

**Introduced by Senator Hancock**

February 18, 2011

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An act to amend Section 65009 of the Government Code, relating to land use.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 808, as introduced, Hancock. Land use and planning: cause of action: 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 make technical, nonsubstantive changes to these provisions of law.

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

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

- 1 SECTION 1. Section 65009 of the Government Code is
- 2 amended to read:
- 3 65009. (a) (1) The Legislature finds and declares that there
- 4 currently is a housing crisis in California and it is essential to

1 reduce delays and restraints upon expeditiously completing housing  
2 projects.

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

15 (3) The purpose of this section is to provide certainty for  
16 property owners and local governments regarding *the* decisions  
17 made pursuant to this division.

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

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

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

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

37 (3) The application of this subdivision to causes of action  
38 brought pursuant to subdivision (d) ~~applies~~ *shall apply* only to the  
39 final action taken in response to the notice to the city or clerk of  
40 the board of supervisors. If no final action is taken, then the issue

1 raised in the cause of action brought pursuant to subdivision (d)  
2 shall be limited to those matters presented at a properly noticed  
3 public hearing or to those matters specified in the notice given to  
4 the city or clerk of the board of supervisors pursuant to subdivision  
5 (d), or both.

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

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

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

19 (C) To determine the reasonableness, legality, or validity of any  
20 decision to adopt or amend any regulation attached to a specific  
21 plan.

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

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

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

38 (2) In the case of an action or proceeding challenging the  
39 adoption or revision of a housing element pursuant to this  
40 subdivision, the action or proceeding may, in addition, be

1 maintained if it is commenced and service is made on the  
2 legislative body within 60 days following the date that the  
3 Department of Housing and Community Development reports its  
4 findings pursuant to subdivision (h) of Section 65585.

5 (d) An action or proceeding shall ~~be commenced~~ *commence*  
6 and the legislative body served within one year after the accrual  
7 of the cause of action as provided in this subdivision, if the action  
8 or proceeding meets both of the following requirements:

9 (1) It is brought in support of or to encourage or facilitate the  
10 development of housing that would increase the community's  
11 supply of housing affordable to persons and families with low or  
12 moderate incomes, as defined in Section 50079.5 of the Health  
13 and Safety Code, or with very low incomes, as defined in Section  
14 50105 of the Health and Safety Code, or middle-income  
15 households, as defined in Section 65008 of this code. This  
16 subdivision is not intended to require that the action or proceeding  
17 be brought in support of or to encourage or facilitate a specific  
18 housing development project.

19 (2) It is brought with respect to actions taken pursuant to Article  
20 10.6 (commencing with Section 65580) of Chapter 3 of this  
21 division, pursuant to Section 65589.5, 65863.6, 65915, or 66474.2  
22 or pursuant to Chapter 4.2 (commencing with Section 65913).

23 A cause of action brought pursuant to this subdivision shall not  
24 be maintained until 60 days have expired following notice to the  
25 city or clerk of the board of supervisors by the party bringing the  
26 cause of action, or his or her representative, specifying the  
27 deficiencies of the general plan, specific plan, or zoning ordinance.  
28 A cause of action brought pursuant to this subdivision shall accrue  
29 60 days after notice is filed or the legislative body takes a final  
30 action in response to the notice, whichever occurs first. A notice  
31 or cause of action brought by one party pursuant to this subdivision  
32 shall not bar filing of a notice and initiation of a cause of action  
33 by any other party.

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

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

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

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