

AMENDED IN ASSEMBLY JULY 1, 1999

AMENDED IN SENATE APRIL 5, 1999

**SENATE BILL**

**No. 948**

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**Introduced by Senator Alarcon  
(Principal coauthor: Senator Burton)**

February 25, 1999

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An act to amend Sections ~~65009, 65589.5, and 65915~~ 7060.7, 65009, 65589.5, 65915, and 65950 of the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

SB 948, as amended, Alarcon. Affordable housing developments.

(1) *Under existing law, public entities generally are prohibited from adopting any statute, ordinance, or regulation, or taking any administrative action, to compel the owner of residential real property to offer or to continue to offer accommodations in the property for rent or lease.*

*This bill would revise the statement of legislative intent in this law.*

(2) Under existing law, the Planning 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 after accrual of the cause of action if it meets certain requirements, including that it is brought in support of the development of housing that meets the requirements for housing persons and families with low or moderate incomes. Where the action or proceeding

challenges the adequacy of a housing element, the action or proceeding may be initiated up to 60 days following the date the Department of Housing and Community Development reports its findings concerning the housing element pursuant to specified provisions.

This bill would revise these provisions to include actions or proceedings to encourage or facilitate the development of housing and would include persons and families of very ~~low incomes~~—*low and middle incomes*. The bill would also provide that any action challenging the adequacy of a housing element pursuant to these provisions may be brought as specified above.

~~(2)~~

(3) Existing law requires local agencies to make specified findings before disapproving or conditionally approving certain housing development projects. Existing law also requires local agencies to provide developer incentives for the production of lower income housing units within a housing development if the developer meets specified requirements. Developer incentives include, among other things, a density bonus, as defined.

This bill would make specified changes in these findings relating to very low income, low-income, ~~and~~ lower to moderate-income housing, *middle-income households* and the housing element of a general plan, respectively. The bill would revise the definition of “affordable to low- and moderate-income households” to include very low income households *or middle-income households, as defined*, and would add a definition for “disapprove the *development project*” to these provisions. The bill would also require the court in any action brought to enforce these provisions to order a local agency, within ~~90~~—60 days, to ~~approve all applications for~~ *comply with these provisions and take action on the development projects that were ~~denied~~ disapproved* on the basis of findings that were inadequate or lacked substantial evidence and ~~would establish expedited procedures to retain jurisdiction~~ for this purpose. The bill would also revise the ~~definition~~ *definitions* of “density bonus” and “area median income” to mean *very low or low-income households* for purposes of these provisions.



Because these changes would impose new duties on local agencies, the bill would impose a state-mandated local program.

~~(3)~~

*(4) Under the Permit Streamlining Act, a public agency that is the lead agency for a development project is required to approve or disapprove the project within 180 days from the date of certification by the lead agency of an environmental impact report if the report is prepared pursuant to specified provisions.*

*This bill, in addition, would reduce that period to 90 days if the development project is affordable to very low or low-income households and the project applicant has provided written notice to the lead agency that an application has been or will be made to a public or federal agency for an allocation or commitment of financing, tax credits, bond authority, or other financial assistance and there is confirmation that the application was made prior to certification of the environmental impact report.*

(5) 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.

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

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

~~1 SECTION 1. It is the intent of the Legislature to  
2 reaffirm the right of an owner to withdraw residential  
3 property from rent or lease. It is also the intent of the  
4 Legislature to reaffirm the right of a local agency to~~



1 ~~impose reasonable conditions on the subsequent use of~~  
2 ~~residential property once the property has been~~  
3 ~~withdrawn from rent or lease.~~

4 *SECTION 1. Section 7060.7 of the Government Code*  
5 *is amended to read:*

6 7060.7. It is the intent of the Legislature in enacting  
7 this chapter to supersede any holding or portion of any  
8 holding in *Nash v. City of Santa Monica*, 37-Cal. 3d-Cal.3d  
9 97 to the extent that the holding, or portion of the holding,  
10 conflicts with this chapter, so as to permit landlords to go  
11 out of business. However, this act is not otherwise  
12 intended to do any of the following:

13 (1) Interfere with local governmental authority over  
14 land use, including regulation of the *demolition or*  
15 *conversion of existing housing to condominiums or other*  
16 *subdivided interests or to other nonresidential use*  
17 *following its withdrawal from rent or lease under this*  
18 *chapter.*

19 (2) *Prohibit a single owner of a property and his or her*  
20 *immediate family members from occupying one or more*  
21 *of the units as a primary residence in a structure that has*  
22 *been withdrawn from rent or lease.*

23 (3) Override procedural protections designed to  
24 prevent abuse of the right to evict tenants.

25 ~~(3)~~

26 (4) Permit an owner to withdraw from rent or lease  
27 less than all of the accommodations, as defined by  
28 paragraph (1) or (2) of subdivision (b) of Section 7060.

29 ~~(4)~~

30 (5) Grant to any public entity any power which it does  
31 not possess independent of this chapter to control or  
32 establish a system of control on the price at which  
33 accommodations may be offered for rent or lease, or to  
34 diminish any such power which that public entity may  
35 possess, except as specifically provided in this chapter.

36 ~~(5)~~

37 (6) Alter in any way either Section 65863.7 relating to  
38 the withdrawal of accommodations which comprise a  
39 mobilehome park from rent or lease or subdivision (f) of



1 Section 798.56 of the Civil Code relating to a change of use  
2 of a mobilehome park.

3 SEC. 2. Section 65009 of the Government Code is  
4 amended to read:

5 65009. (a) (1) The Legislature finds and declares  
6 that there currently is a housing crisis in California and it  
7 is essential to reduce delays and restraints upon  
8 expeditiously completing housing projects.

9 (2) The Legislature further finds and declares that a  
10 legal action challenging a decision of a city, county, or city  
11 and county has a chilling effect on the confidence with  
12 which property owners and local governments can  
13 proceed with projects. Legal actions filed to attack,  
14 review, set aside, void, or annul a decision of a city,  
15 county, or city and county pursuant to this division can  
16 prevent the completion of needed developments even  
17 though the projects have received required  
18 governmental approvals.

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

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

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

32 (B) The body conducting the public hearing  
33 prevented the issue from being raised at the public  
34 hearing.

35 (2) If a public agency desires the provisions of this  
36 subdivision to apply to a matter, it shall include in any  
37 public notice issued pursuant to this title a notice  
38 substantially stating all of the following: "If you challenge  
39 the (nature of the proposed action) in court, you may be  
40 limited to raising only those issues you or someone else



1 raised at the public hearing described in this notice, or in  
2 written correspondence delivered to the (public entity  
3 conducting the hearing) at, or prior to, the public  
4 hearing.”

5 (3) The application of this subdivision to causes of  
6 action brought pursuant to subdivision (d) applies only to  
7 the final action taken in response to the notice to the city  
8 or county clerk. If no final action is taken, then the issue  
9 raised in the cause of action brought pursuant to  
10 subdivision (d) shall be limited to those matters  
11 presented at a properly noticed public hearing or to those  
12 matters specified in the notice given to the city or county  
13 clerk pursuant to subdivision (d), or both.

14 (c) (1) Except as provided in subdivisions (d) and (i),  
15 no action or proceeding shall be maintained in any of the  
16 following cases by any person unless the action or  
17 proceeding is commenced and service is made on the  
18 legislative body within 90 days after the legislative body’s  
19 decision:

20 ~~(1)~~

21 (A) To attack, review, set aside, void, or annul the  
22 decision of a legislative body to adopt or amend a general  
23 or specific plan. This paragraph does not apply where an  
24 action is brought based upon the complete absence of a  
25 general plan or a mandatory element thereof, but does  
26 apply to an action attacking a general plan or mandatory  
27 element thereof on the basis that it is inadequate.

28 ~~(2)~~

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

32 ~~(3)~~

33 (C) To determine the reasonableness, legality, or  
34 validity of any decision to adopt or amend any regulation  
35 attached to a specific plan.

36 ~~(4)~~

37 (D) To attack, review, set aside, void, or annul the  
38 decision of a legislative body to adopt, amend, or modify  
39 a development agreement. An action or proceeding to  
40 attack, review, set aside, void, or annul the decisions of a



1 legislative body to adopt, amend, or modify a  
2 development agreement shall only extend to the specific  
3 portion of the development agreement that is the subject  
4 of the adoption, amendment, or modification. This  
5 paragraph applies to development agreements,  
6 amendments, and modifications adopted on or after  
7 January 1, 1996.

8 ~~(5)~~

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

14 ~~(6)~~

15 (F) Concerning any of the proceedings, acts, or  
16 determinations taken, done, or made prior to any of the  
17 decisions listed in paragraphs (1), (2), (3), (4), and (5).

18 (2) *In the case of an action or proceeding challenging*  
19 *the adoption or revision of a housing element pursuant to*  
20 *this subdivision, the action or proceeding may, in*  
21 *addition, be maintained if it is commenced and service is*  
22 *made on the legislative body within 60 days following the*  
23 *date that the Department of Housing and Community*  
24 *Development reports its findings pursuant to subdivision*  
25 *(h) of Section 65585.*

26 (d) An action or proceeding shall be commenced and  
27 the legislative body served within one year after the  
28 accrual of the cause of action as provided in this  
29 subdivision, if the action or proceeding meets both of the  
30 following requirements:

31 (1) It is brought generally in support of or to  
32 encourage or facilitate the development of housing that  
33 would increase the community's supply of housing  
34 affordable to persons and families with low or moderate  
35 incomes, as defined in Section 50079.5 of the Health and  
36 Safety Code, or with very low incomes, as defined in  
37 Section 50105 of the Health and Safety Code, *or*  
38 *middle-income households, as defined in Section 65008 of*  
39 *this code. This subdivision is not intended to require that*  
40 *the action or proceeding be brought in support of or to*



1 *encourage or facilitate a specific housing development*  
2 *project.*

3 (2) It is brought with respect to actions taken pursuant  
4 to Article 10.6 (commencing with Section 65580) of  
5 Chapter 3 of this division, pursuant to Section 65589.5,  
6 65863.6, 65915, or 66474.2 or pursuant to Chapter 4.2  
7 (commencing with Section 65913).

8 A cause of action brought pursuant to this subdivision  
9 shall not be maintained until 60 days have expired  
10 following notice to the city or county clerk by the party  
11 bringing the cause of action, or his or her representative,  
12 specifying the deficiencies of the general plan, specific  
13 plan, or zoning ordinance. A cause of action brought  
14 pursuant to this subdivision shall accrue 60 days after  
15 notice is filed or the legislative body takes a final action  
16 in response to the notice, whichever occurs first. A notice  
17 or cause of action brought by one party pursuant to this  
18 subdivision shall not bar filing of a notice and initiation of  
19 a cause of action by any other party.

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

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

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

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

33 ~~(i) In addition to accrual of a cause of action~~  
34 ~~challenging adequacy of a housing element pursuant to~~  
35 ~~subdivision (d), where the action or proceeding~~  
36 ~~challenges the adequacy of a housing element pursuant~~  
37 ~~to subdivision (e), the action or proceeding may be~~  
38 ~~initiated up to 60 days following the date the Department~~  
39 ~~of Housing and Community Development reports its~~



1 ~~findings concerning the housing element pursuant to~~  
2 ~~subdivision (h) of Section 65585.~~

3 SEC. 3. Section 65589.5 of the Government Code is  
4 amended to read:

5 65589.5. (a) The Legislature finds all of the following:

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

9 (2) California housing has become the most expensive  
10 in the nation. The excessive cost of the state's housing  
11 supply is partially caused by activities and policies of  
12 many local governments which limit the approval of  
13 affordable housing, increase the cost of land for affordable  
14 housing, and require that high fees and exactions be paid  
15 by producers of potentially affordable housing.

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

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

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

35 (c) The Legislature also recognizes that premature  
36 and unnecessary development of agricultural lands to  
37 urban uses continues to have adverse effects on the  
38 availability of those lands for food and fiber production  
39 and on the economy of the state. Furthermore, it is the  
40 policy of the state that development should be guided



1 away from prime agricultural lands; therefore, in  
2 implementing this section, local jurisdictions should  
3 encourage, to the maximum extent practicable, in filling  
4 existing urban areas.

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

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

20 (2) The development project as proposed would have  
21 a specific, adverse impact upon the public health or  
22 safety, and there is no feasible method to satisfactorily  
23 mitigate or avoid the specific adverse impact without  
24 rendering the development unaffordable to low- and  
25 moderate-income households. As used in this paragraph,  
26 a “specific, adverse impact” means a significant,  
27 ~~measurable and unavoidable impact, based on objective~~  
28 ~~written standards.~~ *quantifiable, direct, and unavoidable*  
29 *impact, based on objective, identified written public*  
30 *health or safety standards, policies, or conditions as they*  
31 *existed on the date the application was deemed complete.*

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

37 (4) Approval of the development project would  
38 increase the concentration of ~~very low~~ lower income  
39 households in a neighborhood that already has a  
40 ~~disproportionately high number of housing development~~



1 ~~projects reserved for very low income households as~~  
2 ~~compared to other predominantly very low income~~  
3 ~~neighborhoods in the jurisdiction, and the development~~  
4 ~~would be approved and feasible to develop by the~~  
5 ~~applicant at a different site, including those sites~~  
6 ~~disproportionately high number of lower income~~  
7 ~~households and there is no feasible method of approving~~  
8 ~~the development at a different site, including those sites~~  
9 identified pursuant to paragraph (1) of subdivision (c) of  
10 Section 65583, without rendering the development  
11 unaffordable to low- and moderate-income households.

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

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

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

37 (f) Nothing in this section shall be construed to  
38 prohibit a local agency from requiring the development  
39 project to comply with written development standards,  
40 conditions, and policies appropriate to, and consistent



1 with, meeting the quantified objectives relative to the  
2 development of housing, as required in the housing  
3 element pursuant to subdivision (b) of Section 65583.  
4 Nothing in this section shall be construed to prohibit a  
5 local agency from imposing fees and other exactions  
6 otherwise authorized by law which are essential to  
7 provide necessary public services and facilities to the  
8 development project.

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

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

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

18 (2) "Affordable to very low ~~and low-income~~  
19 ~~households~~" ~~means, low-, or moderate-income~~  
20 *households*" means that either (A) at least 20 percent of  
21 the total units shall be sold or rented to lower income  
22 households, as defined in Section 50079.5 of the Health  
23 and Safety Code. ~~"Affordable to moderate-income~~  
24 ~~households~~" ~~means that Code, or (B)~~ 100 percent of the  
25 units shall be sold or rented to moderate-income  
26 households as defined in Section 50093 of the Health and  
27 Safety Code, *or middle-income households, as defined in*  
28 *Section 65008 of this code.* Housing units targeted for  
29 lower income households shall be made available at a  
30 monthly housing cost that does not exceed 30 percent of  
31 60 percent of area median income with adjustments for  
32 household size made in accordance with the adjustment  
33 factors on which the lower income eligibility limits are  
34 based. Housing units targeted for persons and families of  
35 moderate income shall be made available at a monthly  
36 housing cost that does not exceed 30 percent of 100  
37 percent of area median income with adjustments for  
38 household size made in accordance with the adjustment  
39 factors on which the moderate income eligibility limits  
40 are based.



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

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

17 ~~(5) “Disapprove the project” includes any instance in~~  
18 ~~which a local agency votes on a proposed housing~~  
19 ~~development application and the application is not~~  
20 ~~approved, and includes tie votes and instances in which~~  
21 ~~a local agency continues action on a proposed housing~~  
22 ~~development application for three successive meetings~~  
23 ~~other than at the applicant’s request.~~

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

27 (A) *Votes on a proposed housing development project*  
28 *application and the application is disapproved.*

29 (B) *Fails to comply with the time periods specified in*  
30 *subparagraph (B) of paragraph (1) of subdivision (a) of*  
31 *Section 65950. An extension of time pursuant to Article 5*  
32 *(commencing with Section 65950) shall be deemed to be*  
33 *an extension of time pursuant to this paragraph.*

34 (i) If any city, county, or city and county denies  
35 approval or imposes restrictions, including a reduction of  
36 allowable densities or the percentage of a lot which may  
37 be occupied by a building or structure under the  
38 applicable planning and zoning in force at the time the  
39 application is deemed complete pursuant to Section  
40 65943, which have a substantial adverse effect on the



1 viability or affordability of a housing development  
2 affordable to ~~lower~~ *very low, low-,* or moderate-income  
3 households, and the denial of the development or the  
4 imposition of restrictions on the development is the  
5 subject of a court action which challenges the denial, then  
6 the burden of proof shall be on the local legislative body  
7 to show that its decision is consistent with the findings as  
8 described in subdivision (d) and that the findings are  
9 supported by substantial evidence in the record.

10 (j) When a proposed housing development project  
11 ~~complies with the applicable general plan land use~~  
12 ~~designation, zoning notwithstanding, in effect at the time~~  
13 *complies with applicable, objective general plan and*  
14 *zoning standards and criteria in effect at the time* that the  
15 housing development project's application is determined  
16 to be complete, but the local agency proposes to  
17 disapprove the project or to approve it upon the  
18 condition that the project be developed at a lower  
19 density, the local agency shall base its decision regarding  
20 the proposed housing development project upon written  
21 findings supported by substantial evidence on the record  
22 that both of the following conditions exist:

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

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



1 (k) If in any action brought to enforce the provisions  
2 of this section, a court finds that the local agency denied  
3 a project or conditioned its approval in a manner  
4 rendering it infeasible for the development of lower  
5 income or moderate-income households without making  
6 the appropriate findings, or that the findings were  
7 inadequate or lacking substantial evidence, the court  
8 shall order the local agency to approve, within 90 days, all  
9 applications that have been submitted for the proposed  
10 development, as described at the time the application  
11 was deemed complete. *of this section, a court finds that*  
12 *the local agency disapproved a project or conditioned its*  
13 *approval in a manner rendering it infeasible for the*  
14 *development of very low, low-, or moderate-income*  
15 *households without properly making the findings*  
16 *required by this section or without making sufficient*  
17 *findings supported by substantial evidence, the court*  
18 *shall issue an order or judgment compelling compliance*  
19 *with this section within 60 days, including, but not limited*  
20 *to, an order that the local agency take action on the*  
21 *development project. The court shall retain jurisdiction*  
22 *to ensure that its order or judgment is carried out. If the*  
23 *court determines that its order or judgment has not been*  
24 *carried out within 60 days, the court may issue further*  
25 *orders as provided by law to ensure that the purposes and*  
26 *policies of this section are fulfilled.*

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

38 SEC. 4. Section 65915 of the Government Code is  
39 amended to read:



1 65915. (a) When a developer of housing proposes a  
2 housing development within the jurisdiction of the local  
3 government, the city, county, or city and county shall  
4 provide the developer incentives for the production of  
5 lower income housing units within the development if  
6 the developer meets the requirements set forth in  
7 subdivisions (b) and (c). The city, county, or city and  
8 county shall adopt an ordinance which shall specify the  
9 method of providing developer incentives.

10 (b) When a developer of housing agrees or proposes to  
11 construct at least (1) 20 percent of the total units of a  
12 housing development for lower income households, as  
13 defined in Section 50079.5 of the Health and Safety Code,  
14 or (2) 10 percent of the total units of a housing  
15 development for very low income households, as defined  
16 in Section 50105 of the Health and Safety Code, or (3) 50  
17 percent of the total dwelling units of a housing  
18 development for qualifying residents, as defined in  
19 Section 51.3 of the Civil Code, a city, county, or city and  
20 county shall either (1) grant a density bonus and at least  
21 one of the concessions or incentives identified in  
22 subdivision (h) unless the city, county, or city and county  
23 makes a written finding that the additional concession or  
24 incentive is not required in order to provide for  
25 affordable housing costs as defined in Section 50052.5 of  
26 the Health and Safety Code or for rents for the targeted  
27 units to be set as specified in subdivision (c), or (2)  
28 provide other incentives of equivalent financial value  
29 based upon the land cost per dwelling unit.

30 (c) A developer shall agree to and the city, county, or  
31 city and county shall ensure continued affordability of all  
32 lower income density bonus units for 30 years or a longer  
33 period of time if required by the construction or  
34 mortgage financing assistance program, mortgage  
35 insurance program, or rental subsidy program. Those  
36 units targeted for lower income households, as defined in  
37 Section 50079.5 of the Health and Safety Code, shall be  
38 affordable at a rent that does not exceed 30 percent of 60  
39 percent of area median income. Those units targeted for  
40 very low income households, as defined in Section 50105



1 of the Health and Safety Code, shall be affordable at a rent  
2 that does not exceed 30 percent of 50 percent of area  
3 median income. If a city, county, or city and county does  
4 not grant at least one additional concession or incentive  
5 pursuant to paragraph (1) of subdivision (b), the  
6 developer shall agree to and the city, county, or city and  
7 county shall ensure continued affordability for 10 years of  
8 all lower income housing units receiving a density bonus.

9 (d) A developer may submit to a city, county, or city  
10 and county a preliminary proposal for the development  
11 of housing pursuant to this section prior to the submittal  
12 of any formal requests for general plan amendments,  
13 zoning amendments, or subdivision map approvals. The  
14 city, county, or city and county shall, within 90 days of  
15 receipt of a written proposal, notify the housing  
16 developer in writing of the procedures under which it  
17 will comply with this section. The city, county, or city and  
18 county shall establish procedures for carrying out this  
19 section, which shall include legislative body approval of  
20 the means of compliance with this section. The city,  
21 county, or city and county shall also establish procedures  
22 for waiving or modifying development and zoning  
23 standards which would otherwise inhibit the utilization of  
24 the density bonus on specific sites. These procedures shall  
25 include, but not be limited to, such items as minimum lot  
26 size, side yard setbacks, and placement of public works  
27 improvements.

28 (e) The housing developer shall show that the waiver  
29 or modification is necessary to make the housing units  
30 economically feasible.

31 (f) For the purposes of this chapter, “density bonus”  
32 means a density increase of at least 25 percent, unless a  
33 lesser percentage is elected by the developer, over the  
34 otherwise maximum allowable residential density under  
35 the applicable zoning ordinance and land use element of  
36 the general plan as of the date of application by the  
37 ~~developer to the city, county, or city and county. Local~~  
38 ~~jurisdictions are authorized and required to grant a~~  
39 ~~density bonus pursuant to this section without approval~~  
40 ~~of a zoning change, variance, general plan amendment,~~



1 ~~use permit, or any local requirement. The density bonus~~  
2 ~~developer to the city, county, or city and county. The~~  
3 ~~granting of a density bonus shall not be interpreted, in~~  
4 ~~and of itself, to require a general plan amendment,~~  
5 ~~zoning change, or other discretionary approval. The~~  
6 ~~density bonus shall not be included when determining~~  
7 the number of housing units which is equal to 10 or 20  
8 percent of the total. The density bonus shall apply to  
9 housing developments consisting of five or more dwelling  
10 units.

11 (g) “Housing development,” as used in this section,  
12 means one or more groups of projects for residential units  
13 constructed in the planned development of a city, county,  
14 or city and county. For purposes of calculating a density  
15 bonus, the residential units do not have to be based upon  
16 individual subdivision maps or parcels. The density bonus  
17 shall be permitted in geographic areas of the housing  
18 development other than the areas where the units for the  
19 lower income households are located.

20 (h) For purposes of this chapter, concession or  
21 incentive means any of the following:

22 (1) A reduction in site development standards or a  
23 modification of zoning code requirements or  
24 architectural design requirements which exceed the  
25 minimum building standards approved by the California  
26 Building Standards Commission as provided in Part 2.5  
27 (commencing with Section 18901) of Division 13 of the  
28 Health and Safety Code, including, but not limited to, a  
29 reduction in setback and square footage requirements  
30 and in the ratio of vehicular parking spaces that would  
31 otherwise be required.

32 (2) Approval of mixed use zoning in conjunction with  
33 the housing project if commercial, office, industrial, or  
34 other land uses will reduce the cost of the housing  
35 development and if the commercial, office, industrial, or  
36 other land uses are compatible with the housing project  
37 and the existing or planned development in the area  
38 where the proposed housing project will be located.



1 (3) Other regulatory incentives or concessions  
2 proposed by the developer or the city, county, or city and  
3 county which result in identifiable cost reductions.

4 This subdivision does not limit or require the provision  
5 of direct financial incentives for the housing  
6 development, including the provision of publicly owned  
7 land, by the city, county, or city and county, or the waiver  
8 of fees or dedication requirements.

9 (i) If a developer agrees to construct both 20 percent  
10 of the total units for lower income households and 10  
11 percent of the total units for very low income households,  
12 the developer is entitled to only one density bonus and at  
13 least one additional concession or incentive identified in  
14 Section 65913.4 under this section although the city, city  
15 and county, or county may, at its discretion, grant more  
16 than one density bonus.

17 SEC. 5. *Section 65950 of the Government Code is*  
18 *amended to read:*

19 65950. (a) Any public agency that is the lead agency  
20 for a development project shall approve or disapprove  
21 the project within whichever of the following periods is  
22 applicable:

23 (1) One hundred eighty days from the date of  
24 certification by the lead agency of the environmental  
25 impact report if an environmental impact report is  
26 prepared pursuant to Section 21100 or 21151 of the Public  
27 Resources Code for the development project.

28 (2) *Ninety days from the date of certification by the*  
29 *lead agency of the environmental impact report if an*  
30 *environmental impact report is prepared pursuant to*  
31 *Section 21100 or 21151 of the Public Resources Code for*  
32 *the development project and all of the following*  
33 *conditions are met:*

34 (A) *The development project is affordable to very low*  
35 *or low-income households, as defined by Sections 50105*  
36 *and 50079.5 of the Health and Safety Code, respectively.*

37 (B) *Prior to the application being deemed complete*  
38 *for the development project pursuant to Article 3*  
39 *(commencing with Section 65940), the lead agency*  
40 *received written notice from the project applicant that*



1 an application has been made or will be made for an  
2 allocation or commitment of financing, tax credits, bond  
3 authority, or other financial assistance from a public  
4 agency or federal agency, and the notice specifies the  
5 financial assistance that has been applied for or will be  
6 applied for and the deadline for application for that  
7 assistance, the requirement that one of the approvals of  
8 the development project by the lead agency is a  
9 prerequisite to the application for or approval of the  
10 application for financial assistance, and that the financial  
11 assistance is necessary for the project to be affordable as  
12 required pursuant to subparagraph (A).

13 (C) There is confirmation that the application has  
14 been made to the public agency or federal agency prior  
15 to certification of the environmental impact report.

16 (3) Sixty days from the date of adoption by the lead  
17 agency of the negative declaration if a negative  
18 declaration is completed and adopted for the  
19 development project.

20 ~~(3)~~

21 (4) Sixty days from the determination by the lead  
22 agency that the project is exempt from the California  
23 Environmental Quality Act (Division 13 (commencing  
24 with Section 21000) of the Public Resources Code) if the  
25 project is exempt from the California Environmental  
26 Quality Act.

27 (b) Nothing in this section precludes a project  
28 applicant and a public agency from mutually agreeing in  
29 writing to an extension of any time limit provided by this  
30 section pursuant to Section 65957.

31 (c) For purposes of this section, “lead agency” and  
32 “negative declaration” shall have the same meaning as  
33 those terms are defined in Sections 21067 and 21064 of the  
34 Public Resources Code, respectively.

35 *SEC. 6. The Legislature finds and declares both of the*  
36 *following:*

37 (a) *The amendments made by this act to subdivision*  
38 *(c) of Section 65009 of the Government Code, excluding*  
39 *the portion of the amendment related to middle-income*  
40 *households, are declaratory of existing law.*



1     **(b)** *The amendments made by this act to Section 65915*  
2 *of the Government Code are declaratory of existing law.*

3     **SEC. 7.** Notwithstanding Section 17610 of the  
4 Government Code, if the Commission on State Mandates  
5 determines that this act contains costs mandated by the  
6 state, reimbursement to local agencies and school  
7 districts for those costs shall be made pursuant to Part 7  
8 (commencing with Section 17500) of Division 4 of Title  
9 2 of the Government Code. If the statewide cost of the  
10 claim for reimbursement does not exceed one million  
11 dollars (\$1,000,000), reimbursement shall be made from  
12 the State Mandates Claims Fund.

