  
27 taken in response to the notice to the city or clerk of the board of  
28 supervisors. If no final action is taken, then the issue raised in the  
29 cause of action brought pursuant to subdivision (d) shall be limited  
30 to those matters presented at a properly noticed public hearing or  
31 to those matters specified in the notice given to the city or clerk  
32 of the board of supervisors pursuant to subdivision (d), or both.

33 (c) (1) Except as provided in subdivision (d), no action or  
34 proceeding shall be maintained in any of the following cases by  
35 any person unless the action or proceeding is commenced and  
36 service is made on the legislative body within 90 days after the  
37 legislative body’s decision:

38 (A) To attack, review, set aside, void, or annul the decision of  
39 a legislative body to adopt or amend a general or specific plan.

40 This paragraph does not apply where an action is brought based

1 upon the complete absence of a general plan or a mandatory  
 2 element thereof, but does apply to an action attacking a general  
 3 plan or mandatory element thereof on the basis that it is inadequate.

4 (B) To attack, review, set aside, void, or annul the decision of  
 5 a legislative body to adopt or amend a zoning ordinance.

6 (C) To determine the reasonableness, legality, or validity of any  
 7 decision to adopt or amend any regulation attached to a specific  
 8 plan.

9 (D) To attack, review, set aside, void, or annul the decision of  
 10 a legislative body to adopt, amend, or modify a development  
 11 agreement. An action or proceeding to attack, review, set aside,  
 12 void, or annul the decisions of a legislative body to adopt, amend,  
 13 or modify a development agreement shall only extend to the  
 14 specific portion of the development agreement that is the subject  
 15 of the adoption, amendment, or modification. This paragraph  
 16 applies to development agreements, amendments, and  
 17 modifications adopted on or after January 1, 1996.

18 (E) To attack, review, set aside, void, or annul any decision on  
 19 the matters listed in Sections 65901 and 65903, or to determine  
 20 the reasonableness, legality, or validity of any condition attached  
 21 to a variance, conditional use permit, or any other permit.

22 (F) Concerning any of the proceedings, acts, or determinations  
 23 taken, done, or made prior to any of the decisions listed in  
 24 subparagraphs (A), (B), (C), (D), and (E).

25 (2) In the case of an action or proceeding challenging the  
 26 adoption or revision of a housing element pursuant to this  
 27 subdivision, the action or proceeding may, in addition, be  
 28 maintained if it is commenced and service is made on the  
 29 legislative body within 60 days following the date that the  
 30 Department of Housing and Community Development reports its  
 31 findings pursuant to subdivision (h) of Section 65585.

32 (d) (1) An action or proceeding shall be commenced and the  
 33 legislative body served within one year after the accrual of the  
 34 cause of action as provided in this subdivision, *except that in no*  
 35 *case shall the action or proceeding be commenced more than five*  
 36 *years after an action described in subparagraph (B), if the action*  
 37 *or proceeding meets both of the following requirements:*

38 (1)

39 (A) It is brought in support of or to encourage or facilitate the  
 40 development of housing that would increase the community's

1 supply of housing affordable to persons and families with low or  
2 moderate incomes, as defined in Section 50079.5 of the Health  
3 and Safety Code, or with very low incomes, as defined in Section  
4 50105 of the Health and Safety Code, or middle-income  
5 households, as defined in Section 65008 of this code. This  
6 subdivision is not intended to require that the action or proceeding  
7 be brought in support of or to encourage or facilitate a specific  
8 housing development project.

9 (2)

10 (B) It is brought with respect to actions taken pursuant to Article  
11 10.6 (commencing with Section 65580) of Chapter 3 ~~of this~~  
12 ~~division, pursuant to Section 65589.5, 65863.6, 65915, or 66474.2~~  
13 ~~or pursuant to, Section 65863.6, or Chapter 4.2 (commencing with~~  
14 ~~Section 65913), or to challenge the adequacy of an ordinance~~  
15 ~~adopted pursuant to Section 65915.~~

16 A

17 (2) A cause of action brought pursuant to this subdivision shall  
18 not be maintained until 60 days have expired following notice to  
19 the city or clerk of the board of supervisors by the party bringing  
20 the cause of action, or his or her representative, specifying the  
21 deficiencies of the general plan, specific plan, or zoning ordinance.  
22 A cause of action brought pursuant to this subdivision shall accrue  
23 60 days after notice is filed or the legislative body takes a final  
24 action in response to the notice, whichever occurs first. *This notice*  
25 *may be filed at any time within five years after an action described*  
26 *in subparagraph (B) of paragraph (1).* A notice or cause of action  
27 brought by one party pursuant to this subdivision shall not bar  
28 filing of a notice and initiation of a cause of action by any other  
29 party.

30 (3) *After the adoption of a housing element covering the current*  
31 *planning period, no action shall be filed pursuant to this*  
32 *subdivision to challenge a housing element covering a prior*  
33 *planning period.*

34 (e) Upon the expiration of the time limits provided for in this  
35 section, all persons are barred from any further action or  
36 proceeding.

37 (f) Notwithstanding Sections 65700 and 65803, or any other  
38 provision of law, this section shall apply to charter cities.

1 (g) Except as provided in subdivision (d), this section shall not  
2 affect any law prescribing or authorizing a shorter period of  
3 limitation than that specified herein.

4 (h) Except as provided in paragraph (4) of subdivision (c), this  
5 section shall be applicable to those decisions of the legislative  
6 body of a city, county, or city and county made pursuant to this  
7 division on or after January 1, 1984.

8 SEC. 3. Section 65589.3 of the Government Code is amended  
9 to read:

10 65589.3. (a) In any action filed on or after January 1, 1991,  
11 taken to challenge the validity of a housing element, there shall  
12 be a rebuttable presumption of the validity of the element or  
13 amendment if, pursuant to Section 65585, the department has found  
14 that the element or amendment substantially complies with the  
15 requirements of this article.

16 (b) *In any action brought against a city, county, or city and*  
17 *county to challenge the adequacy of a housing element, if a court*  
18 *finds that the adopted housing element or amended housing element*  
19 *for the current planning period substantially complies with all of*  
20 *the requirements of this article, including, without limitation, the*  
21 *requirements for public participation set forth in paragraph (7)*  
22 *of subdivision (c) of Section 65583, the element or amendment*  
23 *shall be deemed to satisfy any condition of a state-administered*  
24 *housing grant program requiring a department finding that the*  
25 *housing element substantially complies with the requirements of*  
26 *this article.*

27 SEC. 4. Section 65755 of the Government Code is amended  
28 to read:

29 65755. (a) The court shall include, in the order or judgment  
30 rendered pursuant to Section 65754, one or more of the following  
31 provisions for any or all types or classes of developments or any  
32 or all geographic segments of the city, county, or city and county  
33 until the city, county, or city and county has substantially complied  
34 with the requirements of Article 5 (commencing with Section  
35 65300):

36 (1) Suspend the authority of the city, county, or city and county  
37 pursuant to Division 13 (commencing with Section 17910) of the  
38 Health and Safety Code, to issue building permits, or any category  
39 of building permits, and all other related permits, except that the  
40 city, county, or city and county shall continue to function as an

1 enforcement agency for review of permit applications for  
2 appropriate codes and standards compliance, prior to the issuance  
3 of building permits and other related permits for residential housing  
4 for that city, county, or city and county.

5 (2) Suspend the authority of the city, county, or city and county,  
6 pursuant to Chapter 4 (commencing with Section 65800) to grant  
7 any and all categories of zoning changes, variances, or both.

8 (3) Suspend the authority of the city, county, or city and county,  
9 pursuant to Division 2 (commencing with Section 66410), to grant  
10 subdivision map approvals for any and all categories of subdivision  
11 map approvals.

12 (4) Mandate the approval of all applications for building permits,  
13 or other related construction permits, for residential housing where  
14 a final subdivision map, parcel map, or plot plan has been approved  
15 for the project, where the approval will not impact on the ability  
16 of the city, county, or city and county to properly adopt and  
17 implement an adequate housing element, and where the permit  
18 application conforms to all code requirements and other applicable  
19 provisions of law except those zoning laws held to be invalid by  
20 the final court order, and changes to the zoning ordinances adopted  
21 after such final court order which were enacted for the purpose of  
22 preventing the construction of a specific residential development.

23 (5) Mandate the approval of any or all final subdivision maps  
24 for residential housing projects which have previously received a  
25 tentative map approval from the city, county, or city and county  
26 pursuant to Division 2 (commencing with Section 66410) when  
27 the final map conforms to the approved tentative map, the tentative  
28 map has not expired, and where approval will not impact on the  
29 ability of the city, county, or city and county to properly adopt and  
30 implement an adequate housing element.

31 (6) Mandate that notwithstanding the provisions of Sections  
32 66473.5 and 66474, any tentative subdivision map for a residential  
33 housing project shall be approved if all of the following  
34 requirements are met:

35 (A) The approval of the map will not significantly impair the  
36 ability of the city, county, or city and county to adopt and  
37 implement those elements or portions thereof of the general plan  
38 which have been held to be inadequate.

39 (B) The map complies with all of the provisions of Division 2  
40 (commencing with Section 66410), except those parts which would

1 require disapproval of the project due to the inadequacy of the  
 2 general plan.

3 (C) The approval of the map will not affect the ability of the  
 4 city, county, or city and county to adopt and implement an adequate  
 5 housing element.

6 (D) The map is consistent with the portions of the general plan  
 7 not found inadequate and the proposed revisions, if applicable, to  
 8 the part of the plan held inadequate.

9 (b) Any order or judgment of a court which includes the  
 10 remedies described in paragraphs (1), (2), or (3) of subdivision (a)  
 11 shall exclude from the operation of that order or judgment any  
 12 action, program, or project required by law to be consistent with  
 13 a general or specific plan if the court finds that the approval or  
 14 undertaking of the action, program, or project complies with both  
 15 of the following requirements:

16 (1) That it will not significantly impair the ability of the city,  
 17 county, or city and county to adopt or amend all or part of the  
 18 applicable plan as may be necessary to make the plan substantially  
 19 comply with the requirements of Article 5 (commencing with  
 20 Section 65300) in the case of a general plan, or Article 8  
 21 (commencing with Section 65450) in the case of a specific plan.

22 (2) That it is consistent with those portions of the plan  
 23 challenged in the action or proceeding and found by the court to  
 24 substantially comply with applicable provisions of law.

25 The party seeking exclusion from any order or judgment of a  
 26 court pursuant to this subdivision shall have the burden of showing  
 27 that the action, program, or project complies with paragraphs (1)  
 28 and (2).

29 (c) *Notwithstanding Section 65754.4 or subdivisions (a) and*  
 30 *(b), in any action or proceeding brought pursuant to subdivision*  
 31 *(d) of Section 65009, no remedy pursuant to this section or*  
 32 *injunction pursuant to Section 65754.5 shall abrogate, impair, or*  
 33 *otherwise interfere with the full exercise of the rights and*  
 34 *protections granted to (1) an applicant for a tentative map pursuant*  
 35 *to Section 66474.2, or (2) a developer pursuant to Sections 65866*  
 36 *and 66498.1*