

AMENDED IN ASSEMBLY MARCH 27, 2017

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1350**

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**Introduced by Assembly Member Friedman**

February 17, 2017

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An act to ~~amend Section 65584.03 of the Government Code, relating to land use~~; *add Section 65584.08 to the Government Code, relating to land use, and making an appropriation therefor.*

LEGISLATIVE COUNSEL’S DIGEST

AB 1350, as amended, Friedman. Land use: housing ~~element update~~. *element: regional housing need: noncompliant cities and counties: penalty.*

The Planning and Zoning Law requires a city or county to prepare and adopt a general plan, containing various elements, including a housing element, and requires the housing element to contain an assessment of the city’s or county’s housing needs and an inventory of resources and constraints relevant to the meeting of those needs. That law requires that assessment to include the city’s or county’s share of the regional housing need, as determined by the Department of Housing and Community Development in consultation with each council of governments, and requires a council of governments to develop a proposed methodology for distributing the existing and projected regional housing need, as specified.

~~Existing law requires each local government to review its housing element as frequently as appropriate to evaluate specified criteria and, in some instances, according to a prescribed schedule. Existing law authorizes, at least 28 months prior to the scheduled housing element update, at least 2 or more cities and a county, or counties, to form a~~

~~subregional entity to allocate the subregion's existing and projected housing need among its members. Existing law, if the council of governments does not receive a notification of this formation at least 28 months prior to the update, requires the council of governments to implement specified requirements regarding the regional housing need process. Existing law requires the council of governments to determine the share of regional housing need assigned to each delegate subregion at least 25 months prior to the scheduled revision.~~

~~This bill would instead authorize the formation of the subregional entity and, in the absence of notice, require the council of governments to implement the regional housing need process requirements, at least 24 months prior to the scheduled housing element update. The bill would instead require the council of governments to determine the share of regional housing need assigned to each delegate subregion at least 20 months prior to the scheduled revision.~~

~~By changing the duties of the council of governments as described above, this bill would impose a state-mandated local program.~~

~~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.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

*This bill would require a noncompliant city or county, as defined, to pay a penalty, as provided, to the Department of Housing and Community Development. The bill would define a "noncompliant city or county" to mean a city or county that has not met at least  $\frac{1}{3}$  of its share of the regional housing need for low-income and very low income housing during its current housing element planning period on or before January 1, 2021. The bill would require the penalty to be deposited in the Regional Housing Needs Assessment Compliance Fund, which the bill would create, and would continuously appropriate money in the fund to the department for the distribution of grants, as specified, to compliant cities and counties, as defined. The bill would require compliant cities and counties to use the grant for specified purposes. The bill, on or after January 1, 2021, would prohibit a noncompliant city or county from collecting established fees, or imposing new fees, as a condition of approval of a development project, as specified, and from requiring the payment of building permit fees.*

Vote: ~~majority~~<sup>2/3</sup>. Appropriation: ~~no~~<sup>yes</sup>. Fiscal committee: yes. State-mandated local program: ~~yes~~<sup>no</sup>.

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

1     *SECTION 1. Section 65584.08 is added to the Government*  
2     *Code, to read:*

3     65584.08. (a) (1) *A noncompliant city or county shall pay a*  
4     *penalty to the department. The penalty shall be an amount equal*  
5     *to either of the following amounts, whichever is less:*

6     (A) *One-third of the annual property tax increment allocated*  
7     *to the city or county for the 2018–19 fiscal year to the 2020–21*  
8     *fiscal year, inclusive.*

9     (B) *One-third of the annual sales price for a single-family home*  
10    *in the noncompliant city or county multiplied by the number of*  
11    *low-income and very low income units that would have met at least*  
12    *one-third of the noncompliant city's or county's share of the*  
13    *regional housing need during its current housing element planning*  
14    *period.*

15    (2) (A) *The penalty imposed pursuant to paragraph (1) shall*  
16    *be deposited in the Regional Housing Needs Assessment*  
17    *Compliance Fund, which is hereby created in the General Fund.*

18    (B) *Notwithstanding Section 13340, all money deposited in the*  
19    *Regional Housing Needs Assessment Compliance Fund is hereby*  
20    *continuously appropriated to the department without regard to*  
21    *fiscal years for distribution of grants in accordance with paragraph*  
22    *(3) to compliant cities and counties.*

23    (3) (A) *The department shall do all of the following:*

24    (i) *Be responsible for overseeing the grant program.*

25    (ii) *Award grants to compliant cities and counties with priority*  
26    *given to projects within compliant cities and counties that are*  
27    *closest in proximity to cities and counties that have paid the penalty*  
28    *required pursuant to paragraph (1).*

29    (iii) *Publish deadlines and written procedures for compliant*  
30    *cities and counties to apply for the grants.*

31    (B) *Grants awarded pursuant to this paragraph shall be used*  
32    *by compliant cities and counties for one or more of the following*  
33    *purposes:*

34    (i) *To construct low-income and very low income housing.*

35    (ii) *To convert market-rate housing to low-income and very low*  
36    *income housing.*

37    (iii) *Very low, low-, and moderate-income first-time home buyer*  
38    *programs.*

1     (iv) *Workforce housing.*

2     (v) *To subsidize the creation of low-income and very low income*  
3 *housing units within other market rate housing projects.*

4     (4) *Upon payment of the penalty required pursuant to paragraph*  
5 *(1), a noncompliant city or county shall be deemed to be a*  
6 *compliant city or county.*

7     (5) *A noncompliant city or county that has not received an*  
8 *allocation of annual property tax increment for the 2018–19 fiscal*  
9 *year to the 2020–21 fiscal year, inclusive, shall not be required*  
10 *to pay the penalty required pursuant to paragraph (1).*

11     (b) (1) *On or after January 1, 2021, a noncompliant city or*  
12 *county shall not do either of the following for low-income and very*  
13 *low income housing projects:*

14     (A) *Collect established fees, or impose new fees, as a condition*  
15 *of approval of a development project that is greater than 20 percent*  
16 *of the fee imposed as a condition of approval for market rate*  
17 *projects.*

18     (B) *Require the payment of building permit fees.*

19     (2) *This subdivision shall cease to apply to a noncompliant city*  
20 *or county when either of the following occur:*

21     (A) *A noncompliant city or county pays the penalty required*  
22 *pursuant to subdivision (a).*

23     (B) *A noncompliant city or county described in paragraph (5)*  
24 *of subdivision (a) becomes a compliant city or county.*

25     (c) *For purposes of this section, all of the following definitions*  
26 *shall apply:*

27     (1) *“Annual tax increment” has the same meaning as that term*  
28 *is described in Section 96.5 of the Revenue and Taxation Code.*

29     (2) *“Compliant city or county” means a city or county that has*  
30 *met at least one-third of its share of the regional housing need for*  
31 *low-income and very low income housing during its current*  
32 *housing element planning period on or before January 1, 2021.*

33     (3) *“Department” means the Department of Housing and*  
34 *Community Development.*

35     (4) *“Noncompliant city or county” means a city or county that*  
36 *has not met at least one-third of its share of the regional housing*  
37 *need for low-income and very low income housing during its*  
38 *current housing element planning period on or before January 1,*  
39 *2021.*

1     ~~SECTION 1. Section 65584.03 of the Government Code is~~  
2     ~~amended to read:~~

3     ~~65584.03. (a) At least 24 months prior to the scheduled housing~~  
4     ~~element update required by Section 65588, at least two or more~~  
5     ~~cities and a county, or counties, may form a subregional entity for~~  
6     ~~the purpose of allocation of the subregion's existing and projected~~  
7     ~~need for housing among its members in accordance with the~~  
8     ~~allocation methodology established pursuant to Section 65584.04.~~  
9     ~~The purpose of establishing a subregion shall be to recognize the~~  
10    ~~community of interest and mutual challenges and opportunities~~  
11    ~~for providing housing within a subregion. A subregion formed~~  
12    ~~pursuant to this section may include a single county and each of~~  
13    ~~the cities in that county or any other combination of geographically~~  
14    ~~contiguous local governments and shall be approved by the~~  
15    ~~adoption of a resolution by each of the local governments in the~~  
16    ~~subregion as well as by the council of governments. All decisions~~  
17    ~~of the subregion shall be approved by vote as provided for in rules~~  
18    ~~adopted by the local governments comprising the subregion or~~  
19    ~~shall be approved by vote of the county or counties, if any, and~~  
20    ~~the majority of the cities with the majority of population within a~~  
21    ~~county or counties.~~

22    ~~(b) Upon formation of the subregional entity, the entity shall~~  
23    ~~notify the council of governments of this formation. If the council~~  
24    ~~of governments has not received notification from an eligible~~  
25    ~~subregional entity at least 24 months prior to the scheduled housing~~  
26    ~~element update required by Section 65588, the council of~~  
27    ~~governments shall implement the provisions of Sections 65584~~  
28    ~~and 65584.04. The delegate subregion and the council of~~  
29    ~~governments shall enter into an agreement that sets forth the~~  
30    ~~process, timing, and other terms and conditions of the delegation~~  
31    ~~of responsibility by the council of governments to the subregion.~~

32    ~~(c) At least 20 months prior to the scheduled revision, the~~  
33    ~~council of governments shall determine the share of regional~~  
34    ~~housing need assigned to each delegate subregion. The share or~~  
35    ~~shares allocated to the delegate subregion or subregions by a~~  
36    ~~council of governments shall be in a proportion consistent with~~  
37    ~~the distribution of households assumed for the comparable time~~  
38    ~~period of the applicable regional transportation plan. Prior to~~  
39    ~~allocating the regional housing needs to any delegate subregion~~  
40    ~~or subregions, the council of governments shall hold at least one~~

1 public hearing, and may consider requests for revision of the  
2 proposed allocation to a subregion. If a proposed revision is  
3 rejected, the council of governments shall respond with a written  
4 explanation of why the proposed revised share has not been  
5 accepted.

6 (d) Each delegate subregion shall fully allocate its share of the  
7 regional housing need to local governments within its subregion.  
8 If a delegate subregion fails to complete the regional housing need  
9 allocation process among its member jurisdictions in a manner  
10 consistent with this article and with the delegation agreement  
11 between the subregion and the council of governments, the  
12 allocations to member jurisdictions shall be made by the council  
13 of governments.

14 SEC. 2. No reimbursement is required by this act pursuant to  
15 Section 6 of Article XIII B of the California Constitution because  
16 a local agency or school district has the authority to levy service  
17 charges, fees, or assessments sufficient to pay for the program or  
18 level of service mandated by this act, within the meaning of Section  
19 17556 of the Government Code.