

AMENDED IN ASSEMBLY APRIL 25, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1220

Introduced by Assembly Member Alejo

(Principal coauthor: Senator Steinberg)

~~(Coauthor: Assembly Member~~ ***Coauthors: Assembly Members Atkins
and Cedillo***)

February 18, 2011

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 amended, 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

1 other related public benefits, can prevent the completion of needed
2 developments even though the projects have received required
3 governmental approvals.

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

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

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

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

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

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

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

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

1 This paragraph does not apply where an action is brought based
2 upon the complete absence of a general plan or a mandatory
3 element thereof, but does apply to an action attacking a general
4 plan or mandatory element thereof on the basis that it is inadequate.

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

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

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

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

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

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

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

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

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

27 (3) After the adoption of a housing element covering the current
28 planning period, no action shall be filed pursuant to this subdivision
29 to challenge a housing element covering a prior planning period.

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

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

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

38 (h) Except as provided in paragraph (4) of subdivision (c), this
39 section shall be applicable to those decisions of the legislative

1 body of a city, county, or city and county made pursuant to this
2 division on or after January 1, 1984.

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

5 65589.3. (a) In any action filed on or after January 1, 1991,
6 taken to challenge the validity of a housing element, there shall
7 be a rebuttable presumption of the validity of the element or
8 amendment if, pursuant to Section 65585, the department has found
9 that the element or amendment substantially complies with the
10 requirements of this article.

11 (b) In any action brought against a city, county, or city and
12 county to challenge the adequacy of a housing element, if a court
13 finds that the adopted housing element or amended housing element
14 for the current planning period substantially complies with all of
15 the requirements of this article, including, ~~without limitation~~ *but*
16 *not limited to*, the requirements for public participation set forth
17 in paragraph (7) of subdivision (c) of Section 65583, the element
18 or amendment shall be deemed to satisfy any condition of a
19 state-administered housing grant program requiring a department
20 finding that the housing element substantially complies with the
21 requirements of this article.

22 SEC. 4. Section 65755 of the Government Code is amended
23 to read:

24 65755. (a) The court shall include, in the order or judgment
25 rendered pursuant to Section 65754, one or more of the following
26 provisions for any or all types or classes of developments or any
27 or all geographic segments of the city, county, or city and county
28 until the city, county, or city and county has substantially complied
29 with the requirements of Article 5 (commencing with Section
30 65300):

31 (1) Suspend the authority of the city, county, or city and county
32 pursuant to Division 13 (commencing with Section 17910) of the
33 Health and Safety Code, to issue building permits, or any category
34 of building permits, and all other related permits, except that the
35 city, county, or city and county shall continue to function as an
36 enforcement agency for review of permit applications for
37 appropriate codes and standards compliance, prior to the issuance
38 of building permits and other related permits for residential housing
39 for that city, county, or city and county.

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

4 (3) Suspend the authority of the city, county, or city and county,
5 pursuant to Division 2 (commencing with Section 66410), to grant
6 subdivision map approvals for any and all categories of subdivision
7 map approvals.

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

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

27 (6) Mandate that notwithstanding the provisions of Sections
28 66473.5 and 66474, any tentative subdivision map for a residential
29 housing project shall be approved if all of the following
30 requirements are met:

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

35 (B) The map complies with all of the provisions of Division 2
36 (commencing with Section 66410), except those parts which would
37 require disapproval of the project due to the inadequacy of the
38 general plan.

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

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

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

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

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

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

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

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