

ASSEMBLY BILL

No. 1585

Introduced by Assembly Member Bloom

February 17, 2017

An act to amend Section 65582.1 of, and to add Section 65584.7 to, the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 1585, as introduced, Bloom. Planning and zoning: affordable housing: single application.

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. Existing law provides for various reforms and incentives intended to facilitate and expedite the construction of affordable housing. Existing law requires the Department of Housing and Community Development, in consultation with each council of governments, to determine existing and projected needs for housing for each region and requires each council of governments or, for cities and counties without a council of governments, the department to adopt a final regional housing need plan that allocates a share of the regional housing need to each city, county, or city and county and is consistent with specified objectives.

This bill would establish in each city, county, and city and county in the state an affordable housing zoning board and procedures by which a public agency or nonprofit organization proposing to build affordable housing units, as defined, or a developer proposing to build a housing project that meets specified affordability criteria, could submit to that board a single application for a comprehensive conditional use or other discretionary permit. The bill would require the board to conduct a

public hearing, as provided, and issue a decision approving, approving with conditions, or denying the application and to issue a comprehensive permit if the application is approved or approved with conditions. The bill would require the board to consider the general plan and zoning ordinances of the affected local agency, the share of the regional housing needs of the affected local agency, whether the applicant has made specified certifications relating to the payment of prevailing wages and employment of a skilled and trained workforce, as provided, on the affordable housing units or housing project development, documents or other evidence presented at the hearing, and the recommendations of experts or consultants, if any, retained by the board. The bill would provide that the comprehensive permit would have the same force and effect as a conditional use or other discretionary permit issued by an affected local agency, but would prohibit the board from abrogating a provision of the general plan or zoning ordinances of the affected local agency except to grant a density bonus, as provided.

The bill would require the Department of Housing and Community Development to establish a housing appeals committee. The bill would establish procedures by which an applicant for a comprehensive permit could appeal the decision of an affordable housing zoning board to either deny the application or approve the application with conditions in a manner rendering it infeasible for the development of the affordable housing units or housing project. The bill would provide that the committee would not have jurisdiction if the affected local agency has permitted construction of unspecified percentages of its allocation of units for very low, low-, and moderate-income households in the previous regional housing needs allocation plan cycle. The bill would authorize the committee, following a public hearing conducted according to specified procedures, to affirm, modify, or reverse the decision of the board. The bill would limit the review of the committee to whether, in the case of a denial, the decision was unreasonable and not consistent with local needs or, in the case of approval with conditions, whether the conditions imposed render it infeasible for the development of the affordable housing units or housing project and are not consistent with local needs. The bill would require the committee to affirm the decision of the board if it finds that the denial or conditions are consistent with local needs. The bill would provide that a decision of the committee to modify or reverse a decision of the board may be reviewed in the superior court for the county in which the affordable housing units or housing project are proposed to be built.

The bill would make findings that encouraging and streamlining the development of affordable housing throughout the state is a matter of vital statewide concern and declare that its provisions would apply to all cities and counties, including charter cities.

By imposing new duties on local agencies with respect to the issuance of comprehensive permits for affordable housing developments, 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, 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 the statutory provisions noted above.

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 65582.1 of the Government Code is
- 2 amended to read:
- 3 65582.1. The Legislature finds and declares that it has provided
- 4 reforms and incentives to facilitate and expedite the construction
- 5 of affordable housing. Those reforms and incentives can be found
- 6 in the following provisions:
- 7 (a) Housing element law (Article 10.6 (commencing with
- 8 Section 65580) of Chapter 3).
- 9 (b) Extension of statute of limitations in actions challenging the
- 10 housing element and brought in support of affordable housing
- 11 (subdivision (d) of Section 65009).
- 12 (c) Restrictions on disapproval of housing developments
- 13 (Section 65589.5).
- 14 (d) Priority for affordable housing in the allocation of water and
- 15 sewer hookups (Section 65589.7).
- 16 (e) Least cost zoning law (Section 65913.1).
- 17 (f) Density bonus law (Section 65915).
- 18 (g) Accessory dwelling units (Sections 65852.150 and 65852.2).
- 19 (h) By-right housing, in which certain multifamily housing are
- 20 designated a permitted use (Section 65589.4).

1 (i) No-net-loss-in zoning density law limiting downzonings and
2 density reductions (Section 65863).

3 (j) Requiring persons who sue to halt affordable housing to pay
4 attorney fees (Section 65914) or post a bond (Section 529.2 of the
5 Code of Civil Procedure).

6 (k) Reduced time for action on affordable housing applications
7 under the approval of development permits process (Article 5
8 (commencing with Section 65950) of Chapter 4.5).

9 (l) Limiting moratoriums on multifamily housing (Section
10 65858).

11 (m) Prohibiting discrimination against affordable housing
12 (Section 65008).

13 (n) California Fair Employment and Housing Act (Part 2.8
14 (commencing with Section 12900) of Division 3).

15 (o) Community redevelopment law (Part 1 (commencing with
16 Section 33000) of Division 24 of the Health and Safety Code, and
17 in particular Sections 33334.2 and 33413).

18 (p) *Establishing a streamlined process for the approval of*
19 *affordable housing units, including the opportunity to appeal a*
20 *denial of a permit to the department (Section 65584.7).*

21 SEC. 2. Section 65584.7 is added to the Government Code, to
22 read:

23 65584.7. (a) For purposes of this section, the following
24 definitions shall apply:

25 (1) “Affected local agency” means a city, county, or city and
26 county, including a charter city, charter county, or charter city and
27 county, with jurisdiction over the proposed affordable housing
28 units or housing project that would be subject to a comprehensive
29 permit issued by an affordable housing zoning board.

30 (2) “Affordable housing unit” means a single-family or
31 multifamily residential development with an affordable housing
32 cost, as defined in Section 50052.5 of the Health and Safety Code,
33 or an affordable rent, as defined in Section 50053 of the Health
34 and Safety Code, for very low, low-, and moderate-income
35 households.

36 (3) “Affordable housing zoning board” or “board” means the
37 entity established within a city, county, or city and county
38 authorized to issue a comprehensive permit in accordance with
39 this section.

40 (4) “Applicant” means either of the following:

1 (A) A public agency or nonprofit organization proposing to
2 build affordable housing units that will receive full or partial
3 funding through a state or federal program, including, but not
4 limited to, the following:

5 (i) The United States Housing Act of 1937 (42 U.S.C. Section
6 1437 et seq.).

7 (ii) The Housing Authorities Law (Part 2 (commencing with
8 Section 34200) of Division 24 of the Health and Safety Code).

9 (iii) Programs administered by the Department of Housing and
10 Community Development pursuant to Part 2 (commencing with
11 Section 50400) of Division 31 of the Health and Safety Code for
12 the purpose of providing grants and other financing for housing.

13 (iv) Financial assistance received from the California Housing
14 Finance Agency pursuant to Part 3 (commencing with Section
15 50900) of Division 31 of the Health and Safety Code.

16 (B) A developer proposing to build a housing project.

17 (5) “Comprehensive permit” means a conditional use or other
18 discretionary permit issued by an affordable housing zoning board
19 in accordance with subdivision (b) that allows for the development
20 of affordable housing units by a public agency or nonprofit
21 organization or a housing project by a developer.

22 (6) “Consistent with local needs” means reasonable with respect
23 to the determination of regional housing needs as determined
24 pursuant to Section 65584, the number of very low, low-, and
25 moderate-income households within a city, county, or city and
26 county, and the health and safety of the residents of the city,
27 county, or city and county.

28 (7) “Housing appeals committee” or “committee” means the
29 committee established within the department for the purpose of
30 hearing appeals from a decision of the affordable housing zoning
31 board with respect to an application for a comprehensive permit.

32 (8) “Housing project” means a residential development of which
33 5 percent of the units are affordable to persons making 60 percent
34 or less of the area median income and 10 percent of the units are
35 affordable to persons making 80 percent or less of the area median
36 income. These units shall be subject to a recorded affordability
37 restriction for at least 55 years. This paragraph shall not be
38 construed to nullify an inclusionary zoning ordinance requiring a
39 greater percentage of the residential units within a project to be
40 affordable to low and very low income households.

1 (9) “Infeasible for the development of the affordable housing
2 units or housing project” means that it is impossible for a public
3 agency or nonprofit organization to build or operate the affordable
4 housing units, or for a developer to build or operate the housing
5 project, as applicable, without financial loss without substantially
6 changing the cost of the housing or unit sizes.

7 (b) (1) (A) There is hereby established within each city, county,
8 and city and county in this state an affordable housing zoning
9 board. Members of the planning commission of the city, county,
10 or city and county shall serve ex officio as members of the
11 affordable housing zoning board.

12 (B) Proceedings of the board shall be subject to the Ralph M.
13 Brown Act (Chapter 9 (commencing with Section 54950) of Part
14 1 of Division 2 of Title 5) and the board shall comply with the
15 California Public Records Act (Chapter 3.5 (commencing with
16 Section 6250) of Division 7 of Title 1).

17 (C) The board shall be deemed the lead agency for purposes of
18 the California Environmental Quality Act (Division 13
19 (commencing with Section 21000) of the Public Resources Code)
20 with respect to the issuance of a comprehensive permit pursuant
21 to this section.

22 (2) Notwithstanding any other law, an applicant may submit to
23 the affordable housing zoning board a single application for a
24 comprehensive permit. The board shall transmit a copy of the
25 application to each affected local agency.

26 (3) The board shall conduct a public hearing on the application
27 for a comprehensive permit within 30 days of receipt of the
28 application. The applicant, representatives of any affected local
29 agencies, and any persons who would be substantially affected by
30 the issuance of the comprehensive permit shall have the right to
31 appear at the hearing. The public hearing shall be completed in no
32 more than 180 days. The board shall, by majority vote, approve,
33 approve with conditions, or deny an application for a
34 comprehensive permit within 40 days after the conclusion of the
35 public hearing.

36 (4) (A) In making its decision, the board shall consider all of
37 the following:

38 (i) The general plan and zoning ordinances of the affected local
39 agency that apply to the proposed affordable housing units or
40 housing project. The board shall not abrogate a provision of the

1 general plan or zoning ordinances of an affected local agency as
2 they apply to the proposed affordable housing units or housing
3 project, except that the board may grant the applicant a density
4 bonus in accordance with Section 65915.

5 (ii) The share of the regional housing needs as determined
6 pursuant to Section 65584 for the jurisdiction in which the applicant
7 proposes to build affordable housing units or housing project.

8 (iii) Whether the applicant has made the certifications required
9 by subdivision (e).

10 (iv) Any documents or other evidence presented at the public
11 hearing by the applicant, the representatives of the affected local
12 agencies, or other persons who would be substantially affected by
13 the issuance of the comprehensive permit.

14 (v) The recommendations of experts or consultants retained by
15 the board, if any, pertaining to the proposed affordable housing
16 units or housing project.

17 (B) If the board approves or approves with conditions an
18 application for a comprehensive permit, the board shall issue the
19 permit to the applicant. A comprehensive permit issued pursuant
20 to this subdivision shall have the same force and effect as a
21 conditional use or other discretionary permit issued by the affected
22 local agency.

23 (C) If the board does not approve, approve with conditions, or
24 deny an application for a comprehensive permit within 40 days
25 after the conclusion of the public hearing, as required by paragraph
26 (3), the application shall be deemed approved and the board shall
27 issue the comprehensive permit.

28 (c) (1) (A) The department shall establish a housing appeals
29 committee. The Director of Housing and Community Development
30 shall annually appoint the members of the committee and designate
31 a chair.

32 (B) Membership on the committee shall be as follows:

33 (i) Three representatives of the department.

34 (ii) Four public members who shall be appointed so as to
35 promote geographic diversity and balance urban and rural interests
36 and who shall each be representative of, or have experience in,
37 one or more of the following areas:

38 (I) Private sector lending institutions.

39 (II) For-profit housing development.

40 (III) Nonprofit housing development.

1 (IV) Public sector housing development.

2 (V) Local or regional planning.

3 (VI) Architecture.

4 (VII) Local community development.

5 (VIII) Local government.

6 (IX) Housing consultation.

7 (X) Academia as related to housing issues.

8 (C) Members of the committee shall serve without
9 compensation, but shall be reimbursed for all actual and necessary
10 expenses incurred in the performance of their duties.

11 (D) The committee shall hear appeals pursuant to this
12 subdivision at a public hearing held at least quarterly. The
13 committee shall conduct the public hearing in accordance with
14 any applicable rules and regulations adopted by the department.

15 (E) The department shall provide space and clerical or other
16 assistance that the committee may require.

17 (2) (A) If the board denies an application for a comprehensive
18 permit submitted pursuant to subdivision (b) or grants it with
19 conditions in a manner rendering it infeasible for the development
20 of the affordable housing units or housing project, the applicant
21 may, within 20 days of the final decision of the board, appeal the
22 decision to the committee by submitting a statement of appeal,
23 which shall state the grounds for the appeal and the relief sought,
24 to the committee.

25 (B) The committee shall transmit a notice of the appeal to the
26 board and any affected local agency. No later than 10 days
27 following receipt of the notice of appeal, the board shall transmit
28 a copy of its final decision to the committee for review.

29 (C) The committee shall not have jurisdiction over the appeal
30 if the affected local agency has permitted construction of at least
31 ____ percent of its allocation of units for very low-income
32 households, ____ percent of its allocation of units for low-income
33 households, and ____ percent of its allocation of units for
34 moderate-income households in the previous regional housing
35 needs allocation plan cycle developed pursuant to Section 65584.

36 (3) The committee shall conduct a hearing on the appeal within
37 30 days of receipt of the statement of appeal. The committee shall,
38 by majority vote and consistent with paragraph (4), affirm, modify,
39 or reverse the decision of the board within 30 days after the
40 conclusion of the hearing.

1 (4) The review of the committee shall be limited as follows:

2 (A) (i) If the board denied the application for a comprehensive
3 permit, whether that denial was reasonable and consistent with
4 local needs.

5 (ii) If the committee determines that a denial of the application
6 for a comprehensive permit is both unreasonable and not consistent
7 with local needs, the committee shall reverse the decision of the
8 board and remand the matter with instructions that the application
9 be approved consistent with the decision of the committee.

10 (B) (i) If the board approved the application with conditions,
11 whether the conditions imposed render it infeasible for the
12 development of the affordable housing units or housing project
13 and are consistent with local needs.

14 (ii) If the committee determines that one or more of the
15 conditions imposed on the proposed affordable housing units or
16 housing project render it infeasible for the development of the
17 affordable housing units or housing project and that those
18 conditions are not consistent with local needs, the committee shall
19 modify the permit so that it no longer renders infeasible the
20 development of the affordable housing units or housing project
21 and the conditions are consistent with local needs. The committee
22 shall remand the matter to the board with instructions to issue the
23 permit as modified by the committee.

24 (C) The committee shall affirm the decision of the affordable
25 housing zoning board if it finds that the decision is consistent with
26 local needs.

27 (5) Once the committee has issued its final decision, the board
28 shall not have any discretion to modify the permit other than as
29 directed in the decision of the committee. Implementation of the
30 final decision of the committee shall be deemed a ministerial duty
31 of the board.

32 (d) A decision of the committee modifying or reversing a
33 decision of the board may be reviewed in the superior court for
34 the county in which the affordable housing units or housing project
35 are proposed to be built.

36 (e) An applicant for a comprehensive permit shall do the
37 following, as applicable:

38 (1) Certify to the affordable housing zoning board that either
39 of the following is true, as applicable:

1 (A) That the entirety of the proposed affordable housing units
2 or housing project development is a public work for purposes of
3 Chapter 1 (commencing with Section 1720) of Part 7 of Division
4 2 of the Labor Code.

5 (B) If the proposed affordable housing units or housing project
6 development is not in its entirety a public work, that all
7 construction workers employed in the execution of the project will
8 be paid at least the general prevailing rate of per diem wages for
9 the type of work and geographic area, as determined by the Director
10 of Industrial Relations pursuant to Sections 1773 and 1773.9 of
11 the Labor Code. If the board approves the application, then for
12 those portions of the proposed affordable housing units or housing
13 project development that are not a public work all of the following
14 shall apply:

15 (i) The applicant shall include the prevailing wage requirement
16 in all contracts for the performance of the work.

17 (ii) Contractors and subcontractors shall pay to all construction
18 workers employed in the execution of the work at least the general
19 prevailing rate of per diem wages.

20 (iii) Except as provided in clause (iv), the obligation of the
21 contractors and subcontractors to pay prevailing wages may be
22 enforced by the Labor Commissioner through the issuance of a
23 civil wage and penalty assessment pursuant to Section 1741 of the
24 Labor Code, which may be reviewed pursuant to Section 1742 of
25 the Labor Code, within 18 months after the completion of the
26 affordable housing units or housing project, or by an underpaid
27 worker through an administrative complaint or civil action. If a
28 civil wage and penalty assessment is issued, the contractor,
29 subcontractor, and surety on a bond or bonds issued to secure the
30 payment of wages covered by the assessment shall be liable for
31 liquidated damages pursuant to Section 1742.1 of the Labor Code.

32 (iv) Clause (iii) shall not apply if all contractors and
33 subcontractors performing work on the affordable housing units
34 or housing project are subject to a project labor agreement that
35 requires the payment of prevailing wages to all construction
36 workers employed in the execution of the project and provides for
37 enforcement of that obligation through an arbitration procedure.
38 For purposes of this clause, “project labor agreement” has the same
39 meaning as set forth in paragraph (1) of subdivision (b) of Section
40 2500 of the Public Contract Code.

1 (v) Notwithstanding subdivision (c) of Section 1773.1 of the
2 Labor Code, the requirement that employer payments not reduce
3 the obligation to pay the hourly straight time or overtime wages
4 found to be prevailing shall not apply if otherwise provided in a
5 bona fide collective bargaining agreement covering the worker.
6 The requirements of paragraph (2) of subdivision (c) of Section
7 1773.1 of the Labor Code do not preclude use of an alternative
8 workweek schedule adopted pursuant to Section 511 or 514 of the
9 Labor Code.

10 (2) For proposed affordable housing units or housing project
11 development with a cost exceeding ____ dollars (\$____), certify
12 to the affordable housing zoning board that a skilled and trained
13 workforce will be used to complete the affordable housing units
14 or housing project. For purposes of this paragraph, “skilled and
15 trained workforce” has the same meaning as provided in
16 subdivision (d) of Section 2601 of the Public Contract Code. If
17 the board approves the application, the following shall apply:

18 (A) The applicant shall require in all contracts for the
19 performance of work that every contractor and subcontractor at
20 every tier will individually use a skilled and trained workforce to
21 complete the affordable housing units or housing project.

22 (B) Every contractor and subcontractor shall use a skilled and
23 trained workforce to complete the affordable housing units or
24 housing project.

25 (C) Except as provided in subparagraph (D), the applicant shall
26 provide to the board, on a monthly basis while the project or
27 contract is being performed, a report demonstrating compliance
28 with this paragraph. A monthly report provided to the board
29 pursuant to this subparagraph shall be a public record under the
30 California Public Records Act (Chapter 3.5 (commencing with
31 Section 6250) of Division 7 of Title 1) and shall be open to public
32 inspection. An applicant that fails to provide a monthly report
33 demonstrating compliance with this paragraph shall be subject to
34 a civil penalty of ten thousand dollars (\$10,000) per month for
35 each month for which the report has not been provided. Any
36 contractor or subcontractor that fails to use a skilled and trained
37 workforce shall be subject to a civil penalty of two hundred dollars
38 (\$200) per day for each worker employed in contravention of the
39 skilled and trained workforce requirement. Penalties may be
40 assessed by the Labor Commissioner within 18 months of

1 completion of the affordable housing units or housing project using
2 the same procedures for issuance of civil wage and penalty
3 assessments pursuant to Section 1741 of the Labor Code, and may
4 be reviewed pursuant to the same procedures in Section 1742 of
5 the Labor Code. Penalties shall be paid to the State Public Works
6 Enforcement Fund.

7 (D) Subparagraph (C) shall not apply if all contractors and
8 subcontractors performing work on the affordable housing units
9 or housing project are subject to a project labor agreement that
10 requires compliance with the skilled and trained workforce
11 requirement and provides for enforcement of that obligation
12 through an arbitration procedure. For purposes of this
13 subparagraph, “project labor agreement” has the same meaning as
14 set forth in paragraph (1) of subdivision (b) of Section 2500 of the
15 Public Contract Code.

16 (f) The Legislature finds and declares that encouraging and
17 streamlining the development of affordable housing throughout
18 the state is a matter of vital statewide concern and that this section
19 applies to all cities and counties, including charter cities.

20 SEC. 3. If the Commission on State Mandates determines that
21 this act contains costs mandated by the state, reimbursement to
22 local agencies and school districts for those costs shall be made
23 pursuant to Part 7 (commencing with Section 17500) of Division
24 4 of Title 2 of the Government Code.