

## Assembly Bill No. 919

### CHAPTER 966

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

[Approved by Governor October 10, 1999. Filed  
with Secretary of State October 10, 1999.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 919, Dutra. Land use: local agencies.

Under the Planning and Zoning Law, local agencies are required to make specified findings based upon substantial evidence before disapproving or conditionally approving a housing development project that renders it infeasible for the use of low- and moderate-income households. This law requires that when a proposed housing development project complies with the applicable general plan, zoning, and development policies in effect at the time that the project's application is determined to be complete, a local agency may not propose to disapprove the project or conditionally approve it at a lower density unless the agency bases its decision on written findings supported by substantial evidence on the record that certain conditions exist.

This bill would revise this procedure to require that a proposed housing development project include very low, low- or moderate-income households and comply with the applicable, objective general plan and zoning standards and criteria, and would make changes in the conditions that a local agency is required to find. The bill also would revise the definitions of "affordable to low- and moderate-income households" to include very low income households or middle income households, as defined, and "area median income" to include very low or low-income households.

The bill would also provide that it shall not become operative if SB 948 is enacted and becomes effective on or before January 1, 2000.

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

SECTION 1. Section 65589.5 of the Government Code is amended to read:

65589.5. (a) The Legislature finds all of the following:

(1) The lack of affordable housing is a critical problem which threatens the economic, environmental, and social quality of life in California.

(2) California housing has become the most expensive in the nation. The excessive cost of the state's housing supply is partially



caused by activities and policies of many local governments which limit the approval of affordable housing, increase the cost of land for affordable housing, and require that high fees and exactions be paid by producers of potentially affordable housing.

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

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

(b) It is the policy of the state that a local government not reject or make infeasible affordable housing developments which contribute to meeting the housing need determined pursuant to this article without a thorough analysis of the economic, social, and environmental effects of the action and without meeting the provisions of subdivision (d).

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

(d) A local agency shall not disapprove a housing development project affordable to very low, low- or moderate-income households or condition approval in a manner that renders the project infeasible for development for the use of very low, low- or moderate-income households unless it makes written findings based upon substantial evidence in the record as to one of the following:

(1) The jurisdiction has adopted a housing element pursuant to this article that has been revised in accordance with Section 65588 and that is in substantial compliance with this article, and the development project is not needed for the jurisdiction to meet its share of the regional housing need of very low, low- or moderate-income housing.

(2) The development project as proposed would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households. As used in this paragraph, a “specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact based on objective, identified written public



health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

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

(4) Approval of the development project would increase the concentration of lower income households in a neighborhood that already has a disproportionately high number of lower income households and there is no feasible method of approving the development at a different site, including those sites identified pursuant to paragraph (1) of subdivision (c) of Section 65583, without rendering the development unaffordable to low- and moderate-income households.

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

(6) The development project is inconsistent with the jurisdiction's general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete, and the jurisdiction has adopted a housing element pursuant to this article.

(e) Nothing in this section shall be construed to relieve the local agency from complying with the Congestion Management Program required by Chapter 2.6 (commencing with Section 65088) of Division 1 of Title 7 or the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code). Neither shall anything in this section be construed to relieve the local agency from making one or more of the findings required pursuant to Section 21081 of the Public Resources Code or otherwise complying with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(f) Nothing in this section shall be construed to prohibit a local agency from requiring the development project to comply with written development standards, conditions, and policies appropriate to, and consistent with, meeting the quantified objectives relative to the development of housing, as required in the housing element pursuant to subdivision (b) of Section 65583. Nor shall anything in this section be construed to prohibit a local agency from imposing fees and other exactions otherwise authorized by law which are essential to provide necessary public services and facilities to the development project.

(g) This section shall be applicable to charter cities, because the Legislature finds that the lack of affordable housing is a critical statewide problem.



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

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

(2) “Affordable to very low, low- or moderate-income households” means that either (A) at least 20 percent of the total units shall be sold or rented to lower income households, as defined in Section 50079.5 of the Health and Safety Code, or (B) 100 percent of the units shall be sold or rented to moderate-income households, as defined in Section 50093 of the Health and Safety Code, or middle income households, as defined in Section 65008. Housing units targeted for lower income households shall be made available at a monthly housing cost that does not exceed 30 percent of 60 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the lower income eligibility limits are based. Housing units targeted for persons and families of moderate income shall be made available at a monthly housing cost that does not exceed 30 percent of 100 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the moderate income eligibility limits are based.

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

(4) “Neighborhood” means a planning area commonly identified as such in a community’s planning documents, and identified as a neighborhood by the individuals residing and working within the neighborhood. Documentation demonstrating that the area meets the definition of neighborhood may include a map prepared for planning purposes which lists the name and boundaries of the neighborhood.

(i) If any city, county, or city and county denies approval or imposes restrictions, including a reduction of allowable densities or the percentage of a lot which may be occupied by a building or structure under the applicable planning and zoning in force at the time the application is deemed complete pursuant to Section 65943, which have a substantial adverse effect on the viability or affordability of a housing development affordable to low- and moderate-income households, and the denial of the development or the imposition of restrictions on the development is the subject of a court action which challenges the denial, then the burden of proof shall be on the local legislative body to show that its decision is consistent with the findings as described in subdivision (d).



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

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

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

SEC. 2. Section 1 of this act shall not become operative if SB 948 is enacted and becomes effective on or before January 1, 2000.

