

ASSEMBLY BILL

No. 1516

Introduced by Committee on Housing and Community Development

March 9, 2015

An act to amend Section 65589.5 of the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 1516, as introduced, Committee on Housing and Community Development. Housing.

The Housing Accountability Act, among other things, prohibits a local agency from disapproving a housing development project unless the local agency makes specified written findings.

This bill would update cross-references and make technical changes to the act.

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. Section 65589.5 of the Government Code is
- 2 amended to read:
- 3 65589.5. (a) The Legislature finds and declares all of the
- 4 following:
- 5 (1) The lack of housing, including emergency shelters, is a
- 6 critical problem that threatens the economic, environmental, and
- 7 social quality of life in California.
- 8 (2) California housing has become the most expensive in the
- 9 nation. The excessive cost of the state's housing supply is partially

1 caused by activities and policies of many local governments that
2 limit the approval of housing, increase the cost of land for housing,
3 and require that high fees and exactions be paid by producers of
4 housing.

5 (3) Among the consequences of those actions are discrimination
6 against low-income and minority households, lack of housing to
7 support employment growth, imbalance in jobs and housing,
8 reduced mobility, urban sprawl, excessive commuting, and air
9 quality deterioration.

10 (4) Many local governments do not give adequate attention to
11 the economic, environmental, and social costs of decisions that
12 result in disapproval of housing projects, reduction in density of
13 housing projects, and excessive standards for housing projects.

14 (b) It is the policy of the state that a local government not reject
15 or make infeasible housing developments, including emergency
16 shelters, that contribute to meeting the need determined pursuant
17 to this article without a thorough analysis of the economic, social,
18 and environmental effects of the action and without complying
19 with subdivision (d).

20 (c) The Legislature also recognizes that premature and
21 unnecessary development of agricultural lands for urban uses
22 continues to have adverse effects on the availability of those lands
23 for food and fiber production and on the economy of the state.
24 Furthermore, it is the policy of the state that development should
25 be guided away from prime agricultural lands; therefore, in
26 implementing this section, local jurisdictions should encourage,
27 to the maximum extent practicable, in filling existing urban areas.

28 (d) A local agency shall not disapprove a housing development
29 project, including farmworker housing as defined in subdivision
30 ~~(d)~~ (h) of Section ~~50199.50~~ 50199.7 of the Health and Safety Code,
31 for very low, low-, or moderate-income households, or an
32 emergency shelter, or condition approval in a manner that renders
33 the project infeasible for development for the use of very low,
34 low-, or moderate-income households, or an emergency shelter,
35 including through the use of design review standards, unless it
36 makes written findings, based upon substantial evidence in the
37 record, as to one of the following:

38 (1) The jurisdiction has adopted a housing element pursuant to
39 this article that has been revised in accordance with Section 65588,
40 is in substantial compliance with this article, and the jurisdiction

1 has met or exceeded its share of the regional housing need
2 allocation pursuant to Section 65584 for the planning period for
3 the income category proposed for the housing development project,
4 provided that any disapproval or conditional approval shall not be
5 based on any of the reasons prohibited by Section 65008. If the
6 housing development project includes a mix of income categories,
7 and the jurisdiction has not met or exceeded its share of the regional
8 housing need for one or more of those categories, then this
9 paragraph shall not be used to disapprove or conditionally approve
10 the project. The share of the regional housing need met by the
11 jurisdiction shall be calculated consistently with the forms and
12 definitions that may be adopted by the Department of Housing and
13 Community Development pursuant to Section 65400. In the case
14 of an emergency shelter, the jurisdiction shall have met or exceeded
15 the need for emergency shelter, as identified pursuant to paragraph
16 (7) of subdivision (a) of Section 65583. Any disapproval or
17 conditional approval pursuant to this paragraph shall be in
18 accordance with applicable law, rule, or standards.

19 (2) The development project or emergency shelter as proposed
20 would have a specific, adverse impact upon the public health or
21 safety, and there is no feasible method to satisfactorily mitigate or
22 avoid the specific adverse impact without rendering the
23 development unaffordable to low- and moderate-income
24 households or rendering the development of the emergency shelter
25 financially infeasible. As used in this paragraph, a “specific,
26 adverse impact” means a significant, quantifiable, direct, and
27 unavoidable impact, based on objective, identified written public
28 health or safety standards, policies, or conditions as they existed
29 on the date the application was deemed complete. Inconsistency
30 with the zoning ordinance or general plan land use designation
31 shall not constitute a specific, adverse impact upon the public
32 health or safety.

33 (3) The denial of the project or imposition of conditions is
34 required in order to comply with specific state or federal law, and
35 there is no feasible method to comply without rendering the
36 development unaffordable to low- and moderate-income
37 households or rendering the development of the emergency shelter
38 financially infeasible.

39 (4) The development project or emergency shelter is proposed
40 on land zoned for agriculture or resource preservation that is

1 surrounded on at least two sides by land being used for agricultural
2 or resource preservation purposes, or which does not have adequate
3 water or wastewater facilities to serve the project.

4 (5) The development project or emergency shelter is inconsistent
5 with both the jurisdiction’s zoning ordinance and general plan land
6 use designation as specified in any element of the general plan as
7 it existed on the date the application was deemed complete, and
8 the jurisdiction has adopted a revised housing element in
9 accordance with Section 65588 that is in substantial compliance
10 with this article.

11 (A) This paragraph cannot be utilized to disapprove or
12 conditionally approve a housing development project if the
13 development project is proposed on a site that is identified as
14 suitable or available for very low, low-, or moderate-income
15 households in the jurisdiction’s housing element, and consistent
16 with the density specified in the housing element, even though it
17 is inconsistent with both the jurisdiction’s zoning ordinance and
18 general plan land use designation.

19 (B) If the local agency has failed to identify in the inventory of
20 land in its housing element sites that can be developed for housing
21 within the planning period and ~~that~~ are sufficient to provide for
22 the jurisdiction’s share of the regional housing need for all income
23 levels pursuant to Section 65584, then this paragraph shall not be
24 utilized to disapprove or conditionally approve a housing
25 development project proposed for a site designated in any element
26 of the general plan for residential uses or designated in any element
27 of the general plan for commercial uses if residential uses are
28 permitted or conditionally permitted within commercial
29 designations. In any action in court, the burden of proof shall be
30 on the local agency to show that its housing element does identify
31 adequate sites with appropriate zoning and development standards
32 and with services and facilities to accommodate the local agency’s
33 share of the regional housing need for the very low and low-income
34 categories.

35 (C) If the local agency has failed to identify a zone or zones
36 where emergency shelters are allowed as a permitted use without
37 a conditional use or other discretionary permit, has failed to
38 demonstrate that the identified zone or zones include sufficient
39 capacity to accommodate the need for emergency shelter identified
40 in paragraph (7) of subdivision (a) of Section 65583, or has failed

1 to demonstrate that the identified zone or zones can accommodate
2 at least one emergency shelter, as required by paragraph (4) of
3 subdivision (a) of Section 65583, then this paragraph shall not be
4 utilized to disapprove or conditionally approve an emergency
5 shelter proposed for a site designated in any element of the general
6 plan for industrial, commercial, or multifamily residential uses. In
7 any action in court, the burden of proof shall be on the local agency
8 to show that its housing element does satisfy the requirements of
9 paragraph (4) of subdivision (a) of Section 65583.

10 (e) Nothing in this section shall be construed to relieve the local
11 agency from complying with the ~~Congestion Management Program~~
12 *congestion management program* required by Chapter 2.6
13 (commencing with Section 65088) of Division 1 of Title 7 or the
14 California Coastal Act of 1976 (Division 20 (commencing with
15 Section 30000) of the Public Resources Code). Neither shall
16 anything in this section be construed to relieve the local agency
17 from making one or more of the findings required pursuant to
18 Section 21081 of the Public Resources Code or otherwise
19 complying with the California Environmental Quality Act (Division
20 13 (commencing with Section 21000) of the Public Resources
21 Code).

22 (f) (1) Nothing in this section shall be construed to prohibit a
23 local agency from requiring the development project to comply
24 with objective, quantifiable, written development standards,
25 conditions, and policies appropriate to, and consistent with, meeting
26 the jurisdiction's share of the regional housing need pursuant to
27 Section 65584. However, the development standards, conditions,
28 and policies shall be applied to facilitate and accommodate
29 development at the density permitted on the site and proposed by
30 the development.

31 (2) Nothing in this section shall be construed to prohibit a local
32 agency from requiring an emergency shelter project to comply
33 with objective, quantifiable, written development standards,
34 conditions, and policies that are consistent with paragraph (4) of
35 subdivision (a) of Section 65583 and appropriate to, and consistent
36 with, meeting the jurisdiction's need for emergency shelter, as
37 identified pursuant to paragraph (7) of subdivision (a) of Section
38 65583. However, the development standards, conditions, and
39 policies shall be applied by the local agency to facilitate and
40 accommodate the development of the emergency shelter project.

1 (3) This section does not prohibit a local agency from imposing
 2 fees and other exactions otherwise authorized by law that are
 3 essential to provide necessary public services and facilities to the
 4 development project or emergency shelter.

5 (g) This section shall be applicable to charter cities because the
 6 Legislature finds that the lack of housing, including emergency
 7 shelter, is a critical statewide problem.

8 (h) The following definitions apply for the purposes of this
 9 section:

10 (1) “Feasible” means capable of being accomplished in a
 11 successful manner within a reasonable period of time, taking into
 12 account economic, environmental, social, and technological factors.

13 (2) “Housing development project” means a use consisting of
 14 any of the following:

15 (A) Residential units only.

16 (B) Mixed-use developments consisting of residential and
 17 nonresidential uses in which nonresidential uses are limited to
 18 neighborhood commercial uses and to the first floor of buildings
 19 that are two or more stories. As used in this paragraph,
 20 “neighborhood commercial” means small-scale general or specialty
 21 stores that furnish goods and services primarily to residents of the
 22 neighborhood.

23 (C) Transitional housing or supportive housing.

24 (3) “Housing for very low, low-, or moderate-income
 25 households” means that either (A) at least 20 percent of the total
 26 units shall be sold or rented to lower income households, as defined
 27 in Section 50079.5 of the Health and Safety Code, or (B) 100
 28 percent of the units shall be sold or rented to ~~moderate-income~~
 29 ~~households~~ *persons and families of moderate income* as defined
 30 in Section 50093 of the Health and Safety Code, or ~~middle-income~~
 31 ~~households~~, *persons and families of middle income*, as defined in
 32 Section 65008 of this code. Housing units targeted for lower
 33 income households shall be made available at a monthly housing
 34 cost that does not exceed 30 percent of 60 percent of area median
 35 income with adjustments for household size made in accordance
 36 with the adjustment factors on which the lower income eligibility
 37 limits are based. Housing units targeted for persons and families
 38 of moderate income shall be made available at a monthly housing
 39 cost that does not exceed 30 percent of 100 percent of area median
 40 income with adjustments for household size made in accordance

1 with the adjustment factors on which the moderate-income
2 eligibility limits are based.

3 (4) “Area median income” means area median income as
4 periodically established by the Department of Housing and
5 Community Development pursuant to Section 50093 of the Health
6 and Safety Code. The developer shall provide sufficient legal
7 commitments to ensure continued availability of units for very low
8 or low-income households in accordance with the provisions of
9 this subdivision for 30 years.

10 (5) “Disapprove the development project” includes any instance
11 in which a local agency does either of the following:

12 (A) Votes on a proposed housing development project
13 application and the application is disapproved.

14 (B) Fails to comply with the time periods specified in
15 subdivision (a) of Section 65950. An extension of time pursuant
16 to Article 5 (commencing with Section 65950) shall be deemed to
17 be an extension of time pursuant to this paragraph.

18 (i) If any city, county, or city and county denies approval or
19 imposes restrictions, including design changes, a reduction of
20 allowable densities or the percentage of a lot that may be occupied
21 by a building or structure under the applicable planning and zoning
22 in force at the time the application is deemed complete pursuant
23 to Section 65943, that have a substantial adverse effect on the
24 viability or affordability of a housing development for very low,
25 low-, or moderate-income households, and the denial of the
26 development or the imposition of restrictions on the development
27 is the subject of a court action which challenges the denial, then
28 the burden of proof shall be on the local legislative body to show
29 that its decision is consistent with the findings as described in
30 subdivision (d) and that the findings are supported by substantial
31 evidence in the record.

32 (j) When a proposed housing development project complies
33 with applicable, objective general plan and zoning standards and
34 criteria, including design review standards, in effect at the time
35 that the housing development project’s application is determined
36 to be complete, but the local agency proposes to disapprove the
37 project or to approve it upon the condition that the project be
38 developed at a lower density, the local agency shall base its
39 decision regarding the proposed housing development project upon

1 written findings supported by substantial evidence on the record
2 that both of the following conditions exist:

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

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

16 (k) The applicant or any person who would be eligible to apply
17 for residency in the development or emergency shelter may bring
18 an action to enforce this section. If in any action brought to enforce
19 the provisions of this section, a court finds that the local agency
20 disapproved a project or conditioned its approval in a manner
21 rendering it infeasible for the development of an emergency shelter,
22 or housing for very low, low-, or moderate-income households,
23 including farmworker housing, without making the findings
24 required by this section or without making sufficient findings
25 supported by substantial evidence, the court shall issue an order
26 or judgment compelling compliance with this section within 60
27 days, including, but not limited to, an order that the local agency
28 take action on the development project or emergency shelter. The
29 court shall retain jurisdiction to ensure that its order or judgment
30 is carried out and shall award reasonable attorney’s fees and costs
31 of suit to the plaintiff or petitioner who proposed the housing
32 development or emergency shelter, except under extraordinary
33 circumstances in which the court finds that awarding fees would
34 not further the purposes of this section. If the court determines that
35 its order or judgment has not been carried out within 60 days, the
36 court may issue further orders as provided by law to ensure that
37 the purposes and policies of this section are fulfilled, including,
38 but not limited to, an order to vacate the decision of the local
39 agency, in which case the application for the project, as constituted
40 at the time the local agency took the initial action determined to

1 be in violation of this section, along with any standard conditions
2 determined by the court to be generally imposed by the local
3 agency on similar projects, shall be deemed approved unless the
4 applicant consents to a different decision or action by the local
5 agency.

6 (l) If the court finds that the local agency (1) acted in bad faith
7 when it disapproved or conditionally approved the housing
8 development or emergency shelter in violation of this section and
9 (2) failed to carry out the court's order or judgment within 60 days
10 as described in subdivision (k), ~~the court~~ *court*, in addition to any
11 other remedies provided by this section, may impose fines upon
12 the local agency that the local agency shall be required to deposit
13 into a housing trust fund. Fines shall not be paid from funds that
14 are already dedicated for affordable housing, including, but not
15 limited to, redevelopment or low- and moderate-income housing
16 funds and federal HOME and CDBG funds. The local agency shall
17 commit the money in the trust fund within five years for the sole
18 purpose of financing newly constructed housing units affordable
19 to extremely low, very low, or low-income households. For
20 purposes of this section, "bad faith" shall mean an action that is
21 frivolous or otherwise entirely without merit.

22 (m) Any action brought to enforce the provisions of this section
23 shall be brought pursuant to Section 1094.5 of the Code of Civil
24 Procedure, and the local agency shall prepare and certify the record
25 of proceedings in accordance with subdivision (c) of Section 1094.6
26 of the Code of Civil Procedure no later than 30 days after the
27 petition is served, provided that the cost of preparation of the record
28 shall be borne by the local agency. Upon entry of the trial court's
29 order, a party shall, in order to obtain appellate review of the order,
30 file a petition within 20 days after service upon it of a written
31 notice of the entry of the order, or within such further time not
32 exceeding an additional 20 days as the trial court may for good
33 cause allow. If the local agency appeals the judgment of the trial
34 court, the local agency shall post a bond, in an amount to be
35 determined by the court, to the benefit of the plaintiff if the plaintiff
36 is the project applicant.

37 (n) In any action, the record of the proceedings before the local
38 agency shall be filed as expeditiously as possible and,
39 notwithstanding Section 1094.6 of the Code of Civil Procedure or
40 subdivision (m) of this section, all or part of the record may be

1 prepared (1) by the petitioner with the petition or petitioner’s points
2 and authorities, (2) by the respondent with respondent’s points and
3 authorities, (3) after payment of costs by the petitioner, or (4) as
4 otherwise directed by the court. If the expense of preparing the
5 record has been borne by the petitioner and the petitioner is the
6 prevailing party, the expense shall be taxable as costs.

7 (o) This section shall be known, and may be cited, as the
8 Housing Accountability Act.

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