

ASSEMBLY BILL

No. 2584

**Introduced by Assembly Member Daly
(Coauthors: Assembly Members Low and Santiago)**

February 19, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2584, as introduced, Daly. Land use: housing development.

The Housing Accountability Act, among other things, prohibits a local agency from disapproving a housing development project for very low, low-, or moderate-income households or an emergency shelter unless the local agency makes specified written findings. The act authorizes an applicant or person who would be eligible to apply for residency in the development or emergency shelter to bring an action to enforce the act.

This bill would authorize an entity that represents a housing provider or a person who would be eligible to apply for residency to bring an action to enforce 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:

1 (1) The lack of housing, including emergency shelters, is a
2 critical problem that threatens the economic, environmental, and
3 social quality of life in California.

4 (2) California housing has become the most expensive in the
5 nation. The excessive cost of the state’s housing supply is partially
6 caused by activities and policies of many local governments that
7 limit the approval of housing, increase the cost of land for housing,
8 and require that high fees and exactions be paid by producers of
9 housing.

10 (3) Among the consequences of those actions are discrimination
11 against low-income and minority households, lack of housing to
12 support employment growth, imbalance in jobs and housing,
13 reduced mobility, urban sprawl, excessive commuting, and air
14 quality deterioration.

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

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

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

33 (d) A local agency shall not disapprove a housing development
34 project, including farmworker housing as defined in subdivision
35 (h) of Section 50199.7 of the Health and Safety Code, for very
36 low, low-, or moderate-income households, or an emergency
37 shelter, or condition approval in a manner that renders the project
38 infeasible for development for the use of very low, low-, or
39 moderate-income households, or an emergency shelter, including
40 through the use of design review standards, unless it makes written

1 findings, based upon substantial evidence in the record, as to one
2 of the following:

3 (1) The jurisdiction has adopted a housing element pursuant to
4 this article that has been revised in accordance with Section 65588,
5 is in substantial compliance with this article, and the jurisdiction
6 has met or exceeded its share of the regional housing need
7 allocation pursuant to Section 65584 for the planning period for
8 the income category proposed for the housing development project,
9 provided that any disapproval or conditional approval shall not be
10 based on any of the reasons prohibited by Section 65008. If the
11 housing development project includes a mix of income categories,
12 and the jurisdiction has not met or exceeded its share of the regional
13 housing need for one or more of those categories, then this
14 paragraph shall not be used to disapprove or conditionally approve
15 the project. The share of the regional housing need met by the
16 jurisdiction shall be calculated consistently with the forms and
17 definitions that may be adopted by the Department of Housing and
18 Community Development pursuant to Section 65400. In the case
19 of an emergency shelter, the jurisdiction shall have met or exceeded
20 the need for emergency shelter, as identified pursuant to paragraph
21 (7) of subdivision (a) of Section 65583. Any disapproval or
22 conditional approval pursuant to this paragraph shall be in
23 accordance with applicable law, rule, or standards.

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

38 (3) The denial of the project or imposition of conditions is
39 required in order to comply with specific state or federal law, and
40 there is no feasible method to comply without rendering the

1 development unaffordable to low- and moderate-income
2 households or rendering the development of the emergency shelter
3 financially infeasible.

4 (4) The development project or emergency shelter is proposed
5 on land zoned for agriculture or resource preservation that is
6 surrounded on at least two sides by land being used for agricultural
7 or resource preservation purposes, or which does not have adequate
8 water or wastewater facilities to serve the project.

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

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

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

1 (C) If the local agency has failed to identify a zone or zones
2 where emergency shelters are allowed as a permitted use without
3 a conditional use or other discretionary permit, has failed to
4 demonstrate that the identified zone or zones include sufficient
5 capacity to accommodate the need for emergency shelter identified
6 in paragraph (7) of subdivision (a) of Section 65583, or has failed
7 to demonstrate that the identified zone or zones can accommodate
8 at least one emergency shelter, as required by paragraph (4) of
9 subdivision (a) of Section 65583, then this paragraph shall not be
10 utilized to disapprove or conditionally approve an emergency
11 shelter proposed for a site designated in any element of the general
12 plan for industrial, commercial, or multifamily residential uses. In
13 any action in court, the burden of proof shall be on the local agency
14 to show that its housing element does satisfy the requirements of
15 paragraph (4) of subdivision (a) of Section 65583.

16 (e) Nothing in this section shall be construed to relieve the local
17 agency from complying with the congestion management program
18 required by Chapter 2.6 (commencing with Section 65088) of
19 Division 1 of Title 7 or the California Coastal Act of 1976
20 (Division 20 (commencing with Section 30000) of the Public
21 Resources Code). Neither shall anything in this section be
22 construed to relieve the local agency from making one or more of
23 the findings required pursuant to Section 21081 of the Public
24 Resources Code or otherwise complying with the California
25 Environmental Quality Act (Division 13 (commencing with Section
26 21000) of the Public Resources Code).

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

36 (2) Nothing in this section shall be construed to prohibit a local
37 agency from requiring an emergency shelter project to comply
38 with objective, quantifiable, written development standards,
39 conditions, and policies that are consistent with paragraph (4) of
40 subdivision (a) of Section 65583 and appropriate to, and consistent

1 with, meeting the jurisdiction’s need for emergency shelter, as
2 identified pursuant to paragraph (7) of subdivision (a) of Section
3 65583. However, the development standards, conditions, and
4 policies shall be applied by the local agency to facilitate and
5 accommodate the development of the emergency shelter project.

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

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

13 (h) The following definitions apply for the purposes of this
14 section:

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

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

20 (A) Residential units only.

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

28 (C) Transitional housing or supportive housing.

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

1 limits are based. Housing units targeted for persons and families
2 of moderate income shall be made available at a monthly housing
3 cost that does not exceed 30 percent of 100 percent of area median
4 income with adjustments for household size made in accordance
5 with the adjustment factors on which the moderate-income
6 eligibility limits are based.

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

14 (5) "Disapprove the development project" includes any instance
15 in which a local agency does either of the following:

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

18 (B) Fails to comply with the time periods specified in
19 subdivision (a) of Section 65950. An extension of time pursuant
20 to Article 5 (commencing with Section 65950) shall be deemed to
21 be an extension of time pursuant to this paragraph.

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

36 (j) When a proposed housing development project complies
37 with applicable, objective general plan and zoning standards and
38 criteria, including design review standards, in effect at the time
39 that the housing development project's application is determined
40 to be complete, but the local agency proposes to disapprove the

1 project or to approve it upon the condition that the project be
2 developed at a lower density, the local agency shall base its
3 decision regarding the proposed housing development project upon
4 written findings supported by substantial evidence on the record
5 that both of the following conditions exist:

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

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

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

1 court may issue further orders as provided by law to ensure that
2 the purposes and policies of this section are fulfilled, including,
3 but not limited to, an order to vacate the decision of the local
4 agency, in which case the application for the project, as constituted
5 at the time the local agency took the initial action determined to
6 be in violation of this section, along with any standard conditions
7 determined by the court to be generally imposed by the local
8 agency on similar projects, shall be deemed approved unless the
9 applicant consents to a different decision or action by the local
10 agency.

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

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

1 determined by the court, to the benefit of the plaintiff if the plaintiff
2 is the project applicant.

3 (n) In any action, the record of the proceedings before the local
4 agency shall be filed as expeditiously as possible and,
5 notwithstanding Section 1094.6 of the Code of Civil Procedure or
6 subdivision (m) of this section, all or part of the record may be
7 prepared (1) by the petitioner with the petition or petitioner’s points
8 and authorities, (2) by the respondent with respondent’s points and
9 authorities, (3) after payment of costs by the petitioner, or (4) as
10 otherwise directed by the court. If the expense of preparing the
11 record has been borne by the petitioner and the petitioner is the
12 prevailing party, the expense shall be taxable as costs.

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