

AMENDED IN SENATE APRIL 21, 2003

SENATE BILL

No. 744

**Introduced by Senators Dunn and Ducheny
(Principal coauthor: Senator Hollingsworth)
(Principal coauthor: Assembly Member Steinberg)
(Coauthors: Senators Burton and Florez)**

February 21, 2003

An act to add ~~Sections 65585.3 and~~ *Section* 65585.4 to the Government Code, relating to planning.

LEGISLATIVE COUNSEL'S DIGEST

SB 744, as amended, Dunn. Planning: housing.

Existing law requires each city, county, or city and county to prepare and adopt a general plan for its jurisdiction that contains certain mandatory elements, including a housing element. One part of the housing element is an assessment of housing needs and inventory of resources and constraints relevant to meeting these needs. The assessment includes the locality's share of regional housing needs which is determined by the appropriate council of governments, subject to revision by the Department of Housing *and Community Development*.

~~This bill would provide that a city, county, or city and county that has met at least 10% of its housing needs for each of the very low, low-, and moderate income categories during the preceding year or 30% over the preceding 3 years shall receive priority eligibility in the award of competitive state grants or loans for planning, infrastructure, commercial or industrial development, or other economic development.~~

This bill would also establish with *within* the department a Housing Accountability Committee consisting of 5 members, appointed as specified, to hear appeals of city, county, or city and county decisions on applications for the construction of housing developments that meet specified affordability requirements.

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

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

1 ~~SECTION 1. Section 65585.3 is added to the Government~~
2 ~~Code, to read:~~
3 ~~65585.3. (a) A city, county, or city and county that has met at~~
4 ~~least 10 percent of its housing need for each of the very low, low,~~
5 ~~and moderate income categories, as determined pursuant to~~
6 ~~Section 65584, during the preceding year or 30 percent of its~~
7 ~~housing need in each of the very low, low, and moderate income~~
8 ~~categories over the preceding three years shall receive priority~~
9 ~~eligibility in the award of competitive state grants or loans for~~
10 ~~planning, infrastructure, commercial or industrial development, or~~
11 ~~other economic development activities. To be eligible for the~~
12 ~~priority, the city, county, or city and county shall conclusively~~
13 ~~demonstrate to the department that it has achieved the required~~
14 ~~percentages in accordance with the forms and definitions~~
15 ~~determined by the department pursuant to Section 65400.~~
16 ~~(b) As used in this article, "competitive grant or loan" means~~
17 ~~any discretionary award of money by a state agency, department,~~
18 ~~board, or commission that is funded with money from the state~~
19 ~~General Fund, federal funds, or, except where specifically~~
20 ~~inconsistent with the applicable bond act, a state bond approved~~
21 ~~after January 1, 2004.~~
22 ~~(c) For purposes of this section, "infrastructure" includes all~~
23 ~~of the following:~~
24 ~~(1) Land, improvements, and equipment for highways, streets,~~
25 ~~roads, and public transportation and transit.~~
26 ~~(2) Facilities for the collection, transmission, treatment, and~~
27 ~~disposal of sewage.~~
28 ~~(3) Facilities for the treatment, transmission, and distribution~~
29 ~~of nonagricultural water.~~



1 ~~(4) Facilities for the diversion, collection, storage, and disposal~~
2 ~~of flood or storm water.~~

3 ~~(5) Open space land, parkland, and related improvements.~~

4 ~~(6) Libraries, museums, performing arts centers, zoos, and~~
5 ~~other public facilities.~~

6 ~~(7) Telecommunications and technology improvements.~~

7 ~~(8) Power generation and distribution systems.~~

8 ~~SEC. 2.—~~

9 *SECTION 1.* Section 65585.4 is added to the Government
10 Code, to read:

11 65585.4. (a) There shall be within the department a Housing
12 Accountability Committee consisting of five members. The
13 director of the department and the Director of the Governor's
14 Office of Planning and Research shall be ex officio members,
15 except that either may designate an employee of his or her
16 respective department or office to serve on the committee. The
17 remaining three members shall be appointed by the Governor with
18 the advice and consent of the Senate. One member shall be a
19 member of a city council or board of supervisors, and one *other*
20 member shall have extensive experience in the development of
21 affordable housing. The appointed members shall serve for terms
22 of two years each, and the director shall designate the chairperson.
23 A member of the committee shall receive no compensation for his
24 or her services, but shall be reimbursed by the department for all
25 reasonable expenses actually or necessarily incurred in the
26 performance of his or her official duties. The committee shall hear
27 appeals pursuant to this section at least quarterly or more often as
28 necessary. The committee shall conduct the hearings in
29 accordance with rules and regulations established by the
30 department. The department shall provide the space and clerical
31 and other assistance that the committee may require.

32 (b) Any applicant who proposes to construct a housing
33 development that meets the criteria of subdivision (c) and whose
34 application is either denied or approved with conditions that in his
35 or her judgment render the provision of housing infeasible, may
36 appeal the decision of the city, county, or city and county to the
37 housing accountability committee. *However, conditions or*
38 *mitigation measures impose pursuant to a local coastal permit or*
39 *an environmental review required by the California*
40 *Environmental Quality Act (Division 13 (commencing with*



1 *Section 21000) of the Public Resources Code) may not be*
2 *appealed.*

3 (c) An applicant may file an appeal with the committee if both
4 of the following criteria are met:

5 (1) The proposed housing development will meet any of the
6 following affordability requirements:

7 ~~(A) Ten percent of the total units of the housing development~~
8 ~~are~~

9 (A) *Five percent of the total housing of the housing*
10 *development is available at affordable housing cost to extremely*
11 *low-income households whose household income is less than or*
12 *equal to 30 percent of the area median income.*

13 (B) *Ten percent of the total housing of the development is*
14 *available at affordable housing cost to very low income*
15 *households, as defined in Section 50105 of the Health and Safety*
16 *Code.*

17 ~~(B)~~

18 (C) *Twenty percent of the total units of the development are*
19 *housing of the development is available at affordable housing cost*
20 *to lower income households, as defined in Section 50079.5 of the*
21 *Health and Safety Code.*

22 ~~(C)~~

23 (D) *Fifty percent of the total units of the development are*
24 *housing of the development is available at affordable housing cost*
25 *to moderate-income households, consistent with Section 50052.5*
26 *of the Health and Safety Code.*

27 (2) Either of the following criteria is met as of the date on which
28 the application to the city, county, or city and county is deemed
29 complete:

30 (A) The city, county, or city and county has adopted a housing
31 element that the department has determined pursuant to Section
32 65585 to be in substantial compliance with the requirements of this
33 article, and the proposed housing development, exclusive of any
34 density bonus granted pursuant to Section 65915, is consistent
35 with both the density allowed by the jurisdiction’s zoning
36 ordinance and the general plan land use designation as specified
37 in any element of the general plan *as of the date the application*
38 *was deemed complete*, provided that consistency shall not be
39 required with the zoning ordinance or land use designation if the



1 jurisdiction has not amended the ordinance or the designation to
2 conform to the adopted housing element.

3 (B) The city, county, or city and county has not adopted a
4 housing element that the department has determined pursuant to
5 Section 65585 to be in substantial compliance with the
6 requirements of this article, and the proposed housing
7 ~~development, exclusive of any density bonus granted pursuant to~~
8 ~~Section 65915, is consistent with the jurisdiction's general plan~~
9 ~~land use designation as specified in any element of the general~~
10 ~~plan. development, is located on a site that is designated for~~
11 ~~residential or commercial uses in any element of the general plan~~
12 ~~as of the date the application was deemed complete.~~

13 (d) An applicant may file an appeal with the committee within
14 20 days after the date of the decision by the local agency to deny
15 the application or approve the application with conditions that
16 render the provision of housing infeasible. The committee shall
17 notify the local agency of the filing of such an appeal within 10
18 days, and the local agency shall, within 10 days of the receipt of
19 ~~such~~ *the* notice, transmit a copy of its decision and the reasons
20 therefor to the committee. The appeal shall be heard within 30 days
21 after receipt of the request for an appeal by the applicant. The
22 appeal hearing may be conducted by the board, a subcommittee of
23 one or more members of the board, or a hearing officer appointed
24 by the chair of the board. A stenographic record of the proceedings
25 shall be kept. At its next ~~fall~~ *full* meeting, the committee shall
26 render a written decision, based upon a majority vote, stating its
27 findings of fact, its conclusions and the reasons ~~therefore~~ *therefor*.
28 The hearing by the housing accountability committee shall be
29 limited to the issue of whether, in the case of the denial of an
30 application, the decision of the city, county, or city and county was
31 reasonable and consistent with meeting local housing needs as
32 determined pursuant to Section 65584 and, in the case of an
33 approval of an application with conditions and requirements
34 imposed, whether ~~such~~ *those* conditions and requirements render
35 the provision of housing infeasible and whether they are
36 *reasonable and* consistent with meeting local housing needs as
37 determined pursuant to Section 65584. If the committee finds, in
38 the case of a denial, that the decision of the local agency ~~was~~
39 ~~unreasonable and not~~ *is not reasonable or* consistent with meeting
40 local housing needs, it shall vacate ~~such~~ *the* decision and shall



1 direct the local agency to issue any necessary approval or permit
2 to the applicant. If the committee finds, in the case of an approval
3 with conditions and requirements imposed, that the decision of the
4 board renders the provision of housing infeasible and is not
5 *reasonable or* consistent with meeting local housing needs, it shall
6 order the local agency to modify or remove any such condition or
7 requirement so as to make the project no longer infeasible and to
8 issue any necessary permit or approval. Decisions or conditions
9 and requirements imposed by a local agency that are consistent
10 with meeting local housing needs shall not be vacated, modified,
11 or removed by the committee notwithstanding that ~~such~~ *those*
12 decisions or conditions and requirements have the effect of
13 rendering the provision of housing infeasible.

14 ~~(f)~~

15 (e) In any appeal before the committee, the applicant shall have
16 the initial burden of proof to show that it has met the requirements
17 of subdivision (c). In a case of approval with conditions or
18 requirements imposed, the applicant shall also have the burden of
19 proof to show that the conditions and requirements render the
20 provision of housing infeasible. If the applicant meets the initial
21 burden of proof, then the city, county, or city and county shall have
22 the burden of proof to show that its action was reasonable in that
23 denial of the project or the failure to implement the conditions and
24 requirements, as proposed, would have a specific, adverse impact,
25 *as defined in Section 65589.5*, upon the public health or safety ~~or~~,
26 the physical environment, ~~as defined in Section 65589.5~~, or on any
27 real property that is listed in the California Register of Historical
28 Resources, that there is no feasible method to satisfactorily
29 mitigate or avoid the specific adverse impact without rendering the
30 project infeasible, and that the mitigation or avoidance of such
31 impacts outweigh local housing needs. ~~The committee's decision~~
32 ~~must be consistent with the California Environmental Quality Act~~
33 ~~(Division 13 of the Public Resources Code) and any mitigations~~
34 ~~adopted as a result of the environmental review required by that~~
35 ~~act.~~

36 ~~(g)~~

37 (f) The housing accountability committee or the applicant shall
38 have the power to enforce the orders of the committee at law or in
39 equity in the superior court. The city, county, or city and county
40 shall carry out the order of the housing accountability committee



1 within 30 days of its entry and, upon failure to do so, the order of
2 the committee shall for all purposes, be deemed to be the action of
3 the local agency, unless the applicant consents to a different
4 decision or order by the local agency.

5 ~~(h)~~

6 (g) The department may charge a fee to cover actual costs
7 directly related to the activities of the Housing Accountability
8 Committee. ~~If the committee sustains the original decision of the~~
9 ~~city, county, or city and county, the fee shall be charged to the~~
10 ~~Committee. The fee shall initially be paid by the applicant. If the~~
11 ~~committee orders approval of the proposed development or~~
12 ~~modifies or removes and any conditions or requirements imposed~~
13 ~~upon the applicant, the fee shall be charged to the city, county, or~~
14 ~~city and county. the city, county, or city and county shall reimburse~~
15 ~~the applicant for the fee paid pursuant to this subdivision.~~

16 (h) (1) For the purposes of this section, “housing
17 development” means a development project consisting of one or
18 more residential dwelling units or an emergency shelter facility.

19 (2) For the purposes of this section, an adopted housing
20 element that has been self-certified pursuant to Section 65585.1
21 shall be deemed to have been approved by the department, unless
22 a court finds that the jurisdiction’s housing element does not
23 substantially comply with this article.

24 (i) The remedies provided in this section are in addition to any
25 other remedy provided by law.

