

AMENDED IN SENATE JUNE 27, 2016

AMENDED IN SENATE JUNE 15, 2016

AMENDED IN ASSEMBLY APRIL 25, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2584

**Introduced by Assembly Member Daly
(Coauthors: Assembly Members Atkins, Cristina Garcia, 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 *or conditioning approval in a manner that renders the project infeasible* 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, in addition, authorize a housing organization, as defined, to bring an action ~~to enforce the act.~~ *challenging the disapproval of a housing development pursuant to these provisions.*

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
10 caused by activities and policies of many local governments that
11 limit the approval of housing, increase the cost of land for housing,
12 and require that high fees and exactions be paid by producers of
13 housing.

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

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

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

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

37 (d) A local agency shall not disapprove a housing development
38 project, including farmworker housing as defined in subdivision

1 (h) of Section 50199.7 of the Health and Safety Code, for very
2 low, low-, or moderate-income households, or an emergency
3 shelter, or condition approval in a manner that renders the project
4 infeasible for development for the use of very low, low-, or
5 moderate-income households, or an emergency shelter, including
6 through the use of design review standards, unless it makes written
7 findings, based upon substantial evidence in the record, as to one
8 of the following:

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

30 (2) The development project or emergency shelter as proposed
31 would have a specific, adverse impact upon the public health or
32 safety, and there is no feasible method to satisfactorily mitigate or
33 avoid the specific adverse impact without rendering the
34 development unaffordable to low- and moderate-income
35 households or rendering the development of the emergency shelter
36 financially infeasible. As used in this paragraph, a “specific,
37 adverse impact” means a significant, quantifiable, direct, and
38 unavoidable impact, based on objective, identified written public
39 health or safety standards, policies, or conditions as they existed
40 on the date the application was deemed complete. Inconsistency

1 with the zoning ordinance or general plan land use designation
2 shall not constitute a specific, adverse impact upon the public
3 health or safety.

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

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

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

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

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

1 on the local agency to show that its housing element does identify
2 adequate sites with appropriate zoning and development standards
3 and with services and facilities to accommodate the local agency's
4 share of the regional housing need for the very low and low-income
5 categories.

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

21 (e) Nothing in this section shall be construed to relieve the local
22 agency from complying with the congestion management program
23 required by Chapter 2.6 (commencing with Section 65088) of
24 Division 1 of Title 7 or the California Coastal Act of 1976
25 (Division 20 (commencing with Section 30000) of the Public
26 Resources Code). Neither shall anything in this section be
27 construed to relieve the local agency from making one or more of
28 the findings required pursuant to Section 21081 of the Public
29 Resources Code or otherwise complying with the California
30 Environmental Quality Act (Division 13 (commencing with Section
31 21000) of the Public Resources Code).

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

1 (2) Nothing in this section shall be construed to prohibit a local
 2 agency from requiring an emergency shelter project to comply
 3 with objective, quantifiable, written development standards,
 4 conditions, and policies that are consistent with paragraph (4) of
 5 subdivision (a) of Section 65583 and appropriate to, and consistent
 6 with, meeting the jurisdiction’s need for emergency shelter, as
 7 identified pursuant to paragraph (7) of subdivision (a) of Section
 8 65583. However, the development standards, conditions, and
 9 policies shall be applied by the local agency to facilitate and
 10 accommodate the development of the emergency shelter project.

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

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

18 (h) The following definitions apply for the purposes of this
 19 section:

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

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

25 (A) Residential units only.

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

33 (C) Transitional housing or supportive housing.

34 (3) “Housing for very low, low-, or moderate-income
 35 households” means that either (A) at least 20 percent of the total
 36 units shall be sold or rented to lower income households, as defined
 37 in Section 50079.5 of the Health and Safety Code, or (B) 100
 38 percent of the units shall be sold or rented to persons and families
 39 of moderate income as defined in Section 50093 of the Health and
 40 Safety Code, or persons and families of middle income, as defined

1 in Section 65008 of this code. Housing units targeted for lower
2 income households shall be made available at a monthly housing
3 cost that does not exceed 30 percent of 60 percent of area median
4 income with adjustments for household size made in accordance
5 with the adjustment factors on which the lower income eligibility
6 limits are based. Housing units targeted for persons and families
7 of moderate income shall be made available at a monthly housing
8 cost that does not exceed 30 percent of 100 percent of area median
9 income with adjustments for household size made in accordance
10 with the adjustment factors on which the moderate-income
11 eligibility limits are based.

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

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

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

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

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

1 (j) When a proposed housing development project complies
2 with applicable, objective general plan and zoning standards and
3 criteria, including design review standards, in effect at the time
4 that the housing development project’s application is determined
5 to be complete, but the local agency proposes to disapprove the
6 project or to approve it upon the condition that the project be
7 developed at a lower density, the local agency shall base its
8 decision regarding the proposed housing development project upon
9 written findings supported by substantial evidence on the record
10 that both of the following conditions exist:

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

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

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

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

14 (2) For purposes of this subdivision, “housing organization”
15 means a trade or industry group whose local members are primarily
16 engaged in the construction or management of housing units or a
17 nonprofit organization whose mission includes providing or
18 advocating for increased access to housing for low-income
19 ~~households~~. *households and have filed written or oral comments*
20 *with the local agency prior to action on the project. A housing*
21 *organization may only file an action pursuant to this section to*
22 *challenge the disapproval of a housing development by a local*
23 *agency.*

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

1 (m) Any action brought to enforce the provisions of this section
2 shall be brought pursuant to Section 1094.5 of the Code of Civil
3 Procedure, and the local agency shall prepare and certify the record
4 of proceedings in accordance with subdivision (c) of Section 1094.6
5 of the Code of Civil Procedure no later than 30 days after the
6 petition is served, provided that the cost of preparation of the record
7 shall be borne by the local agency. Upon entry of the trial court's
8 order, a party shall, in order to obtain appellate review of the order,
9 file a petition within 20 days after service upon it of a written
10 notice of the entry of the order, or within such further time not
11 exceeding an additional 20 days as the trial court may for good
12 cause allow. If the local agency appeals the judgment of the trial
13 court, the local agency shall post a bond, in an amount to be
14 determined by the court, to the benefit of the plaintiff if the plaintiff
15 is the project applicant.

16 (n) In any action, the record of the proceedings before the local
17 agency shall be filed as expeditiously as possible and,
18 notwithstanding Section 1094.6 of the Code of Civil Procedure or
19 subdivision (m) of this section, all or part of the record may be
20 prepared (1) by the petitioner with the petitioner's points
21 and authorities, (2) by the respondent with respondent's points and
22 authorities, (3) after payment of costs by the petitioner, or (4) as
23 otherwise directed by the court. If the expense of preparing the
24 record has been borne by the petitioner and the petitioner is the
25 prevailing party, the expense shall be taxable as costs.

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

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