

AMENDED IN SENATE SEPTEMBER 6, 2013

AMENDED IN ASSEMBLY MAY 29, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 325**

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**Introduced by Assembly Member Alejo  
(Coauthor: Assembly Member Ammiano)**

February 13, 2013

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An act to amend Sections 65009, ~~65589.3~~, 65587, and 65755 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 325, as amended, Alejo. Land use and planning: cause of actions: time limitations.

~~(1) The~~

*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 a certain 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 ~~3 years~~ 180 days after an action taken pursuant to certain laws, specified zoning and planning decisions, but would set a 270-day period for notice with respect to an adopted or revised housing element that is found to substantially comply with law, and a 2-year period for notice with*

*respect to an adopted or revised housing element that is found not to substantially comply with law. This bill would also establish a 6-month limitations period for the commencement of an action or proceeding arising from a notice subject to the 270-day period, a one-year limitations period for the commencement of an action or proceeding arising from a notice subject to the 2-year period, and a 180-day limitations period for the commencement of an action or proceeding arising from a notice subject to the 180-day period. The bill would declare the intent of the Legislature to modify a specified court opinion. The bill would also provide that in an action or proceeding subject to a one-year or 6-month limitations period, these provisions, no remedy pursuant to specified provisions of law shall 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. The bill would make further conforming changes.*

~~(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 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, that 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:

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

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

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

20 (b) (1) In an action or proceeding to attack, review, set aside,  
21 void, or annul a finding, determination, or decision of a public  
22 agency made pursuant to this title at a properly noticed public  
23 hearing, the issues raised shall be limited to those raised in the  
24 public hearing or in written correspondence delivered to the public  
25 agency prior to, or at, the public hearing, except where the court  
26 finds either of the following:

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

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

31 (2) If a public agency desires the provisions of this subdivision  
32 to apply to a matter, it shall include in any public notice issued  
33 pursuant to this title a notice substantially stating all of the  
34 following: "If you challenge the (nature of the proposed action)  
35 in court, you may be limited to raising only those issues you or  
36 someone else raised at the public hearing described in this notice,  
37 or in written correspondence delivered to the (public entity  
38 conducting the hearing) at, or prior to, the public hearing."

39 (3) The application of this subdivision to causes of action  
40 brought pursuant to subdivision (d) applies only to the final action

1 taken in response to the notice to the city or clerk of the board of  
2 supervisors. If no final action is taken, then the issue raised in the  
3 cause of action brought pursuant to subdivision (d) shall be limited  
4 to those matters presented at a properly noticed public hearing or  
5 to those matters specified in the notice given to the city or clerk  
6 of the board of supervisors pursuant to subdivision (d), or both.

7 (c) (1) Except as provided in subdivision (d), no action or  
8 proceeding shall be maintained in any of the following cases by  
9 any person unless the action or proceeding is commenced and  
10 service is made on the legislative body within 90 days after the  
11 legislative body's decision:

12 (A) To attack, review, set aside, void, or annul the decision of  
13 a legislative body to adopt or amend a general or specific plan.  
14 This paragraph does not apply where an action is brought based  
15 upon the complete absence of a general plan or a mandatory  
16 element thereof, but does apply to an action attacking a general  
17 plan or mandatory element thereof on the basis that it is inadequate.

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

20 (C) To determine the reasonableness, legality, or validity of any  
21 decision to adopt or amend any regulation attached to a specific  
22 plan.

23 (D) To attack, review, set aside, void, or annul the decision of  
24 a legislative body to adopt, amend, or modify a development  
25 agreement. An action or proceeding to attack, review, set aside,  
26 void, or annul the decisions of a legislative body to adopt, amend,  
27 or modify a development agreement shall only extend to the  
28 specific portion of the development agreement that is the subject  
29 of the adoption, amendment, or modification. This paragraph  
30 applies to development agreements, amendments, and  
31 modifications adopted on or after January 1, 1996.

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

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

39 (2) In the case of an action or proceeding challenging the  
40 adoption or revision of a housing element pursuant to this

1 subdivision, the action or proceeding may, in addition, be  
2 maintained if it is commenced and service is made on the  
3 legislative body within 60 days following the date that the  
4 Department of Housing and Community Development reports its  
5 findings pursuant to subdivision (h) of Section 65585.

6 (d) (1) ~~Except as provided in paragraph (2), an~~ An action or  
7 proceeding shall be commenced and the legislative body served  
8 ~~within one year~~ after the accrual of the cause of action as provided  
9 in this subdivision, if the action or proceeding meets both of the  
10 following requirements:

11 (A) It is brought in support of or to encourage or facilitate the  
12 development of housing that would increase the community's  
13 supply of housing affordable to persons and families with low or  
14 moderate incomes, as defined in Section 50079.5 of the Health  
15 and Safety Code, or with very low incomes, as defined in Section  
16 50105 of the Health and Safety Code, or middle-income  
17 households, as defined in Section 65008 of this code. This  
18 subdivision is not intended to require that the action or proceeding  
19 be brought in support of or to encourage or facilitate a specific  
20 housing development project.

21 (B) It is brought with respect to ~~actions taken~~ *the adoption or*  
22 *revision of a housing element* pursuant to Article 10.6 (commencing  
23 with Section 65580) of Chapter 3, *actions taken pursuant to* Section  
24 65863.6, or Chapter 4.2 (commencing with Section 65913), or to  
25 challenge the adequacy of an ordinance adopted pursuant to Section  
26 65915.

27 (2) (A) An action or proceeding challenging the adoption or  
28 revision of a housing element that the Department of Housing and  
29 Community Development has found to substantially comply with  
30 the requirements of Article 10.6 (commencing with Section 65580)  
31 of Chapter 3 shall be commenced, and the legislative body shall  
32 be served, within six months after the accrual of the cause of action  
33 as provided in this subdivision.

34 (B) *An action or proceeding challenging the adoption or revision*  
35 *of a housing element that the Department of Housing and*  
36 *Community Development has found does not substantially comply*  
37 *with the requirements of Article 10.6 (commencing with Section*  
38 *65580) of Chapter 3, where the legislative body has failed to*  
39 *change the draft element or amendment to substantially comply*  
40 *with the requirements of Article 10.6 or has adopted the draft*

1 *element or amendment without change and made findings pursuant*  
2 *to subdivision (f) of Section 65585, shall be commenced, and the*  
3 *legislative body shall be served, within one year after the accrual*  
4 *of the cause of action as provided in this subdivision.*

5 *(C) An action or proceeding challenging an action taken*  
6 *pursuant to Section 65863.6, or Chapter 4.2 (commencing with*  
7 *Section 65913), or to challenge the adequacy of an ordinance*  
8 *adopted pursuant to Section 65915 shall be served within 180 days*  
9 *after the accrual of the cause of action as provided in this*  
10 *subdivision.*

11 (3) (A) A cause of action brought pursuant to this subdivision  
12 shall not be maintained until 60 days have expired following notice  
13 to the city or clerk of the board of supervisors by the party bringing  
14 the cause of action, or his or her representative, specifying the  
15 deficiencies of the general plan, specific plan, ~~or zoning ordinance,~~  
16 *or other action described in subparagraph (B) of paragraph (1).*  
17 A cause of action brought pursuant to this subdivision shall accrue  
18 60 days after notice is filed or the legislative body takes a final  
19 action in response to the notice, whichever occurs first.

20 (B) This notice may be filed at any time within ~~three years~~ 270  
21 *days after an action described in subparagraph (B) of paragraph*  
22 *(1), except that, if the notice specifies a deficiency in an adopted*  
23 *or revised housing element that has been found to substantially*  
24 *comply with the requirements of Article 10.6 (commencing with*  
25 *Section 65580) of Chapter 3, the notice may be filed at any time*  
26 *within 270 days after the action to revise or adopt the housing*  
27 *element. (A) of paragraph (2), two years after an action described*  
28 *in subparagraph (B) of paragraph (2), or 180 days after an action*  
29 *described in subparagraph (C) of paragraph (2).*

30 (4) A notice or cause of action brought by one party pursuant  
31 to this subdivision shall not bar filing of a notice and initiation of  
32 a cause of action by any other party.

33 (5) After the adoption of a housing element covering the current  
34 planning period, no action shall be filed pursuant to this subdivision  
35 to challenge a housing element covering a prior planning period.

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

39 (f) Notwithstanding Sections 65700 and 65803, or any other  
40 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, but not limited to, the~~  
21 ~~requirements for public participation set forth in paragraph (7) of~~  
22 ~~subdivision (c) of Section 65583, the element or amendment shall~~  
23 ~~be deemed to satisfy any condition of a state-administered housing~~  
24 ~~grant program requiring a department finding that the housing~~  
25 ~~element substantially complies with the requirements of this article.~~

26 ~~SEC. 3. Section 65587 of the Government Code is amended to~~  
27 ~~read:~~

28 65587. (a) Each city, county, or city and county shall bring  
29 its housing element, as required by subdivision (c) of Section  
30 65302, into conformity with the requirements of this article on or  
31 before October 1, 1981, and the deadlines set by Section 65588.  
32 Except as specifically provided in subdivision (b) of Section 65361,  
33 the Director of Planning and Research shall not grant an extension  
34 of time from these requirements.

35 (b) Any action brought by any interested party to review the  
36 conformity with the provisions of this article of any housing  
37 element or portion thereof or revision thereto shall be brought  
38 pursuant to Section 1085 of the Code of Civil Procedure; the  
39 court's review of compliance with the provisions of this article  
40 shall extend to whether the housing element or portion thereof or

1 revision thereto substantially complies with the requirements of  
2 this article.

3 (c) If a court finds that an action of a city, county, or city and  
4 county, which is required to be consistent with its general plan,  
5 does not comply with its housing element, the city, county, or city  
6 and county shall bring its action into compliance within 60 days.  
7 However, the court shall retain jurisdiction throughout the period  
8 for compliance to enforce its decision. Upon the court's  
9 determination that the 60-day period for compliance would place  
10 an undue hardship on the city, county, or city and county, the court  
11 may extend the time period for compliance by an additional 60  
12 days.

13 (d) (1) If a court finds that a city, county, or city and county  
14 failed to complete the rezoning required by subparagraph (A) of  
15 paragraph (1) of subdivision (c) of Section 65583, as that deadline  
16 may be modified by the extension provided for in subdivision (f)  
17 of that section, the court shall issue an order or judgment, after  
18 considering the equities of the circumstances presented by all  
19 parties, compelling the local government to complete the rezoning  
20 within 60 days or the earliest time consistent with public hearing  
21 notice requirements in existence at the time the action was filed.  
22 The court shall retain jurisdiction to ensure that its order or  
23 judgment is carried out. If the court determines that its order or  
24 judgment is not carried out, the court shall issue further orders to  
25 ensure that the purposes and policies of this article are fulfilled,  
26 including ordering, after considering the equities of the  
27 circumstances presented by all parties, that any rezoning required  
28 by subparagraph (A) of paragraph (1) of subdivision (c) of Section  
29 65583 be completed within 60 days or the earliest time consistent  
30 with public hearing notice requirements in existence at the time  
31 the action was filed and may impose sanctions on the city, county,  
32 or city and county.

33 (2) Any interested person may bring an action to compel  
34 compliance with the deadlines and requirements of paragraphs (1),  
35 (2), and (3) of subdivision (c) of Section 65583. The action shall  
36 be brought pursuant to Section 1085 of the Code of Civil  
37 Procedure. ~~An action may be brought pursuant to the notice and~~  
38 ~~accrual provisions of subdivision (d) of Section 65009.~~ In any such  
39 action, the city, county, or city and county shall bear the burden  
40 of proof.

1 SEC. 4. Section 65755 of the Government Code is amended  
2 to read:

3 65755. (a) The court shall include, in the order or judgment  
4 rendered pursuant to Section 65754, one or more of the following  
5 provisions for any or all types or classes of developments or any  
6 or all geographic segments of the city, county, or city and county  
7 until the city, county, or city and county has substantially complied  
8 with the requirements of Article 5 (commencing with Section  
9 65300):

10 (1) Suspend the authority of the city, county, or city and county  
11 pursuant to Division 13 (commencing with Section 17910) of the  
12 Health and Safety Code, to issue building permits, or any category  
13 of building permits, and all other related permits, except that the  
14 city, county, or city and county shall continue to function as an  
15 enforcement agency for review of permit applications for  
16 appropriate codes and standards compliance, prior to the issuance  
17 of building permits and other related permits for residential housing  
18 for that city, county, or city and county.

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

22 (3) Suspend the authority of the city, county, or city and county,  
23 pursuant to Division 2 (commencing with Section 66410), to grant  
24 subdivision map approvals for any and all categories of subdivision  
25 map approvals.

26 (4) Mandate the approval of all applications for building permits,  
27 or other related construction permits, for residential housing where  
28 a final subdivision map, parcel map, or plot plan has been approved  
29 for the project, where the approval will not impact on the ability  
30 of the city, county, or city and county to properly adopt and  
31 implement an adequate housing element, and where the permit  
32 application conforms to all code requirements and other applicable  
33 provisions of law except those zoning laws held to be invalid by  
34 the final court order, and changes to the zoning ordinances adopted  
35 after such final court order which were enacted for the purpose of  
36 preventing the construction of a specific residential development.

37 (5) Mandate the approval of any or all final subdivision maps  
38 for residential housing projects which have previously received a  
39 tentative map approval from the city, county, or city and county  
40 pursuant to Division 2 (commencing with Section 66410) when

1 the final map conforms to the approved tentative map, the tentative  
2 map has not expired, and where approval will not impact on the  
3 ability of the city, county, or city and county to properly adopt and  
4 implement an adequate housing element.

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

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

13 (B) The map complies with all of the provisions of Division 2  
14 (commencing with Section 66410), except those parts which would  
15 require disapproval of the project due to the inadequacy of the  
16 general plan.

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

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

23 (b) Any order or judgment of a court which includes the  
24 remedies described in paragraphs (1), (2), or (3) of subdivision (a)  
25 shall exclude from the operation of that order or judgment any  
26 action, program, or project required by law to be consistent with  
27 a general or specific plan if the court finds that the approval or  
28 undertaking of the action, program, or project complies with both  
29 of the following requirements:

30 (1) That it will not significantly impair the ability of the city,  
31 county, or city and county to adopt or amend all or part of the  
32 applicable plan as may be necessary to make the plan substantially  
33 comply with the requirements of Article 5 (commencing with  
34 Section 65300) in the case of a general plan, or Article 8  
35 (commencing with Section 65450) in the case of a specific plan.

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

39 The party seeking exclusion from any order or judgment of a  
40 court pursuant to this subdivision shall have the burden of showing

1 that the action, program, or project complies with paragraphs (1)  
2 and (2).

3 (c) Notwithstanding Section 65754.4 or subdivisions (a) and  
4 (b), in any action or proceeding brought pursuant to subdivision  
5 (d) of Section 65009, no remedy pursuant to this section or  
6 injunction pursuant to Section 65754.5 shall abrogate, impair, or  
7 otherwise interfere with the full exercise of the rights and  
8 protections granted to (1) an applicant for a tentative map pursuant  
9 to Section 66474.2, or (2) a developer pursuant to Sections 65866  
10 and 66498.1.

O