

AMENDED IN ASSEMBLY AUGUST 16, 1999

AMENDED IN ASSEMBLY JULY 13, 1999

AMENDED IN ASSEMBLY JULY 1, 1999

AMENDED IN SENATE APRIL 5, 1999

SENATE BILL

No. 948

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

February 25, 1999

An act to amend Sections 7060, 7060.2, 7060.4, 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~~ *the Ellis Act*, 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. *The act also authorizes any public entity that has in effect any system of rent control, notwithstanding any provision of the Ellis Act, to subject to specified provisions, accommodations that had been withdrawn from rent or lease and are again offered for rent or lease for residential purposes within one year of the date that the accommodations were withdrawn pursuant to a 60-day notice.*

This bill would revise the *act's* statement of legislative intent ~~in this law~~. *It would also extend the period from one year to 2 years that accommodations that are offered again for rent or lease for residential purposes are subject to specified regulatory provisions and it would revise those provisions. The bill would also require that a specified notice and conditions apply to a tenant or lessee who is at least 62 years of age or disabled, as defined, and has lived in his or her accommodations for at least one year, as specified, when the owner of the residential property delivers to the public entity a notice of intent to withdraw the accommodations from rent or lease under the act.*

The bill would also change the notice of intent to withdraw to the public entity from 60 days to 120 days and would require that these provisions shall only apply to accommodations where the date of delivery to the public entity of the notice of intent to withdraw is on or after January 1, 2000.

(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 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.

(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, 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 60 days, to comply with these provisions and take action on the development projects that were disapproved on the basis of findings that were inadequate or lacked substantial evidence and to retain jurisdiction for this purpose. The bill would also revise the 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.

(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. *Section 7060 of the Government Code is*
2 *amended to read:*

3 7060. (a) No public entity, as defined in Section 811.2,
4 shall, by statute, ordinance, or regulation, or by
5 administrative action implementing any statute,
6 ordinance or regulation, compel the owner of any
7 residential real property to offer, or to continue to offer,
8 accommodations in the property for rent or lease.

9 (b) For the purposes of this chapter,
10 ~~”accommodations~~ *the following definitions apply:*

11 (1) “Accommodations” means *either of the following:*

12 ~~(1)~~

13 (A) The residential rental units in any detached
14 physical structure containing four or more residential
15 rental units.

16 ~~(2)~~

17 (B) With respect to a detached physical structure
18 containing three or fewer residential rental units, the
19 residential rental units in that structure and in any other
20 structure located on the same parcel of land, including



1 any detached physical structure specified in ~~paragraph~~
2 ~~(1)~~ *subparagraph (A)*.

3 (2) *“Disabled” means a person with a disability, as*
4 *defined in Section 12955.3 of the Government Code.*

5 *SEC. 2. Section 7060.2 of the Government Code is*
6 *amended to read:*

7 7060.2. If a public entity, by valid exercise of its police
8 power, has in effect any control or system of control on
9 the price at which accommodations may be offered for
10 rent or lease, that entity may, notwithstanding any
11 provision of this chapter, provide by statute or ordinance,
12 or by regulation as specified in Section 7060.5, that any
13 accommodations which have been offered for rent or
14 lease and which were subject to that control or system of
15 control at the time the accommodations were withdrawn
16 from rent or lease, shall be subject to the following:

17 (a) If the accommodations are offered again for rent
18 or lease for residential purposes within ~~one year~~ *two years*
19 of the date the accommodations were withdrawn from
20 rent or lease, the following provisions shall govern:

21 (1) The accommodations shall be subject to any
22 control on the price at which they may be offered in the
23 manner and to the same extent as if the accommodations
24 had not been withdrawn from rent or lease. This
25 paragraph shall prevail over any conflicting provision of
26 law authorizing the landlord to establish the rental rate
27 upon the initial hiring of the accommodations.

28 (2) The owner of the accommodations shall be liable
29 to any tenant or lessee who was displaced from the
30 property by that action for actual *and exemplary*
31 ~~damages which were the proximate result of that~~
32 ~~displacement, as defined and limited by the standards for~~
33 ~~compensation or payments applied to public entities with~~
34 ~~respect to rental dwellings by Sections 7262 and 7264, and~~
35 ~~punitive damages in an amount which does not exceed~~
36 ~~the contract rent for six months.~~ Any action by a tenant
37 or lessee pursuant to this paragraph shall be brought
38 within ~~two~~ *three* years of ~~that displacement~~ *the*
39 *withdrawal of the accommodations from rent or lease.*
40 However, nothing in this paragraph precludes a tenant



1 from pursuing any alternative remedy available under
2 the law.

3 (3) A public entity which has acted pursuant to this
4 section may institute a civil proceeding against any owner
5 who has again offered accommodations for rent or lease
6 subject to this subdivision, for exemplary damages for
7 displacement of tenants or lessees. ~~The exemplary~~
8 ~~damages shall not exceed the contract rent for six months~~
9 ~~for any unit or units from which a tenant or lessee was~~
10 ~~displaced by withdrawal of the unit from rent or lease~~
11 ~~pursuant to this chapter.~~ Any action by a public entity
12 pursuant to this paragraph shall be brought within three
13 years of the withdrawal of the accommodations from rent
14 or lease.

15 (4) Any owner who offers accommodations again for
16 rent or lease shall first offer the unit for rent or lease to
17 the tenant or lessee displaced from that unit by the
18 withdrawal pursuant to this chapter, if the tenant has
19 advised the owner in writing within 30 days of the
20 displacement of his or her desire to consider an offer to
21 renew the tenancy and has furnished the owner with an
22 address to which that offer is to be directed. That tenant,
23 lessee, or former tenant or lessee may advise the owner
24 at any time during the eligibility of a change of address
25 to which an offer is to be directed.

26 If the owner again offers the accommodations for rent
27 or lease pursuant to this subdivision, and the tenant or
28 lessee has advised the owner pursuant to this subdivision
29 of a desire to consider an offer to renew the tenancy, then
30 the owner shall offer to reinstitute a rental agreement or
31 lease on terms permitted by law to that displaced tenant
32 or lessee.

33 This offer shall be deposited in the United States mail,
34 by registered or certified mail with postage prepaid,
35 addressed to the displaced tenant or lessee at the address
36 furnished to the owner as provided in this subdivision,
37 and shall describe the terms of the offer. The displaced
38 tenant or lessee shall have 30 days from the deposit of the
39 offer in the mail to accept the offer by personal delivery
40 of that acceptance or by deposit of the acceptance in the



1 United States mail by registered or certified mail with
2 postage prepaid.

3 (b) (1) If the accommodations are offered again for
4 residential purposes more than ~~one year~~ *two years* after
5 the date the accommodations were withdrawn from rent
6 or lease, the accommodations shall be subject to any
7 control on the price at which they may be offered in the
8 manner and to the same extent as if the accommodations
9 had not been withdrawn from rent or lease, subject to any
10 adjustments otherwise available under the system of
11 control. This subdivision shall prevail over any conflicting
12 provision of law authorizing the landlord to establish the
13 rental rate upon the initial hiring of the accommodations.

14 (2) A public entity which has acted pursuant to this
15 section, may require by statute or ordinance, or by
16 regulation as specified in Section 7060.5, that an owner
17 who offers accommodations again for rent or lease within
18 a period not exceeding 10 years from the date on which
19 they are withdrawn, and which are subject to this
20 subdivision, shall first offer the unit to the tenant or lessee
21 displaced from that unit by the withdrawal, if that tenant
22 or lessee requests the offer in writing within 30 days after
23 the owner has notified the public entity of an intention to
24 offer the accommodations again for residential rent or
25 lease pursuant to a requirement adopted by the public
26 entity under subdivision (c) of Section 7060.4. The owner
27 of the accommodations shall be liable to any tenant or
28 lessee who was displaced by that action for failure to
29 comply with this paragraph, for punitive damages in an
30 amount which does not exceed the contract rent for six
31 months.

32 (c) If the accommodations are demolished, and new
33 accommodations are constructed on the same property,
34 and offered for rent or lease within five years of the date
35 the accommodations were withdrawn from rent or lease,
36 the newly constructed accommodations shall be subject
37 to any system of controls on the price at which they would
38 be offered on the basis of a fair and reasonable return on
39 the newly constructed accommodations,



1 notwithstanding any exemption from such a system of
2 controls for newly constructed accommodations.

3 *SEC. 3. Section 7060.4 of the Government Code is*
4 *amended to read:*

5 7060.4. (a) Any public entity which, by a valid
6 exercise of its police power, has in effect any control or
7 system of control on the price at which accommodations
8 are offered for rent or lease, may require by statute or
9 ordinance, or by regulation as specified in Section 7060.5,
10 that the owner notify the entity of an intention to
11 withdraw those accommodations from rent or lease and
12 may require that the notice contain statements, under
13 penalty of perjury, providing information on the number
14 of accommodations, the address or location of those
15 accommodations, the name or names of the tenants or
16 lessees of the accommodations, and the rent applicable to
17 each residential rental unit.

18 Information respecting the name or names of the
19 tenants, the rent applicable to any residential rental unit,
20 or the total number of accommodations, is confidential
21 information and for purposes of this chapter shall be
22 treated as confidential information by any public entity
23 for purposes of the Information Practices Act of 1977, as
24 contained in Chapter 1 (commencing with Section 1798)
25 of Title 1.8 of Part 4 of Division 3 of the Civil Code. A
26 public entity shall, to the extent required by the
27 preceding sentence, be considered an “agency,” as
28 defined by subdivision (d) of Section 1798.3 of the Civil
29 Code.

30 ~~The~~

31 (b) *The* statute, ordinance, or regulation of the public
32 entity may require that the owner record with the county
33 recorder a memorandum summarizing the provisions,
34 other than the confidential provisions, of the notice in a
35 form which shall be prescribed by the statute, ordinance,
36 or regulation, and require a certification with that notice
37 that actions have been initiated as required by law to
38 terminate any existing tenancies. In that situation, the
39 date on which the accommodations are withdrawn from
40 rent or lease for purposes of this chapter is ~~60~~ 120 days



1 from the delivery in person or by first-class mail of that
2 notice to the public entity. *However, if the tenant or*
3 *lessee is at least 62 years of age or disabled, and has lived*
4 *in his or her accommodations for at least one year prior*
5 *to the date of delivery to the public entity of the notice*
6 *of intent to withdraw pursuant to subdivision (a), then*
7 *the date of withdrawal of the accommodations of that*
8 *tenant or lessee shall be extended to one year after the*
9 *date of delivery of that notice to the public entity,*
10 *provided that the tenant or lessee gives written notice of*
11 *his or her entitlement to an extension to the owner within*
12 *60 days of the date of delivery to the public entity of the*
13 *notice of intent to withdraw. In that situation, the*
14 *following provisions shall apply:*

15 (1) *The tenancy shall be continued on the same terms*
16 *and conditions as existed on the date of delivery to the*
17 *public entity of the notice of intent to withdraw, subject*
18 *to any adjustments otherwise available under the system*
19 *of control.*

20 (2) *No party shall be relieved of the duty to perform*
21 *any obligation under the lease or rental agreement.*

22 (3) *The owner may elect to extend the date of*
23 *withdrawal on any other accommodations up to one year*
24 *after date of delivery to the public entity of the notice of*
25 *intent to withdraw, subject to paragraphs (1) and (2).*

26 (4) *Within 30 days of the notification by the tenant or*
27 *lessee to the owner of his or her entitlement to an*
28 *extension, the owner shall give written notice to the*
29 *public entity of the claim that the tenant or lessee is*
30 *entitled to stay in their accommodations for one year*
31 *after date of delivery to the public entity of the notice of*
32 *intent to withdraw.*

33 (5) *Within 90 days of date of delivery to the public*
34 *entity of the notice of intent to withdraw, the owner shall*
35 *give written notice to the public entity and the affected*
36 *tenant or lessee of the owner's election to extend the date*
37 *of withdrawal and the new date of withdrawal under*
38 *paragraph (3).*

39 ~~(b)~~



1 (c) The statute, ordinance, or regulation of the public
2 entity adopted pursuant to subdivision (a) may also
3 require the owner to notify any tenant or lessee displaced
4 pursuant to this chapter ~~that~~ of the following:

5 (1) *That* the public entity has been notified pursuant
6 to subdivision (a), ~~that~~.

7 (2) *That* the notice to the public entity specified the
8 name and the amount of rent paid by the tenant or lessee
9 as an occupant of the accommodations, ~~and the~~.

10 (3) *The* amount of rent the owner specified in the
11 notice to the public entity, ~~together with a notice~~.

12 (4) *Notice* to the tenant or lessee of his or her rights
13 under paragraph (4) of subdivision (a) of Section 7060.2.

14 ~~(e)~~

15 (5) *Notice to the tenant or lessee of the following:*

16 (A) *If the tenant or lessee is at least 62 years of age or*
17 *disabled, and has lived in his or her accommodations for*
18 *at least one year prior to the date of delivery to the public*
19 *entity of the notice of intent to withdraw, then tenancy*
20 *shall be extended to one year after date of delivery to the*
21 *public entity of the notice of intent to withdraw, provided*
22 *that the tenant or lessee gives written notice of his or her*
23 *entitlement to the owner within 60 days of date of*
24 *delivery to the public entity of the notice of intent to*
25 *withdraw.*

26 (B) *The extended tenancy shall be continued on the*
27 *same terms and conditions as existed on date of delivery*
28 *to the public entity of the notice of intent to withdraw,*
29 *subject to any adjustments otherwise available under the*
30 *system of control.*

31 (C) *No party shall be relieved of the duty to perform*
32 *any obligation under the lease or rental agreement*
33 *during the extended tenancy.*

34 (d) The statute, ordinance, or regulation of the public
35 entity adopted pursuant to subdivision (a) may also
36 require the owner to notify the public entity in writing of
37 an intention to again offer the accommodations for rent
38 or lease.

39 SEC. 4. Section 7060.7 of the Government Code is
40 amended to read:



1 7060.7. It is the intent of the Legislature in enacting
2 this chapter to supersede any holding or portion of any
3 holding in *Nash v. City of Santa Monica*, 37 Cal.3d 97 to
4 the extent that the holding, or portion of the holding,
5 conflicts with this chapter, so as to permit landlords to go
6 out of business. However, this act is not otherwise
7 intended to do any of the following:

8 ~~(1)~~

9 (a) Interfere with local governmental authority over
10 land use, including regulation of the conversion of
11 existing housing to condominiums or other subdivided
12 interests or to other nonresidential use following its
13 withdrawal from rent or lease under this chapter.

14 ~~(2)~~

15 (b) Preempt local or municipal environmental or land
16 use regulations, procedures, or controls that govern the
17 demolition and redevelopment of residential property.

18 ~~(3)~~

19 (c) Override procedural protections designed to
20 prevent abuse of the right to evict tenants.

21 ~~(4)~~

22 (d) Permit an owner to withdraw from rent or lease
23 less than all of the accommodations, as defined by
24 paragraph (1) or (2) of subdivision (b) of Section 7060.

25 ~~(5)~~

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

32 ~~(6)~~

33 (f) Alter in any way either Section 65863.7 relating to
34 the withdrawal of accommodations which comprise a
35 mobilehome park from rent or lease or subdivision (f) of
36 Section 798.56 of the Civil Code relating to a change of use
37 of a mobilehome park.

38 ~~SEC. 2.—~~

39 SEC. 5. Section 65009 of the Government Code is
40 amended to read:



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

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

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

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

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

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

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



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

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

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

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

26 (C) To determine the reasonableness, legality, or
27 validity of any decision to adopt or amend any regulation
28 attached to a specific plan.

29 (D) To attack, review, set aside, void, or annul the
30 decision of a legislative body to adopt, amend, or modify
31 a development agreement. An action or proceeding to
32 attack, review, set aside, void, or annul the decisions of a
33 legislative body to adopt, amend, or modify a
34 development agreement shall only extend to the specific
35 portion of the development agreement that is the subject
36 of the adoption, amendment, or modification. This
37 paragraph applies to development agreements,
38 amendments, and modifications adopted on or after
39 January 1, 1996.



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

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

9 (2) In the case of an action or proceeding challenging
10 the adoption or revision of a housing element pursuant to
11 this subdivision, the action or proceeding may, in
12 addition, be maintained if it is commenced and service is
13 made on the legislative body within 60 days following the
14 date that the Department of Housing and Community
15 Development reports its findings pursuant to subdivision
16 (h) of Section 65585.

17 (d) An action or proceeding shall be commenced and
18 the legislative body served within one year after the
19 accrual of the cause of action as provided in this
20 subdivision, if the action or proceeding meets both of the
21 following requirements:

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

33 (2) It is brought with respect to actions taken pursuant
34 to Article 10.6 (commencing with Section 65580) of
35 Chapter 3 of this division, pursuant to Section 65589.5,
36 65863.6, 65915, or 66474.2 or pursuant to Chapter 4.2
37 (commencing with Section 65913).

38 A cause of action brought pursuant to this subdivision
39 shall not be maintained until 60 days have expired
40 following notice to the city or county clerk by the party



1 bringing the cause of action, or his or her representative,
2 specifying the deficiencies of the general plan, specific
3 plan, or zoning ordinance. A cause of action brought
4 pursuant to this subdivision shall accrue 60 days after
5 notice is filed or the legislative body takes a final action
6 in response to the notice, whichever occurs first. A notice
7 or cause of action brought by one party pursuant to this
8 subdivision shall not bar filing of a notice and initiation of
9 a cause of action by any other party.

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

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

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

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

23 ~~SEC. 3.—~~

24 *SEC. 6.* Section 65589.5 of the Government Code is
25 amended to read:

26 65589.5. (a) The Legislature finds all of the following:

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

30 (2) California housing has become the most expensive
31 in the nation. The excessive cost of the state's housing
32 supply is partially caused by activities and policies of
33 many local governments which limit the approval of
34 affordable housing, increase the cost of land for affordable
35 housing, and require that high fees and exactions be paid
36 by producers of potentially affordable housing.

37 (3) Among the consequences of those actions are
38 discrimination against low-income and minority
39 households, lack of housing to support employment
40 growth, imbalance in jobs and housing, reduced mobility,



1 urban sprawl, excessive commuting, and air quality
2 deterioration.

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

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

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

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

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



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

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

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

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

32 (6) The development project is inconsistent with both
33 the jurisdiction’s zoning ordinance and general plan land
34 use designation as specified in any element of the general
35 plan as it existed on the date the application was deemed
36 complete, and the jurisdiction has adopted a housing
37 element pursuant to this article.

38 (e) Nothing in this section shall be construed to relieve
39 the local agency from complying with the Congestion
40 Management Program required by Chapter 2.6



1 (commencing with Section 65088) of Division 1 of Title
2 7 or the California Coastal Act (Division 20 (commencing
3 with Section 30000) of the Public Resources Code).
4 Neither shall anything in this section be construed to
5 relieve the local agency from making one or more of the
6 findings required pursuant to Section 21081 of the Public
7 Resources Code or otherwise complying with the
8 California Environmental Quality Act (Division 13
9 (commencing with Section 21000) of the Public
10 Resources Code).

11 (f) Nothing in this section shall be construed to
12 prohibit a local agency from requiring the development
13 project to comply with written development standards,
14 conditions, and policies appropriate to, and consistent
15 with, meeting the quantified objectives relative to the
16 development of housing, as required in the housing
17 element pursuant to subdivision (b) of Section 65583.
18 Nothing in this section shall be construed to prohibit a
19 local agency from imposing fees and other exactions
20 otherwise authorized by law which are essential to
21 provide necessary public services and facilities to the
22 development project.

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

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

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

32 (2) “Affordable to very low, low-, or moderate-income
33 households” means that either (A) at least 20 percent of
34 the total units shall be sold or rented to lower income
35 households, as defined in Section 50079.5 of the Health
36 and Safety Code, or (B) 100 percent of the units shall be
37 sold or rented to moderate-income households as defined
38 in Section 50093 of the Health and Safety Code, or
39 middle-income households, as defined in Section 65008 of
40 this code. Housing units targeted for lower income



1 households shall be made available at a monthly housing
2 cost that does not exceed 30 percent of 60 percent of area
3 median income with adjustments for household size
4 made in accordance with the adjustment factors on which
5 the lower income eligibility limits are based. Housing
6 units targeted for persons and families of moderate
7 income shall be made available at a monthly housing cost
8 that does not exceed 30 percent of 100 percent of area
9 median income with adjustments for household size
10 made in accordance with the adjustment factors on which
11 the moderate income eligibility limits are based.

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

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

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

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

33 (B) Fails to comply with the time periods specified in
34 subparagraph (B) of paragraph (1) of subdivision (a) of
35 Section 65950. An extension of time pursuant to Article 5
36 (commencing with Section 65950) shall be deemed to be
37 an extension of time pursuant to this paragraph.

38 (i) If any city, county, or city and county denies
39 approval or imposes restrictions, including a reduction of
40 allowable densities or the percentage of a lot which may



1 be occupied by a building or structure under the
2 applicable planning and zoning in force at the time the
3 application is deemed complete pursuant to Section
4 65943, which have a substantial adverse effect on the
5 viability or affordability of a housing development
6 affordable to very low, low-, or moderate-income
7 households, and the denial of the development or the
8 imposition of restrictions on the development is the
9 subject of a court action which challenges the denial, then
10 the burden of proof shall be on the local legislative body
11 to show that its decision is consistent with the findings as
12 described in subdivision (d) and that the findings are
13 supported by substantial evidence in the record.

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

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

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



1 (k) If in any action brought to enforce the provisions
2 of this section, a court finds that the local agency
3 disapproved a project or conditioned its approval in a
4 manner rendering it infeasible for the development of
5 very low, low-, or moderate-income households without
6 properly making the findings required by this section or
7 without making sufficient findings supported by
8 substantial evidence, the court shall issue an order or
9 judgment compelling compliance with this section within
10 60 days, including, but not limited to, an order that the
11 local agency take action on the development project. The
12 court shall retain jurisdiction to ensure that its order or
13 judgment is carried out. If the court determines that its
14 order or judgment has not been carried out within 60
15 days, the court may issue further orders as provided by
16 law to ensure that the purposes and policies of this section
17 are fulfilled.

18 (l) In any action, the record of the proceedings before
19 the local agency shall be filed as expeditiously as possible
20 and, notwithstanding Section 1094.6 of the Code of Civil
21 Procedure, all or part of the record may be filed (1) by
22 the petitioner with the petition or petitioner's points and
23 authorities, (2) by the respondent with respondent's
24 points and authorities, (3) after payment of costs by the
25 petitioner, or (4) as otherwise directed by the court. If the
26 expense of preparing the record has been borne by the
27 petitioner and the petitioner is the prevailing party, the
28 expense shall be taxable as costs.

29 ~~SEC. 4.—~~

30 *SEC. 7.* Section 65915 of the Government Code is
31 amended to read:

32 65915. (a) When a developer of housing proposes a
33 housing development within the jurisdiction of the local
34 government, the city, county, or city and county shall
35 provide the developer incentives for the production of
36 lower income housing units within the development if
37 the developer meets the requirements set forth in
38 subdivisions (b) and (c). The city, county, or city and
39 county shall adopt an ordinance which shall specify the
40 method of providing developer incentives.



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

21 (c) A developer shall agree to and the city, county, or
22 city and county shall ensure continued affordability of all
23 lower income density bonus units for 30 years or a longer
24 period of time if required by the construction or
25 mortgage financing assistance program, mortgage
26 insurance program, or rental subsidy program. Those
27 units targeted for lower income households, as defined in
28 Section 50079.5 of the Health and Safety Code, shall be
29 affordable at a rent that does not exceed 30 percent of 60
30 percent of area median income. Those units targeted for
31 very low income households, as defined in Section 50105
32 of the Health and Safety Code, shall be affordable at a rent
33 that does not exceed 30 percent of 50 percent of area
34 median income. If a city, county, or city and county does
35 not grant at least one additional concession or incentive
36 pursuant to paragraph (1) of subdivision (b), the
37 developer shall agree to and the city, county, or city and
38 county shall ensure continued affordability for 10 years of
39 all lower income housing units receiving a density bonus.



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

20 (e) The housing developer shall show that the waiver
21 or modification is necessary to make the housing units
22 economically feasible.

23 (f) For the purposes of this chapter, “density bonus”
24 means a density increase of at least 25 percent, unless a
25 lesser percentage is elected by the developer, over the
26 otherwise maximum allowable residential density under
27 the applicable zoning ordinance and land use element of
28 the general plan as of the date of application by the
29 developer to the city, county, or city and county. The
30 granting of a density bonus shall not be interpreted, in
31 and of itself, to require a general plan amendment,
32 zoning change, or other discretionary approval. The
33 density bonus shall not be included when determining
34 the number of housing units which is equal to 10 or 20
35 percent of the total. The density bonus shall apply to
36 housing developments consisting of five or more dwelling
37 units.

38 (g) “Housing development,” as used in this section,
39 means one or more groups of projects for residential units
40 constructed in the planned development of a city, county,



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

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

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

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

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

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

34 (i) If a developer agrees to construct both 20 percent
35 of the total units for lower income households and 10
36 percent of the total units for very low income households,
37 the developer is entitled to only one density bonus and at
38 least one additional concession or incentive identified in
39 Section 65913.4 under this section although the city, city



1 and county, or county may, at its discretion, grant more
2 than one density bonus.

3 ~~SEC. 5.—~~

4 *SEC. 8.* Section 65950 of the Government Code is
5 amended to read:

6 65950. (a) Any public agency that is the lead agency
7 for a development project shall approve or disapprove
8 the project within whichever of the following periods is
9 applicable:

10 (1) One hundred eighty days from the date of
11 certification by the lead agency of the environmental
12 impact report if an environmental impact report is
13 prepared pursuant to Section 21100 or 21151 of the Public
14 Resources Code for the development project.

15 (2) Ninety days from the date of certification by the
16 lead agency of the environmental impact report if an
17 environmental impact report is prepared pursuant to
18 Section 21100 or 21151 of the Public Resources Code for
19 the development project and all of the following
20 conditions are met:

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

24 (B) Prior to the application being deemed complete
25 for the development project pursuant to Article 3
26 (commencing with Section 65940), the lead agency
27 received written notice from the project applicant that
28 an application has been made or will be made for an
29 allocation or commitment of financing, tax credits, bond
30 authority, or other financial assistance from a public
31 agency or federal agency, and the notice specifies the
32 financial assistance that has been applied for or will be
33 applied for and the deadline for application for that
34 assistance, the requirement that one of the approvals of
35 the development project by the lead agency is a
36 prerequisite to the application for or approval of the
37 application for financial assistance, and that the financial
38 assistance is necessary for the project to be affordable as
39 required pursuant to subparagraph (A).



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

4 (3) Sixty days from the date of adoption by the lead
5 agency of the negative declaration if a negative
6 declaration is completed and adopted for the
7 development project.

8 (4) Sixty days from the determination by the lead
9 agency that the project is exempt from the California
10 Environmental Quality Act (Division 13 (commencing
11 with Section 21000) of the Public Resources Code) if the
12 project is exempt from the California Environmental
13 Quality Act.

14 (b) Nothing in this section precludes a project
15 applicant and a public agency from mutually agreeing in
16 writing to an extension of any time limit provided by this
17 section pursuant to Section 65957.

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

22 ~~SEC. 6.—~~

23 *SEC. 9.* The Legislature finds and declares both of the
24 following:

25 (a) The amendments made by this act to subdivision
26 (c) of Section 65009 of the Government Code, excluding
27 the portion of the amendment related to middle-income
28 households, are declaratory of existing law.

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

31 ~~SEC. 7.—~~

32 *SEC. 10.* Sections 1 to 5, inclusive, of this act shall
33 apply only to accommodations where the date of delivery
34 to the public entity of the notice of intent to withdraw
35 pursuant to subdivision (a) of Section 7060.4 of the
36 Government Code is on or after January 1, 2000.

37 *SEC. 11.* Notwithstanding Section 17610 of the
38 Government Code, if the Commission on State Mandates
39 determines that this act contains costs mandated by the
40 state, reimbursement to local agencies and school



1 districts for those costs shall be made pursuant to Part 7
2 (commencing with Section 17500) of Division 4 of Title
3 2 of the Government Code. If the statewide cost of the
4 claim for reimbursement does not exceed one million
5 dollars (\$1,000,000), reimbursement shall be made from
6 the State Mandates Claims Fund.

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