

AMENDED IN SENATE APRIL 1, 2013

**SENATE BILL**

**No. 513**

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**Introduced by Senator Hancock**

February 21, 2013

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An act to ~~amend Section 65470 of~~ *add Section 851.87 to the Government Penal Code*, relating to ~~local development diversion programs.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 513, as amended, Hancock. ~~Local development. Diversion programs: sealed records.~~

Existing law ~~authorizes a city or a county to participate in the Transit Priority Project Program by adopting an ordinance to that effect and forming an infrastructure finance district. Existing law requires a development project located within a district that participates in the program to meet certain requirements, including the requirement that the project provides 20% affordable units in rental or owner-occupied housing for low- or moderate-income persons and families, or pays a fee in an amount equivalent to the cost to provide affordable units elsewhere within the city's or county's jurisdiction, as determined by the city or county. provides that, upon successful completion of a drug diversion program or deferred entry of judgment program, the court may order the sealing of court and arrest records of the diverted charges where the interests of justice would be served, as specified.~~

~~This bill would revise that percentage requirement to 10%. provide that in any case where a person is arrested and successfully completes a diversion program administered by a prosecuting attorney in lieu of filing an accusatory pleading, the person may petition the superior court that would have had jurisdiction over the matter for an order to~~

*seal the records of the arresting agency and related court files and records, and the court may issue that order if the court finds that doing so will be in furtherance of justice. The bill would provide that the Department of Justice shall continue to be able to maintain and disseminate any records or documents received or maintained by it, as authorized by law.*

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

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

1     *SECTION 1. The Legislature finds and declares that in order*  
2     *to allow a person who has been arrested and who successfully*  
3     *completes a diversion program administered by a prosecuting*  
4     *attorney in lieu of filing an accusatory pleading to become a law*  
5     *abiding and productive member of society, the records of the*  
6     *arresting agency and related court files and records shall be*  
7     *sealed.*

8     *SEC. 2. Section 851.87 is added to the Penal Code, to read:*  
9     *851.87. (a) (1) In any case where a person is arrested and*  
10    *successfully completes a diversion program administered by a*  
11    *prosecuting attorney in lieu of filing an accusatory pleading, the*  
12    *person may, two years after successful completion of the diversion*  
13    *program as determined by the prosecuting attorney, petition the*  
14    *superior court that would have had jurisdiction over the matter*  
15    *to issue an order to seal the records of the arresting agency and*  
16    *related court files and records, and the court may order those*  
17    *records sealed if the court finds that doing so will be in furtherance*  
18    *of justice. A copy of the petition shall be served on the law*  
19    *enforcement agency and the prosecuting attorney of the county or*  
20    *city having jurisdiction over the offense at least 10 days prior to*  
21    *the hearing. The prosecuting attorney and the law enforcement*  
22    *agency, through the prosecuting attorney, may present evidence*  
23    *to the court at the hearing.*

24    *(2) If the order is made, the clerk of the court shall thereafter*  
25    *not allow access to any records concerning the case, including*  
26    *the court file, index, register of actions, or other similar records.*

27    *(3) If the order is made, the court shall give a copy of the order*  
28    *to the person and inform the person that he or she may thereafter*  
29    *state that he or she was not arrested for the charge.*

1 (4) *The person may, except as specified in subdivisions (b), (c),*  
2 *and (d), indicate in response to any question concerning the*  
3 *person’s prior criminal record that the person was not arrested.*

4 (5) *Subject to subdivisions (b), (c), and (d), a record pertaining*  
5 *to the arrest shall not, without the person’s permission, be used*  
6 *in any way that could result in the denial of any employment,*  
7 *benefit, or certificate.*

8 (6) *A sealing order made pursuant to this subdivision shall not*  
9 *be forwarded to the Department of Justice to be included or notated*  
10 *in the department’s manual or electronic fingerprint image or*  
11 *criminal history record systems. Any sealing order made pursuant*  
12 *to this subdivision and received by the Department of Justice need*  
13 *not be processed by the department.*

14 (b) *The person shall be advised that, regardless of the person’s*  
15 *successful completion of the diversion program, the arrest shall*  
16 *be disclosed by the Department of Justice in response to any peace*  
17 *officer application request, and that, notwithstanding subdivision*  
18 *(a), this section does not relieve the person of the obligation to*  
19 *disclose the arrest in response to any direct question contained in*  
20 *any questionnaire or application for a position as a peace officer,*  
21 *as defined in Section 830.*

22 (c) *The person shall be advised that, regardless of the person’s*  
23 *successful completion of the diversion program, the arrest shall*  
24 *be disclosed by the Department of Justice or the court in which*  
25 *the matter was heard in response to any subsequent inquiry by the*  
26 *district attorney, court, probation department, or counsel for the*  
27 *person concerning the person’s eligibility for any diversion*  
28 *program administered by a prosecuting attorney in the future.*

29 (d) *A sealing order made pursuant to this section shall not apply*  
30 *to any record or document received or maintained by the*  
31 *Department of Justice. Upon issuing the sealing order, the court*  
32 *shall advise the person that, notwithstanding the issuance of a*  
33 *sealing order pursuant to this section, the Department of Justice*  
34 *shall continue to be able to maintain and disseminate any records*  
35 *or documents received or maintained by the department, as*  
36 *authorized by law.*

37 ~~SECTION 1. Section 65470 of the Government Code is~~  
38 ~~amended to read:~~

39 ~~65470. (a) (1) It is the intent of the Legislature to provide a~~  
40 ~~process for cities and counties to create development patterns in~~

1 the form of transit priority projects that comply with Chapter 4.2  
2 (commencing with Section 21155) of Division 13 of the Public  
3 Resources Code, create jobs, reduce vehicle miles traveled, expand  
4 the availability of accessible open-space, build the density needed  
5 for transit viability, and meet regional housing targets.

6 ~~(2) It is the intent of the Legislature that, when implemented, a  
7 Transit Priority Project Program will help a development project  
8 in meeting the standards for expedited review under paragraph (2)  
9 of subdivision (a) of Section 65950.~~

10 ~~(b) (1) A city or county may participate in the Transit Priority  
11 Project Program by adopting an ordinance indicating its intent to  
12 participate in the program and by forming an infrastructure  
13 financing district pursuant to Article 1 (commencing with Section  
14 53395) of Chapter 2.8 of Part 1 of Title 5.~~

15 ~~(2) Nothing in this article shall be construed to add to the  
16 definitions of or to the requirements to implement Chapter 4.2  
17 (commencing with Section 21155) of Division 13 of the Public  
18 Resources Code.~~

19 ~~(c) If a city or county elects to participate in the program by  
20 adopting the ordinance described in subdivision (b) and forms an  
21 infrastructure financing district, the city or county shall amend, if  
22 necessary, the general plan and any related specific plan to  
23 authorize participating developers to build at an increased height  
24 of a minimum of three stories within the boundaries of the  
25 infrastructure financing district created pursuant to subdivision  
26 (b).~~

27 ~~(d) A Transit Priority Project Program development project  
28 shall meet all of the following requirements:~~

29 ~~(1) Is located in a designated transit priority project and within  
30 one-half of one mile of a transit station, pursuant to Section 21155  
31 of the Public Resources Code.~~

32 ~~(2) Is located within a zone in which buildings of three stories  
33 or more are authorized.~~

34 ~~(3) Meets State Air Resources Board land use guidelines with  
35 respect to distance from major emitters.~~

36 ~~(4) Provides onsite bicycle parking.~~

37 ~~(5) Provides for car sharing if a car sharing program is available  
38 in the city or county. The car sharing area may be onsite, or the  
39 developer may pay a fee to the city or county to cover the cost of  
40 providing for car sharing at an offsite location near the project.~~

1 The developer shall provide one car share for the first 20 units and  
2 one car share for every 50 units thereafter.

3 ~~(6) Provides unbundled parking.~~

4 ~~(7) Provides to all units transit passes for 10 years as part of the~~  
5 ~~rent or condo fees if transit passes are available from local~~  
6 ~~providers.~~

7 ~~(8) Provides to tenants recycling for bottles, cans, paper, and~~  
8 ~~plastic containers.~~

9 ~~(9) Provides open space onsite, including, but not limited to,~~  
10 ~~accessible roof gardens, or pays a fee into a fund established for~~  
11 ~~local open space. The fee shall not exceed 10 cents (\$0.10) per~~  
12 ~~square foot.~~

13 ~~(10) Provides 10 percent affordable units in rental or owner~~  
14 ~~occupied housing for low- or moderate-income persons and~~  
15 ~~families, or pays a fee in an amount equivalent to the cost to~~  
16 ~~provide affordable units elsewhere within the city's or county's~~  
17 ~~jurisdiction, as determined by the city or county. The developer~~  
18 ~~shall require, by covenants or restrictions, that the housing units~~  
19 ~~built pursuant to this paragraph shall remain available at affordable~~  
20 ~~housing cost to, and occupied by, persons and families of low- or~~  
21 ~~moderate-income households for the longest feasible time, but for~~  
22 ~~not less than 55 years for rental units and 45 years for~~  
23 ~~owner-occupied units.~~

24 ~~(11) Pays prevailing wages to construction workers for~~  
25 ~~residential projects over 100 units pursuant to Sections 1770, 1773,~~  
26 ~~and 1773.1 of the Labor Code.~~

27 ~~(12) For purposes of this subdivision, "unbundled parking"~~  
28 ~~means renting a parking space for the residential units separately~~  
29 ~~from the residential units, or pays a fee to the appropriate local~~  
30 ~~transit management fund to cover one-half of the cost to provide~~  
31 ~~a parking space.~~

32 ~~(e) (1) A development project that meets the criteria established~~  
33 ~~in subdivision (d) shall comply with any local design guidelines~~  
34 ~~that were adopted prior to the submission of the project application.~~

35 ~~(2) The infrastructure financing district formed pursuant to~~  
36 ~~subdivision (b) may reimburse a developer of a project that is~~  
37 ~~consistent with the requirements established in subdivision (d) for~~  
38 ~~any permit costs, or costs associated with the construction of the~~  
39 ~~affordable housing units required pursuant to paragraph (10) of~~  
40 ~~subdivision (d).~~

1     ~~(f) This article shall not apply to a city or county that has~~  
2     ~~adopted language in its charter or by ordinance or resolution that~~  
3     ~~does either of the following:~~  
4     ~~(1) Provides that the requirements of Chapter 1 (commencing~~  
5     ~~with Section 1720) of Part 7 of Division 2 of the Labor Code do~~  
6     ~~not apply to some or all work awarded or funded by the city or~~  
7     ~~county that would otherwise be subject to those requirements.~~  
8     ~~(2) Prohibits a contractor, subcontractor, or other person or firm~~  
9     ~~engaged in the construction, rehabilitation, alteration, conversion,~~  
10    ~~extension, maintenance, repair, or improvement of public works,~~  
11    ~~from executing or otherwise becoming a party to any prehire,~~  
12    ~~collective bargaining, or similar agreement entered into with one~~  
13    ~~or more labor organizations, employees, or employee~~  
14    ~~representatives that establishes the terms and conditions of~~  
15    ~~employment on a construction project, or the city or county from~~  
16    ~~incorporating such an agreement into the bid specifications or~~  
17    ~~contract for a construction project, or the governing body of the~~  
18    ~~city or county from deciding that the city or county should enter~~  
19    ~~into such an agreement for a particular construction project or~~  
20    ~~projects.~~