

AMENDED IN SENATE MARCH 29, 2017

AMENDED IN SENATE MARCH 14, 2017

**SENATE BILL**

**No. 167**

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**Introduced by Senator Skinner**

(Principal coauthor: Assembly Member Bocanegra)

January 23, 2017

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An act to amend Section 65589.5 of the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

SB 167, as amended, Skinner. Housing Accountability Act.

(1) The Housing Accountability Act, among other things, prohibits a local agency from disapproving, or conditioning approval in a manner than renders infeasible, a housing development project for very low, low-, or moderate-income households or an emergency shelter unless the local agency makes specified written findings based upon substantial evidence in the record.

This bill would ~~extend the provisions of the Housing Accountability Act to apply to housing development projects for above moderate-income households. The bill would also require the findings of the local agency to instead be based on clear and convincing evidence in the record.~~

(2) The act authorizes a local agency to disapprove or condition approval of a housing development or emergency shelter, as described above, if, among other reasons, the housing development project or emergency shelter is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation as specified in any element of the general plan as it existed on the date the application was

deemed complete, and the jurisdiction has adopted a revised housing element in accordance with specified law.

This bill would specify that a change to the zoning ordinance or general plan land use designation subsequent to the date the application was deemed complete does not constitute a valid basis to disapprove or condition approval of the housing development project or emergency shelter.

~~(3) The act defines various terms for purposes of its provisions. The act specifies that “feasible” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors. The act also specifies that disapproval of a housing development project includes any instance in which the local agency either votes to disapprove the project or shelter or fails to act within certain time periods specified in the Permit Streamlining Act.~~

~~This bill would specify that a housing development project is rendered “infeasible” if, among other things, the applicant’s ability to earn an economic rate of return comparable to that of other projects that are similar to the proposed housing development project is diminished. The bill would also provide that a disapproval of a housing development project or emergency shelter includes any instance in which the local agency approves another project that is proposed for the same land as the housing development project and the other project contains fewer residential units for very low, low-, moderate-, or above moderate-income households.~~

~~This bill would also specify that “imposes conditions” includes any instance in which a local agency requires conditions, either with or without legislative action, or in which an applicant proposes conditions in response to pressure or opposition from a local agency. The bill would specify that “substantial adverse effect on the viability or affordability of a housing development project” includes the diminished ability of an applicant to earn an economic rate of return comparable to that of other projects that are similar to the proposed housing development project.~~

~~(4)~~

~~(3) The act authorizes the project applicant, a person who would be eligible to apply for residency in the development or emergency shelter, or a housing organization, as defined, to bring an action to enforce its provisions. The act limits actions by a housing organization to challenges to the disapproval of a housing development.~~

~~This bill would additionally authorize a housing organization to bring an action challenging the reduction of allowable densities or percentage of lot that may be occupied by a building or structure under the applicable general plan and zoning ordinances in effect on the date the application was deemed complete, or the imposition of conditions. The bill would entitle a housing organization to reasonable attorney's fees and costs if it is the prevailing party in an action to enforce the act.~~

~~(5)~~

~~(4) If a court finds that the local agency disapproved, or conditioned approval in a manner that renders infeasible the project or emergency shelter without making the required findings or without making sufficient findings, the act requires the court to issue an order or judgment compelling compliance with its provisions within 60 days, including an order that the local agency take action on the development project or emergency shelter.~~

~~This bill would recast this requirement to specify that the court may order the local agency to approve the housing development project or emergency shelter.~~

~~(6)~~

~~(5) The act authorizes the court to impose fines if it finds that a local agency acted in bad faith when it disapproved or conditionally approved the housing development or emergency shelter and failed to carry out the court's order or judgment within 60 days of the court's judgment. The act requires that the fines be deposited into a housing trust fund and committed for the sole purpose of financing newly constructed housing units affordable to extremely low, very low, or low-income households.~~

~~This bill would instead require the court to impose fines, as described above, in every instance in which the court determines that the local agency disapproved, or conditioned approval in a manner than renders infeasible, the project or emergency shelter without making the required findings or without making sufficient findings. The bill would require that the fine be in a minimum amount of \$100,000 per housing unit in the housing development project on the date the application was deemed complete. In determining the amount of fine to impose, the bill would require the court to consider the local agency's progress in attaining its target allocation of the regional housing need and any prior violations of the act. If the local agency has acted in bad faith and failed to carry out the court's order, as described above, the bill would authorize the court to award punitive damages.~~

This bill would also require the local agency to publish an analysis of the requirements of the act as part of its review of each application for a housing development project and specify that failure to do so constitutes “bad faith” for purposes of a punitive damages award.

~~(7) The act requires that an action to enforce its provisions be brought as a petition for a writ of administrative mandate in accordance with specified law.~~

This bill would require that a petition to enforce the act section be filed and served no later than 90 days from the later of (A) the withdrawal of the application by the applicant or the effective date of a decision of the local agency imposing conditions on, disapproving, or taking any other final action on a housing development project or (B) the expiration of certain time periods specified in the Permit Streamlining Act. ~~The bill would require the trial court to exercise its independent judgment when deciding the case.~~

~~(8)~~

(6) This bill would make various technical and conforming changes to the Housing Accountability Act.

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

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

1 SECTION 1. Section 65589.5 of the Government Code is  
 2 amended to read:  
 3 65589.5. (a) The Legislature finds and declares all of the  
 4 following:  
 5 (1) The lack of housing, including emergency shelters, is a  
 6 critical problem that threatens the economic, environmental, and  
 7 social quality of life in California.  
 8 (2) California housing has become the most expensive in the  
 9 nation. The excessive cost of the state’s housing supply is partially  
 10 caused by activities and policies of many local governments that  
 11 limit the approval of housing, increase the cost of land for housing,  
 12 and require that high fees and exactions be paid by producers of  
 13 housing.  
 14 (3) Among the consequences of those actions are discrimination  
 15 against low-income and minority households, lack of housing to  
 16 support employment growth, imbalance in jobs and housing,

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

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

8 (b) It is the policy of the state that a local government not reject  
9 or make infeasible housing development projects, including  
10 emergency shelters, that contribute to meeting the need determined  
11 pursuant to this article without a thorough analysis of the economic,  
12 social, and environmental effects of the action and without  
13 complying with subdivision (d).

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

22 (d) A local agency shall not disapprove a housing development  
23 project, including farmworker housing as defined in subdivision  
24 (h) of Section 50199.7 of the Health and Safety Code, for very  
25 low, low-, ~~moderate-~~, or ~~above moderate-~~ income households, or  
26 an emergency shelter, or condition approval in a manner that  
27 renders the housing development project infeasible for development  
28 for the use of very low, low-, ~~moderate-~~, or ~~above moderate-~~ income  
29 households, or an emergency shelter, including through the use of  
30 design review standards, unless it makes written findings, based  
31 upon clear and convincing evidence in the record, as to one of the  
32 following:

33 (1) The jurisdiction has adopted a housing element pursuant to  
34 this article that has been revised in accordance with Section 65588,  
35 is in substantial compliance with this article, and the jurisdiction  
36 has met or exceeded its share of the regional housing need  
37 allocation pursuant to Section 65584 for the planning period for  
38 the income category proposed for the housing development project,  
39 provided that any disapproval or conditional approval shall not be  
40 based on any of the reasons prohibited by Section 65008. If the

1 housing development project includes a mix of income categories,  
2 and the jurisdiction has not met or exceeded its share of the regional  
3 housing need for one or more of those categories, then this  
4 paragraph shall not be used to disapprove or conditionally approve  
5 the housing development project. The share of the regional housing  
6 need met by the jurisdiction shall be calculated consistently with  
7 the forms and definitions that may be adopted by the Department  
8 of Housing and Community Development pursuant to Section  
9 65400. In the case of an emergency shelter, the jurisdiction shall  
10 have met or exceeded the need for emergency shelter, as identified  
11 pursuant to paragraph (7) of subdivision (a) of Section 65583. Any  
12 disapproval or conditional approval pursuant to this paragraph  
13 shall be in accordance with applicable law, rule, or standards.

14 (2) The housing development project or emergency shelter as  
15 proposed would have a specific, adverse impact upon the public  
16 health or safety, and there is no feasible method to satisfactorily  
17 mitigate or avoid the specific adverse impact without rendering  
18 the development unaffordable to ~~low-, moderate-, and above~~  
19 ~~moderate-income~~ *low- and moderate-income* households or  
20 rendering the development of the emergency shelter financially  
21 infeasible. As used in this paragraph, a “specific, adverse impact”  
22 means a significant, quantifiable, direct, and unavoidable impact,  
23 based on objective, identified written public health or safety  
24 standards, policies, or conditions as they existed on the date the  
25 application was deemed complete. Inconsistency with the zoning  
26 ordinance or general plan land use designation shall not constitute  
27 a specific, adverse impact upon the public health or safety.

28 (3) The denial of the housing development project or imposition  
29 of conditions, including, for purposes of this section, restrictions,  
30 is required in order to comply with specific state or federal law,  
31 and there is no feasible method to comply without rendering the  
32 development unaffordable to ~~low-, moderate-, and above~~  
33 ~~moderate-income~~ *low- and moderate-income* households or  
34 rendering the development of the emergency shelter financially  
35 infeasible.

36 (4) The housing development project or emergency shelter is  
37 proposed on land zoned for agriculture or resource preservation  
38 that is surrounded on at least two sides by land being used for  
39 agricultural or resource preservation purposes, or which does not  
40 have adequate water or wastewater facilities to serve the project.

1 (5) The housing development project or emergency shelter is  
2 inconsistent with both the jurisdiction’s zoning ordinance and  
3 general plan land use designation as specified in any element of  
4 the general plan as it existed on the date the application was  
5 deemed complete, and the jurisdiction has adopted a revised  
6 housing element in accordance with Section 65588 that is in  
7 substantial compliance with this article. For purposes of this  
8 section, a change to the zoning ordinance or general plan land use  
9 designation subsequent to the date the application was deemed  
10 complete shall not constitute a valid basis to disapprove or  
11 condition approval of the housing development project or  
12 emergency shelter.

13 (A) This paragraph cannot be utilized to disapprove or  
14 conditionally approve a housing development project if the housing  
15 development project is proposed on a site that is identified as  
16 suitable or available for very low, low-, ~~moderate-~~, or above *or*  
17 moderate-income households in the jurisdiction’s housing element,  
18 and consistent with the density specified in the housing element,  
19 even though it is inconsistent with both the jurisdiction’s zoning  
20 ordinance and general plan land use designation.

21 (B) If the local agency has failed to identify in the inventory of  
22 land in its housing element sites that can be developed for housing  
23 within the planning period and are sufficient to provide for the  
24 jurisdiction’s share of the regional housing need for all income  
25 levels pursuant to Section 65584, then this paragraph shall not be  
26 utilized to disapprove or conditionally approve a housing  
27 development project proposed for a site designated in any element  
28 of the general plan for residential uses or designated in any element  
29 of the general plan for commercial uses if residential uses are  
30 permitted or conditionally permitted within commercial  
31 designations. In any action in court, the burden of proof shall be  
32 on the local agency to show that its housing element does identify  
33 adequate sites with appropriate zoning and development standards  
34 and with services and facilities to accommodate the local agency’s  
35 share of the regional housing need for the very low, low-,  
36 ~~moderate-, and above~~ *and* moderate-income categories.

37 (C) If the local agency has failed to identify a zone or zones  
38 where emergency shelters are allowed as a permitted use without  
39 a conditional use or other discretionary permit, has failed to  
40 demonstrate that the identified zone or zones include sufficient

1 capacity to accommodate the need for emergency shelter identified  
2 in paragraph (7) of subdivision (a) of Section 65583, or has failed  
3 to demonstrate that the identified zone or zones can accommodate  
4 at least one emergency shelter, as required by paragraph (4) of  
5 subdivision (a) of Section 65583, then this paragraph shall not be  
6 utilized to disapprove or conditionally approve an emergency  
7 shelter proposed for a site designated in any element of the general  
8 plan for industrial, commercial, or multifamily residential uses. In  
9 any action in court, the burden of proof shall be on the local agency  
10 to show that its housing element does satisfy the requirements of  
11 paragraph (4) of subdivision (a) of Section 65583.

12 (e) Nothing in this section shall be construed to relieve the local  
13 agency from complying with the congestion management program  
14 required by Chapter 2.6 (commencing with Section 65088) of  
15 Division 1 of Title 7 or the California Coastal Act of 1976  
16 (Division 20 (commencing with Section 30000) of the Public  
17 Resources Code). Neither shall anything in this section be  
18 construed to relieve the local agency from making one or more of  
19 the findings required pursuant to Section 21081 of the Public  
20 Resources Code or otherwise complying with the California  
21 Environmental Quality Act (Division 13 (commencing with Section  
22 21000) of the Public Resources Code).

23 (f) (1) Nothing in this section shall be construed to prohibit a  
24 local agency from requiring the housing development project to  
25 comply with objective, quantifiable, written development standards,  
26 conditions, and policies appropriate to, and consistent with, meeting  
27 the jurisdiction's share of the regional housing need pursuant to  
28 Section 65584. However, the development standards, conditions,  
29 and policies shall be applied to facilitate and accommodate  
30 development at the density permitted on the site and proposed by  
31 the development.

32 (2) Nothing in this section shall be construed to prohibit a local  
33 agency from requiring an emergency shelter project to comply  
34 with objective, quantifiable, written development standards,  
35 conditions, and policies that are consistent with paragraph (4) of  
36 subdivision (a) of Section 65583 and appropriate to, and consistent  
37 with, meeting the jurisdiction's need for emergency shelter, as  
38 identified pursuant to paragraph (7) of subdivision (a) of Section  
39 65583. However, the development standards, conditions, and

1 policies shall be applied by the local agency to facilitate and  
2 accommodate the development of the emergency shelter project.

3 (3) This section does not prohibit a local agency from imposing  
4 fees and other exactions otherwise authorized by law that are  
5 essential to provide necessary public services and facilities to the  
6 housing development project or emergency shelter, provided ~~that~~  
7 ~~any fees or other exactions do not render the proposed housing~~  
8 ~~development project or emergency shelter infeasible.~~ *the project*  
9 *remains feasible.*

10 (g) This section shall be applicable to charter cities because the  
11 Legislature finds that the lack of housing, including emergency  
12 shelter, is a critical statewide problem.

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

15 (1) “Feasible” means capable of being accomplished in a  
16 successful manner within a reasonable period of time, taking into  
17 account economic, environmental, social, and technological factors.  
18 ~~A housing development project is rendered “infeasible” if, among~~  
19 ~~other things, the applicant’s ability to earn an economic rate of~~  
20 ~~return comparable to that of other projects that are similar to the~~  
21 ~~proposed housing development project is diminished.~~

22 (2) “Housing development project” means a use consisting of  
23 any of the following:

24 (A) Residential units only.

25 (B) Mixed-use developments consisting of residential and  
26 nonresidential uses in which nonresidential uses are limited to  
27 neighborhood commercial uses and to the first floor of buildings  
28 that are two or more stories. As used in this paragraph,  
29 “neighborhood commercial” means small-scale general or specialty  
30 stores that furnish goods and services primarily to residents of the  
31 neighborhood.

32 (C) Transitional housing or supportive housing.

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

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

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

18 (5) “Disapprove the housing development project” includes any  
19 instance in which a local agency does ~~any~~ *either* of the following:

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

22 (B) Fails to comply with the time periods specified in  
23 subdivision (a) of Section 65950. An extension of time pursuant  
24 to Article 5 (commencing with Section 65950) shall be deemed to  
25 be an extension of time pursuant to this paragraph.

26 ~~(C) Approves another project that is proposed for the same land  
27 as a housing development project and the other project contains  
28 fewer residential units for very low, low-, moderate-, or above  
29 moderate-income households.~~

30 ~~(6) “Substantial adverse effect on the viability or affordability  
31 of a housing development project” includes, but is not limited to,  
32 the diminished ability of an applicant to earn an economic rate of  
33 return comparable to that of other projects that are similar to the  
34 proposed housing development project.~~

35 ~~(7)  
36 “Impose conditions” includes any instance in which a local  
37 agency requires conditions, either with or without legislative action,  
38 or in which an applicant proposes conditions in response to pressure  
39 or opposition from a local agency.~~

1 (i) If any city, county, or city and county denies approval or  
2 imposes ~~conditions~~, *conditions or restrictions*, including, but not  
3 limited to, fees, exactions, design changes, a reduction of allowable  
4 densities or the percentage of a lot that may be occupied by a  
5 building or structure under the applicable planning and zoning in  
6 force at the time the application is deemed complete pursuant to  
7 Section 65943, project-specific conditions, or the enactment of a  
8 zoning ordinance, general plan amendment, or other code  
9 amendment, that have a substantial adverse effect on the viability  
10 or affordability of a housing development for very low, low-,  
11 moderate-, or above moderate-income households, including  
12 purchasers or renters, and the denial of the development or the  
13 imposition of conditions on the development is the subject of a  
14 court action which challenges the denial or imposition of  
15 conditions, then the burden of proof shall be on the local legislative  
16 body to show that its decision is consistent with the findings as  
17 described in subdivision (d) and that the findings are supported by  
18 clear and convincing evidence in the record.

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

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

37 (2) There is no feasible method to satisfactorily mitigate or  
38 avoid the adverse impact identified pursuant to paragraph (1), other  
39 than the disapproval of the housing development project or the

1 approval of the project upon the condition that it be developed at  
2 a lower density.

3 (k) (1) (A) The applicant, a person who would be eligible to  
4 apply for residency in the development or emergency shelter, or  
5 a housing organization may bring an action to enforce this section.  
6 If, in any action brought to enforce this section, a court finds that  
7 the local agency disapproved a housing development project or  
8 conditioned its approval in a manner rendering it infeasible for the  
9 development of an emergency shelter, or housing for very low,  
10 low-, moderate-, or above moderate-income households, including  
11 farmworker housing, without making the findings required by this  
12 section or without making sufficient findings supported by clear  
13 and convincing evidence, the court shall issue an order or judgment  
14 compelling compliance with this section within 60 days, including,  
15 but not limited to, an order that the local agency approve the  
16 housing development project or emergency shelter. The court shall  
17 retain jurisdiction to ensure that its order or judgment is carried  
18 out and shall award reasonable attorney's fees and costs of suit to  
19 the plaintiff or petitioner, except under extraordinary circumstances  
20 in which the court finds that awarding fees would not further the  
21 purposes of this section.

22 (B) The court shall also impose fines on a local agency that has  
23 violated this section and require the local agency to deposit any  
24 fine levied pursuant to this subdivision into a housing trust fund.  
25 The fine shall be in a minimum amount of one hundred thousand  
26 dollars (\$100,000) per housing unit in the housing development  
27 project on the date the application was deemed complete pursuant  
28 to Section 65943. In determining the amount of fine to impose,  
29 the court shall consider the local agency's progress in attaining its  
30 target allocation of the regional housing need pursuant to Section  
31 65584 and any prior violations of this section. Fines shall not be  
32 paid out of funds already dedicated to affordable housing,  
33 including, but not limited to, redevelopment, funds dedicated to  
34 housing for very low, low-, and moderate-income households, and  
35 federal HOME Investment Partnerships Program and Community  
36 Development Block Grant Program funds. The local agency shall  
37 commit the money in the housing trust fund within five years for  
38 the sole purpose of financing newly constructed housing units  
39 affordable to extremely low, very low, or low-income households.

1 (C) If the court determines that its order or judgment has not  
2 been carried out within 60 days, the court may issue further orders  
3 as provided by law to ensure that the purposes and policies of this  
4 section are fulfilled, including, but not limited to, an order to vacate  
5 the decision of the local agency, in which case the application for  
6 the project, as constituted at the time the local agency took the  
7 initial action determined to be in violation of this section, along  
8 with any standard conditions determined by the court to be  
9 generally imposed by the local agency on similar projects, shall  
10 be deemed approved unless the applicant consents to a different  
11 decision or action by the local agency.

12 (2) For purposes of this subdivision, “housing organization”  
13 means a trade or industry group whose local members are primarily  
14 engaged in the construction or management of housing units or a  
15 nonprofit organization whose mission includes providing or  
16 advocating for increased access to housing *for low income*  
17 *households* and have filed written or oral comments with the local  
18 agency prior to action on the housing development project. A  
19 housing organization may only file an action pursuant to this  
20 section to challenge the ~~disapproval, reduction of allowable~~  
21 ~~densities or percentage of lot that may be occupied by a building~~  
22 ~~or structure under the applicable general plan and zoning~~  
23 ~~ordinances in effect on the date the application was deemed~~  
24 ~~complete pursuant to Section 65943, or the imposition of~~  
25 ~~conditions, including, but not limited to, fees or exactions and~~  
26 ~~design changes that have a substantial adverse effect on the~~  
27 ~~viability or affordability of a housing development project for very~~  
28 ~~low, low-, moderate-, or above moderate-income households,~~  
29 ~~disapproval of a housing development~~ by a local agency. A housing  
30 organization shall be entitled to reasonable attorney’s fees and  
31 costs if it is the prevailing party in an action to enforce this section.

32 (l) If the court finds that the local agency (1) acted in bad faith  
33 when it disapproved or conditionally approved the housing  
34 development or emergency shelter in violation of this section and  
35 (2) failed to carry out the court’s order or judgment within 60 days  
36 as described in subdivision (k), the court, in addition to any other  
37 remedies provided by this section, may award punitive damages  
38 to the petitioner. For purposes of this section, “bad faith” includes,  
39 but is not limited to, the failure to comply with subdivision (o) or  
40 an action that is frivolous or otherwise entirely without merit.

1 (m) Any action brought to enforce the provisions of this section  
2 shall be brought pursuant to Section 1094.5 of the Code of Civil  
3 Procedure, and the local agency shall prepare and certify the record  
4 of proceedings in accordance with subdivision (c) of Section 1094.6  
5 of the Code of Civil Procedure no later than 30 days after the  
6 petition is served, provided that the cost of preparation of the record  
7 shall be borne by the local agency. A petition to enforce the  
8 provisions of this section shall be filed and served no later than 90  
9 days from the later of (1) the withdrawal of the application by the  
10 applicant or the effective date of a decision of the local agency  
11 imposing conditions on, disapproving, or any other final action on  
12 a housing development project or (2) the expiration of the time  
13 periods specified in subparagraph (B) of paragraph (5) of  
14 subdivision (h). ~~Notwithstanding the foregoing, a petition may be~~  
15 ~~filed upon the earlier of the foregoing events. The trial court shall~~  
16 ~~exercise its independent judgment when deciding the case.~~ Upon  
17 entry of the trial court's order, a party shall, in order to obtain  
18 appellate review of the order, file a petition within 20 days after  
19 service upon it of a written notice of the entry of the order, or  
20 within such further time not exceeding an additional 20 days as  
21 the trial court may for good cause allow. If the local agency appeals  
22 the judgment of the trial court, the local agency shall post a bond,  
23 in an amount to be determined by the court, to the benefit of the  
24 plaintiff if the plaintiff is the project applicant.

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

35 (o) Every local agency shall publish an analysis of the  
36 requirements of this section as part of its review of each application  
37 for a housing development project.

1 (p) This section shall be known, and may be cited, as the  
2 Housing Accountability Act.

O