

- 3) Requires the local agency, if it receives notice of interest in low- or moderate-income housing from more than one entity, to give first priority to the entity that proposes the deepest average level of affordability for the affordable units. A local agency may negotiate concurrently with all entities that provide a notice of interest that meets the affordability requirements.
- 4) Requires an entity proposing to use the surplus land for development of low- and moderate-income housing to agree to designate at least 25% of the units as lower-income.
- 5) Prohibits the negotiations between a disposing agency and interested entities to determine price and terms to:
 - a) Disallow residential use of the site as a condition of its sale or lease, except where the condition is required to mitigate impacts to public health and safety or agency operations.
 - b) Reduce the allowable number of residential units or the maximum lot coverage below what may be allowed by zoning or general plan requirements.
 - c) Require, as a condition of sale or lease, any design standards or architectural requirements that would have a substantial adverse effect on the viability or affordability of a housing development for very low, low, or moderate income households, other than the minimum standards required by general plan, zoning, and subdivision standards and criteria.

Surplus Land Act violations

- 6) Requires a local agency, prior to agreeing to the terms for the disposition of surplus land, to provide specified information about its disposition process to HCD. Requires HCD to submit to the local agency, within 30 days, written findings of any process violations that have occurred. Provides the local agency 60 days to either correct the violations or adopt a resolution with findings explaining why the process is not in violation.
- 7) Provides that a local agency that disposes of land in violation of the Surplus Land Act following a notification from HCD is liable for a penalty of 30% of the final sale price for a first violation and 50% for subsequent violations. Authorizes HCD to notify the Attorney General of local Surplus Land Act violations.

Surplus Land Act – HCD

- 8) Requires HCD to maintain on its website an up-to-date listing of all notices of availability of local surplus properties throughout the state.
- 9) Requires HCD to make available educational resources and materials to inform each agency of its obligations under the Surplus Land Act.
- 10) Requires each city and county, on or before December 31 of each year, to report to HCD a list of properties it sold, leased, or disposed of in the prior year, as part of its annual progress report for its housing element.
- 11) Requires each city and county to include in the site inventory of its housing element, for non-vacant sites owned by the city or county, a description of whether there are plans to dispose of the property during the planning period and how the city or county will comply with the Surplus Lands Act.

This bill:

- 1) Creates the Surplus Land Unit within HCD, subject to appropriation by the Legislature, to facilitate the development and construction of housing on local surplus property.
- 2) Authorizes the Surplus Land Unit to:
 - a) Facilitate agreements between, and provide technical assistance to, housing developers and local agencies relating to disposition of surplus land, available funding and financing instruments, and construction of housing on local surplus land.
 - b) Collaborate with the California Housing Finance Agency (CalHFA), the California Tax Credit Allocation Committee (TCAC), the California Debt Limit Allocation Committee (CDLAC), and other relevant state agencies to assist housing developers and local agencies in obtaining financing to facilitate the construction of housing on surplus land.
 - c) Employ architects, engineers, attorneys, accountants, housing construction and financial experts, and other advisors, consultants, and agents.
 - d) Make and execute contracts and all other instruments as necessary.

- e) Acquire real or personal property on either a temporary or long-term basis as specified.
 - f) Hold, sell, assign, or otherwise dispose of any mortgage interest under its ownership, control or custody, or possession.
 - g) Insure or reinsure against any loss in connection with its property and other assets, including mortgages and mortgage loans, as specified.
 - h) Establish fees and charges in connection with its work.
 - i) Enter agreements to obtain and maintain federal housing subsidies in connection with housing developments.
 - j) Provide bilingual staff and make available Surplus Land Unit publications in a language other than English where necessary to effectively serve all groups for which those services or publications are made available.
- 3) Prohibits the Surplus Land Unit from regulating or enforcing land use decisions, or from acquiring property by eminent domain.
- 4) Provides that this bill shall not relieve a local agency or a housing developer from complying with any disposal requirements or conditions applicable to disposal of government property, as specified.
- 5) Requires the Surplus Land Unit to submit an annual report to the Legislature and Governor by December 31st of each year. This report shall include an evaluation of the extent to which the programs it administers have attained its statutory objectives, recommendations for additional resources and authority, as well as the following:
- a) The number of housing units assisted.
 - b) The distribution of assisted housing units among the metropolitan, non-metropolitan, and rural areas of the state.
 - c) The affordability levels of assisted rental and for-sale units, both in aggregate and at the individual project level.
 - d) Demographic information for the households occupying assisted housing units, both in aggregate and at the individual project level.

- e) A breakdown of state, local, and other funding sources for each assisted housing development.
- 6) Establishes the California Surplus Land Fund, to be made available to the Surplus Land Unit upon appropriation by the Legislature, and states legislative intent relating to eligible expenditures from the Fund.

COMMENTS

- 1) *Author's statement.* "It is clear that the state is facing a severe housing crisis, requiring that all levels of government capitalize on opportunities to build more affordable housing. Past bills have set the groundwork for utilizing unused public land to promote affordable housing development. The state must take the next step by making a robust effort to provide technical and financial assistance to local agencies interested in surplus land development. SB 791 accomplishes this goal by creating a unit within HCD that will provide assistance to local agencies to help them plan, finance, and develop affordable housing on their surplus land."
- 2) *State surplus lands.* In January 2019, the Governor issued an executive order directing DGS, HCD, and the California Housing Finance Agency (CalHFA) to work together to prioritize affordable housing development for appropriate state-owned properties. Since September 2019, the Administration has issued 10 requests for proposals (RFPs) for new housing construction on state parcels identified as in excess of state departments' foreseeable operational needs. The intent is for developing entities to receive a long-term ground lease from the state and to build, own, and manage the housing they develop, subject to state oversight. The executive order also directed DGS to create a digitized inventory of all state-owned surplus land parcels, as well as a comprehensive map of excess state parcels where development of affordable housing is feasible.
- 3) *Local surplus lands.* Building on the January 2019 executive order, SB 6 (Beall, Chapter 667, Statutes of 2019) required DGS, in coordination with HCD, to create a public inventory of local sites suited to housing development. A companion bill, AB 1255 (Rivas, Chapter 661, Statutes of 2019) requires each city and county to report to HCD an inventory of its surplus lands. This bill seeks to take the next step by providing state assistance to facilitate housing development on local surplus lands, similar to the effort relating to state surplus lands.

In recent years, the Legislature has passed a number of measures aimed at encouraging and facilitating construction of housing – particularly affordable housing – to help meet the state’s severe housing shortage. As a result of these significant housing element law reforms, enacted to help address decades of underbuilding, most cities and counties across the state are receiving a sixth cycle housing allocation that is vastly larger than their fifth cycle allocation. City- and county-owned land that is sitting unused, particularly if it is located near jobs and transit, could provide an ideal opportunity to help meet local housing obligations.

- 4) *Background: strengthening the Surplus Land Act.* In 2014, the Legislature updated the Surplus Land Act to enhance the affordable housing requirements under the law (AB 2135, Ting, Chapter 677, Statutes of 2014). AB 2135 requires that if the land is to be used for low or moderate income housing, at least 25% of the units must be offered at an affordable housing cost or rent. If the local agency doesn’t come to terms with a housing sponsor or other local agency, and a housing project with 10 or more units is subsequently built on the land, at least 15% of the units must be designated as affordable. These changes aimed to expand the supply of land available for affordable housing.

However, following passage of AB 2135, reports emerged of local agencies attempting to circumvent the affordable housing requirements. In response, AB 1486 (Ting, Chapter 664, Statutes of 2019) aimed to tighten the Surplus Land Law’s affordable housing provisions. AB 1486, among other things:

- a) Expands the definition of local surplus land, thereby making it more difficult for local governments to declare it as exempt from the Surplus Land Act.
- b) Requires a city or county to designate the land as surplus prior to selling it, ensuring that the Surplus Land Act disposal requirements are triggered.
- c) Exempts surplus local land put out to open, competitive bid for affordable housing from the Surplus Land Act requirements, since it already meets the Surplus Land Act’s goal of prioritizing affordable housing development.
- d) Prohibits local agencies from counting the sale of land for economic development purposes as being “for the agency’s use,” meaning that local agencies must open their properties up to affordable housing developers first, even if they have a different use in mind for the property.
- e) Imposes penalties on local agencies that violate the Surplus Land Act, as specified.

- 5) *Other technical assistance (TA) units in state government.* The committee is aware of several TA units in state financing programs. For example, SB 136 (Leyva, Chapter 766, Statutes of 2017) authorized HCD, as part of the Mobilehome Park Rehabilitation and Resident Ownership Program (MPRRROP), to contract directly with, and provide grants to, nonprofit corporations for providing TA to participants of MPRROP. In addition, the Strategic Growth Council contracts with a team of consultants across the state to provide TA for its Affordable Housing and Sustainable Communities Program (AHSC). This TA provides direct application assistance to teams applying for funding and capacity building services for potential applicants to AHSC. And in his proposed budget in January, the Governor proposed to finance the creation of a new Housing Law Unit at HCD to assist local jurisdictions in housing element and other state housing law compliance.
- 6) *Double referral.* This bill has also been referred to the Committee on Governmental Organization, which has indicated it will waive hearing because the April 19, 2021 amendments remove state excess lands from this bill, thereby removing this bill from its jurisdiction.

RELATED LEGISLATION:

SB 490 (Caballero, 2021) — creates the Housing Acquisition and Rehabilitation Technical Assistance Program at HCD for the purposes of providing technical assistance to specified entities. *This bill is pending in the Senate Appropriations Committee.*

AB 1486 (Ting, Chapter 664, Statutes of 2019) — expanded Surplus Land Act requirements for local agencies, requires local governments to include specified information relating to surplus lands in their housing elements and annual progress reports (APRs).

AB 1255 (R. Rivas, Chapter 661, Statutes of 2019) — required each city and county to report to HCD an inventory of its surplus lands located in urbanized areas or urban clusters, as specified. Requires HCD to provide this information to DGS for inclusion in a digitized inventory of state surplus land sites.

SB 6 (Beall, Chapter 667, Statutes of 2019) — required DGS, in coordination with HCD, to create a public inventory of local sites suitable for residential development, along with state surplus lands.

AB 2135 (Ting, Chapter 677, Statutes of 2014) — required that surplus local government land sold under preference for affordable housing provide at least 25% of the units at affordable housing cost to low-income households. Required that such land sold outside the preference system for residential use provide at least 15% of the units at affordable housing cost to low-income households.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

POSITIONS: (Communicated to the committee before noon on Friday, April 23, 2021.)

SUPPORT:

California Apartment Association
California Association of Realtors

OPPOSITION:

None received

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