

AMENDED IN SENATE AUGUST 20, 2010

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CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 602

Introduced by Assembly Member Feuer
(Principal coauthor: Senator Steinberg)

February 25, 2009

An act to amend ~~Section 65009~~ *Sections 65009, 65589.3, and 65755* of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 602, as amended, Feuer. Land use and planning: cause of actions: time limitations.

Existing law, the Planning and Zoning Law, requires an action or proceeding against local zoning and planning decisions of a legislative body to be commenced and the legislative body to be served within a year of accrual of the cause of action if it meets certain requirements. Where the action or proceeding is brought in support of or to encourage or facilitate the development of housing that would increase the community's supply of affordable housing, a cause of action accrues 60 days after notice is filed or the legislative body takes a final action in response to the notice, whichever occurs first.

This bill would authorize the notice to be filed any time ~~after an action to adopt, amend, or revise a housing element pursuant to existing law~~ *within 5 years after a specified action pursuant to existing law*. The bill would declare the intent of the Legislature that its provisions modify a specified court opinion. *The bill would also provide that in that specified action or proceeding, no remedy pursuant to specified provisions of law abrogate, impair, or otherwise interfere with the full exercise of the rights and protections granted to a tentative map application or a developer, as prescribed.*

Existing law establishes a rebuttable presumption, in any action filed on or after January 1, 1991, taken to challenge the validity of a housing element, of the validity of a housing element or amendment if the Department of Housing and Community Development has found that the element or amendment substantially complies with specified provisions of existing law.

This bill would provide that in any action brought against a city, county, or city and county to challenge the adequacy of a housing element, if a court finds that the adopted housing element or amended housing element for the current planning period substantially complies with specified provisions, the element or amendment be deemed to satisfy any condition of a state-administered housing grant program requiring a department finding of housing element compliance.

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

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

- 1 SECTION 1. It is the intent of the Legislature in enacting
- 2 Section 2 of this act to modify the court's opinion in Urban Habitat
- 3 Program v. City of Pleasanton (2008) 164 Cal.App.4th 1561, with
- 4 respect to the interpretation of Section 65009 of the Government
- 5 Code.
- 6 SEC. 2. Section 65009 of the Government Code is amended
- 7 to read:
- 8 65009. (a) (1) The Legislature finds and declares that there
- 9 currently is a housing crisis in California and it is essential to
- 10 reduce delays and restraints upon expeditiously completing housing
- 11 projects.
- 12 (2) The Legislature further finds and declares that a legal action
- 13 or proceeding challenging a decision of a city, county, or city and

1 county has a chilling effect on the confidence with which property
2 owners and local governments can proceed with projects. Legal
3 actions or proceedings filed to attack, review, set aside, void, or
4 annul a decision of a city, county, or city and county pursuant to
5 this division, including, but not limited to, the implementation of
6 general plan goals and policies that provide incentives for
7 affordable housing, open-space and recreational opportunities, and
8 other related public benefits, can prevent the completion of needed
9 developments even though the projects have received required
10 governmental approvals.

11 (3) The purpose of this section is to provide certainty for
12 property owners and local governments regarding decisions made
13 pursuant to this division.

14 (b) (1) In an action or proceeding to attack, review, set aside,
15 void, or annul a finding, determination, or decision of a public
16 agency made pursuant to this title at a properly noticed public
17 hearing, the issues raised shall be limited to those raised in the
18 public hearing or in written correspondence delivered to the public
19 agency prior to, or at, the public hearing, except where the court
20 finds either of the following:

21 (A) The issue could not have been raised at the public hearing
22 by persons exercising reasonable diligence.

23 (B) The body conducting the public hearing prevented the issue
24 from being raised at the public hearing.

25 (2) If a public agency desires the provisions of this subdivision
26 to apply to a matter, it shall include in any public notice issued
27 pursuant to this title a notice substantially stating all of the
28 following: "If you challenge the (nature of the proposed action)
29 in court, you may be limited to raising only those issues you or
30 someone else raised at the public hearing described in this notice,
31 or in written correspondence delivered to the (public entity
32 conducting the hearing) at, or prior to, the public hearing."

33 (3) The application of this subdivision to causes of action
34 brought pursuant to subdivision (d) applies only to the final action
35 taken in response to the notice to the city or clerk of the board of
36 supervisors. If no final action is taken, then the issue raised in the
37 cause of action brought pursuant to subdivision (d) shall be limited
38 to those matters presented at a properly noticed public hearing or
39 to those matters specified in the notice given to the city or clerk
40 of the board of supervisors pursuant to subdivision (d), or both.

1 (c) (1) Except as provided in subdivision (d), no action or
2 proceeding shall be maintained in any of the following cases by
3 any person unless the action or proceeding is commenced and
4 service is made on the legislative body within 90 days after the
5 legislative body's decision:

6 (A) To attack, review, set aside, void, or annul the decision of
7 a legislative body to adopt or amend a general or specific plan.
8 This paragraph does not apply where an action is brought based
9 upon the complete absence of a general plan or a mandatory
10 element thereof, but does apply to an action attacking a general
11 plan or mandatory element thereof on the basis that it is inadequate.

12 (B) To attack, review, set aside, void, or annul the decision of
13 a legislative body to adopt or amend a zoning ordinance.

14 (C) To determine the reasonableness, legality, or validity of any
15 decision to adopt or amend any regulation attached to a specific
16 plan.

17 (D) To attack, review, set aside, void, or annul the decision of
18 a legislative body to adopt, amend, or modify a development
19 agreement. An action or proceeding to attack, review, set aside,
20 void, or annul the decisions of a legislative body to adopt, amend,
21 or modify a development agreement shall only extend to the
22 specific portion of the development agreement that is the subject
23 of the adoption, amendment, or modification. This paragraph
24 applies to development agreements, amendments, and
25 modifications adopted on or after January 1, 1996.

26 (E) To attack, review, set aside, void, or annul any decision on
27 the matters listed in Sections 65901 and 65903, or to determine
28 the reasonableness, legality, or validity of any condition attached
29 to a variance, conditional use permit, or any other permit.

30 (F) Concerning any of the proceedings, acts, or determinations
31 taken, done, or made prior to any of the decisions listed in
32 subparagraphs (A), (B), (C), (D), and (E).

33 (2) In the case of an action or proceeding challenging the
34 adoption or revision of a housing element pursuant to this
35 subdivision, the action or proceeding may, in addition, be
36 maintained if it is commenced and service is made on the
37 legislative body within 60 days following the date that the
38 Department of Housing and Community Development reports its
39 findings pursuant to subdivision (h) of Section 65585.

(d) (1) An action or proceeding shall be commenced and the legislative body served within one year after the accrual of the cause of action as provided in this subdivision, *except that in no case shall the action or proceeding be commenced more than five years after an action described in subparagraph (B)*, if the action or proceeding meets both of the following requirements:

(A) It is brought in support of or to encourage or facilitate the development of housing that would increase the community's supply of housing affordable to persons and families with low or moderate incomes, as defined in Section 50079.5 of the Health and Safety Code, or with very low incomes, as defined in Section 50105 of the Health and Safety Code, or middle-income households, as defined in Section 65008 of this code. This subdivision is not intended to require that the action or proceeding be brought in support of or to encourage or facilitate a specific housing development project.

(B) It is brought with respect to actions taken pursuant to Article 10.6 (commencing with Section 65580) of Chapter 3, ~~pursuant to Section 65589.5, 65863.6, 65915, or 66474.2 or pursuant to Section 65863.6, or Chapter 4.2 (commencing with Section 65913), or to challenge the adequacy of an ordinance adopted pursuant to Section 65915.~~

(2) A cause of action brought pursuant to this subdivision shall not be maintained until 60 days have expired following notice to the city or clerk of the board of supervisors by the party bringing the cause of action, or his or her representative, specifying the deficiencies of the general plan, specific plan, or zoning ordinance. A cause of action brought pursuant to this subdivision shall accrue 60 days after notice is filed or the legislative body takes a final action in response to the notice, whichever occurs first. This notice ~~may be filed at any time after an action described in Article 10.6 (commencing with Section 65580) of Chapter 3 to adopt, amend, or revise a housing element. A notice or cause of action brought may be filed at any time within five years after an action described in subparagraph (B) of paragraph (1). A notice or cause of action brought by one party pursuant to this subdivision shall not bar filing of a notice and initiation of a cause of action by any other party.~~

(3) *After the adoption of a housing element covering the current planning period, no action shall be filed pursuant to this*

1 *subdivision to challenge a housing element covering a prior*
2 *planning period.*

3 (e) Upon the expiration of the time limits provided for in this
4 section, all persons are barred from any further action or
5 proceeding.

6 (f) Notwithstanding Sections 65700 and 65803, or any other
7 provision of law, this section shall apply to charter cities.

8 (g) Except as provided in subdivision (d), this section shall not
9 affect any law prescribing or authorizing a shorter period of
10 limitation than that specified herein.

11 (h) Except as provided in paragraph (4) of subdivision (c), this
12 section shall be applicable to those decisions of the legislative
13 body of a city, county, or city and county made pursuant to this
14 division on or after January 1, 1984.

15 *SEC. 3. Section 65589.3 of the Government Code is amended*
16 *to read:*

17 65589.3. (a) In any action filed on or after January 1, 1991,
18 taken to challenge the validity of a housing element, there shall
19 be a rebuttable presumption of the validity of the element or
20 amendment if, pursuant to Section 65585, the department has found
21 that the element or amendment substantially complies with the
22 requirements of this article.

23 (b) *In any action brought against a city, county, or city and*
24 *county to challenge the adequacy of a housing element, if a court*
25 *finds that the adopted housing element or amended housing element*
26 *for the current planning period substantially complies with all of*
27 *the requirements of this article, including, without limitation, the*
28 *requirements for public participation set forth in paragraph (7)*
29 *of subdivision (c) of Section 65583, the element or amendment*
30 *shall be deemed to satisfy any condition of a state-administered*
31 *housing grant program requiring a department finding that the*
32 *housing element substantially complies with the requirements of*
33 *this article.*

34 *SEC. 4. Section 65755 of the Government Code is amended to*
35 *read:*

36 65755. (a) The court shall include, in the order or judgment
37 rendered pursuant to Section 65754, one or more of the following
38 provisions for any or all types or classes of developments or any
39 or all geographic segments of the city, county, or city and county
40 until the city, county, or city and county has substantially complied

1 with the requirements of Article 5 (commencing with Section
2 65300):

3 (1) Suspend the authority of the city, county, or city and county
4 pursuant to Division 13 (commencing with Section 17910) of the
5 Health and Safety Code, to issue building permits, or any category
6 of building permits, and all other related permits, except that the
7 city, county, or city and county shall continue to function as an
8 enforcement agency for review of permit applications for
9 appropriate codes and standards compliance, prior to the issuance
10 of building permits and other related permits for residential housing
11 for that city, county, or city and county.

12 (2) Suspend the authority of the city, county, or city and county,
13 pursuant to Chapter 4 (commencing with Section 65800) to grant
14 any and all categories of zoning changes, variances, or both.

15 (3) Suspend the authority of the city, county, or city and county,
16 pursuant to Division 2 (commencing with Section 66410), to grant
17 subdivision map approvals for any and all categories of subdivision
18 map approvals.

19 (4) Mandate the approval of all applications for building permits,
20 or other related construction permits, for residential housing where
21 a final subdivision map, parcel map, or plot plan has been approved
22 for the project, where the approval will not impact on the ability
23 of the city, county, or city and county to properly adopt and
24 implement an adequate housing element, and where the permit
25 application conforms to all code requirements and other applicable
26 provisions of law except those zoning laws held to be invalid by
27 the final court order, and changes to the zoning ordinances adopted
28 after such final court order which were enacted for the purpose of
29 preventing the construction of a specific residential development.

30 (5) Mandate the approval of any or all final subdivision maps
31 for residential housing projects which have previously received a
32 tentative map approval from the city, county, or city and county
33 pursuant to Division 2 (commencing with Section 66410) when
34 the final map conforms to the approved tentative map, the tentative
35 map has not expired, and where approval will not impact on the
36 ability of the city, county, or city and county to properly adopt and
37 implement an adequate housing element.

38 (6) Mandate that notwithstanding the provisions of Sections
39 66473.5 and 66474, any tentative subdivision map for a residential

1 housing project shall be approved if all of the following
2 requirements are met:

3 (A) The approval of the map will not significantly impair the
4 ability of the city, county, or city and county to adopt and
5 implement those elements or portions thereof of the general plan
6 which have been held to be inadequate.

7 (B) The map complies with all of the provisions of Division 2
8 (commencing with Section 66410), except those parts which would
9 require disapproval of the project due to the inadequacy of the
10 general plan.

11 (C) The approval of the map will not affect the ability of the
12 city, county, or city and county to adopt and implement an adequate
13 housing element.

14 (D) The map is consistent with the portions of the general plan
15 not found inadequate and the proposed revisions, if applicable, to
16 the part of the plan held inadequate.

17 (b) Any order or judgment of a court which includes the
18 remedies described in paragraphs (1), (2), or (3) of subdivision (a)
19 shall exclude from the operation of that order or judgment any
20 action, program, or project required by law to be consistent with
21 a general or specific plan if the court finds that the approval or
22 undertaking of the action, program, or project complies with both
23 of the following requirements:

24 (1) That it will not significantly impair the ability of the city,
25 county, or city and county to adopt or amend all or part of the
26 applicable plan as may be necessary to make the plan substantially
27 comply with the requirements of Article 5 (commencing with
28 Section 65300) in the case of a general plan, or Article 8
29 (commencing with Section 65450) in the case of a specific plan.

30 (2) That it is consistent with those portions of the plan
31 challenged in the action or proceeding and found by the court to
32 substantially comply with applicable provisions of law.

33 The party seeking exclusion from any order or judgment of a
34 court pursuant to this subdivision shall have the burden of showing
35 that the action, program, or project complies with paragraphs (1)
36 and (2).

37 (c) *Notwithstanding Section 65754.5 or subdivisions (a) and*
38 *(b), in any action or proceeding brought pursuant to subdivision*
39 *(d) of Section 65009, no remedy pursuant to this section or*
40 *injunction pursuant to Section 65754.5 shall abrogate, impair, or*

1 *otherwise interfere with the full exercise of the rights and*
2 *protections granted to (1) an applicant for a tentative map pursuant*
3 *to Section 66474.2, or (2) a developer pursuant to Sections 65866*
4 *and 66498.1.*

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