

AMENDED IN ASSEMBLY APRIL 25, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2584

Introduced by Assembly Member Daly
(Coauthors: Assembly Members ~~Low Atkins~~, *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 amended, 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~~ *would, in addition*, authorize ~~an entity that represents a housing provider or a person who would be eligible to apply for residency~~ *a housing organization, as defined*, 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:

1 65589.5. (a) The Legislature finds and declares all of the
2 following:

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

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

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

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

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

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

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

1 moderate-income households, or an emergency shelter, including
2 through the use of design review standards, unless it makes written
3 findings, based upon substantial evidence in the record, as to one
4 of the following:

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

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

1 (3) The denial of the project or imposition of conditions is
2 required in order to comply with specific state or federal law, and
3 there is no feasible method to comply without rendering the
4 development unaffordable to low- and moderate-income
5 households or rendering the development of the emergency shelter
6 financially infeasible.

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

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

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

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

1 share of the regional housing need for the very low and low-income
2 categories.

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

18 (e) Nothing in this section shall be construed to relieve the local
19 agency from complying with the congestion management program
20 required by Chapter 2.6 (commencing with Section 65088) of
21 Division 1 of Title 7 or the California Coastal Act of 1976
22 (Division 20 (commencing with Section 30000) of the Public
23 Resources Code). Neither shall anything in this section be
24 construed to relieve the local agency from making one or more of
25 the findings required pursuant to Section 21081 of the Public
26 Resources Code or otherwise complying with the California
27 Environmental Quality Act (Division 13 (commencing with Section
28 21000) of the Public Resources Code).

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

38 (2) Nothing in this section shall be construed to prohibit a local
39 agency from requiring an emergency shelter project to comply
40 with objective, quantifiable, written development standards,

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

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

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

15 (h) The following definitions apply for the purposes of this
16 section:

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

20 (2) "Housing development project" means a use consisting of
21 any of the following:

22 (A) Residential units only.

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

30 (C) Transitional housing or supportive housing.

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

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

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

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

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

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

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

38 (j) When a proposed housing development project complies
39 with applicable, objective general plan and zoning standards and
40 criteria, including design review standards, in effect at the time

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

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

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

21 (k) (1) ~~The applicant, a person who would be eligible to apply~~
22 ~~for residency in the development or emergency shelter, or an entity~~
23 ~~that represents a housing provider or a person who would be~~
24 ~~eligible to apply for residency~~ *a housing organization* may bring
25 an action to enforce this section. If, in any action brought to enforce
26 this section, a court finds that the local agency disapproved a
27 project or conditioned its approval in a manner rendering it
28 infeasible for the development of an emergency shelter, or housing
29 for very low, low-, or moderate-income households, including
30 farmworker housing, without making the findings required by this
31 section or without making sufficient findings supported by
32 substantial evidence, the court shall issue an order or judgment
33 compelling compliance with this section within 60 days, including,
34 but not limited to, an order that the local agency take action on the
35 development project or emergency shelter. The court shall retain
36 jurisdiction to ensure that its order or judgment is carried out and
37 shall award reasonable attorney’s fees and costs of suit to the
38 plaintiff or petitioner who proposed the housing development or
39 emergency shelter, except under extraordinary circumstances in
40 which the court finds that awarding fees would not further the

1 purposes of this section. If the court determines that its order or
2 judgment has not been carried out within 60 days, the court may
3 issue further orders as provided by law to ensure that the purposes
4 and policies of this section are fulfilled, including, but not limited
5 to, an order to vacate the decision of the local agency, in which
6 case the application for the project, as constituted at the time the
7 local agency took the initial action determined to be in violation
8 of this section, along with any standard conditions determined by
9 the court to be generally imposed by the local agency on similar
10 projects, shall be deemed approved unless the applicant consents
11 to a different decision or action by the local agency.

12 (2) *For purposes of this subdivision, “housing organization”*
13 *means a trade or industry group whose local members are*
14 *primarily engaged in the construction or management of affordable*
15 *housing units or a nonprofit organization whose mission includes*
16 *providing or advocating for increased access to affordable housing*
17 *for low-income households.*

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

34 (m) Any action brought to enforce the provisions of this section
35 shall be brought pursuant to Section 1094.5 of the Code of Civil
36 Procedure, and the local agency shall prepare and certify the record
37 of proceedings in accordance with subdivision (c) of Section 1094.6
38 of the Code of Civil Procedure no later than 30 days after the
39 petition is served, provided that the cost of preparation of the record
40 shall be borne by the local agency. Upon entry of the trial court’s

1 order, a party shall, in order to obtain appellate review of the order,
2 file a petition within 20 days after service upon it of a written
3 notice of the entry of the order, or within such further time not
4 exceeding an additional 20 days as the trial court may for good
5 cause allow. If the local agency appeals the judgment of the trial
6 court, the local agency shall post a bond, in an amount to be
7 determined by the court, to the benefit of the plaintiff if the plaintiff
8 is the project applicant.

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

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