

AMENDED IN ASSEMBLY APRIL 5, 2021

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 215

Introduced by Assembly Member Chiu

January 11, 2021

An act to amend Section 65585 ~~of~~ *of*, and to add Sections 65585.5 and 65589.10 to, the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 215, as amended, Chiu. Housing ~~element~~. *element: regional housing need: relative progress determination.*

Existing

(1) Existing law, the Planning and Zoning Law, requires a city or county to adopt a general plan for land use development within its boundaries that includes, among other things, a housing element. That law requires the Department of Housing and Community Development (~~HCD~~) to determine whether the housing element is in substantial compliance with specified provisions of that law. ~~That law~~

This bill, starting with the 6th housing element revision, would require the department to determine the relative progress toward meeting regional housing needs of each jurisdiction, council of governments, and subregion, as specified. The bill would require the department to make this determination based on the information contained in the annual reports submitted by each jurisdiction, as specified. The bill would require the department to make this determination for all housing and for lower income housing by dividing the applicable entity's progress toward meeting its share of the regional housing need by its prorated share of the regional housing need, as specified. The bill would require the department to post the determinations of relative progress

on its internet website by July 1 of the year in which relative progress is determined.

The bill would require a jurisdiction to undertake a midcycle housing element consultation with the department if the jurisdiction's progress toward meeting its share of the regional housing need is less than its prorated share of the regional housing need and the relative progress of the jurisdiction for all housing or for lower income housing is less than the relative progress of the affiliated council of governments or subregion, as specified. The bill would require a jurisdiction to undertake specified actions, in consultation with the department, as a part of this midcycle housing element consultation, including a review and update of the jurisdiction's goals, policies, quantified objectives, financial resources, and scheduled programs. The bill would require the department to find that a housing element is not in substantial compliance with the Planning and Zoning Law if the department determines that the jurisdiction has not complied with these provisions.

Because this bill would require certain jurisdictions to participate in a midcycle housing element consultation with the department, the bill imposes a state-mandated local program.

(2) Existing law, for award cycles commencing after July 1, 2021, awards a city or county additional points in the scoring of specified program applications if the city or county, among other things, has been designated by the department as prohousing based upon its adoption of prohousing local policies for housing, as provided. Existing law defines "prohousing local policies" as policies that facilitate the planning, approval, or construction of housing, including, but not limited to, local financial incentives for housing, reduced parking requirements for sites that are zoned for residential development, and the adoption of zoning allowing for use by right for residential and mixed-use development.

This bill, commencing with the 6th revision of the housing element, would require a jurisdiction to attain a prohousing designation by the department if the jurisdiction's relative progress toward meeting its share of the regional or subregional housing need for all housing is at least 10 percentage points less than the relative progress of their affiliated council of governments or subregion, as determined pursuant to the provisions described above, as specified.

(3) The Planning and Zoning Law also requires ~~HCD~~ the department to notify a city, county, or city and county, and authorizes ~~HCD~~ the department to notify the office of the Attorney General, that the city,

county, or city and county is in violation of state law if ~~HCD~~ the department finds that the housing element or an amendment to the housing element does not substantially comply with specified provisions of the Planning and Zoning Law, or that the local government has taken action or failed to act in violation of specified provisions of law.

This bill would add the Housing Crisis Act of 2019 to those specified provisions of law.

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.

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

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

1 ~~SECTION 1. The State of California is suffering from~~
2 ~~extremely high home prices, rents, and levels of homelessness.~~
3 ~~This is, in part, due to the lack of proper planning at the local level~~
4 ~~for the appropriate amount of housing. It is the intent of the~~
5 ~~Legislature to ensure proper planning occurs at the local level by~~
6 ~~requiring the Department of Housing and Community Development~~
7 ~~to review the plans and programs of any city county where the~~
8 ~~amount of housing produced falls below a specified percentage of~~
9 ~~their regional housing needs allocation, and to recommend~~
10 ~~amendments to local housing elements as necessary.~~

11 ~~SEC. 2.~~

12 ~~SECTION 1.~~ Section 65585 of the Government Code is
13 amended to read:

14 65585. (a) In the preparation of its housing element, each city
15 and county shall consider the guidelines adopted by the department
16 pursuant to Section 50459 of the Health and Safety Code. Those
17 guidelines shall be advisory to each city or county in the
18 preparation of its housing element.

19 (b) (1) At least 90 days prior to adoption of its housing element,
20 or at least 60 days prior to the adoption of an amendment to this
21 element, the planning agency shall submit a draft element or draft
22 amendment to the department.

1 (2) The planning agency staff shall collect and compile the
2 public comments regarding the housing element received by the
3 city, county, or city and county, and provide these comments to
4 each member of the legislative body before it adopts the housing
5 element.

6 (3) The department shall review the draft and report its written
7 findings to the planning agency within 90 days of its receipt of the
8 draft in the case of an adoption or within 60 days of its receipt in
9 the case of a draft amendment.

10 (c) In the preparation of its findings, the department may consult
11 with any public agency, group, or person. The department shall
12 receive and consider any written comments from any public
13 agency, group, or person regarding the draft or adopted element
14 or amendment under review.

15 (d) In its written findings, the department shall determine
16 whether the draft element or draft amendment substantially
17 complies with this article.

18 (e) Prior to the adoption of its draft element or draft amendment,
19 the legislative body shall consider the findings made by the
20 department. If the department's findings are not available within
21 the time limits set by this section, the legislative body may act
22 without them.

23 (f) If the department finds that the draft element or draft
24 amendment does not substantially comply with this article, the
25 legislative body shall take one of the following actions:

26 (1) Change the draft element or draft amendment to substantially
27 comply with this article.

28 (2) Adopt the draft element or draft amendment without changes.
29 The legislative body shall include in its resolution of adoption
30 written findings which explain the reasons the legislative body
31 believes that the draft element or draft amendment substantially
32 complies with this article despite the findings of the department.

33 (g) Promptly following the adoption of its element or
34 amendment, the planning agency shall submit a copy to the
35 department.

36 (h) The department shall, within 90 days, review adopted
37 housing elements or amendments and report its findings to the
38 planning agency.

39 (i) (1) (A) The department shall review any action or failure
40 to act by the city, county, or city and county that it determines is

1 inconsistent with an adopted housing element or Section 65583,
2 including any failure to implement any program actions included
3 in the housing element pursuant to Section 65583. The department
4 shall issue written findings to the city, county, or city and county
5 as to whether the action or failure to act substantially complies
6 with this article, and provide a reasonable time no longer than 30
7 days for the city, county, or city and county to respond to the
8 findings before taking any other action authorized by this section,
9 including the action authorized by subparagraph (B).

10 (B) If the department finds that the action or failure to act by
11 the city, county, or city and county does not substantially comply
12 with this article, and if it has issued findings pursuant to this section
13 that an amendment to the housing element substantially complies
14 with this article, the department may revoke its findings until it
15 determines that the city, county, or city and county has come into
16 compliance with this article.

17 (2) The department may consult with any local government,
18 public agency, group, or person, and shall receive and consider
19 any written comments from any public agency, group, or person,
20 regarding the action or failure to act by the city, county, or city
21 and county described in paragraph (1), in determining whether the
22 housing element substantially complies with this article.

23 (j) The department shall notify the city, county, or city and
24 county and may notify the office of the Attorney General that the
25 city, county, or city and county is in violation of state law if the
26 department finds that the housing element or an amendment to this
27 element, or any action or failure to act described in subdivision
28 (i), does not substantially comply with this article or that any local
29 government has taken an action in violation of the following:

30 (1) Housing Accountability Act (Section 65589.5 of the
31 Government Code).

32 (2) Section 65863 of the Government Code.

33 (3) Chapter 4.3 (commencing with Section 65915) of Division
34 1 of Title 7 of the Government Code.

35 (4) Section 65008 of the Government Code.

36 (5) Housing Crisis Act of 2019 (Section 66300 of the
37 Government Code).

38 (k) Commencing July 1, 2019, prior to the Attorney General
39 bringing any suit for a violation of the provisions identified in
40 subdivision (j) related to housing element compliance and seeking

1 remedies available pursuant to this subdivision, the department
2 shall offer the jurisdiction the opportunity for two meetings in
3 person or via telephone to discuss the violation, and shall provide
4 the jurisdiction written findings regarding the violation. This
5 paragraph does not affect any action filed prior to the effective
6 date of this section. The requirements set forth in this subdivision
7 do not apply to any suits brought for a violation or violations of
8 paragraphs (1), (3), and (4) of subdivision (j).

9 (l) In any action or special proceeding brought by the Attorney
10 General relating to housing element compliance pursuant to a
11 notice or referral under subdivision (j), the Attorney General may
12 request, upon a finding of the court that the housing element does
13 not substantially comply with the requirements of this article
14 pursuant to this section, that the court issue an order or judgment
15 directing the jurisdiction to bring its housing element into
16 substantial compliance with the requirements of this article. The
17 court shall retain jurisdiction to ensure that its order or judgment
18 is carried out. If a court determines that the housing element of
19 the jurisdiction substantially complies with this article, it shall
20 have the same force and effect, for purposes of eligibility for any
21 financial assistance that requires a housing element in substantial
22 compliance and for purposes of any incentives provided under
23 Section 65589.9, as a determination by the department that the
24 housing element substantially complies with this article.

25 (1) If the jurisdiction has not complied with the order or
26 judgment after twelve months, the court shall conduct a status
27 conference. Following the status conference, upon a determination
28 that the jurisdiction failed to comply with the order or judgment
29 compelling substantial compliance with the requirements of this
30 article, the court shall impose fines on the jurisdiction, which shall
31 be deposited into the Building Homes and Jobs Trust Fund. Any
32 fine levied pursuant to this paragraph shall be in a minimum
33 amount of ten thousand dollars (\$10,000) per month, but shall not
34 exceed one hundred thousand dollars (\$100,000) per month, except
35 as provided in paragraphs (2) and (3). In the event that the
36 jurisdiction fails to pay fines imposed by the court in full and on
37 time, the court may require the Controller to intercept any available
38 state and local funds and direct such funds to the Building Homes
39 and Jobs Trust Fund to correct the jurisdiction's failure to pay.

1 The intercept of the funds by the Controller for this purpose shall
2 not violate any provision of the California Constitution.

3 (2) If the jurisdiction has not complied with the order or
4 judgment after three months following the imposition of fees
5 described in paragraph (1), the court shall conduct a status
6 conference. Following the status conference, if the court finds that
7 the fees imposed pursuant to paragraph (1) are insufficient to bring
8 the jurisdiction into compliance with the order or judgment, the
9 court may multiply the fine determined pursuant to paragraph (1)
10 by a factor of three. In the event that the jurisdiction fails to pay
11 fines imposed by the court in full and on time, the court may
12 require the Controller to intercept any available state and local
13 funds and direct such funds to the Building Homes and Jobs Trust
14 Fund to correct the jurisdiction's failure to pay. The intercept of
15 the funds by the Controller for this purpose shall not violate any
16 provision of the California Constitution.

17 (3) If the jurisdiction has not complied with the order or
18 judgment six months following the imposition of fees described
19 in paragraph (1), the court shall conduct a status conference. Upon
20 a determination that the jurisdiction failed to comply with the order
21 or judgment, the court may impose the following:

22 (A) If the court finds that the fees imposed pursuant to
23 paragraphs (1) and (2) are insufficient to bring the jurisdiction into
24 compliance with the order or judgment, the court may multiply
25 the fine determined pursuant to paragraph (1) by a factor of six.
26 In the event that the jurisdiction fails to pay fines imposed by the
27 court in full and on time, the court may require the Controller to
28 intercept any available state and local funds and direct such funds
29 to the Building Homes and Jobs Trust Fund to correct the
30 jurisdiction's failure to pay. The intercept of the funds by the
31 Controller for this purpose shall not violate any provision of the
32 California Constitution.

33 (B) The court may order remedies available pursuant to Section
34 564 of the Code of Civil Procedure, under which the agent of the
35 court may take all governmental actions necessary to bring the
36 jurisdiction's housing element into substantial compliance pursuant
37 to this article in order to remedy identified deficiencies. The court
38 shall determine whether the housing element of the jurisdiction
39 substantially complies with this article and, once the court makes
40 that determination, it shall have the same force and effect, for all

1 purposes, as the department's determination that the housing
2 element substantially complies with this article. An agent appointed
3 pursuant to this paragraph shall have expertise in planning in
4 California.

5 (4) This subdivision does not limit a court's discretion to apply
6 any and all remedies in an action or special proceeding for a
7 violation of any law identified in subdivision (j).

8 (m) In determining the application of the remedies available
9 under subdivision (l), the court shall consider whether there are
10 any mitigating circumstances delaying the jurisdiction from coming
11 into compliance with state housing law. The court may consider
12 whether a city, county, or city and county is making a good faith
13 effort to come into substantial compliance or is facing substantial
14 undue hardships.

15 (n) The office of the Attorney General may seek all remedies
16 available under law including those set forth in this section.

17 *SEC. 2. Section 65585.5 is added to the Government Code, to*
18 *read:*

19 *65585.5. (a) Commencing with the sixth revision of the housing*
20 *element pursuant to Section 65588, the department shall determine*
21 *the relative progress toward meeting regional housing needs*
22 *subject to the following:*

23 *(1) (A) The department shall determine relative progress toward*
24 *meeting regional housing needs for all housing and lower income*
25 *housing during the fifth year of the applicable planning period.*

26 *(B) The department shall also determine relative progress*
27 *toward meeting regional housing needs for all housing during the*
28 *year after the completion of the jurisdiction's planning period.*
29 *The department's determination of relative progress under this*
30 *subparagraph shall be used to determine jurisdictions that must*
31 *attain a prohousing designation pursuant to Section 65589.10 and*
32 *shall not be the basis for a midcycle housing element consultation*
33 *under subdivision (b).*

34 *(2) The department shall make relative progress determinations*
35 *based on the information contained in the annual reports submitted*
36 *pursuant to Section 65400, and shall measure relative progress*
37 *subject to the following:*

38 *(A) For each jurisdiction:*

39 *(i) Relative progress for all housing shall be measured by*
40 *dividing the jurisdiction's progress toward meeting its share of*

1 *the regional housing need by its prorated share of the regional*
2 *housing need, as determined pursuant to Section 65584.*

3 *(ii) Relative progress for lower income housing shall be*
4 *measured by dividing the jurisdiction's progress toward meeting*
5 *its share of the regional housing need for the very low and*
6 *low-income categories by its prorated share of the regional housing*
7 *need for very low and low-income households, as determined*
8 *pursuant to Section 65584.*

9 *(B) For each council of governments:*

10 *(i) Relative progress for all housing shall be measured by*
11 *summing the progress of each of the council of governments'*
12 *member jurisdictions toward meeting their share of the regional*
13 *housing need and dividing that sum by the prorated regional*
14 *housing need, as determined pursuant to Section 65584.01.*

15 *(ii) Relative progress for lower income housing shall be*
16 *measured by summing the progress of each of the council of*
17 *governments' member jurisdictions toward meeting their share of*
18 *the regional housing need for very low and low-income households*
19 *and dividing that sum by the prorated regional housing need for*
20 *very low and low-income households, as determined pursuant to*
21 *Section 65584.01.*

22 *(C) For each subregion:*

23 *(i) Relative progress for all housing shall be measured by*
24 *summing the progress of each of the subregion's member*
25 *jurisdictions toward meeting their share of the subregional housing*
26 *need and dividing that sum by the prorated subregional housing*
27 *need, as determined pursuant to Section 65584.03.*

28 *(ii) Relative progress for lower income housing shall be*
29 *measured by summing the progress of each of the subregion's*
30 *member jurisdictions toward meeting their share of the subregional*
31 *housing need for very low and low-income households and dividing*
32 *that sum by the prorated subregional housing need for very low*
33 *and low-income households, as determined pursuant to Section*
34 *65584.03.*

35 *(3) This subdivision shall only apply to jurisdictions with an*
36 *eight-year housing element planning period, pursuant to Section*
37 *65588.*

38 *(4) Determinations of relative progress shall be published on*
39 *the department's internet website by July 1 of the year in which*
40 *relative progress is determined.*

1 (b) (1) A jurisdiction shall undertake a midcycle housing
2 element consultation with the department if both of the following
3 occur:

4 (A) The jurisdiction's progress toward meeting its share of the
5 regional housing need is less than its prorated share of the regional
6 housing need.

7 (B) The jurisdiction meets one of the following:

8 (i) The jurisdiction's relative progress for all housing during
9 the fifth year of the applicable planning period, pursuant to
10 subdivision (a), is less than the relative progress for all housing
11 of the jurisdiction's affiliated council of governments or subregion.

12 (ii) The jurisdiction's relative progress for very low and
13 low-income households during the fifth year of the applicable
14 planning period, pursuant to subdivision (a), is less than the
15 relative progress for very low and low-income households of the
16 jurisdiction's affiliated council of governments or subregion.

17 (2) A jurisdiction required to conduct a midcycle housing
18 element consultation pursuant to this subdivision shall, in
19 coordination with the department, do all of the following:

20 (A) Review and update, as necessary, all goals, policies,
21 quantified objectives, financial resources, and scheduled programs.

22 (B) Ensure that all programs have enforceable actions and
23 concrete timelines.

24 (3) (A) By July 1 of the year in which the determination of
25 relative progress has occurred pursuant to subdivision (a), the
26 department shall notify each jurisdiction, in writing, of their need
27 to comply with this subdivision.

28 (B) A midcycle housing element consultation shall occur within
29 six months of the jurisdiction receiving the notice pursuant to
30 subparagraph (A).

31 (C) Any revisions to the housing element required by the
32 department during a midcycle housing element consultation must
33 be completed within one year of the consultation.

34 (4) The department may apply the requirements of this
35 subdivision to any jurisdiction that fails to submit a substantially
36 compliant annual report pursuant to the timelines and requirements
37 of Section 65400.

38 (5) If the department determines that a jurisdiction has not
39 complied with the requirements of this subdivision, the department

1 *shall find that their housing element does not substantially comply*
2 *with this article, pursuant to Section 65585.*

3 *SEC. 3. Section 65589.10 is added to the Government Code,*
4 *to read:*

5 *65589.10. (a) Commencing with the sixth revision of the*
6 *housing element pursuant to Section 65588, any jurisdiction whose*
7 *relative progress toward meeting its share of the regional or*
8 *subregional housing need for all housing, as determined pursuant*
9 *to paragraph (2) of subdivision (a) of Section 65585.5, is at least*
10 *10 percentage points less than the relative progress of their*
11 *affiliated council of governments or subregion shall be required*
12 *to attain a prohousing designation by the department pursuant to*
13 *subdivision (c) of Section 65589.9.*

14 *(b) (1) The department shall determine whether a jurisdiction*
15 *is required to attain a prohousing designation pursuant to*
16 *subdivision (a) by July 1 of the year in which the determination of*
17 *relative progress has occurred.*

18 *(2) The department shall make a second determination of*
19 *whether a jurisdiction is required to attain a prohousing*
20 *designation pursuant to subdivision (a) by July 1 of the year after*
21 *the completion of the jurisdiction's planning period.*

22 *(3) The department shall provide written notice to a jurisdiction*
23 *that must attain a prohousing designation pursuant to subdivision*
24 *(a) by July 1 of the year in which the determination is made.*

25 *(4) A jurisdiction that receives written notice pursuant to*
26 *paragraph (3) that does not already have a prohousing designation*
27 *shall attain a prohousing designation by July 1 of the year after*
28 *receiving the notice pursuant to paragraph (3). If the jurisdiction*
29 *does not comply with this timeline, the department shall find that*
30 *the jurisdiction's housing element does not substantially comply*
31 *with this article pursuant to Section 65585.*

32 *(c) The department may apply the requirements of this section*
33 *to any jurisdiction that fails to submit a substantially compliant*
34 *annual report pursuant to the timelines and requirements of Section*
35 *65400.*

36 *SEC. 4. No reimbursement is required by this act pursuant to*
37 *Section 6 of Article XIII B of the California Constitution because*
38 *a local agency or school district has the authority to levy service*
39 *charges, fees, or assessments sufficient to pay for the program or*

- 1 *level of service mandated by this act, within the meaning of Section*
- 2 *17556 of the Government Code.*

O