

AMENDED IN ASSEMBLY APRIL 16, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 2348

Introduced by Assembly Member Mullin

February 19, 2004

An act to amend ~~Section 65584~~ of Sections 65583, 65583.1, 65589.5, and 65915 of, and to add Section 65583.2 to, the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 2348, as amended, Mullin. *Housing element: regional housing need.*

(1) *Existing law requires each city, county, or city and county to prepare and adopt a general plan for its jurisdiction that contains certain mandatory elements, including a housing element. One part of the housing element is an assessment of housing needs and an inventory of land suitable for residential development in meeting a city's or county's share of the regional housing need, including vacant sites and sites having potential for redevelopment, and an analysis of the relationship of zoning facilities and services to these sites. A city, county, or city and county is required to submit a draft housing element or draft amendment to its housing element to the Department of Housing and Community Development for a determination of whether the draft complies with state law governing housing elements.*

This bill would revise the criteria for the inventory of sites that can be developed for housing within the planning period of the general plan to accommodate that portion of a city's or county's share of the regional housing need for all income levels, as specified, and would expand the

relocation assistance available to persons displaced by sites identified for substantial rehabilitation. By imposing additional duties upon local officials, this bill would create a state-mandated local program.

The bill would also provide that the department evaluates a proposed or adopted housing element for substantial compliance with governing state law and would revise the requirements that may be imposed on a development project that contributes to meeting the regional housing need.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

~~Existing law prescribes procedures for determining a city or county's share of the regional housing needs of persons at all income levels.~~

~~This bill would allow a city, county, or city and county to reduce its share of the regional housing needs by 15% for each income group under prescribed conditions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: ~~no~~ yes.

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

- 1 ~~SECTION 1.—Section 65584 of the Government Code is~~
- 2 ~~SECTION 1. Section 65583 of the Government Code is~~
- 3 ~~amended to read:~~
- 4 65583. The housing element shall consist of an identification
- 5 and analysis of existing and projected housing needs and a
- 6 statement of goals, policies, quantified objectives, financial
- 7 resources, and scheduled programs for the preservation,
- 8 improvement, and development of housing. The housing element
- 9 shall identify adequate sites for housing, including rental housing,
- 10 factory-built housing, and mobilehomes, and shall make adequate
- 11 provision for the existing and projected needs of all economic



1 segments of the community. The element shall contain all of the
2 following:

3 (a) An assessment of housing needs and an inventory of
4 resources and constraints relevant to the meeting of these needs.
5 The assessment and inventory shall include all of the following:

6 (1) An analysis of population and employment trends and
7 documentation of projections and a quantification of the locality's
8 existing and projected housing needs for all income levels. These
9 existing and projected needs shall include the locality's share of the
10 regional housing need in accordance with Section 65584.

11 (2) An analysis and documentation of household
12 characteristics, including level of payment compared to ability to
13 pay, housing characteristics, including overcrowding, and housing
14 stock condition.

15 (3) An inventory of land suitable for residential development,
16 including vacant sites and sites having potential for
17 redevelopment, and an analysis of the relationship of zoning and
18 public facilities and services to these sites.

19 (4) An analysis of potential and actual governmental
20 constraints upon the maintenance, improvement, or development
21 of housing for all income levels and for persons with disabilities
22 as identified in the analysis pursuant to paragraph (6), including
23 land use controls, building codes and their enforcement, site
24 improvements, fees and other exactions required of developers,
25 and local processing and permit procedures. The analysis shall also
26 demonstrate local efforts to remove governmental constraints that
27 hinder the locality from meeting its share of the regional housing
28 need in accordance with Section 65584 and from meeting the need
29 for housing for persons with disabilities identified pursuant to
30 paragraph (6).

31 (5) An analysis of potential and actual nongovernmental
32 constraints upon the maintenance, improvement, or development
33 of housing for all income levels, including the availability of
34 financing, the price of land, and the cost of construction.

35 (6) An analysis of any special housing needs, such as those of
36 the elderly, persons with disabilities, large families, farmworkers,
37 families with female heads of households, and families and
38 persons in need of emergency shelter.

39 (7) An analysis of opportunities for energy conservation with
40 respect to residential development.



1 (8) An analysis of existing assisted housing developments that
2 are eligible to change from low-income housing uses during the
3 next 10 years due to termination of subsidy contracts, mortgage
4 prepayment, or expiration of restrictions on use. “Assisted
5 housing developments,” for the purpose of this section, shall mean
6 multifamily rental housing that receives governmental assistance
7 under federal programs listed in subdivision (a) of Section
8 65863.10, state and local multifamily revenue bond programs,
9 local redevelopment programs, the federal Community
10 Development Block Grant Program, or local in-lieu fees.
11 “Assisted housing developments” shall also include multifamily
12 rental units that were developed pursuant to a local inclusionary
13 housing program or used to qualify for a density bonus pursuant
14 to Section 65916.

15 (A) The analysis shall include a listing of each development by
16 project name and address, the type of governmental assistance
17 received, the earliest possible date of change from low-income use
18 and the total number of elderly and nonelderly units that could be
19 lost from the locality’s low-income housing stock in each year
20 during the 10-year period. For purposes of state and federally
21 funded projects, the analysis required by this subparagraph need
22 only contain information available on a statewide basis.

23 (B) The analysis shall estimate the total cost of producing new
24 rental housing that is comparable in size and rent levels, to replace
25 the units that could change from low-income use, and an estimated
26 cost of preserving the assisted housing developments. This cost
27 analysis for replacement housing may be done aggregately for
28 each five-year period and does not have to contain a
29 project-by-project cost estimate.

30 (C) The analysis shall identify public and private nonprofit
31 corporations known to the local government which have legal and
32 managerial capacity to acquire and manage these housing
33 developments.

34 (D) The analysis shall identify and consider the use of all
35 federal, state, and local financing and subsidy programs which can
36 be used to preserve, for lower income households, the assisted
37 housing developments, identified in this paragraph, including, but
38 not limited to, federal Community Development Block Grant
39 Program funds, tax increment funds received by a redevelopment
40 agency of the community, and administrative fees received by a



1 housing authority operating within the community. In considering
2 the use of these financing and subsidy programs, the analysis shall
3 identify the amounts of funds under each available program which
4 have not been legally obligated for other purposes and which could
5 be available for use in preserving assisted housing developments.

6 (b) (1) A statement of the community's goals, quantified
7 objectives, and policies relative to the maintenance, preservation,
8 improvement, and development of housing.

9 (2) It is recognized that the total housing needs identified
10 pursuant to subdivision (a) may exceed available resources and the
11 community's ability to satisfy this need within the content of the
12 general plan requirements outlined in Article 5 (commencing with
13 Section 65300). Under these circumstances, the quantified
14 objectives need not be identical to the total housing needs. The
15 quantified objectives shall establish the maximum number of
16 housing units by income category that can be constructed,
17 rehabilitated, and conserved over a five-year time period.

18 (c) A program which sets forth a five-year schedule of actions
19 the local government is undertaking or intends to undertake to
20 implement the policies and achieve the goals and objectives of the
21 housing element through the administration of land use and
22 development controls, provision of regulatory concessions and
23 incentives, and the utilization of appropriate federal and state
24 financing and subsidy programs when available and the utilization
25 of moneys in a low- and moderate-income housing fund of an
26 agency if the locality has established a redevelopment project area
27 pursuant to the Community Redevelopment Law (Division 24
28 (commencing with Section 33000) of the Health and Safety Code).
29 In order to make adequate provision for the housing needs of all
30 economic segments of the community, the program shall do all of
31 the following:

32 (1) (A) Identify ~~adequate~~ *actions that will be taken to make*
33 ~~sites which will be made available through~~ *during the planning*
34 *period of the general plan with appropriate zoning and*
35 *development standards and with services and facilities, including*
36 ~~sewage collection and treatment, domestic water supply, and~~
37 ~~septic tanks and wells, needed to accommodate that portion of the~~
38 *city's or county's share of the regional housing need for each*
39 *income level that could not be accommodated on sites identified*
40 *in the inventory completed pursuant to paragraph (3) of*



1 *subdivision (a) without rezoning. Sites shall be identified as*
2 *needed to facilitate and encourage the development of a variety of*
3 *types of housing for all income levels, including multifamily*
4 *rental housing, factory-built housing, mobilehomes, housing for*
5 *agricultural employees, emergency shelters, and transitional*
6 *housing in order to meet the community's housing goals as*
7 *identified in subdivision (b).*

8 (i) Where the inventory of sites, pursuant to paragraph (3) of
9 subdivision (a), does not identify adequate sites to accommodate
10 the need for groups of all household income levels pursuant to
11 Section 65584, the program shall ~~provide for sufficient sites with~~
12 ~~zoning that permits owner-occupied and rental multifamily~~
13 ~~residential use by right, including density and development~~
14 ~~standards that could accommodate and facilitate the feasibility of~~
15 ~~housing for very low and low-income households~~ *identify sites*
16 *that can be developed for housing within the planning period of the*
17 *general plan pursuant to Section 65583.2.*

18 (ii) Where the inventory of sites pursuant to paragraph (3) of
19 subdivision (a) does not identify adequate sites to accommodate
20 the need for farmworker housing, the program shall provide for
21 sufficient sites to meet the need with zoning that permits
22 farmworker housing use by right, including density and
23 development standards that could accommodate and facilitate the
24 feasibility of the development of farmworker housing for low- and
25 very low income households.

26 (B) For purposes of this paragraph, the phrase “use by right”
27 shall mean the use does not require a conditional use permit, except
28 when the proposed project is a mixed-use project involving both
29 commercial or industrial uses and residential uses. Use by right for
30 all rental multifamily residential housing shall be provided in
31 accordance with subdivision (f) of Section 65589.5.

32 (C) The requirements of this subdivision regarding
33 identification of sites for farmworker housing shall apply
34 commencing with the next revision of housing elements required
35 by Section 65588 following the enactment of this subparagraph.

36 (2) Assist in the development of adequate housing to meet the
37 needs of low- and moderate-income households.

38 (3) Address and, where appropriate and legally possible,
39 remove governmental constraints to the maintenance,
40 improvement, and development of housing, including housing for



1 all income levels and housing for persons with disabilities. The
2 program shall remove constraints to, or provide reasonable
3 accommodations for housing designed for, intended for
4 occupancy by, or with supportive services for, persons with
5 disabilities.

6 (4) Conserve and improve the condition of the existing
7 affordable housing stock, which may include addressing ways to
8 mitigate the loss of dwelling units demolished by public or private
9 action.

10 (5) Promote housing opportunities for all persons regardless of
11 race, religion, sex, marital status, ancestry, national origin, color,
12 familial status, or disability.

13 (6) (A) Preserve for lower income households the assisted
14 housing developments identified pursuant to paragraph (8) of
15 subdivision (a). The program for preservation of the assisted
16 housing developments shall utilize, to the extent necessary, all
17 available federal, state, and local financing and subsidy programs
18 identified in paragraph (8) of subdivision (a), except where a
19 community has other urgent needs for which alternative funding
20 sources are not available. The program may include strategies that
21 involve local regulation and technical assistance.

22 (B) The program shall include an identification of the agencies
23 and officials responsible for the implementation of the various
24 actions and the means by which consistency will be achieved with
25 other general plan elements and community goals. The local
26 government shall make a diligent effort to achieve public
27 participation of all economic segments of the community in the
28 development of the housing element, and the program shall
29 describe this effort.

30 (d) The analysis and program for preserving assisted housing
31 developments required by the amendments to this section enacted
32 by the Statutes of 1989 shall be adopted as an amendment to the
33 housing element by July 1, 1992.

34 (e) Failure of the department to review and report its findings
35 pursuant to Section 65585 to the local government between July
36 1, 1992, and the next periodic review and revision required by
37 Section 65588, concerning the housing element amendment
38 required by the amendments to this section by the Statutes of 1989,
39 shall not be used as a basis for allocation or denial of any housing



1 assistance administered pursuant to Part 2 (commencing with
2 Section 50400) of Division 31 of the Health and Safety Code.

3 *SEC. 2. Section 65583.1 of the Government Code is amended*
4 *to read:*

5 65583.1. (a) The Department of Housing and Community
6 Development, in evaluating a proposed or adopted housing
7 element for ~~compliance with state law~~ *substantial compliance with*
8 *this article*, may allow a city or county to identify adequate sites,
9 as required pursuant to Section 65583, by a variety of methods,
10 including, but not limited to, redesignation of property to a more
11 intense land use category and increasing the density allowed
12 within one or more categories. The department may also allow a
13 city or county to identify sites for second units based on the number
14 of second units developed in the prior housing element planning
15 period whether or not the units are permitted by right, the need for
16 these units in the community, the resources or incentives available
17 for their development, and any other relevant factors, as
18 determined by the department. Nothing in this section reduces the
19 responsibility of a city or county to identify, by income category,
20 the total number of sites for residential development as required
21 by this article.

22 (b) Sites that contain permanent housing units located on a
23 military base undergoing closure or conversion as a result of action
24 pursuant to the Defense Authorization Amendments and Base
25 Closure and Realignment Act (Public Law 100-526), the Defense
26 Base Closure and Realignment Act of 1990 (Public Law 101-510),
27 or any subsequent act requiring the closure or conversion of a
28 military base may be identified as an adequate site if the housing
29 element demonstrates that the housing units will be available for
30 occupancy by households within the planning period of the
31 element. No sites containing housing units scheduled or planned
32 for demolition or conversion to nonresidential uses shall qualify
33 as an adequate site.

34 Any city, city and county, or county using this subdivision shall
35 address the progress in meeting this section in the reports provided
36 pursuant to paragraph (1) of subdivision (b) of Section 65400.

37 (c) (1) The Department of Housing and Community
38 Development may allow a city or county to substitute the provision
39 of units for up to 25 percent of the community's obligation to
40 identify adequate sites for any income category in its housing



1 element pursuant to paragraph (1) of subdivision (c) of Section
2 65583 ~~if~~ *where* the community includes in its housing element a
3 program committing the local government to provide units in that
4 income category within the city or county that will be made
5 available through the provision of committed assistance during the
6 planning period covered by the element to low- and very low
7 income households at affordable housing costs or affordable rents,
8 as defined in Sections 50052.5 and 50053 of the Health and Safety
9 Code, and which meet the requirements of paragraph (2). Except
10 as otherwise provided in this subdivision, the community may
11 substitute one dwelling unit for one dwelling unit site in the
12 applicable income category. The program shall do all of the
13 following:

14 (A) Identify the specific, existing sources of committed
15 assistance and dedicate a specific portion of the funds from those
16 sources to the provision of housing pursuant to this subdivision.

17 (B) Indicate the number of units that will be provided to both
18 low- and very low income households and demonstrate that the
19 amount of dedicated funds is sufficient to develop the units at
20 affordable housing costs or affordable rents.

21 (C) Demonstrate that the units meet the requirements of
22 paragraph (2).

23 (2) Only units that comply with subparagraph (A), (B), or (C)
24 qualify for inclusion in the housing element program described in
25 paragraph (1), as follows:

26 (A) Units that are to be substantially rehabilitated with
27 committed assistance from the city or county and constitute a net
28 increase in the community's stock of housing affordable to low-
29 and very low income households. For purposes of this
30 subparagraph, a unit is not eligible to be "substantially
31 rehabilitated" unless all of the following requirements are met:

32 (i) At the time the unit is identified for substantial
33 rehabilitation, (I) the local government has determined that the
34 unit is at imminent risk of loss to the housing stock, (II) the local
35 government has committed to provide relocation assistance
36 pursuant to Chapter 16 (commencing with Section 7260) of
37 Division 7 of Title 1 to any occupants temporarily or permanently
38 displaced by the rehabilitation or code enforcement activity, *or the*
39 *relocation is otherwise provided prior to displacement either as a*
40 *condition of receivership, or provided by the property owner or the*



1 local government pursuant to Chapter 6.1 (commencing with
2 Section 50651) of Part 2 of Division 31 of the Health and Safety
3 Code, or as otherwise provided by local ordinance; provided the
4 assistance includes not less than the equivalent of four months rent
5 and moving expenses and comparable replacement housing
6 consistent with the moving expenses and comparable replacement
7 housing required pursuant to Section 7260, (III) the local
8 government requires that any displaced occupants will have the
9 right to reoccupy the rehabilitated units, and (IV) the unit has been
10 ~~cited and found by the local code enforcement agency government~~
11 ~~or a court to be unfit for human habitation and vacated or subject~~
12 ~~to being vacated because of the existence for not less than 120 days~~
13 ~~of four due to the existence of at least four violations of the~~
14 conditions listed in subdivisions (a) to (g), inclusive, of Section
15 17995.3 of the Health and Safety Code.

16 (ii) The rehabilitated unit will have long-term affordability
17 covenants and restrictions that require the unit to be available to,
18 and occupied by, persons or families of low- or very low income
19 at affordable housing costs for at least 20 years or the time period
20 required by any applicable federal or state law or regulation;
21 ~~except that if the period is less than 20 years, only one unit shall~~
22 ~~be credited as an identified adequate site for every three units~~
23 ~~rehabilitated pursuant to this section, and no credit shall be allowed~~
24 ~~for a unit required to remain affordable for less than 10 years.~~

25 (iii) Prior to initial occupancy after rehabilitation, the local
26 code enforcement agency shall issue a certificate of occupancy
27 indicating compliance with all applicable state and local building
28 code and health and safety code requirements.

29 (B) Units that are located in a multifamily rental housing
30 complex of ~~16~~ *four* or more units, are converted with committed
31 assistance from the city or county from nonaffordable to
32 affordable by acquisition of the unit or the purchase of
33 affordability covenants and restrictions for the unit, are not
34 acquired by eminent domain, and constitute a net increase in the
35 community's stock of housing affordable to low- and very low
36 income households. For purposes of this subparagraph, a unit is
37 not converted by acquisition or the purchase of affordability
38 covenants unless all of the following occur:

39 (i) The unit is made available at a cost affordable to low- or very
40 low income households.



1 (ii) At the time the unit is identified for acquisition, the unit is
2 not available at a cost affordable to low- or very low income
3 households. *an affordable housing cost to either of the following:*

4 (I) *Low-income households, if the unit will be made affordable*
5 *to low-income households.*

6 (II) *Very low income households, if the unit will be made*
7 *affordable to very low income households.*

8 (iii) At the time the unit is identified for acquisition the unit is
9 not occupied by low- or very low income households *or if the*
10 *acquired unit is occupied, the local government has committed to*
11 *provide relocation assistance prior to displacement, if any,*
12 *pursuant to Chapter 16 (commencing with Section 7260) of*
13 *Division 7 of Title 1 to any occupants temporarily or permanently*
14 *displaced by the rehabilitation or code enforcement activity, or the*
15 *relocation is otherwise provided prior to displacement either as a*
16 *condition of receivership, or provided by the property owner or the*
17 *local government pursuant to Chapter 6.1 (commencing with*
18 *Section 50651) of Part 2 of Division 31 of the Health and Safety*
19 *Code, or as otherwise provided by local ordinance; provided the*
20 *assistance includes not less than the equivalent of four months rent*
21 *and moving expenses and comparable replacement housing*
22 *consistent with the moving expenses and comparable replacement*
23 *housing required pursuant to Section 7260.*

24 (iv) The unit is in decent, safe, and sanitary condition at the
25 time of occupancy.

26 (v) ~~The acquisition price is not greater than 120 percent of the~~
27 ~~median price for housing units in the city or county.~~

28 ~~(vi) The unit has long-term affordability covenants and~~
29 ~~restrictions that require the unit to be affordable to persons of low-~~
30 ~~or very low income for not less than 30 55 years.~~

31 (C) Units that will be preserved at affordable housing costs to
32 persons or families of low- or very low incomes with committed
33 assistance from the city or county by acquisition of the unit or the
34 purchase of affordability covenants for the unit. For purposes of
35 this subparagraph, a unit shall not be deemed preserved unless all
36 of the following occur:

37 (i) The unit has long-term affordability covenants and
38 restrictions that require the unit to be affordable to and reserved for
39 occupancy by persons of the same or lower income group as the
40 current occupants for a period of at least 40 years.



1 (ii) The unit is multifamily rental housing that receives
2 governmental assistance under any of the following state and
3 federal programs: Section 221(d)(3) of the National Housing Act
4 (12 U.S.C. Sec. 1715l(d)(3) and (5)); Section 236 of the National
5 Housing Act (12 U.S.C. Sec. 1715z-1); Section 202 of the Housing
6 Act of 1959 (12 U.S.C. Sec. 1701q); for rent supplement
7 assistance under Section 101 of the Housing and Urban
8 Development Act of 1965, as amended (12 U.S.C. Sec. 1701s);
9 under Section 515 of the Housing Act of 1949, as amended (42
10 U.S.C. Sec. 1485); and any new construction, substantial
11 rehabilitation, moderate rehabilitation, property disposition, and
12 loan management set-aside programs, or any other program
13 providing project-based assistance, under Section 8 of the United
14 States Housing Act of 1937, as amended (42 U.S.C. Sec. 1437f);
15 any state and local multifamily revenue bond programs; local
16 redevelopment programs; the federal Community Development
17 Block Grant Program; and other local housing assistance
18 programs or units that were used to qualify for a density bonus
19 pursuant to Section 65916.

20 (iii) The city or county finds, after a public hearing, that the unit
21 is eligible, and is reasonably expected, to change from housing
22 affordable to low- and very low income households to any other
23 use during the next five years due to termination of subsidy
24 contracts, mortgage prepayment, or expiration of restrictions on
25 use.

26 (iv) The unit is in decent, safe, and sanitary condition at the
27 time of occupancy.

28 (v) At the time the unit is identified for preservation it is
29 available at affordable cost to persons or families of low- or very
30 low income.

31 (3) This subdivision does not apply to any city or county that,
32 during the current or immediately prior planning period, as
33 defined by Section 65588, has not met any of its share of the
34 regional need for affordable housing, as defined in Section 65584,
35 for low- and very low income households. A city or county shall
36 document for any such housing unit that a building permit has been
37 issued and all development and permit fees have been paid or the
38 unit is eligible to be lawfully occupied.

39 (4) For purposes of this subdivision, “committed assistance”
40 means that the city or county enters into a legally enforceable



1 agreement during the first two years of the housing element
2 planning period that obligates sufficient available funds to provide
3 the assistance necessary to make the identified units affordable and
4 that requires that the units be made available for occupancy within
5 two years of the execution of the agreement. “Committed
6 assistance” does not include tenant-based rental assistance.

7 (5) For purposes of this subdivision, “net increase” includes
8 only housing units provided committed assistance pursuant to
9 subparagraph (A) or (B) of paragraph (2) in the current planning
10 period, as defined in Section 65588, that were not provided
11 committed assistance in the immediately prior planning period.

12 (6) For purposes of this subdivision, “the time the unit is
13 identified” means the earliest time when any city or county agent,
14 acting on behalf of a public entity, has proposed in writing or has
15 proposed orally or in writing to the property owner, that the unit
16 be considered for substantial rehabilitation, acquisition, or
17 preservation.

18 (7) On July 1 of the third year of the planning period, as defined
19 by Section 65588, in the report required pursuant to Section
20 65400, each city or county that has included in its housing element
21 a program to provide units pursuant to subparagraph (A), (B), or
22 (C) of paragraph (2) shall report in writing to the legislative body,
23 and to the department within 30 days of making its report to the
24 legislative body, on its progress in providing units pursuant to this
25 subdivision. The report shall identify the specific units for which
26 committed assistance has been provided or which have been made
27 available to low- and very low income households, and it shall
28 adequately document how each unit complies with this
29 subdivision. If, by July 1 of the third year of the planning period,
30 the city or county has not entered into an enforceable agreement
31 of committed assistance for all units specified in the programs
32 adopted pursuant to subparagraph (A), (B), or (C) of paragraph
33 (2), the city or county shall, not later than July 1 of the fourth year
34 of the planning period, adopt an amended housing element in
35 accordance with Section 65585, identifying additional adequate
36 sites pursuant to paragraph (1) of subdivision (c) of Section 65583
37 sufficient to accommodate the number of units for which
38 committed assistance was not provided. If a city or county does not
39 amend its housing element to identify adequate sites to address any
40 shortfall, or fails to complete the rehabilitation, acquisition,



1 purchase of affordability covenants, or the preservation of any
2 housing unit within two years after committed assistance was
3 provided to that unit, it shall be prohibited from identifying units
4 pursuant to subparagraph (A), (B), or (C) of paragraph (2) in the
5 housing element that it adopts for the next planning period, as
6 defined in Section 65588, above the number of units actually
7 provided or preserved due to committed assistance.

8 *SEC. 3. Section 65583.2 is added to the Government Code, to*
9 *read:*

10 *65583.2. (a) A city's or county's inventory of land suitable for*
11 *residential development shall be used to identify sites that can be*
12 *developed for housing within the planning period of the general*
13 *plan and that are sufficient to provide for the jurisdiction's share*
14 *of the regional housing need for all income levels pursuant to*
15 *Section 65584. As used in this section, "land suitable for*
16 *residential development" includes all of the following:*

17 *(1) Vacant sites zoned for residential use.*

18 *(2) Vacant sites zoned for nonresidential use that allows*
19 *residential development.*

20 *(3) Residentially zoned sites that are capable of being*
21 *developed at a higher density.*

22 *(4) Sites zoned for nonresidential use that can be redeveloped*
23 *for, and as necessary, rezoned for, residential use.*

24 *(b) The inventory of land shall include all of the following:*

25 *(1) A listing of properties by parcel number or other unique*
26 *reference.*

27 *(2) The size of each property listed pursuant to paragraph (1),*
28 *and the general plan designation and zoning of each property.*

29 *(3) For nonvacant sites, a description of the existing use of each*
30 *property.*

31 *(4) A general description of any environmental constraints to*
32 *the development of housing within the jurisdiction, the*
33 *documentation for which has been made available to the*
34 *jurisdiction. This information need not be identified on a*
35 *site-specific basis.*

36 *(5) A general description of existing or planned water, sewer,*
37 *and other dry utilities supply, including the availability and access*
38 *to distribution facilities. This information need not be identified on*
39 *a site-specific basis.*



1 (6) Sites identified as available for housing for
2 above-moderate income households in areas not served by public
3 sewer systems. This information need not be identified on a
4 site-specific basis.

5 (7) A map that shows the location of the sites included in the
6 inventory, such as the land use map from the jurisdiction's general
7 plan for reference purposes only.

8 (c) Based on the information provided in subdivision (b), a city
9 or county shall determine whether each site in the inventory can
10 accommodate some portion of its share of the regional housing
11 need by income level during the planning period of the general
12 plan, as determined pursuant to Section 65584. The analysis shall
13 determine whether the inventory can provide for a variety of types
14 of housing, including multifamily rental housing, factory-built
15 housing, mobilehomes, housing for agricultural employees,
16 emergency shelters, and transitional housing. The city or county
17 shall determine the number of housing units that can be
18 accommodated on each site as follows:

19 (1) If local law or regulations require the development of a site
20 at a minimum density, the department shall accept the planning
21 agency's calculation of the total housing unit capacity on that site
22 based on the established minimum density. If the city or county
23 does not adopt regulations, then it shall demonstrate how the
24 number of units determined for that site pursuant to this
25 subdivision will be accommodated.

26 (2) The number of units calculated pursuant to paragraph (1)
27 shall be adjusted as necessary, based on the land use controls and
28 site improvements requirement identified in paragraph (4) of
29 subdivision (a) of Section 65583.

30 (3) For the number of units calculated to accommodate its
31 share of the regional housing need for lower income households
32 pursuant to paragraph (2), a city or county shall do either of the
33 following:

34 (A) Provide an analysis demonstrating how the adopted
35 densities accommodate this need. The analysis shall include, but
36 is not limited to, factors such as market demand, financial
37 feasibility, or information based on development project
38 experience within a zone or zones that provide housing for lower
39 income households.



- 1 (B) The following densities shall be deemed appropriate to
2 accommodate housing for lower income households:
- 3 (i) For incorporated cities within nonmetropolitan counties
4 and for nonmetropolitan counties that have micropolitan areas:
5 sites allowing at least 15 units per acre.
- 6 (ii) For unincorporated areas in all nonmetropolitan counties
7 not included in clause (i): sites allowing at least 10 units per acre.
- 8 (iii) For suburban jurisdictions: sites allowing at least 20 units
9 per acre.
- 10 (iv) For jurisdictions in metropolitan counties: sites allowing
11 at least 30 units per acre.
- 12 (d) For purposes of this section, metropolitan counties,
13 nonmetropolitan counties, and nonmetropolitan counties with
14 micropolitan areas are as determined by the United States Census
15 Bureau. Nonmetropolitan counties with micropolitan areas
16 include the following counties: Del Norte, Humboldt, Lake
17 Mendocino, Nevada, Tehama, and Tuolumne and such other
18 counties as may be determined by the United States Census Bureau
19 to be nonmetropolitan counties with micropolitan areas in the
20 future.
- 21 (e) A jurisdiction is considered suburban if the jurisdiction
22 does not meet the requirements of clauses (i) and (ii) of
23 subparagraph (B) of paragraph (3) of subdivision (c) and is
24 located in a Metropolitan Statistical Area (MSA) of less than
25 2,000,000 in population, unless that jurisdiction's population is
26 greater than 100,000, in which case it is considered metropolitan.
27 Counties, not including the City and County of San Francisco, will
28 be considered suburban unless they are in a MSA of 2,000,000 or
29 greater in population in which case they are considered
30 metropolitan.
- 31 (f) A jurisdiction is considered metropolitan if the jurisdiction
32 does not meet the requirements for "suburban area" above and is
33 located in a MSA of 2,000,000 or greater in population, unless that
34 jurisdiction's population is less than 25,000 in which case it is
35 considered suburban.
- 36 (g) For sites described in paragraph (3) of subdivision (b) the
37 city or county shall specify the additional development potential
38 for each site within the planning period of the general plan and
39 shall provide an explanation of the methodology used to determine
40 the development potential. The methodology shall consider factors



1 including the extent to which existing uses may constitute an
2 impediment to additional residential development, development
3 trends, market conditions, and regulatory or other incentives or
4 standards to encourage additional residential development on
5 these sites.

6 (h) The program provided for in clause (i) of subparagraph (A)
7 of paragraph (1) of subdivision (c) of Section 65583 shall
8 accommodate 100 percent of the need for housing for very low and
9 low-income households allocated pursuant to Section 65584 for
10 which site capacity has not been identified in the inventory of sites
11 pursuant to paragraph (3) of subdivision (a) on sites with zoning
12 that permits owner-occupied and rental multifamily residential
13 use by right. These sites shall have minimum density and
14 development standards that permit at least 16 units per site at a
15 density of at least 16 units per acre in jurisdictions described in
16 clause (i) of subparagraph (B) of paragraph (3) of subdivision (c)
17 and at least 20 units per acre in jurisdictions described in clauses
18 (iii) and (iv) of subparagraph (B) of paragraph (3) of subdivision
19 (c). At least 50 percent of the very low and low-income housing
20 need shall be accommodated on sites designated for residential use
21 and for which nonresidential uses or mixed-uses are not permitted.

22 (i) For purposes of this subdivision, the phrase “use by right”
23 shall mean the use shall not require a conditional use permit or
24 other local government review or approval which constitutes a
25 “project” for the purposes of Division 13 (commencing with
26 Section 21100) of the Public Resources Code. Use by right for all
27 rental multifamily residential housing shall be provided in
28 accordance with subdivision (f) of Section 65589.5 and may be
29 subjected to design review which shall not constitute a “project”
30 for purposes of Division 13 (commencing with Section 21100) of
31 the Public Resources Code.

32 SEC. 4. Section 65589.5 of the Government Code is amended
33 to read:

34 65589.5. (a) The Legislature finds and declares all of the
35 following:

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

38 (2) California housing has become the most expensive in the
39 nation. The excessive cost of the state’s housing supply is partially
40 caused by activities and policies of many local governments that



1 limit the approval of housing, increase the cost of land for housing,
2 and require that high fees and exactions be paid by producers of
3 housing.

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

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

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

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

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

36 (1) The jurisdiction has adopted a housing element pursuant to
37 this article that has been revised in accordance with Section 65588
38 and that is in substantial compliance with this article, and the
39 development project is not needed for the jurisdiction to meet its



1 share of the regional housing need for very low, low-, or
2 moderate-income housing.

3 (2) The development project as proposed would have a
4 specific, adverse impact upon the public health or safety, and there
5 is no feasible method to satisfactorily mitigate or avoid the specific
6 adverse impact without rendering the development unaffordable
7 to low- and moderate-income households. As used in this
8 paragraph, a “specific, adverse impact” means a significant,
9 quantifiable, direct, and unavoidable impact, based on objective,
10 identified written public health or safety standards, policies, or
11 conditions as they existed on the date the application was deemed
12 complete.

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

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

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

31 ~~(6) —~~

32 (5) The development project is inconsistent with both the
33 jurisdiction’s zoning ordinance and general plan land use
34 designation as specified in any element of the general plan as it
35 existed on the date the application was deemed complete, and the
36 jurisdiction has adopted a housing element ~~pursuant to~~ *in*
37 *substantial compliance with* this article. *This subdivision cannot*
38 *be utilized to deny a housing development project defined in*
39 *subdivision (a) if the development project is proposed on a site that*
40 *is identified for very low, low-, or moderate-income households in*



1 *the jurisdiction's housing element, and consistent with the density*
2 *specified in the housing element, even though it is inconsistent with*
3 *both the jurisdiction's zoning ordinance and general plan land use*
4 *designation.*

5 (e) Nothing in this section shall be construed to relieve the local
6 agency from complying with the Congestion Management
7 Program required by Chapter 2.6 (commencing with Section
8 65088) of Division 1 of Title 7 or the California Coastal Act
9 (Division 20 (commencing with Section 30000) of the Public
10 Resources Code). Neither shall anything in this section be
11 construed to relieve the local agency from making one or more of
12 the findings required pursuant to Section 21081 of the Public
13 Resources Code or otherwise complying with the California
14 Environmental Quality Act (Division 13 (commencing with
15 Section 21000) of the Public Resources Code).

16 ~~(f) Nothing in this section shall be construed to prohibit a local~~
17 ~~agency from requiring the development project to comply with~~
18 ~~written development standards, conditions, and policies~~
19 ~~appropriate to, and consistent with, meeting the quantified~~
20 ~~objectives relative to the development of housing, as required in~~
21 ~~the housing element pursuant to subdivision (b) of Section 65583.~~

22 *A local agency may require the development project to comply*
23 *with objective, quantifiable, written development standards,*
24 *conditions, and policies appropriate to, and consistent with,*
25 *meeting the jurisdiction's share of the regional housing need*
26 *pursuant to Section 65584. However, the development standards,*
27 *conditions, and policies shall be applied to facilitate and*
28 *accommodate development at the density permitted on the site and*
29 *proposed by the development project.* Nothing in this section shall
30 be construed to prohibit a local agency from imposing fees and
31 other exactions otherwise authorized by law which are essential to
32 provide necessary public services and facilities to the development
33 project.

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

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

39 (1) "Feasible" means capable of being accomplished in a
40 successful manner within a reasonable period of time, taking into



1 account economic, environmental, social, and technological
2 factors.

3 (2) “Housing development project” means a use consisting of
4 either of the following:

5 (A) Residential units only.

6 (B) Mixed-use developments consisting of residential and
7 nonresidential uses in which nonresidential uses are limited to
8 neighborhood commercial uses and to the first floor of buildings
9 that are two or more stories. As used in this paragraph,
10 “neighborhood commercial” means small-scale general or
11 specialty stores that furnish goods and services primarily to
12 residents of the neighborhood.

13 (3) “Housing for very low, low-, or moderate-income
14 households” means that either (A) at least 20 percent of the total
15 units shall be sold or rented to lower income households, as
16 defined in Section 50079.5 of the Health and Safety Code, or (B)
17 100 percent of the units shall be sold or rented to moderate-income
18 households as defined in Section 50093 of the Health and Safety
19 Code, or middle-income households, as defined in Section 65008
20 of this code. Housing units targeted for lower income households
21 shall be made available at a monthly housing cost that does not
22 exceed 30 percent of 60 percent of area median income with
23 adjustments for household size made in accordance with the
24 adjustment factors on which the lower income eligibility limits are
25 based. Housing units targeted for persons and families of moderate
26 income shall be made available at a monthly housing cost that does
27 not exceed 30 percent of 100 percent of area median income with
28 adjustments for household size made in accordance with the
29 adjustment factors on which the moderate income eligibility limits
30 are based.

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

38 (5) “Neighborhood” means a planning area commonly
39 identified as such in a community’s planning documents, and
40 identified as a neighborhood by the individuals residing and



1 working within the neighborhood. Documentation demonstrating
2 that the area meets the definition of neighborhood may include a
3 map prepared for planning purposes which lists the name and
4 boundaries of the neighborhood.

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

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

9 (B) Fails to comply with the time periods specified in
10 subparagraph (B) of paragraph (1) of subdivision (a) of Section
11 65950. An extension of time pursuant to Article 5 (commencing
12 with Section 65950) shall be deemed to be an extension of time
13 pursuant to this paragraph.

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

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

38 (1) The housing development project would have a specific,
39 adverse impact upon the public health or safety unless the project
40 is disapproved or approved upon the condition that the project be



1 developed at a lower density. As used in this paragraph, a
2 “specific, adverse impact” means a significant, quantifiable,
3 direct, and unavoidable impact, based on objective, identified
4 written public health or safety standards, policies, or conditions as
5 they existed on the date the application was deemed complete.

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

11 (k) If in any action brought to enforce the provisions of this
12 section, a court finds that the local agency disapproved a project
13 or conditioned its approval in a manner rendering it infeasible for
14 the development of housing for very low, low-, or
15 moderate-income households, including farmworker housing,
16 without making the findings required by this section or without
17 making sufficient findings supported by substantial evidence, the
18 court shall issue an order or judgment compelling compliance with
19 this section within 60 days, including, but not limited to, an order
20 that the local agency take action on the development project. The
21 court shall retain jurisdiction to ensure that its order or judgment
22 is carried out and shall award reasonable attorney fees and costs of
23 suit to the plaintiff or petitioner who proposed the housing
24 development, except under extraordinary circumstances in which
25 the court finds that awarding fees would not further the purposes
26 of this section. If the court determines that its order or judgment
27 has not been carried out within 60 days, the court may issue further
28 orders as provided by law to ensure that the purposes and policies
29 of this section are fulfilled.

30 (l) In any action, the record of the proceedings before the local
31 agency shall be filed as expeditiously as possible and,
32 notwithstanding Section 1094.6 of the Code of Civil Procedure, all
33 or part of the record may be filed (1) by the petitioner with the
34 petition or petitioner’s points and authorities, (2) by the respondent
35 with respondent’s points and authorities, (3) after payment of costs
36 by the petitioner, or (4) as otherwise directed by the court. If the
37 expense of preparing the record has been borne by the petitioner
38 and the petitioner is the prevailing party, the expense shall be
39 taxable as costs.



1 SEC. 5. Section 65915 of the Government Code is amended to
2 read:

3 65915. (a) When an applicant proposes a housing
4 development within the jurisdiction of a city, county, or city and
5 county, that local government shall provide the applicant
6 incentives or concessions for the production of housing units and
7 child care facilities as prescribed in this chapter. All cities,
8 counties, or cities and counties shall adopt an ordinance that
9 specifies how compliance with this section will be implemented.

10 (b) A city, county, or city and county shall either grant a density
11 bonus and at least one of the concessions or incentives identified
12 in subdivision (k), or provide other incentives or concessions of
13 equivalent financial value based upon the land cost per dwelling
14 unit, when the applicant for the housing development agrees or
15 proposes to construct at least any one of the following:

16 (1) Twenty percent of the total units of a housing development
17 for lower income households, as defined in Section 50079.5 of the
18 Health and Safety Code.

19 (2) Ten percent of the total units of a housing development for
20 very low income households, as defined in Section 50105 of the
21 Health and Safety Code.

22 (3) Fifty percent of the total dwelling units of a housing
23 development for qualifying residents, as defined in Section 51.3
24 of the Civil Code.

25 (4) Twenty percent of the total dwelling units in a
26 condominium project as defined in subdivision (f) of Section 1351
27 of the Civil Code, for persons and families of moderate income,
28 as defined in Section 50093 of the Health and Safety Code.

29 The city, county, or city and county shall grant the additional
30 concession or incentive required by this subdivision unless the
31 city, county, or city and county makes a written finding, based
32 upon substantial evidence, that the additional concession or
33 incentive is not required in order to provide for affordable housing
34 costs, as defined in Section 50052.5 of the Health and Safety Code,
35 or for rents for the targeted units to be set as specified in
36 subdivision (c).

37 (c) (1) An applicant shall agree to, and the city, county, or city
38 and county shall ensure, continued affordability of all lower
39 income density bonus units for 30 years or a longer period of time
40 if required by the construction or mortgage financing assistance



1 program, mortgage insurance program, or rental subsidy program.
2 Those units targeted for lower income households, as defined in
3 Section 50079.5 of the Health and Safety Code, shall be affordable
4 at a rent that does not exceed 30 percent of 60 percent of area
5 median income. Those units targeted for very low income
6 households, as defined in Section 50105 of the Health and Safety
7 Code, shall be affordable at a rent that does not exceed 30 percent
8 of 50 percent of area median income.

9 (2) An applicant shall agree to, and the city, county, or city and
10 county shall ensure, continued affordability of the
11 moderate-income units that are directly related to the receipt of the
12 density bonus for 10 years if the housing is in a condominium
13 project as defined in subdivision (f) of Section 1351 of the Civil
14 Code.

15 (d) An applicant may submit to a city, county, or city and
16 county a proposal for the specific incentives or concessions that the
17 applicant requests pursuant to this section, and may request a
18 meeting with the city, county, or city and county. The city, county,
19 or city and county shall grant the concession or incentive requested
20 by the applicant unless the city, county, or city and county makes
21 a written finding, based upon substantial evidence, of either of the
22 following:

23 (1) The concession or incentive is not required in order to
24 provide for affordable housing costs, as defined in Section
25 50052.5 of the Health and Safety Code, or for rents for the targeted
26 units to be set as specified in subdivision (c).

27 (2) The concession or incentive would have a specific adverse
28 impact, as defined in paragraph (2) of subdivision (d) of Section
29 65589.5, upon public health and safety or the physical
30 environment or on any real property that is listed in the California
31 Register of Historical Resources and for which there is no feasible
32 method to satisfactorily mitigate or avoid the specific adverse
33 impact without rendering the development unaffordable to low-
34 and moderate-income households.

35 The applicant may initiate judicial proceedings if the city,
36 county, or city and county refuses to grant a requested density
37 bonus, incentive, or concession. If a court finds that the refusal to
38 grant a requested density bonus, incentive, or concession is in
39 violation of this section, the court shall award the plaintiff
40 reasonable attorney's fees and costs of suit. Nothing in this



1 subdivision shall be interpreted to require a local government to
2 grant an incentive or concession that has a specific, adverse
3 impact, as defined in paragraph (2) of subdivision (d) of Section
4 65589.5, upon health, safety, or the physical environment, and for
5 which there is no feasible method to satisfactorily mitigate or
6 avoid the specific adverse impact. Nothing in this subdivision shall
7 be interpreted to require a local government to grant an incentive
8 or concession that would have an adverse impact on any real
9 property that is listed in the California Register of Historical
10 Resources. The city, county, or city and county shall establish
11 procedures for carrying out this section, that shall include
12 legislative body approval of the means of compliance with this
13 section. The city, county, or city and county shall also establish
14 procedures for waiving or modifying development and zoning
15 standards that would otherwise inhibit the utilization of the density
16 bonus on specific sites. These procedures shall include, but not be
17 limited to, such items as minimum lot size, side yard setbacks, and
18 placement of public works improvements.

19 (e) In no case may a city, county, or city and county apply any
20 development standard that will have the effect of precluding the
21 construction of a development meeting the criteria of subdivision
22 (b) at the densities or with the concessions or incentives permitted
23 by this section. An applicant may submit to a city, county, or city
24 and county a proposal for the waiver or reduction of development
25 standards and may request a meeting with the city, county, or city
26 and county. If a court finds that the refusal to grant a waiver or
27 reduction of development standards is in violation of this section,
28 the court shall award the plaintiff reasonable attorney's fees and
29 costs of suit. Nothing in this subdivision shall be interpreted to
30 require a local government to waive or reduce development
31 standards if the waiver or reduction would have a specific, adverse
32 impact, as defined in paragraph (2) of subdivision (d) of Section
33 65589.5, upon health, safety, or the physical environment, and for
34 which there is no feasible method to satisfactorily mitigate or
35 avoid the specific adverse impact. Nothing in this subdivision shall
36 be interpreted to require a local government to waive or reduce
37 development standards that would have an adverse impact on any
38 real property that is listed in the California Register of Historical
39 Resources.



1 (f) The applicant shall show that the waiver or modification is
2 necessary to make the housing units economically feasible.

3 (g) (1) For the purposes of this chapter, except as provided in
4 paragraph (2), “density bonus” means a density increase of at least
5 25 percent, unless a lesser percentage is elected by the applicant,
6 over the otherwise maximum allowable residential density under
7 the applicable zoning ordinance and land use element of the
8 general plan as of the date of application by the applicant to the
9 city, county, or city and county. All density calculations resulting
10 in fractional units shall be rounded up to the next whole number.
11 The granting of a density bonus shall not be interpreted, in and of
12 itself, to require a general plan amendment, local coastal plan
13 amendment, zoning change, or other discretionary approval. The
14 density bonus shall not be included when determining the number
15 of housing units which is equal to 10, 20, or 50 percent of the total.
16 The density bonus shall apply to housing developments consisting
17 of five or more dwelling units.

18 (2) For the purposes of this chapter, if a development does not
19 meet the requirements of paragraph (1), (2), or (3) of subdivision
20 (b), but the applicant agrees or proposes to construct a
21 condominium project as defined in subdivision (f) of Section 1351
22 of the Civil Code, in which at least 20 percent of the total dwelling
23 units are reserved for persons and families of moderate income, as
24 defined in Section 50093 of the Health and Safety Code, a “density
25 bonus” of at least 10 percent shall be granted, unless a lesser
26 percentage is elected by the applicant, over the otherwise
27 maximum allowable residential density under the applicable
28 zoning ordinance and land use element of the general plan as of the
29 date of application by the applicant to the city, county, or city and
30 county. All density calculations resulting in fractional units shall
31 be rounded up to the next whole number. The granting of a density
32 bonus shall not be interpreted, in and of itself, to require a general
33 plan amendment, local coastal plan amendment, zoning change, or
34 other discretionary approval. The density bonus shall not be
35 included when determining the number of housing units which is
36 equal to 20 percent of the total. The density bonus shall apply to
37 housing developments consisting of five or more dwelling units.

38 (h) (1) When an applicant proposes to construct a housing
39 development that conforms to the requirements of subdivision (b)
40 and includes a child care facility that will be located on the



1 premises of, as part of, or adjacent to, the project, the city, county,
2 or city and county shall grant either of the following:

3 (A) An additional density bonus that is an amount of square feet
4 of residential space that is equal to or greater than the amount of
5 square feet in the child care facility.

6 (B) An additional concession or incentive that contributes
7 significantly to the economic feasibility of the construction of the
8 child care facility.

9 (2) The city, county, or city and county shall require, as a
10 condition of approving the housing development, that the
11 following occur:

12 (A) The child care facility shall remain in operation for a period
13 of time that is as long as or longer than the period of time during
14 which the density bonus units are required to remain affordable
15 pursuant to subdivision (c).

16 (B) Of the children who attend the child care facility, the
17 children of very low income households, lower income
18 households, or families of moderate income shall equal a
19 percentage that is equal to or greater than the percentage of
20 dwelling units that are required for very low income households,
21 lower income households, or families of moderate income
22 pursuant to subdivision (b).

23 (3) Notwithstanding any requirement of this subdivision, a
24 city, county, or a city and county shall not be required to provide
25 a density bonus or concession for a child care facility if it finds,
26 based upon substantial evidence, that the community has adequate
27 child care facilities.

28 (4) “Child care facility,” as used in this section, means a child
29 day care facility other than a family day care home, including, but
30 not limited to, infant centers, preschools, extended day care
31 facilities, and schoolage child care centers.

32 (i) “Housing development,” as used in this section, means one
33 or more groups of projects for residential units constructed in the
34 planned development of a city, county, or city and county. For the
35 purposes of this section, “housing development” also includes
36 either (1) a project to substantially rehabilitate and convert an
37 existing commercial building to residential use, or (2) the
38 substantial rehabilitation of an existing multifamily dwelling, as
39 defined in subdivision (d) of Section 65863.4, where the result of
40 the rehabilitation would be a net increase in available residential



1 units. For the purpose of calculating a density bonus, the
2 residential units do not have to be based upon individual
3 subdivision maps or parcels. The density bonus shall be permitted
4 in geographic areas of the housing development other than the
5 areas where the units for the lower income households are located.

6 (j) The granting of a concession or incentive shall not be
7 interpreted, in and of itself, to require a general plan amendment,
8 local coastal plan amendment, zoning change, or other
9 discretionary approval. This provision is declaratory of existing
10 law.

11 (k) For the purposes of this chapter, concession or incentive
12 means any of the following:

13 (1) A reduction in site development standards or a modification
14 of zoning code requirements or architectural design requirements
15 that exceed the minimum building standards approved by the
16 California Building Standards Commission as provided in Part 2.5
17 (commencing with Section 18901) of Division 13 of the Health
18 and Safety Code, including, but not limited to, a reduction in
19 setback and square footage requirements and in the ratio of
20 vehicular parking spaces that would otherwise be required.

21 (2) Approval of mixed use zoning in conjunction with the
22 housing project if commercial, office, industrial, or other land uses
23 will reduce the cost of the housing development and if the
24 commercial, office, industrial, or other land uses are compatible
25 with the housing project and the existing or planned development
26 in the area where the proposed housing project will be located.

27 (3) Other regulatory incentives or concessions proposed by the
28 developer or the city, county, or city and county that result in
29 identifiable and actual cost reductions.

30 This subdivision does not limit or require the provision of direct
31 financial incentives for the housing development, including the
32 provision of publicly owned land, by the city, county, or city and
33 county, or the waiver of fees or dedication requirements.

34 (l) If an applicant agrees to construct both 20 percent of the total
35 units for lower income households and 10 percent of the total units
36 for very low income households, the developer is entitled to only
37 one density bonus and at least one additional concession or
38 incentive identified in Section 65913.4 under this section although
39 the city, county, or city and county may, at its discretion, grant
40 more than one density bonus.



1 (m) Nothing in this section shall be construed to supersede or
 2 in any way alter or lessen the effect or application of the California
 3 Coastal Act (Division 20 (commencing with Section 30000) of the
 4 Public Resources Code).

5 (n) A local agency may charge a fee to reimburse it for costs it
 6 incurs as a result of amendments to this section enacted during the
 7 2001–02 Regular Session of the Legislature.

8 (o) For purposes of this section, the following definitions shall
 9 apply:

10 (1) “Development standard” means any ordinance, general
 11 plan element, specific plan, charter amendment, or other local
 12 condition, law, policy, resolution, or regulation.

13 (2) “Maximum allowable residential density” means the
 14 density allowed under the zoning ordinance, or if a range of
 15 density is permitted, means the maximum allowable density for
 16 the specific zoning range applicable to the project.

17 (p) (1) *Upon the request of the developer, no city, county, or*
 18 *city and county shall require a vehicular parking ratio, inclusive*
 19 *of handicapped and guest parking, of a development meeting the*
 20 *criteria of subdivision (b), that exceeds the following ratios:*

21 (A) *Zero to one bedrooms: one onsite parking space.*

22 (B) *Two to three bedrooms: two onsite parking spaces.*

23 (C) *Four and more bedrooms: two and one-half parking*
 24 *spaces.*

25 (2) *If the total number of parking spaces required for a*
 26 *development is other than a whole number, the number shall be*
 27 *rounded up to the next whole number. For purposes of this*
 28 *subdivision, a development may provide “onsite parking” through*
 29 *tandem parking or uncovered parking, but not through on-street*
 30 *parking.*

31 (3) *This subdivision shall apply to a development meeting the*
 32 *requirements of subdivision (b) and only at the request of the*
 33 *applicant. An applicant may request additional parking incentives*
 34 *or concessions beyond those provided in this section, subject to*
 35 *subdivision (d).*

36 *SEC. 6. Notwithstanding Section 17610 of the Government*
 37 *Code, if the Commission on State Mandates determines that this*
 38 *act contains costs mandated by the state, reimbursement to local*
 39 *agencies and school districts for those costs shall be made*
 40 *pursuant to Part 7 (commencing with Section 17500) of Division*



1 *4 of Title 2 of the Government Code. If the statewide cost of the*
2 *claim for reimbursement does not exceed one million dollars*
3 *(\$1,000,000), reimbursement shall be made from the State*
4 *Mandates Claims Fund.*

5 ~~amended to read:~~

6 ~~65584. (a) For purposes of subdivision (a) of Section 65583,~~
7 ~~the share of a city or county of the regional housing needs includes~~
8 ~~that share of the housing need of persons at all income levels within~~
9 ~~the area significantly affected by a general plan of the city or~~
10 ~~county. The distribution of regional housing needs shall, based~~
11 ~~upon available data, take into consideration market demand for~~
12 ~~housing, employment opportunities, the availability of suitable~~
13 ~~sites and public facilities, commuting patterns, type and tenure of~~
14 ~~housing need, the loss of units contained in assisted housing~~
15 ~~developments, as defined in paragraph (8) of subdivision (a) of~~
16 ~~Section 65583, that changed to non-low-income use through~~
17 ~~mortgage prepayment, subsidy contract expirations, or~~
18 ~~termination of use restrictions, and the housing needs of~~
19 ~~farmworkers. The distribution shall seek to reduce the~~
20 ~~concentration of lower income households in cities or counties that~~
21 ~~already have disproportionately high proportions of lower income~~
22 ~~households. Based upon population projections produced by the~~
23 ~~Department of Finance and regional population forecasts used in~~
24 ~~preparing regional transportation plans, and in consultation with~~
25 ~~each council of governments, the Department of Housing and~~
26 ~~Community Development shall determine the regional share of the~~
27 ~~statewide housing need at least two years prior to the second~~
28 ~~revision, and all subsequent revisions as required pursuant to~~
29 ~~Section 65588. Based upon data provided by the department~~
30 ~~relative to the statewide need for housing, each council of~~
31 ~~governments shall determine the existing and projected housing~~
32 ~~need for its region. Within 30 days following notification of this~~
33 ~~determination, the department shall ensure that this determination~~
34 ~~is consistent with the statewide housing need. The department may~~
35 ~~revise the determination of the council of governments if~~
36 ~~necessary to obtain this consistency. The appropriate council of~~
37 ~~governments shall determine the share for each city or county~~
38 ~~consistent with the criteria of this subdivision and with the advice~~
39 ~~of the department subject to the procedure established pursuant to~~
40 ~~subdivision (c) at least one year prior to the second revision, and~~



1 at five-year intervals following the second revision pursuant to
2 Section 65588. The council of governments shall submit to the
3 department information regarding the assumptions and
4 methodology to be used in allocating the regional housing need.
5 As part of the allocation of the regional housing need, the council
6 of governments, or the department pursuant to subdivision (b),
7 shall provide each city and county with data describing the
8 assumptions and methodology used in calculating its share of the
9 regional housing need. The department shall submit to each
10 council of governments information regarding the assumptions
11 and methodology to be used in allocating the regional share of the
12 statewide housing need. As part of its determination of the regional
13 share of the statewide housing need, the department shall provide
14 each council of governments with data describing the assumptions
15 and methodology used in calculating its share of the statewide
16 housing need. The council of governments shall provide each city
17 and county with the department's information. The council of
18 governments shall provide a subregion with its share of the
19 regional housing need, and delegate responsibility for providing
20 allocations to cities and a county or counties in the subregion to a
21 subregional entity if this responsibility is requested by a county
22 and all cities in the county, a joint powers authority established
23 pursuant to Chapter 5 (commencing with Section 6500) of
24 Division 7 of Title 1, or the governing body of a subregional
25 agency established by the council of governments, in accordance
26 with an agreement entered into between the council of
27 governments and the subregional entity that sets forth the process,
28 timing, and other terms and conditions of that delegation of
29 responsibility.

30 (b) For areas with no council of governments, the department
31 shall determine housing market areas and define the regional
32 housing need for cities and counties within these areas pursuant to
33 the provisions for the distribution of regional housing needs in
34 subdivision (a). If the department determines that a city or county
35 possesses the capability and resources and has agreed to accept the
36 responsibility, with respect to its jurisdiction, for the identification
37 and determination of housing market areas and regional housing
38 needs, the department shall delegate this responsibility to the cities
39 and counties within these areas.



1 ~~(c) (1) Within 90 days following a determination of a council~~
2 ~~of governments pursuant to subdivision (a), or the department's~~
3 ~~determination pursuant to subdivision (b), a city or county may~~
4 ~~propose to revise the determination of its share of the regional~~
5 ~~housing need in accordance with the considerations set forth in~~
6 ~~subdivision (a). The proposed revised share shall be based upon~~
7 ~~available data and accepted planning methodology, and supported~~
8 ~~by adequate documentation.~~

9 ~~(2) Within 60 days after the time period for the revision by the~~
10 ~~city or county, the council of governments or the department, as~~
11 ~~the case may be, shall accept the proposed revision, modify its~~
12 ~~earlier determination, or indicate, based upon available data and~~
13 ~~accepted planning methodology, why the proposed revision is~~
14 ~~inconsistent with the regional housing need.~~

15 ~~(A) If the council of governments or the department, as the case~~
16 ~~may be, does not accept the proposed revision, then the city or~~
17 ~~county shall have the right to request a public hearing to review the~~
18 ~~determination within 30 days.~~

19 ~~(B) The city or county shall be notified within 30 days by~~
20 ~~certified mail, return receipt requested, of at least one public~~
21 ~~hearing regarding the determination.~~

22 ~~(C) The date of the hearing shall be at least 30 days from the~~
23 ~~date of the notification.~~

24 ~~(D) Before making its final determination, the council of~~
25 ~~governments or the department, as the case may be, shall consider~~
26 ~~comments, recommendations, available data, accepted planning~~
27 ~~methodology, and local geological and topographical restraints on~~
28 ~~the production of housing.~~

29 ~~(3) If the council of governments or the department accepts the~~
30 ~~proposed revision or modifies its earlier determination, the city or~~
31 ~~county shall use that share. If the council of governments or the~~
32 ~~department grants a revised allocation pursuant to paragraph (1),~~
33 ~~the council of governments or the department shall ensure that the~~
34 ~~current total housing need is maintained. If the council of~~
35 ~~governments or the department indicates that the proposed~~
36 ~~revision is inconsistent with the regional housing need, the city or~~
37 ~~county shall use the share that was originally determined by the~~
38 ~~council of governments or the department.~~



1 ~~(4) The determination of the council of governments or the~~
2 ~~department, as the case may be, shall be subject to judicial review~~
3 ~~pursuant to Section 1094.5 of the Code of Civil Procedure.~~

4 ~~(5) The council of governments or the department shall reduce~~
5 ~~the share of regional housing needs of a county if all of the~~
6 ~~following conditions are met:~~

7 ~~(A) One or more cities within the county agree to increase its~~
8 ~~share or their shares in an amount that will make up for the~~
9 ~~reduction.~~

10 ~~(B) The transfer of shares shall only occur between a county~~
11 ~~and cities within that county.~~

12 ~~(C) The county's share of low-income and very low income~~
13 ~~housing shall be reduced only in proportion to the amount by~~
14 ~~which the county's share of moderate and above~~
15 ~~moderate-income housing is reduced.~~

16 ~~(D) The council of governments or the department, whichever~~
17 ~~assigned the county's share, shall have authority over the approval~~
18 ~~of the proposed reduction, taking into consideration the criteria of~~
19 ~~subdivision (a).~~

20 ~~(6) A city, county, or city and county may reduce its share of the~~
21 ~~regional housing needs by 15 percent for each income group if all~~
22 ~~of the following conditions are met:~~

23 ~~(A) It has met at least 30 percent of its housing needs.~~

24 ~~(B) It has met 30 percent more of its housing needs than the~~
25 ~~region as a whole.~~

26 ~~(C) The department has determined that it was in substantial~~
27 ~~compliance with the last revision of its housing element.~~

28 ~~(7) The housing element shall contain an analysis of the factors~~
29 ~~and circumstances, with all supporting data, justifying the~~
30 ~~revision. All materials and data used to justify any revision shall~~
31 ~~be made available upon request by any interested party within~~
32 ~~seven days upon payment of reasonable costs of reproduction~~
33 ~~unless the costs are waived due to economic hardship.~~

34 ~~(d) (1) In the event an incorporation of a new city occurs after~~
35 ~~the council of governments, or the department for areas with no~~
36 ~~council of governments, has made its final allocation under this~~
37 ~~section, the city and county may reach a mutually acceptable~~
38 ~~agreement on a revised determination and report the revision to the~~
39 ~~council of governments and the department, or to the department~~
40 ~~for areas with no council of governments. If the affected parties~~



1 cannot reach a mutually acceptable agreement, then either party
2 may request the council of governments, or the department for
3 areas with no council of governments, to consider the facts, data,
4 and methodology presented by both parties and make the revised
5 determination. The revised determination shall be made within
6 one year of the incorporation of the new city based upon the
7 methodology described in subdivision (a) and shall reallocate a
8 portion of the affected county's share of regional housing needs to
9 the new city. The revised determination shall neither reduce the
10 total regional housing need nor change the previous allocation of
11 the regional housing needs assigned by the council of governments
12 or the department, where there is no council of governments, to
13 other cities within the affected county.

14 (2) Except as provided in paragraph (3), any ordinance, policy,
15 or standard of a city or county that directly limits, by number, the
16 building permits that may be issued for residential construction, or
17 limits for a set period of time the number of buildable lots that may
18 be developed for residential purposes, shall not be a justification
19 for a determination or a reduction in the share of a city or county
20 of the regional housing need.

21 (3) Paragraph (2) does not apply to any city or county that
22 imposes a moratorium on residential construction for a specified
23 period of time in order to preserve and protect the public health and
24 safety. If a moratorium is in effect, the city or county shall, prior
25 to a revision pursuant to subdivision (e), adopt findings that
26 specifically describe the threat to the public health and safety and
27 the reasons why construction of the number of units specified as
28 its share of the regional housing need would prevent the mitigation
29 of that threat.

30 (e) Any authority to review and revise the share of a city or
31 county of the regional housing need granted under this section
32 shall not constitute authority to revise, approve, or disapprove the
33 manner in which the share of the city or county of the regional
34 housing need is implemented through its housing program.

35 (f) A fee may be charged to interested parties for any additional
36 costs caused by the amendments made to subdivision (e) by
37 Chapter 1684 of the Statutes of 1984 reducing from 45 to 7 days
38 the time within which materials and data shall be made available
39 to interested parties.



1 ~~(g) Determinations made by the department, a council of~~
2 ~~governments, or a city or county pursuant to this section are~~
3 ~~exempt from the California Environmental Quality Act, Division~~
4 ~~13 (commencing with Section 21000) of the Public Resources~~
5 ~~Code.~~

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