



SOLANO COUNTY

Legislative Committee Meeting

Committee
Supervisor Erin Hannigan (Chair)
Supervisor John M. Vasquez

Staff
Michelle Heppner

April 24, 2017

10:00 a.m.

**Solano County Administration Center
Sixth Floor Conference Center, Room 6003
675 Texas Street
Fairfield, CA 94533**

AGENDA

- i. **Introductions** (Attendees)
- ii. **Public Comment** (Items not on the agenda)
- iii. **Federal Legislative Update** (Waterman & Associates)
 - Latest on GOP Healthcare Bill
 - Fiscal year 2017 Budget
 - PACE Legislation
 - San Luis Unit Drainage Resolution Act
- iv. **Update from Solano County Legislative Delegation** (Representative and/or Staff)
- v. **Report on State Budget and Legislation and consider making a recommendation for a position on legislation** (Karen Lange)

Environmental

[AB 626 \(Garcia, Eduardo D\)](#) California Retail Food Code: microenterprise home kitchen operations.

Housing

[AB 678 \(Bocanegra D\)](#) Housing Accountability Act.

[SB 167 \(Skinner D\)](#) Housing Accountability Act.

Current Analysis: 04/13/2017 [Senate Transportation And Housing \(text 4/17/2017\)](#)

- vi. **Next Regularly Scheduled Meeting: May 1, 2017 at 1:30 p.m.**
- vii. **Adjourn**



Assemblymember Eduardo Garcia, 56th Assembly District

AB 626 – Homemade Food Operations Act.

Updated: 4/11/17

Jointly Authored by: Eduardo Garcia and Joaquin Arambula

BACKGROUND

Restrictions on the preparation and sale of meals in private homes limit the ability of cooks and caterers to legally earn an income from their home kitchens. The goal of this legislation is to reclaim cooking as a means of economic empowerment for the people who need it the most.

Under existing law, there are two ways for individuals to sell food:

1. Through commercial food facilities - such as a co-working kitchens or permitted restaurants, which require a business license, insurance and expensive space rental. These requirements make home cooking inaccessible to many, particularly because the food industry is already one of the lowest margin industries.
2. Through the Cottage Food Act (AB 1616—Gatto, 2012), which only allows for sales of a very restrictive list of food items (mostly non-perishable). This limited list makes it difficult for a person to earn substantive income from their cooking unless they operate a very specialized business (e.g. granola, jams or jerkies).

ISSUE

Current options for selling food are severely prohibitive and make it difficult for the vast majority of home cooks to independently benefit from their labor, skills and limited resources. As a result, many local food businesses operate under the table, risking criminal penalties and without the benefit of safety guidelines or access to education or shared resources.

In 2016, a single mother of six children faced trial on criminal charges for occasionally selling extra portions of food to neighbors and friends through Facebook. In the end, she was just given community service. However, it is up to the Legislature to improve public health safeguards around existing informal economy food sales and legitimize an important lever of economic empowerment for immigrant, minority and other vulnerable communities.

Benefits of Proposed Solution

Economic Empowerment

- Specifically for underrepresented groups such as women, immigrants and people of color

Public Health

- Regulates unsafe private kitchen practices that cause foodborne illnesses.

Protecting Vulnerable Communities

- Under existing law, preparing and selling food from a home kitchen is treated as a criminal act, and may be punishable as a misdemeanor.

BILL SUMMARY

AB 626 would amend Section 113789 of the Health and Safety Code to expand the “Private Homes” exemption and replaces it with “microenterprise home kitchen operations” within the Retail Food Code's requirements for “Food Facilities”. This includes self-registration or permit for Homemade Food Operations. This bill will permit the sale of prepared meals and other foods from small-scale, home kitchen operations.

A “microenterprise home kitchen operation” meets the following requirements:

- No more than one full-time employee
- Food is prepared, cooked, and served on the same day or delivered in a safe time period
- Food preparation does not involve the sale of raw foods including meats, oysters, and milk products.
- Food preparation is limited to 30 meals per day or 60 individual meals per week
- The operation has no more than \$50,000 in verifiable gross annual sales.

The home kitchens prohibit catering operations, cottage food operations and indirect sales.

SUPPORT

- Josephine, Inc. (Sponsor)

FOR MORE INFORMATION

Carlos Gonzalez, Policy Director
State Capitol, Room 4140
Carlos.Gonzalez@asm.ca.gov
(916) 319-2056



April 18, 2017

The Honorable Jim Wood
Chair, Assembly Health Committee
State Capitol, Room 6005
Sacramento, CA 95814



Re: AB 626 (E. Garcia): California Retail Food Code: microenterprise home kitchen operations
As Amended April 6, 2017 – OPPOSE
Set for Hearing April 25, 2017 – Assembly Health Committee

Dear Assembly Member Wood:



The California State Association of Counties (CSAC), Urban Counties of California (UCC), Rural County Representatives of California (RCRC), County Health Executives Association of California (CHEAC), and Health Officers Association of California (HOAC) regrettably must OPPOSE AB 626 by Assembly Member Eduardo Garcia, which would allow for the sale of food directly to consumers from private homes.



Local public health and environmental health departments work diligently to prevent and reduce community exposure to foodborne illnesses. We have tremendous concerns about the preparation of potentially hazardous foods in home kitchens. Cooking, cooling, and reheating foods, as well as ensuring appropriate hot and cold temperature controls, is challenging in a commercial kitchen even with staff training and appropriate equipment and facilities. This danger increases exponentially in a home kitchen.



When food is purchased by the public, they expect it has been prepared within a legal framework to prevent pathogens. AB 626 broadens our cottage food law in a way that would put the public at risk.

Furthermore, the operation of these enterprises in residential neighborhoods raises a host of other issues relating to trash, parking, noise, wastewater, septic sizing, water sources, fire hazards, and ADA accessibility, making enforcement and oversight difficult for a number of local governmental entities

including local health departments, planning and building, fire services, and public works.

It is for these reasons that we must oppose AB 626 (E. Garcia).

Sincerely,



Cara Martinson
Legislative Representative
California State Association of
Counties (CSAC)



Jolena Voorhis
Executive Director
Urban Counties of California (UCC)



Tracy Rhine
Legislative Advocate
Rural County Representatives of
California (RCRC)



Michelle Gibbons
Executive Director
County Health Executives Association
of California (CHEAC)



Kat DeBurgh
Executive Director
Health Officers Association of
California (HOAC)

cc: The Honorable Eduardo Garcia, Member, California State Assembly
Honorable Members, Assembly Health Committee
John Gilman, Consultant, Assembly Health Committee
Peter Anderson, Consultant, Assembly Republican Caucus

AMENDED IN ASSEMBLY APRIL 6, 2017
AMENDED IN ASSEMBLY MARCH 23, 2017
CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 626

Introduced by Assembly Members Eduardo Garcia and Arambula

February 14, 2017

An act to amend ~~Section 113789 of~~, *Sections 113789, 114101, 114130, 114285, and 114390 of*, to add Section ~~113806.5~~ 113825 to, and to add Chapter 11.6 (commencing with Section 114367) to Part 7 of Division 104 of, the Health and Safety Code, relating to the California Retail Food Code.

LEGISLATIVE COUNSEL'S DIGEST

AB 626, as amended, Eduardo Garcia. California Retail Food Code: ~~homemade food operation. microenterprise home kitchen operations.~~

Existing law, the California Retail Food Code, establishes uniform health and sanitation standards for retail food facilities *for regulation* by the State Department of Public ~~Health. Health, and requires local health agencies to enforce these provisions.~~ Existing law defines “food facility” as an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption at the retail level, as specified. Existing law exempts, among others, a private home, including a registered or permitted cottage food operation, from the definition of food facility. A violation of any provision of the California Retail Food Code or regulation adopted pursuant to it is generally a misdemeanor.

~~This bill would make legislative findings and declarations relating to restrictions associated with retail food facilities and cottage food~~

~~operations and difficulties for home cooks to independently benefit from their labor, skills, and limited resources. The bill would exempt a homemade food operation from the definition of food facility. The bill would define “homemade food operation” as an enterprise in a private home for the use of a home kitchen for small-scale, direct food sales by a home cook to consumers, with appropriate flexibility in determining the food types to be sold. The bill would require the department to regulate homemade food operations in a manner that ensures appropriate and sufficient health and sanitation standards. By creating a new crime, 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 no reimbursement is required by this act for a specified reason.~~

This bill would repeal the exemption of a private home from the definition of a food facility. This bill would, among other things, include a microenterprise home kitchen operation within the definition of a food facility, and would define a microenterprise home kitchen operation to mean a food facility that is operated by a resident of a private home where food is prepared for a consumer and that meets specified requirements, including, among others, that the operation has no more than one full-time equivalent food employee and has no more than \$50,000 in verifiable gross annual sales. The bill would require a microenterprise home kitchen operation to be considered a restricted food service facility for purposes of certain provisions of the code, except as otherwise provided. The bill would require the applicant for a permit to operate a microenterprise home kitchen operation to submit to the enforcement agency written standard operating procedures that include specified information, including all food products that will be handled and the days and time that the home kitchen will be utilized as a microenterprise home kitchen operation. The bill would also make conforming changes and related findings and declarations.

By imposing duties on local officials and creating a new crime, the 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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so 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. (a) The Legislature finds and declares all of the
2 following:
- 3 (1) California is the largest agricultural producer and exporter
4 in the United States.
- 5 (2) California is home to the “farm-to-table” movement, which
6 embraces the idea that restaurants and other food sellers should
7 prioritize locally and sustainably produced foods.
- 8 (3) Many cities have embraced the idea of locally grown,
9 produced, and prepared foods. Sacramento, for example,
10 proclaimed itself the farm-to-fork capital of America.
- 11 (4) Accordingly, Californians have shown a preference for
12 supporting local agriculture and local business and for finding
13 sustainable solutions to food insecurity.
- 14 (5) The retail and commercial food market is an integral part
15 of California’s economy.
- 16 (6) Small-scale, home-cooking operations can create significant
17 economic opportunities for Californians that need them most —
18 often women, immigrants, and people of color.
- 19 (7) Under existing law, individuals can sell food through retail
20 food facilities or cottage food operations, the latter of which being
21 limited to a restricted list that primarily consists of nonperishable
22 food items that can be prepared in the home. Both of these options
23 make it difficult for the vast majority of home cooks to
24 independently benefit from their labor, skills, and limited resources.
- 25 (8) Because the bar for entry to restaurant ownership is high,
26 and the cost of renting a retail kitchen is so great, an informal
27 economy of locally produced and prepared hot foods exists in the
28 form of meal preparation services, food carts, and communally
29 shared meals.

1 (9) However, due to a lack of appropriate regulations, many
2 experienced cooks in California are unable to legally participate
3 in the locally prepared food economy and to earn an income legally
4 therein.

5 (10) As a result, and because they feel they have no other option,
6 thousands of private chefs, home caterers, and many other food
7 microentrepreneurs cook out of private homes or unlicensed food
8 facilities, with little access to education for best practices or safety
9 guidelines.

10 (11) Many of these cooks are unable to enter the traditional food
11 economy based on disability, family responsibilities, or lack of
12 opportunity.

13 (12) Under existing law, preparing and selling food from a home
14 kitchen normally can be treated as a criminal act and may be
15 punishable as a misdemeanor.

16 (13) Therefore, the Legislature should create a framework that
17 authorizes the safe preparation and sale of meals prepared in home
18 kitchens, providing adequate regulations and requirements for food
19 handling and safety.

20 (14) Providing guidelines, training, and safety resources to home
21 cooks would also increase public health safeguards in existing
22 informal food economies.

23 (15) The exchange of home-cooked food can also improve
24 access to healthy foods for communities, particularly in food
25 deserts with severely limited options.

26 (16) The California Retail Food Code establishes health and
27 sanitation standards for retail food facilities. That law exempts
28 private homes from the definition of a food facility and includes
29 cottage food operations in that exemption.

30 (b) It is the intent of the Legislature that this act authorize the
31 use of home kitchens for small-scale, direct food sales by home
32 cooks to consumers, providing appropriate flexibility in food types
33 and appropriate health and sanitation standards.

34 SEC. 2. Section 113789 of the Health and Safety Code is
35 amended to read:

36 113789. (a) "Food facility" means an operation that stores,
37 prepares, packages, serves, vends, or otherwise provides food for
38 human consumption at the retail level, including, but not limited
39 to, the following:

- 1 (1) An operation where food is consumed on or off the premises,
2 regardless of whether there is a charge for the food.
- 3 (2) A place used in conjunction with the operations described
4 in this subdivision, including, but not limited to, storage facilities
5 for food-related utensils, equipment, and materials.
- 6 (b) “Food facility” includes permanent and nonpermanent food
7 facilities, including, but not limited to, the following:
- 8 (1) Public and private school cafeterias.
9 (2) Restricted food service facilities.
10 (3) Licensed health care facilities, except as provided in
11 paragraph (12) of subdivision (c).
12 (4) Commissaries.
13 (5) Mobile food facilities.
14 (6) Mobile support units.
15 (7) Temporary food facilities.
16 (8) Vending machines.
17 (9) Certified farmers’ markets, for purposes of permitting and
18 enforcement pursuant to Section 114370.
19 (10) Farm stands, for purposes of permitting and enforcement
20 pursuant to Section 114375.
21 (11) Fishermen’s markets.
22 (12) *Microenterprise home kitchen operations.*
- 23 (c) “Food facility” does not include any of the following:
- 24 (1) A cooperative arrangement wherein no permanent facilities
25 are used for storing or handling food.
26 ~~(2) A private home, which includes, but is not limited to, either~~
27 ~~of the following:~~
- 28 ~~(A)~~
- 29 (2) A cottage food operation that is registered or has a permit
30 pursuant to Section 114365.
31 ~~(B) A homemade food operation, as defined in Section 113806.5.~~
- 32 (3) A church, private club, or other nonprofit association that
33 gives or sells food to its members and guests, and not to the general
34 public, at an event that occurs not more than three days in any
35 90-day period.
- 36 (4) A for-profit entity that gives or sells food at an event that
37 occurs not more than three days in a 90-day period for the benefit
38 of a nonprofit association, if the for-profit entity receives no
39 monetary benefit, other than that resulting from recognition from
40 participating in an event.

1 (5) Premises set aside for wine tasting, as that term is used in
2 Section 23356.1 of the Business and Professions Code, or premises
3 set aside by a beer manufacturer, as defined in Section 25000.2 of
4 the Business and Professions Code, and in the regulations adopted
5 pursuant to those sections, that comply with Section 118375,
6 regardless of whether there is a charge for the wine or beer tasting,
7 if no other beverage, except for bottles of wine or beer and
8 prepackaged nonpotentially hazardous beverages, is offered for
9 sale or for onsite consumption and no food, except for crackers,
10 pretzels, or prepackaged food that is not potentially hazardous
11 food is offered for sale or for onsite consumption.

12 (6) An outlet or location, including, but not limited to, premises,
13 operated by a producer, selling or offering for sale only whole
14 produce grown by the producer or shell eggs, or both, provided
15 the sales are conducted at an outlet or location controlled by the
16 producer.

17 (7) A commercial food processing establishment, as defined in
18 Section 111955.

19 (8) A child day care facility, as defined in Section 1596.750.

20 (9) A community care facility, as defined in Section 1502.

21 (10) A residential care facility for the elderly, as defined in
22 Section 1569.2.

23 (11) A residential care facility for the chronically ill, which has
24 the same meaning as a residential care facility, as defined in Section
25 1568.01.

26 (12) (A) An intermediate care facility for the developmentally
27 disabled, as defined in subdivisions (e), (h), and (m) of Section
28 1250, with a capacity of six beds or fewer.

29 (B) A facility described in subparagraph (A) shall report any
30 foodborne illness or outbreak to the local health department and
31 to the State Department of Public Health within 24 hours of the
32 illness or outbreak.

33 (13) A community food producer, as defined in Section 113752.

34 ~~SEC. 3. Section 113806.5 is added to the Health and Safety~~
35 ~~Code, to read:~~

36 ~~113806.5. (a) "Homemade food operation" means an enterprise~~
37 ~~in a private home for the use of a home kitchen for small-scale,~~
38 ~~direct food sales by a home cook to consumers, with appropriate~~
39 ~~flexibility in determining the food types to be sold, and regulated~~
40 ~~pursuant to Chapter 11.6 (commencing with Section 114367).~~

1 ~~(b) For purposes of this section, “private home” means a~~
2 ~~dwelling, including an apartment or other leased space, where~~
3 ~~individuals reside.~~

4 *SEC. 3. Section 113825 is added to the Health and Safety Code,*
5 *to read:*

6 *113825. (a) “Microenterprise home kitchen operation” means*
7 *a food facility that is operated by a resident in a private home*
8 *where food is prepared for a consumer and meets all of the*
9 *following requirements:*

10 *(1) The operation has no more than one full-time equivalent*
11 *food employee, not including a family member or household*
12 *member.*

13 *(2) Food is prepared, cooked, and served on the same day,*
14 *picked up by the customer, or delivered within a safe time period*
15 *based on holding equipment capacity.*

16 *(3) Food preparation does not involve processes that require*
17 *a HACCP plan, as specified in Section 114419, or the production,*
18 *service, or sale of raw milk or raw milk products, as defined in*
19 *Section 11380 of Title 17 of the California Code of Regulation.*

20 *(4) The service and sale of raw oysters is prohibited.*

21 *(5) Food preparation is limited to no more than 30 individual*
22 *meals per day, and no more than 60 individual meals per week,*
23 *unless otherwise approved by the local enforcement agency based*
24 *on food preparation capacity of the operation.*

25 *(6) The operation has no more than fifty thousand dollars*
26 *(\$50,000) in verifiable gross annual sales.*

27 *(b) “Microenterprise home kitchen operation” does not include*
28 *any of the following:*

29 *(1) A catering operation.*

30 *(2) A cottage food operation, as defined in Section 113758.*

31 *(3) An indirect sale.*

32 *SEC. 4. Section 114101 of the Health and Safety Code is*
33 *amended to read:*

34 *114101. (a) Mechanical machine warewashing shall be*
35 *accomplished by using an approved machine installed and operated*
36 *in accordance with the manufacturer’s specifications.*

37 *(b) Soiled items to be cleaned in a warewashing machine shall*
38 *be loaded in racks, trays, or baskets or onto conveyors in a position*
39 *that exposes the items to the unobstructed spray during all cycles*
40 *and allows the items to drain.*

1 (c) The velocity, quantity, and distribution of the washwater,
2 type, and concentration of detergent used therein, and the time the
3 utensils are exposed to the water shall be sufficient to clean the
4 utensils.

5 (d) Restricted food service facilities need not comply with
6 Section 114130 if the domestic or commercial dishwasher utilized
7 for warewashing is ~~capable of providing heat to the surface of the~~
8 ~~utensils of a~~ *used in accordance with the manufacturer's*
9 *specifications and achieves a utensil surface* temperature of at
10 least 160°F.

11 *SEC. 5. Section 114130 of the Health and Safety Code is*
12 *amended to read:*

13 114130. (a) Equipment and utensils shall be designed and
14 constructed to be durable and to retain their characteristic qualities
15 under normal use conditions.

16 (b) Except as specified in subdivision (c), all new and
17 replacement food-related and utensil-related equipment shall be
18 certified or classified for sanitation by an American National
19 Standards Institute (ANSI) accredited certification program. In the
20 absence of an applicable ANSI certified sanitation standard,
21 food-related and utensil-related equipment shall be evaluated for
22 approval by the enforcement agency.

23 (c) Restricted food service facilities need not comply with
24 subdivision (b), depending on the extent of the food service
25 activities, and if the enforcement officer determines that the
26 equipment meets the characteristics of subdivision (a).

27 (d) All new and replacement electrical appliances shall meet
28 applicable Underwriters Laboratories standards for electrical
29 equipment as determined by an ANSI accredited certification
30 program.

31 (e) *Notwithstanding subdivision (c), equipment for holding cold*
32 *and hot food in a restricted food service facility shall be sufficient*
33 *in number and capacity to ensure proper food temperature control.*

34 *SEC. 6. Section 114285 of the Health and Safety Code is*
35 *amended to read:*

36 114285. (a) Except as specified in subdivision (b), a private
37 home, a room used as living or sleeping quarters, or an area directly
38 opening into a room used as living or sleeping quarters shall not
39 be used for conducting food facility operations.

1 (b) (1) Nonperishable, prepackaged food may be given away,
2 sold, or handled from a private home. No food that has exceeded
3 the labeled shelf life date recommended by the manufacturer shall
4 be deemed to be nonperishable food.

5 (2) For purposes of this subdivision, “nonperishable food” means
6 a food that is not a potentially hazardous food, and that does not
7 show signs of spoiling, becoming rancid, or developing
8 objectionable odors during storage at ambient temperatures.

9 (c) Restricted food service facilities *and microenterprise home*
10 *kitchen operations* are exempt from subdivision (a) provided that
11 no sleeping accommodations shall be allowed in any area where
12 food is prepared or stored.

13 ~~SEC. 4.~~

14 *SEC. 7.* Chapter 11.6 (commencing with Section 114367) is
15 added to Part 7 of Division 104 of the Health and Safety Code, to
16 read:

17

18 CHAPTER 11.6. ~~HOMEMADE FOOD OPERATIONS~~

19 *MICROENTERPRISE HOME KITCHEN ENTERPRISE*

20

21 ~~114367. The department shall regulate homemade food~~
22 ~~operations, as defined in Section 113806.5, in a manner that ensures~~
23 ~~appropriate and sufficient health and sanitation standards.~~

24 *114367. (a) A microenterprise home kitchen operation, as*
25 *defined in Section 113825, shall be considered a restricted food*
26 *service facility for purposes of, and subject to all applicable*
27 *requirements of, Chapter 1 (commencing with Section 113700) to*
28 *Chapter 8 (commencing with Section 114250), inclusive, Chapter*
29 *12.6 (commencing with Section 114377), and Chapter 13*
30 *(commencing with Section 114380), except as otherwise provided*
31 *in this chapter.*

32 (b) A microenterprise home kitchen operation shall be exempt
33 from all of the following provisions:

34 (1) Handwashing sign posting requirements, as specified in
35 Section 113953.5.

36 (2) Handwashing facilities requirements, as required in Section
37 113953, provided that a handwashing sink is supplied with warm
38 water and located in the toilet room and supplied, as specified in
39 Section 113953.2.

1 (3) *Installing a three-compartment sink, as required in Section*
2 *114099, provided that a two-compartment sink is available and*
3 *used, as specified in Section 114099.3.*

4 (4) *Installing a food preparation sink, as required in Section*
5 *114163, provided that produce is washed, as specified in Section*
6 *113992.*

7 (c) *Any individual who is involved in the preparation, storage,*
8 *or service of food in a microenterprise home kitchen operation*
9 *shall be subject to the food handler card requirements specified*
10 *in Section 113948.*

11 114367.5. (a) *A microenterprise home kitchen operation shall*
12 *not be open for business unless it is operating under a permit*
13 *issued from the local enforcement agency in a manner approved*
14 *by the local enforcement agency.*

15 (b) *The applicant shall submit to the local enforcement agency*
16 *written standard operating procedures that include all of the*
17 *following information:*

18 (1) *All food products that will be handled.*

19 (2) *The proposed procedures and methods of food preparation*
20 *and handling.*

21 (3) *Procedures, methods, and schedules for cleaning utensils,*
22 *equipment, and for the disposal of refuse.*

23 (4) *How food will be maintained at the required holding*
24 *temperatures as specified in Section 113996, pending pickup by*
25 *consumer or during delivery.*

26 (5) *Days and times that the home kitchen will be utilized as a*
27 *microenterprise home kitchen operation.*

28 (c) *For purposes of permitting, the permitted area includes the*
29 *home kitchen, onsite customer eating area, food storage, utensils*
30 *and equipment, toilet room, janitorial or cleaning facilities, and*
31 *refuse storage area. Food operations shall not be conducted*
32 *outside of the permitted areas.*

33 (d) (1) *For purposes of determining compliance with this*
34 *chapter, a representative of a local enforcement agency, for*
35 *inspection purposes, may access the permitted area of a private*
36 *home where a food operation is being conducted. Access is limited*
37 *to the permitted areas and solely for the purpose of enforcing or*
38 *administering this part.*

39 (2) *A representative of a local enforcement agency may inspect*
40 *a microenterprise home kitchen operation on the basis of a*

1 *consumer complaint, reason to suspect that adulterated or*
2 *otherwise unsafe food has been produced by the operation, or that*
3 *the operation has violated this part.*

4 ~~SEC. 5. No reimbursement is required by this act pursuant to~~
5 ~~Section 6 of Article XIII B of the California Constitution because~~
6 ~~the only costs that may be incurred by a local agency or school~~
7 ~~district will be incurred because this act creates a new crime or~~
8 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
9 ~~for a crime or infraction, within the meaning of Section 17556 of~~
10 ~~the Government Code, or changes the definition of a crime within~~
11 ~~the meaning of Section 6 of Article XIII B of the California~~
12 ~~Constitution.~~

13 *SEC. 8. Section 114390 of the Health and Safety Code is*
14 *amended to read:*

15 114390. (a) Enforcement officers shall enforce this part and
16 all regulations adopted pursuant to this part.

17 (b) (1) For purposes of enforcement, any authorized
18 enforcement officer may, during the facility's hours of operation
19 and other reasonable times, enter, inspect, issue citations to, and
20 secure any sample, photographs, or other evidence from a food
21 facility, cottage food operation, or any facility suspected of being
22 a food facility or cottage food operation, or a vehicle transporting
23 food to or from a retail food facility, when the vehicle is stationary
24 at an agricultural inspection station, a border crossing, or at any
25 food facility under the jurisdiction of the enforcement agency, or
26 upon the request of an incident commander.

27 (2) If a food facility is operating under an HACCP plan, the
28 enforcement officer may, for the purpose of determining
29 compliance with the plan, secure as evidence any documents, or
30 copies of documents, relating to the facility's adherence to the
31 HACCP plan. Inspection may, for the purpose of determining
32 compliance with this part, include any record, file, paper, process,
33 HACCP plan, invoice, or receipt bearing on whether food,
34 equipment, or utensils are in violation of this part.

35 (3) *The enforcement officer may, for the purpose of determining*
36 *compliance with the gross annual sales requirements for operating*
37 *a microenterprise home kitchen operation or a cottage food*
38 *operation, require those operations to provide copies of documents*
39 *related to determining gross annual sales.*

1 (c) Notwithstanding subdivision (a), an employee may refuse
2 entry to an enforcement officer who is unable to present official
3 identification showing the enforcement officer's picture and
4 enforcement agency name. In the absence of the identification
5 card, a business card showing the enforcement agency's name plus
6 a picture identification card such as a driver's license shall meet
7 this requirement.

8 (d) It is a violation of this part for any person to refuse to permit
9 entry or inspection, the taking of samples or other evidence, access
10 to copy any record as authorized by this part, to conceal any
11 samples or evidence, withhold evidence concerning them, or
12 interfere with the performance of the duties of an enforcement
13 officer, including making verbal or physical threats or sexual or
14 discriminatory harassment.

15 (e) A written report of the inspection shall be ~~made~~ made, and
16 a copy shall be supplied or mailed to the owner, manager, or
17 operator of the food facility.

18 *SEC. 9. No reimbursement is required by this act pursuant to*
19 *Section 6 of Article XIII B of the California Constitution for certain*
20 *costs that may be incurred by a local agency or school district*
21 *because, in that regard, this act creates a new crime or infraction,*
22 *eliminates a crime or infraction, or changes the penalty for a crime*
23 *or infraction, within the meaning of Section 17556 of the*
24 *Government Code, or changes the definition of a crime within the*
25 *meaning of Section 6 of Article XIII B of the California*
26 *Constitution.*

27 *However, if the Commission on State Mandates determines that*
28 *this act contains other costs mandated by the state, reimbursement*
29 *to local agencies and school districts for those costs shall be made*
30 *pursuant to Part 7 (commencing with Section 17500) of Division*
31 *4 of Title 2 of the Government Code.*



SUMMARY:

This measure will add a number of provisions to the Housing Accountability Act (HAA) to ensure local agency compliance during the approval process for proposed housing developments. This measure also clarifies existing provisions of the Act and imposes added penalties on agencies that violate the HAA without appropriate findings.

BACKGROUND:

California is in the midst of an unprecedented housing crisis caused by a severe lack of new housing construction at all levels of affordability. Passed in 1982, the HAA has served for more 30 years as a tool to ensure that municipalities do not unfairly hinder the development of new housing projects, and to ensure new housing construction during crises like the one California faces today.

Under the HAA, local governments must follow certain legal mandates before denying a housing development application that complies with their general plan and zoning rules. Unfortunately, the current enforcement mechanisms of the HAA are inadequate to achieve compliance in many cases.

One of the most significant barriers to the construction of new housing is unjustified local resistance from NIMBY (Not in My Backyard) groups. In a recent report, the Legislative Analyst’s Office confirmed that new housing construction faces community opposition, *“because it often is perceived as bringing negative changes to a community’s quality or character.”*

Using these types of unreasonable arguments, “no growth advocates” and NIMBYs have significantly curtailed housing construction, which significantly worsens the jobs-housing imbalance in our communities, in contravention to state law. This imbalance causes hardship for many people, especially low-income families in need of housing close to their jobs. Building more infill housing and reducing lengthy commute times are also necessary for California to achieve its ambitious 2030 greenhouse gas reduction target, as enumerated in SB 32.

WHAT THE BILL DOES:

This measure will make a number of changes to the Housing Accountability Act to ensure that local agencies do not disapprove housing projects without good cause:

1. Change the existing “substantial” evidentiary standard to “clear and convincing” when local agencies make findings rejecting a proposed housing development;
2. Clarify that zoning or general plan land use changes made after the date the application for a housing development was deemed complete do not constitute a valid basis to disapprove or condition a proposed housing development;
3. Assess fines for noncompliance with the HAA, starting at \$100,000 per housing unit, to be placed in a housing trust fund;
4. Award damages to the petitioner for “bad faith” proposed housing development rejections;
5. Award attorneys fees to the petitioner or to the plaintiff for all proposed housing developments (subsidized below-market-rate and market-rate);
6. At the court’s discretion, grant trial courts the authority to hear HAA cases before a final determination is made about the proposed housing development;
7. Include “above-moderate” proposed housing developments in every section that currently only applies to 100% below market rate housing;
8. Require local agencies to conduct an HAA analysis as part of their review of each housing development application; *and*
9. Prohibit local agencies from imposing conditions or restrictions that would render the proposed housing development infeasible. However, local agencies will still have the authority to impose fees authorized by law that are needed to provide necessary public services and facilities.

SUPPORT:

California Apartment Association
California Chamber of Commerce
East Bay Forward
Abundant Housing LA
California Association of Realtors

OPPOSITION:

None at this time

AMENDED IN ASSEMBLY MARCH 21, 2017

CALIFORNIA LEGISLATURE—2017—18 REGULAR SESSION

ASSEMBLY BILL

No. 678

Introduced by Assembly Member Bocanegra
(Principal coauthor: Senator Skinner)

February 15, 2017

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

LEGISLATIVE COUNSEL'S DIGEST

AB 678, as amended, Bocanegra. 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) 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) 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) 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) *This bill would make various technical and conforming changes to the Housing Accountability Act.*

~~The Housing Accountability Act, among other things, prohibits a local agency from disapproving a housing development project for very low, low-, or moderate-income households or an emergency shelter unless the local agency makes specified written findings.~~

~~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 ~~developments~~, *development projects*,
10 including emergency shelters, that contribute to meeting the need
11 determined pursuant to this article without a thorough analysis of
12 the economic, social, and environmental effects of the action and
13 without 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 ~~substantial~~ *clear and convincing* evidence in the record, as
32 to one of the 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-~~ and *low-, moderate-, and*
19 *above* moderate-income households or rendering the development
20 of the emergency shelter financially infeasible. As used in this
21 paragraph, a “specific, adverse impact” means a significant,
22 quantifiable, direct, and unavoidable impact, based on objective,
23 identified written public health or safety standards, policies, or
24 conditions as they existed on the date the application was deemed
25 complete. Inconsistency with the zoning ordinance or general plan
26 land use designation shall not constitute a specific, adverse impact
27 upon the public health or safety.

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

35 (4) The *housing* development project or emergency shelter is
36 proposed on land zoned for agriculture or resource preservation
37 that is surrounded on at least two sides by land being used for
38 agricultural or resource preservation purposes, or which does not
39 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*
9 *use 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*
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 and low-income
36 *low, low-, moderate-, and above 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~~. *shelter*;
7 *provided that any fees or other exactions do not render the*
8 *proposed housing development project or emergency shelter*
9 *infeasible.*

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

39 (i) If any city, county, or city and county denies approval or
40 imposes ~~restrictions, including~~ conditions, *including, but not limited*

1 *to, fees, exactions, design changes, a reduction of allowable*
2 *densities or the percentage of a lot that may be occupied by a*
3 *building or structure under the applicable planning and zoning in*
4 *force at the time the application is deemed complete pursuant to*
5 *Section 65943, project-specific conditions, or the enactment of a*
6 *zoning ordinance, general plan amendment, or other code*
7 *amendment, that have a substantial adverse effect on the viability*
8 *or affordability of a housing development for very low, low-,*
9 *moderate-, or above moderate-income households, including*
10 *purchasers or renters, and the denial of the development or the*
11 *imposition of ~~restrictions~~ conditions on the development is the*
12 *subject of a court action which challenges the ~~denial~~, denial or*
13 *imposition of conditions, then the burden of proof shall be on the*
14 *local legislative body to show that its decision is consistent with*
15 *the findings as described in subdivision (d) and that the findings*
16 *are supported by ~~substantial~~ clear and convincing evidence in the*
17 *record.*

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

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

36 (2) There is no feasible method to satisfactorily mitigate or
37 avoid the adverse impact identified pursuant to paragraph (1), other
38 than the disapproval of the housing development project or the
39 approval of the project upon the condition that it be developed at
40 a lower density.

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

21 H

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, the*
29 *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 of a housing development~~
21 *disapproval, reduction of allowable densities or percentage of lot*
22 *that may be occupied by a building or structure under the*
23 *applicable general plan and zoning ordinances in effect on the*
24 *date the application was deemed complete pursuant to Section*
25 *65943, or the imposition of conditions, including, but not limited*
26 *to, fees or exactions and design changes that have a substantial*
27 *adverse effect on the viability or affordability of a housing*
28 *development project for very low, low-, moderate-, or above*
29 *moderate-income households, 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 ~~impose fines upon the local~~
38 ~~agency that the local agency shall be required to deposit into a~~
39 ~~housing trust fund. Fines shall not be paid from funds that are~~
40 ~~already dedicated for affordable housing, including, but not limited~~

1 to, redevelopment or low- and moderate-income housing funds
2 and federal HOME and CDBG funds. The local agency shall
3 commit the money in the trust fund within five years for the sole
4 purpose of financing newly constructed housing units affordable
5 to extremely low, very low, or low-income households. For
6 purposes of this section, “bad faith” shall mean *award punitive*
7 *damages to the petitioner. For purposes of this section, “bad faith”*
8 *includes, but is not limited to, the failure to comply with subdivision*
9 *(o) or an action that is frivolous or otherwise entirely without merit.*

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

34 (n) In any action, the record of the proceedings before the local
35 agency shall be filed as expeditiously as possible and,
36 notwithstanding Section 1094.6 of the Code of Civil Procedure or
37 subdivision (m) of this section, all or part of the record may be
38 prepared (1) by the petitioner with the petition or petitioner’s points
39 and authorities, (2) by the respondent with respondent’s points and
40 authorities, (3) after payment of costs by the petitioner, or (4) as

1 otherwise directed by the court. If the expense of preparing the
2 record has been borne by the petitioner and the petitioner is the
3 prevailing party, the expense shall be taxable as costs.

4 *(o) Every local agency shall publish an analysis of the*
5 *requirements of this section as part of its review of each application*
6 *for a housing development project.*

7 ~~(o)~~

8 *(p) This section shall be known, and may be cited, as the*
9 *Housing Accountability Act.*

10 SECTION 1. ~~Section 65589.5 of the Government Code is~~
11 ~~amended to read:~~

12 ~~65589.5.—(a) The Legislature finds and declares all of the~~
13 ~~following:~~

14 ~~(1) The lack of housing, including emergency shelters, is a~~
15 ~~critical problem that threatens the economic, environmental, and~~
16 ~~social quality of life in California.~~

17 ~~(2) California housing has become the most expensive in the~~
18 ~~nation. The excessive cost of the state's housing supply is partially~~
19 ~~caused by activities and policies of many local governments that~~
20 ~~limit the approval of housing, increase the cost of land for housing,~~
21 ~~and require that high fees and exactions be paid by producers of~~
22 ~~housing.~~

23 ~~(3) Among the consequences of those actions are discrimination~~
24 ~~against low-income and minority households, lack of housing to~~
25 ~~support employment growth, imbalance in jobs and housing,~~
26 ~~reduced mobility, urban sprawl, excessive commuting, and air~~
27 ~~quality deterioration.~~

28 ~~(4) Many local governments do not give adequate attention to~~
29 ~~the economic, environmental, and social costs of decisions that~~
30 ~~result in disapproval of housing development projects, reduction~~
31 ~~in density of housing development projects, and excessive~~
32 ~~standards for housing development projects.~~

33 ~~(b) It is the policy of the state that a local government not reject~~
34 ~~or make infeasible housing development projects, including~~
35 ~~emergency shelters, that contribute to meeting the need determined~~
36 ~~pursuant to this article without a thorough analysis of the economic,~~
37 ~~social, and environmental effects of the action and without~~
38 ~~complying with subdivision (d).~~

39 ~~(e) The Legislature also recognizes that premature and~~
40 ~~unnecessary development of agricultural lands for urban uses~~

1 continues to have adverse effects on the availability of those lands
2 for food and fiber production and on the economy of the state.
3 Furthermore, it is the policy of the state that development should
4 be guided away from prime agricultural lands; therefore, in
5 implementing this section, local jurisdictions should encourage,
6 to the maximum extent practicable, in filling existing urban areas.

7 (d) A local agency shall not disapprove a housing development
8 project, including farmworker housing as defined in subdivision
9 (h) of Section 50199.7 of the Health and Safety Code, for very
10 low, low-, or moderate-income households, or an emergency
11 shelter, or condition approval in a manner that renders the project
12 infeasible for development for the use of very low, low-, or
13 moderate-income households, or an emergency shelter, including
14 through the use of design review standards, unless it makes written
15 findings, based upon substantial evidence in the record, as to one
16 of the following:

17 (1) The jurisdiction has adopted a housing element pursuant to
18 this article that has been revised in accordance with Section 65588,
19 is in substantial compliance with this article, and the jurisdiction
20 has met or exceeded its share of the regional housing need
21 allocation pursuant to Section 65584 for the planning period for
22 the income category proposed for the housing development project,
23 provided that any disapproval or conditional approval shall not be
24 based on any of the reasons prohibited by Section 65008. If the
25 housing development project includes a mix of income categories,
26 and the jurisdiction has not met or exceeded its share of the regional
27 housing need for one or more of those categories, then this
28 paragraph shall not be used to disapprove or conditionally approve
29 the housing development project. The share of the regional housing
30 need met by the jurisdiction shall be calculated consistently with
31 the forms and definitions that may be adopted by the Department
32 of Housing and Community Development pursuant to Section
33 65400. In the case of an emergency shelter, the jurisdiction shall
34 have met or exceeded the need for emergency shelter, as identified
35 pursuant to paragraph (7) of subdivision (a) of Section 65583. Any
36 disapproval or conditional approval pursuant to this paragraph
37 shall be in accordance with applicable law, rule, or standards.

38 (2) The housing development project or emergency shelter as
39 proposed would have a specific, adverse impact upon the public
40 health or safety, and there is no feasible method to satisfactorily

1 mitigate or avoid the specific adverse impact without rendering
2 the development unaffordable to low- and moderate-income
3 households or rendering the development of the emergency shelter
4 financially infeasible. As used in this paragraph, a “specific,
5 adverse impact” means a significant, quantifiable, direct, and
6 unavoidable impact, based on objective, identified written public
7 health or safety standards, policies, or conditions as they existed
8 on the date the application was deemed complete. Inconsistency
9 with the zoning ordinance or general plan land use designation
10 shall not constitute a specific, adverse impact upon the public
11 health or safety.

12 (3) ~~The denial of the housing development project or imposition~~
13 ~~of conditions is required in order to comply with specific state or~~
14 ~~federal law, and there is no feasible method to comply without~~
15 ~~rendering the development unaffordable to low- and~~
16 ~~moderate-income households or rendering the development of the~~
17 ~~emergency shelter financially infeasible.~~

18 (4) ~~The housing development project or emergency shelter is~~
19 ~~proposed on land zoned for agriculture or resource preservation~~
20 ~~that is surrounded on at least two sides by land being used for~~
21 ~~agricultural or resource preservation purposes, or which does not~~
22 ~~have adequate water or wastewater facilities to serve the housing~~
23 ~~development project.~~

24 (5) ~~The housing development project or emergency shelter is~~
25 ~~inconsistent with both the jurisdiction’s zoning ordinance and~~
26 ~~general plan land use designation as specified in any element of~~
27 ~~the general plan as it existed on the date the application was~~
28 ~~deemed complete, and the jurisdiction has adopted a revised~~
29 ~~housing element in accordance with Section 65588 that is in~~
30 ~~substantial compliance with this article.~~

31 (A) ~~This paragraph cannot be utilized to disapprove or~~
32 ~~conditionally approve a housing development project if the housing~~
33 ~~development project is proposed on a site that is identified as~~
34 ~~suitable or available for very low, low-, or moderate-income~~
35 ~~households in the jurisdiction’s housing element, and consistent~~
36 ~~with the density specified in the housing element, even though it~~
37 ~~is inconsistent with both the jurisdiction’s zoning ordinance and~~
38 ~~general plan land use designation.~~

39 (B) ~~If the local agency has failed to identify in the inventory of~~
40 ~~land in its housing element sites that can be developed for housing~~

1 within the planning period and are sufficient to provide for the
2 jurisdiction's share of the regional housing need for all income
3 levels pursuant to Section 65584, then this paragraph shall not be
4 utilized to disapprove or conditionally approve a housing
5 development project proposed for a site designated in any element
6 of the general plan for residential uses or designated in any element
7 of the general plan for commercial uses if residential uses are
8 permitted or conditionally permitted within commercial
9 designations. In any action in court, the burden of proof shall be
10 on the local agency to show that its housing element does identify
11 adequate sites with appropriate zoning and development standards
12 and with services and facilities to accommodate the local agency's
13 share of the regional housing need for the very low and low-income
14 categories.

15 (C) If the local agency has failed to identify a zone or zones
16 where emergency shelters are allowed as a permitted use without
17 a conditional use or other discretionary permit, has failed to
18 demonstrate that the identified zone or zones include sufficient
19 capacity to accommodate the need for emergency shelter identified
20 in paragraph (7) of subdivision (a) of Section 65583, or has failed
21 to demonstrate that the identified zone or zones can accommodate
22 at least one emergency shelter, as required by paragraph (4) of
23 subdivision (a) of Section 65583, then this paragraph shall not be
24 utilized to disapprove or conditionally approve an emergency
25 shelter proposed for a site designated in any element of the general
26 plan for industrial, commercial, or multifamily residential uses. In
27 any action in court, the burden of proof shall be on the local agency
28 to show that its housing element does satisfy the requirements of
29 paragraph (4) of subdivision (a) of Section 65583.

30 (e) Nothing in this section shall be construed to relieve the local
31 agency from complying with the congestion management program
32 required by Chapter 2.6 (commencing with Section 65088) of
33 Division 1 of Title 7 or the California Coastal Act of 1976
34 (Division 20 (commencing with Section 30000) of the Public
35 Resources Code). Neither shall anything in this section be
36 construed to relieve the local agency from making one or more of
37 the findings required pursuant to Section 21081 of the Public
38 Resources Code or otherwise complying with the California
39 Environmental Quality Act (Division 13 (commencing with Section
40 21000) of the Public Resources Code).

1 ~~(f) (1) Nothing in this section shall be construed to prohibit a~~
2 ~~local agency from requiring the housing development project to~~
3 ~~comply with objective, quantifiable, written development standards,~~
4 ~~conditions, and policies appropriate to, and consistent with, meeting~~
5 ~~the jurisdiction's share of the regional housing need pursuant to~~
6 ~~Section 65584. However, the development standards, conditions,~~
7 ~~and policies shall be applied to facilitate and accommodate~~
8 ~~development at the density permitted on the site and proposed by~~
9 ~~the development.~~

10 ~~(2) Nothing in this section shall be construed to prohibit a local~~
11 ~~agency from requiring an emergency shelter project to comply~~
12 ~~with objective, quantifiable, written development standards,~~
13 ~~conditions, and policies that are consistent with paragraph (4) of~~
14 ~~subdivision (a) of Section 65583 and appropriate to, and consistent~~
15 ~~with, meeting the jurisdiction's need for emergency shelter, as~~
16 ~~identified pursuant to paragraph (7) of subdivision (a) of Section~~
17 ~~65583. However, the development standards, conditions, and~~
18 ~~policies shall be applied by the local agency to facilitate and~~
19 ~~accommodate the development of the emergency shelter project.~~

20 ~~(3) This section does not prohibit a local agency from imposing~~
21 ~~fees and other exactions otherwise authorized by law that are~~
22 ~~essential to provide necessary public services and facilities to the~~
23 ~~housing development project or emergency shelter.~~

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

27 ~~(h) The following definitions apply for the purposes of this~~
28 ~~section:~~

29 ~~(1) "Feasible" means capable of being accomplished in a~~
30 ~~successful manner within a reasonable period of time, taking into~~
31 ~~account economic, environmental, social, and technological factors.~~

32 ~~(2) "Housing development project" means a use consisting of~~
33 ~~any of the following:~~

34 ~~(A) Residential units only.~~

35 ~~(B) Mixed-use developments consisting of residential and~~
36 ~~nonresidential uses in which nonresidential uses are limited to~~
37 ~~neighborhood commercial uses and to the first floor of buildings~~
38 ~~that are two or more stories. As used in this paragraph,~~
39 ~~"neighborhood commercial" means small-scale general or specialty~~

1 stores that furnish goods and services primarily to residents of the
2 neighborhood.

3 (C) Transitional housing or supportive housing.

4 (3) ~~“Housing for very low, low-, or moderate-income~~
5 ~~households” means that either (A) at least 20 percent of the total~~
6 ~~units shall be sold or rented to lower income households, as defined~~
7 ~~in Section 50079.5 of the Health and Safety Code, or (B) 100~~
8 ~~percent of the units shall be sold or rented to persons and families~~
9 ~~of moderate income as defined in Section 50093 of the Health and~~
10 ~~Safety Code, or persons and families of middle income, as defined~~
11 ~~in Section 65008 of this code. Housing units targeted for lower~~
12 ~~income households shall be made available at a monthly housing~~
13 ~~cost that does not exceed 30 percent of 60 percent of area median~~
14 ~~income with adjustments for household size made in accordance~~
15 ~~with the adjustment factors on which the lower income eligibility~~
16 ~~limits are based. Housing units targeted for persons and families~~
17 ~~of moderate income shall be made available at a monthly housing~~
18 ~~cost that does not exceed 30 percent of 100 percent of area median~~
19 ~~income with adjustments for household size made in accordance~~
20 ~~with the adjustment factors on which the moderate-income~~
21 ~~eligibility limits are based.~~

22 (4) ~~“Area median income” means area median income as~~
23 ~~periodically established by the Department of Housing and~~
24 ~~Community Development pursuant to Section 50093 of the Health~~
25 ~~and Safety Code. The developer shall provide sufficient legal~~
26 ~~commitments to ensure continued availability of units for very low~~
27 ~~or low-income households in accordance with the provisions of~~
28 ~~this subdivision for 30 years.~~

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

31 (A) ~~Votes on a proposed housing development project~~
32 ~~application and the application is disapproved.~~

33 (B) ~~Fails to comply with the time periods specified in~~
34 ~~subdivision (a) of Section 65950. An extension of time pursuant~~
35 ~~to Article 5 (commencing with Section 65950) shall be deemed to~~
36 ~~be an extension of time pursuant to this paragraph.~~

37 (i) ~~If any city, county, or city and county denies approval or~~
38 ~~imposes restrictions, including design changes, a reduction of~~
39 ~~allowable densities or the percentage of a lot that may be occupied~~
40 ~~by a building or structure under the applicable planning and zoning~~

1 in force at the time the application is deemed complete pursuant
2 to Section 65943, that have a substantial adverse effect on the
3 viability or affordability of a housing development for very low,
4 low-, or moderate-income households, and the denial of the
5 development or the imposition of restrictions on the development
6 is the subject of a court action which challenges the denial, then
7 the burden of proof shall be on the local legislative body to show
8 that its decision is consistent with the findings as described in
9 subdivision (d) and that the findings are supported by substantial
10 evidence in the record.

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

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

30 (2) ~~There is no feasible method to satisfactorily mitigate or~~
31 ~~avoid the adverse impact identified pursuant to paragraph (1), other~~
32 ~~than the disapproval of the housing development project or the~~
33 ~~approval of the project upon the condition that it be developed at~~
34 ~~a lower density.~~

35 (k) (1) ~~The applicant, a person who would be eligible to apply~~
36 ~~for residency in the development or emergency shelter, or a housing~~
37 ~~organization may bring an action to enforce this section. If, in any~~
38 ~~action brought to enforce this section, a court finds that the local~~
39 ~~agency disapproved a project or conditioned its approval in a~~
40 ~~manner rendering it infeasible for the development of an emergency~~

1 shelter, or housing for very low, low-, or moderate-income
2 households, including farmworker housing, without making the
3 findings required by this section or without making sufficient
4 findings supported by substantial evidence, the court shall issue
5 an order or judgment compelling compliance with this section
6 within 60 days, including, but not limited to, an order that the local
7 agency take action on the housing development project or
8 emergency shelter. The court shall retain jurisdiction to ensure
9 that its order or judgment is carried out and shall award reasonable
10 attorney's fees and costs of suit to the plaintiff or petitioner who
11 proposed the housing development project or emergency shelter,
12 except under extraordinary circumstances in which the court finds
13 that awarding fees would not further the purposes of this section.
14 If the court determines that its order or judgment has not been
15 carried out within 60 days, the court may issue further orders as
16 provided by law to ensure that the purposes and policies of this
17 section are fulfilled, including, but not limited to, an order to vacate
18 the decision of the local agency, in which case the application for
19 the housing development project, as constituted at the time the
20 local agency took the initial action determined to be in violation
21 of this section, along with any standard conditions determined by
22 the court to be generally imposed by the local agency on similar
23 projects, shall be deemed approved unless the applicant consents
24 to a different decision or action by the local agency.

25 (2) For purposes of this subdivision, "housing organization"
26 means a trade or industry group whose local members are primarily
27 engaged in the construction or management of housing units or a
28 nonprofit organization whose mission includes providing or
29 advocating for increased access to housing for low-income
30 households and have filed written or oral comments with the local
31 agency prior to action on the project. A housing organization may
32 only file an action pursuant to this section to challenge the
33 disapproval of a housing development by a local agency.

34 (l) If the court finds that the local agency (1) acted in bad faith
35 when it disapproved or conditionally approved the housing
36 development or emergency shelter in violation of this section and
37 (2) failed to carry out the court's order or judgment within 60 days
38 as described in subdivision (k), the court, in addition to any other
39 remedies provided by this section, may impose fines upon the local
40 agency that the local agency shall be required to deposit into a

1 housing trust fund. Fines shall not be paid from funds that are
 2 already dedicated for affordable housing, including, but not limited
 3 to, redevelopment or low- and moderate-income housing funds
 4 and federal HOME and CDBG funds. The local agency shall
 5 commit the money in the trust fund within five years for the sole
 6 purpose of financing newly constructed housing units affordable
 7 to extremely low, very low, or low-income households. For
 8 purposes of this section, “bad faith” shall mean an action that is
 9 frivolous or otherwise entirely without merit.

10 (m) Any action brought to enforce the provisions of this section
 11 shall be brought pursuant to Section 1094.5 of the Code of Civil
 12 Procedure, and the local agency shall prepare and certify the record
 13 of proceedings in accordance with subdivision (c) of Section 1094.6
 14 of the Code of Civil Procedure no later than 30 days after the
 15 petition is served, provided that the cost of preparation of the record
 16 shall be borne by the local agency. Upon entry of the trial court’s
 17 order, a party shall, in order to obtain appellate review of the order,
 18 file a petition within 20 days after service upon it of a written
 19 notice of the entry of the order, or within such further time not
 20 exceeding an additional 20 days as the trial court may for good
 21 cause allow. If the local agency appeals the judgment of the trial
 22 court, the local agency shall post a bond, in an amount to be
 23 determined by the court, to the benefit of the plaintiff if the plaintiff
 24 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) This section shall be known, and may be cited, as the
 36 Housing Accountability Act.

O

AMENDED IN ASSEMBLY MARCH 21, 2017

CALIFORNIA LEGISLATURE—2017—18 REGULAR SESSION

ASSEMBLY BILL

No. 678

Introduced by Assembly Member Bocanegra
(Principal coauthor: Senator Skinner)

February 15, 2017

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

LEGISLATIVE COUNSEL'S DIGEST

AB 678, as amended, Bocanegra. 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) 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) 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) 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) *This bill would make various technical and conforming changes to the Housing Accountability Act.*

~~The Housing Accountability Act, among other things, prohibits a local agency from disapproving a housing development project for very low, low-, or moderate-income households or an emergency shelter unless the local agency makes specified written findings.~~

~~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 ~~developments~~, *development projects*,
10 including emergency shelters, that contribute to meeting the need
11 determined pursuant to this article without a thorough analysis of
12 the economic, social, and environmental effects of the action and
13 without 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 ~~substantial~~ *clear and convincing* evidence in the record, as
32 to one of the 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-~~and *low-*, *moderate-*, and
19 *above* moderate-income households or rendering the development
20 of the emergency shelter financially infeasible. As used in this
21 paragraph, a “specific, adverse impact” means a significant,
22 quantifiable, direct, and unavoidable impact, based on objective,
23 identified written public health or safety standards, policies, or
24 conditions as they existed on the date the application was deemed
25 complete. Inconsistency with the zoning ordinance or general plan
26 land use designation shall not constitute a specific, adverse impact
27 upon the public health or safety.

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

35 (4) The *housing* development project or emergency shelter is
36 proposed on land zoned for agriculture or resource preservation
37 that is surrounded on at least two sides by land being used for
38 agricultural or resource preservation purposes, or which does not
39 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*
9 *use 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*
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 and low-income~~
36 *low, low-, moderate-, and above 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~~. *shelter*;
7 *provided that any fees or other exactions do not render the*
8 *proposed housing development project or emergency shelter*
9 *infeasible.*

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

39 (i) If any city, county, or city and county denies approval or
40 imposes ~~restrictions, including~~ conditions, *including, but not limited*

1 *to, fees, exactions, design changes, a reduction of allowable*
2 *densities or the percentage of a lot that may be occupied by a*
3 *building or structure under the applicable planning and zoning in*
4 *force at the time the application is deemed complete pursuant to*
5 *Section 65943, project-specific conditions, or the enactment of a*
6 *zoning ordinance, general plan amendment, or other code*
7 *amendment, that have a substantial adverse effect on the viability*
8 *or affordability of a housing development for very low, low-,*
9 *moderate-, or above moderate-income households, including*
10 *purchasers or renters, and the denial of the development or the*
11 *imposition of ~~restrictions~~ conditions on the development is the*
12 *subject of a court action which challenges the ~~denial~~, denial or*
13 *imposition of conditions, then the burden of proof shall be on the*
14 *local legislative body to show that its decision is consistent with*
15 *the findings as described in subdivision (d) and that the findings*
16 *are supported by ~~substantial~~ clear and convincing evidence in the*
17 *record.*

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

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

36 (2) There is no feasible method to satisfactorily mitigate or
37 avoid the adverse impact identified pursuant to paragraph (1), other
38 than the disapproval of the housing development project or the
39 approval of the project upon the condition that it be developed at
40 a lower density.

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

21 H

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, the*
29 *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 of a housing development~~
21 *disapproval, reduction of allowable densities or percentage of lot*
22 *that may be occupied by a building or structure under the*
23 *applicable general plan and zoning ordinances in effect on the*
24 *date the application was deemed complete pursuant to Section*
25 *65943, or the imposition of conditions, including, but not limited*
26 *to, fees or exactions and design changes that have a substantial*
27 *adverse effect on the viability or affordability of a housing*
28 *development project for very low, low-, moderate-, or above*
29 *moderate-income households, 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 ~~impose fines upon the local~~
38 ~~agency that the local agency shall be required to deposit into a~~
39 ~~housing trust fund. Fines shall not be paid from funds that are~~
40 ~~already dedicated for affordable housing, including, but not limited~~

1 to, redevelopment or low- and moderate-income housing funds
2 and federal HOME and CDBG funds. The local agency shall
3 commit the money in the trust fund within five years for the sole
4 purpose of financing newly constructed housing units affordable
5 to extremely low, very low, or low-income households. For
6 purposes of this section, “bad faith” shall mean *award punitive*
7 *damages to the petitioner. For purposes of this section, “bad faith”*
8 *includes, but is not limited to, the failure to comply with subdivision*
9 *(o) or an action that is frivolous or otherwise entirely without merit.*

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

34 (n) In any action, the record of the proceedings before the local
35 agency shall be filed as expeditiously as possible and,
36 notwithstanding Section 1094.6 of the Code of Civil Procedure or
37 subdivision (m) of this section, all or part of the record may be
38 prepared (1) by the petitioner with the petition or petitioner’s points
39 and authorities, (2) by the respondent with respondent’s points and
40 authorities, (3) after payment of costs by the petitioner, or (4) as

1 otherwise directed by the court. If the expense of preparing the
2 record has been borne by the petitioner and the petitioner is the
3 prevailing party, the expense shall be taxable as costs.

4 *(o) Every local agency shall publish an analysis of the*
5 *requirements of this section as part of its review of each application*
6 *for a housing development project.*

7 ~~(o)~~

8 *(p) This section shall be known, and may be cited, as the*
9 *Housing Accountability Act.*

10 SECTION 1. ~~Section 65589.5 of the Government Code is~~
11 ~~amended to read:~~

12 ~~65589.5.—(a) The Legislature finds and declares all of the~~
13 ~~following:~~

14 ~~(1) The lack of housing, including emergency shelters, is a~~
15 ~~critical problem that threatens the economic, environmental, and~~
16 ~~social quality of life in California.~~

17 ~~(2) California housing has become the most expensive in the~~
18 ~~nation. The excessive cost of the state's housing supply is partially~~
19 ~~caused by activities and policies of many local governments that~~
20 ~~limit the approval of housing, increase the cost of land for housing,~~
21 ~~and require that high fees and exactions be paid by producers of~~
22 ~~housing.~~

23 ~~(3) Among the consequences of those actions are discrimination~~
24 ~~against low-income and minority households, lack of housing to~~
25 ~~support employment growth, imbalance in jobs and housing,~~
26 ~~reduced mobility, urban sprawl, excessive commuting, and air~~
27 ~~quality deterioration.~~

28 ~~(4) Many local governments do not give adequate attention to~~
29 ~~the economic, environmental, and social costs of decisions that~~
30 ~~result in disapproval of housing development projects, reduction~~
31 ~~in density of housing development projects, and excessive~~
32 ~~standards for housing development projects.~~

33 ~~(b) It is the policy of the state that a local government not reject~~
34 ~~or make infeasible housing development projects, including~~
35 ~~emergency shelters, that contribute to meeting the need determined~~
36 ~~pursuant to this article without a thorough analysis of the economic,~~
37 ~~social, and environmental effects of the action and without~~
38 ~~complying with subdivision (d).~~

39 ~~(e) The Legislature also recognizes that premature and~~
40 ~~unnecessary development of agricultural lands for urban uses~~

1 continues to have adverse effects on the availability of those lands
2 for food and fiber production and on the economy of the state.
3 Furthermore, it is the policy of the state that development should
4 be guided away from prime agricultural lands; therefore, in
5 implementing this section, local jurisdictions should encourage,
6 to the maximum extent practicable, in filling existing urban areas.

7 (d) A local agency shall not disapprove a housing development
8 project, including farmworker housing as defined in subdivision
9 (h) of Section 50199.7 of the Health and Safety Code, for very
10 low, low-, or moderate-income households, or an emergency
11 shelter, or condition approval in a manner that renders the project
12 infeasible for development for the use of very low, low-, or
13 moderate-income households, or an emergency shelter, including
14 through the use of design review standards, unless it makes written
15 findings, based upon substantial evidence in the record, as to one
16 of the following:

17 (1) The jurisdiction has adopted a housing element pursuant to
18 this article that has been revised in accordance with Section 65588,
19 is in substantial compliance with this article, and the jurisdiction
20 has met or exceeded its share of the regional housing need
21 allocation pursuant to Section 65584 for the planning period for
22 the income category proposed for the housing development project,
23 provided that any disapproval or conditional approval shall not be
24 based on any of the reasons prohibited by Section 65008. If the
25 housing development project includes a mix of income categories,
26 and the jurisdiction has not met or exceeded its share of the regional
27 housing need for one or more of those categories, then this
28 paragraph shall not be used to disapprove or conditionally approve
29 the housing development project. The share of the regional housing
30 need met by the jurisdiction shall be calculated consistently with
31 the forms and definitions that may be adopted by the Department
32 of Housing and Community Development pursuant to Section
33 65400. In the case of an emergency shelter, the jurisdiction shall
34 have met or exceeded the need for emergency shelter, as identified
35 pursuant to paragraph (7) of subdivision (a) of Section 65583. Any
36 disapproval or conditional approval pursuant to this paragraph
37 shall be in accordance with applicable law, rule, or standards.

38 (2) The housing development project or emergency shelter as
39 proposed would have a specific, adverse impact upon the public
40 health or safety, and there is no feasible method to satisfactorily

1 mitigate or avoid the specific adverse impact without rendering
2 the development unaffordable to low- and moderate-income
3 households or rendering the development of the emergency shelter
4 financially infeasible. As used in this paragraph, a “specific,
5 adverse impact” means a significant, quantifiable, direct, and
6 unavoidable impact, based on objective, identified written public
7 health or safety standards, policies, or conditions as they existed
8 on the date the application was deemed complete. Inconsistency
9 with the zoning ordinance or general plan land use designation
10 shall not constitute a specific, adverse impact upon the public
11 health or safety.

12 (3) ~~The denial of the housing development project or imposition~~
13 ~~of conditions is required in order to comply with specific state or~~
14 ~~federal law, and there is no feasible method to comply without~~
15 ~~rendering the development unaffordable to low- and~~
16 ~~moderate-income households or rendering the development of the~~
17 ~~emergency shelter financially infeasible.~~

18 (4) ~~The housing development project or emergency shelter is~~
19 ~~proposed on land zoned for agriculture or resource preservation~~
20 ~~that is surrounded on at least two sides by land being used for~~
21 ~~agricultural or resource preservation purposes, or which does not~~
22 ~~have adequate water or wastewater facilities to serve the housing~~
23 ~~development project.~~

24 (5) ~~The housing development project or emergency shelter is~~
25 ~~inconsistent with both the jurisdiction’s zoning ordinance and~~
26 ~~general plan land use designation as specified in any element of~~
27 ~~the general plan as it existed on the date the application was~~
28 ~~deemed complete, and the jurisdiction has adopted a revised~~
29 ~~housing element in accordance with Section 65588 that is in~~
30 ~~substantial compliance with this article.~~

31 (A) ~~This paragraph cannot be utilized to disapprove or~~
32 ~~conditionally approve a housing development project if the housing~~
33 ~~development project is proposed on a site that is identified as~~
34 ~~suitable or available for very low, low-, or moderate-income~~
35 ~~households in the jurisdiction’s housing element, and consistent~~
36 ~~with the density specified in the housing element, even though it~~
37 ~~is inconsistent with both the jurisdiction’s zoning ordinance and~~
38 ~~general plan land use designation.~~

39 (B) ~~If the local agency has failed to identify in the inventory of~~
40 ~~land in its housing element sites that can be developed for housing~~

1 within the planning period and are sufficient to provide for the
2 jurisdiction's share of the regional housing need for all income
3 levels pursuant to Section 65584, then this paragraph shall not be
4 utilized to disapprove or conditionally approve a housing
5 development project proposed for a site designated in any element
6 of the general plan for residential uses or designated in any element
7 of the general plan for commercial uses if residential uses are
8 permitted or conditionally permitted within commercial
9 designations. In any action in court, the burden of proof shall be
10 on the local agency to show that its housing element does identify
11 adequate sites with appropriate zoning and development standards
12 and with services and facilities to accommodate the local agency's
13 share of the regional housing need for the very low and low-income
14 categories.

15 (C) If the local agency has failed to identify a zone or zones
16 where emergency shelters are allowed as a permitted use without
17 a conditional use or other discretionary permit, has failed to
18 demonstrate that the identified zone or zones include sufficient
19 capacity to accommodate the need for emergency shelter identified
20 in paragraph (7) of subdivision (a) of Section 65583, or has failed
21 to demonstrate that the identified zone or zones can accommodate
22 at least one emergency shelter, as required by paragraph (4) of
23 subdivision (a) of Section 65583, then this paragraph shall not be
24 utilized to disapprove or conditionally approve an emergency
25 shelter proposed for a site designated in any element of the general
26 plan for industrial, commercial, or multifamily residential uses. In
27 any action in court, the burden of proof shall be on the local agency
28 to show that its housing element does satisfy the requirements of
29 paragraph (4) of subdivision (a) of Section 65583.

30 (e) Nothing in this section shall be construed to relieve the local
31 agency from complying with the congestion management program
32 required by Chapter 2.6 (commencing with Section 65088) of
33 Division 1 of Title 7 or the California Coastal Act of 1976
34 (Division 20 (commencing with Section 30000) of the Public
35 Resources Code). Neither shall anything in this section be
36 construed to relieve the local agency from making one or more of
37 the findings required pursuant to Section 21081 of the Public
38 Resources Code or otherwise complying with the California
39 Environmental Quality Act (Division 13 (commencing with Section
40 21000) of the Public Resources Code).

1 ~~(f) (1) Nothing in this section shall be construed to prohibit a~~
2 ~~local agency from requiring the housing development project to~~
3 ~~comply with objective, quantifiable, written development standards,~~
4 ~~conditions, and policies appropriate to, and consistent with, meeting~~
5 ~~the jurisdiction's share of the regional housing need pursuant to~~
6 ~~Section 65584. However, the development standards, conditions,~~
7 ~~and policies shall be applied to facilitate and accommodate~~
8 ~~development at the density permitted on the site and proposed by~~
9 ~~the development.~~

10 ~~(2) Nothing in this section shall be construed to prohibit a local~~
11 ~~agency from requiring an emergency shelter project to comply~~
12 ~~with objective, quantifiable, written development standards,~~
13 ~~conditions, and policies that are consistent with paragraph (4) of~~
14 ~~subdivision (a) of Section 65583 and appropriate to, and consistent~~
15 ~~with, meeting the jurisdiction's need for emergency shelter, as~~
16 ~~identified pursuant to paragraph (7) of subdivision (a) of Section~~
17 ~~65583. However, the development standards, conditions, and~~
18 ~~policies shall be applied by the local agency to facilitate and~~
19 ~~accommodate the development of the emergency shelter project.~~

20 ~~(3) This section does not prohibit a local agency from imposing~~
21 ~~fees and other exactions otherwise authorized by law that are~~
22 ~~essential to provide necessary public services and facilities to the~~
23 ~~housing development project or emergency shelter.~~

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

27 ~~(h) The following definitions apply for the purposes of this~~
28 ~~section:~~

29 ~~(1) "Feasible" means capable of being accomplished in a~~
30 ~~successful manner within a reasonable period of time, taking into~~
31 ~~account economic, environmental, social, and technological factors.~~

32 ~~(2) "Housing development project" means a use consisting of~~
33 ~~any of the following:~~

34 ~~(A) Residential units only.~~

35 ~~(B) Mixed-use developments consisting of residential and~~
36 ~~nonresidential uses in which nonresidential uses are limited to~~
37 ~~neighborhood commercial uses and to the first floor of buildings~~
38 ~~that are two or more stories. As used in this paragraph,~~
39 ~~"neighborhood commercial" means small-scale general or specialty~~

1 stores that furnish goods and services primarily to residents of the
2 neighborhood.

3 (C) Transitional housing or supportive housing.

4 (3) ~~“Housing for very low, low-, or moderate-income~~
5 ~~households” means that either (A) at least 20 percent of the total~~
6 ~~units shall be sold or rented to lower income households, as defined~~
7 ~~in Section 50079.5 of the Health and Safety Code, or (B) 100~~
8 ~~percent of the units shall be sold or rented to persons and families~~
9 ~~of moderate income as defined in Section 50093 of the Health and~~
10 ~~Safety Code, or persons and families of middle income, as defined~~
11 ~~in Section 65008 of this code. Housing units targeted for lower~~
12 ~~income households shall be made available at a monthly housing~~
13 ~~cost that does not exceed 30 percent of 60 percent of area median~~
14 ~~income with adjustments for household size made in accordance~~
15 ~~with the adjustment factors on which the lower income eligibility~~
16 ~~limits are based. Housing units targeted for persons and families~~
17 ~~of moderate income shall be made available at a monthly housing~~
18 ~~cost that does not exceed 30 percent of 100 percent of area median~~
19 ~~income with adjustments for household size made in accordance~~
20 ~~with the adjustment factors on which the moderate-income~~
21 ~~eligibility limits are based.~~

22 (4) ~~“Area median income” means area median income as~~
23 ~~periodically established by the Department of Housing and~~
24 ~~Community Development pursuant to Section 50093 of the Health~~
25 ~~and Safety Code. The developer shall provide sufficient legal~~
26 ~~commitments to ensure continued availability of units for very low~~
27 ~~or low-income households in accordance with the provisions of~~
28 ~~this subdivision for 30 years.~~

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

31 (A) ~~Votes on a proposed housing development project~~
32 ~~application and the application is disapproved.~~

33 (B) ~~Fails to comply with the time periods specified in~~
34 ~~subdivision (a) of Section 65950. An extension of time pursuant~~
35 ~~to Article 5 (commencing with Section 65950) shall be deemed to~~
36 ~~be an extension of time pursuant to this paragraph.~~

37 (i) ~~If any city, county, or city and county denies approval or~~
38 ~~imposes restrictions, including design changes, a reduction of~~
39 ~~allowable densities or the percentage of a lot that may be occupied~~
40 ~~by a building or structure under the applicable planning and zoning~~

1 in force at the time the application is deemed complete pursuant
2 to Section 65943, that have a substantial adverse effect on the
3 viability or affordability of a housing development for very low,
4 low-, or moderate-income households, and the denial of the
5 development or the imposition of restrictions on the development
6 is the subject of a court action which challenges the denial, then
7 the burden of proof shall be on the local legislative body to show
8 that its decision is consistent with the findings as described in
9 subdivision (d) and that the findings are supported by substantial
10 evidence in the record.

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

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

30 (2) ~~There is no feasible method to satisfactorily mitigate or~~
31 ~~avoid the adverse impact identified pursuant to paragraph (1), other~~
32 ~~than the disapproval of the housing development project or the~~
33 ~~approval of the project upon the condition that it be developed at~~
34 ~~a lower density.~~

35 (k) (1) ~~The applicant, a person who would be eligible to apply~~
36 ~~for residency in the development or emergency shelter, or a housing~~
37 ~~organization may bring an action to enforce this section. If, in any~~
38 ~~action brought to enforce this section, a court finds that the local~~
39 ~~agency disapproved a project or conditioned its approval in a~~
40 ~~manner rendering it infeasible for the development of an emergency~~

1 shelter, or housing for very low, low-, or moderate-income
2 households, including farmworker housing, without making the
3 findings required by this section or without making sufficient
4 findings supported by substantial evidence, the court shall issue
5 an order or judgment compelling compliance with this section
6 within 60 days, including, but not limited to, an order that the local
7 agency take action on the housing development project or
8 emergency shelter. The court shall retain jurisdiction to ensure
9 that its order or judgment is carried out and shall award reasonable
10 attorney's fees and costs of suit to the plaintiff or petitioner who
11 proposed the housing development project or emergency shelter,
12 except under extraordinary circumstances in which the court finds
13 that awarding fees would not further the purposes of this section.
14 If the court determines that its order or judgment has not been
15 carried out within 60 days, the court may issue further orders as
16 provided by law to ensure that the purposes and policies of this
17 section are fulfilled, including, but not limited to, an order to vacate
18 the decision of the local agency, in which case the application for
19 the housing development project, as constituted at the time the
20 local agency took the initial action determined to be in violation
21 of this section, along with any standard conditions determined by
22 the court to be generally imposed by the local agency on similar
23 projects, shall be deemed approved unless the applicant consents
24 to a different decision or action by the local agency.

25 (2) For purposes of this subdivision, "housing organization"
26 means a trade or industry group whose local members are primarily
27 engaged in the construction or management of housing units or a
28 nonprofit organization whose mission includes providing or
29 advocating for increased access to housing for low-income
30 households and have filed written or oral comments with the local
31 agency prior to action on the project. A housing organization may
32 only file an action pursuant to this section to challenge the
33 disapproval of a housing development by a local agency.

34 (l) If the court finds that the local agency (1) acted in bad faith
35 when it disapproved or conditionally approved the housing
36 development or emergency shelter in violation of this section and
37 (2) failed to carry out the court's order or judgment within 60 days
38 as described in subdivision (k), the court, in addition to any other
39 remedies provided by this section, may impose fines upon the local
40 agency that the local agency shall be required to deposit into a

1 housing trust fund. Fines shall not be paid from funds that are
2 already dedicated for affordable housing, including, but not limited
3 to, redevelopment or low- and moderate-income housing funds
4 and federal HOME and CDBG funds. The local agency shall
5 commit the money in the trust fund within five years for the sole
6 purpose of financing newly constructed housing units affordable
7 to extremely low, very low, or low-income households. For
8 purposes of this section, “bad faith” shall mean an action that is
9 frivolous or otherwise entirely without merit.

10 (m) Any action brought to enforce the provisions of this section
11 shall be brought pursuant to Section 1094.5 of the Code of Civil
12 Procedure, and the local agency shall prepare and certify the record
13 of proceedings in accordance with subdivision (c) of Section 1094.6
14 of the Code of Civil Procedure no later than 30 days after the
15 petition is served, provided that the cost of preparation of the record
16 shall be borne by the local agency. Upon entry of the trial court’s
17 order, a party shall, in order to obtain appellate review of the order,
18 file a petition within 20 days after service upon it of a written
19 notice of the entry of the order, or within such further time not
20 exceeding an additional 20 days as the trial court may for good
21 cause allow. If the local agency appeals the judgment of the trial
22 court, the local agency shall post a bond, in an amount to be
23 determined by the court, to the benefit of the plaintiff if the plaintiff
24 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) This section shall be known, and may be cited, as the
36 Housing Accountability Act.

O

Senate Bill 167

Housing Accountability Act (HAA)
Senator Nancy Skinner (D-Berkeley)

BILL SUMMARY

Housing development projects that meet all local housing, zoning, and environmental laws can still face opposition by small, but vocal groups of residents. Met by these pressures, local governments place burdensome conditions that result in delays or withdrawal from project applications entirely.

California has enacted state laws that prevent this kind of abuse, but existing statutes have minimal enforcement provisions. SB 167 would strengthen existing law to help limit the denial of good housing projects that otherwise meet all housing development requirements.

ISSUE

California is in the midst of a housing crisis, in both supply and affordability. The lack of new housing in all income categories is raising costs for all Californians, making homeownership increasingly unattainable, and causing skyrocketing prices in the rental market. California ranks 49th in homeownership in the nation, and 50th in overall affordability. Due to these cost pressures housing is eating up more and more of the average family's household budget. California's average homeowner spent 25.4% of their household income on housing costs in 2014, more than homeowners in any other state.ⁱ

In 1982, California passed the Housing Accountability Act (HAA) to limit local governments from denying or delaying development of new housing projects without good cause. Under the original HAA local governments must comply with their own adopted general plan and zoning ordinances.

Unfortunately, the 1982 HAA has a relatively low evidentiary standard and few true enforcement mechanisms leaving limited deterrents to disapproving housing projects. The law needs strengthening to ensure fewer projects are disapproved that are otherwise consistent with all local planning and zoning laws.

SOLUTION

SB 167 strengthens the existing Housing Accountability Act by:

- Increasing the evidentiary standard that must be met for project denial, from "substantial evidence" to "clear and convincing".
- Awards damages to attorneys and petitioners, if a court finds that a local agency rejects a housing project in "bad faith".
- Requires the court to leverage per-unit fines on local agencies for noncompliance.

SUPPORT

California Renters Legal Advocacy and Education Fund
California Apartment Association
East Bay Forward
North Bay Leadership Council
San Francisco Housing Action Coalition
Terner Center for Housing Innovation

CONTACT

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ⁱ Next Ten. (March 3, 2016). *Current State of the California Housing Market*. <http://next10.org/ca-housing>





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Urban Counties of California
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March 29, 2017

The Honorable Nancy Skinner
Member, California State Senate
State Capitol, Room
Sacramento, California 95814

**Re: Senate Bill 167 (Skinner) – Housing Accountability Act – OPPOSE
Set for hearing in the Senate Transportation and Housing Committee on April 5, 2017**

Dear Senator Skinner:

The California State Association of Counties (CSAC), the Urban Counties of California (UCC), and the Rural County Representatives of California (RCRC), regret to inform you that we are opposed to your bill, SB 167 which would make changes to the Housing Accountability Act (HAA). This bill is scheduled for hearing in the Senate Transportation and Housing Committee on April 5, 2017.

SB 167 would make significant changes to the HAA with new terms and definitions, broaden the ability to sue local governments, and increases fines on local governments. Specifically, we have the following concerns:

- **Restricts Local Governments' Lawful Fee Authority.** SB 167 requires that any fees or other exactions for essential services to be provided to the development cannot render the proposed development project or emergency shelter infeasible. As set forth in this bill, a development is rendered "infeasible when an applicant's ability to earn an economic rate of return comparable to other projects that are similar to the proposed housing development, is diminished". This provides an unclear standard by using economic rate of return comparable to other projects. Local governments currently do not have this type of detailed information and it would require the developer to open their detailed financials on a project which would be difficult to obtain. In addition, this standard seems to set up a system in which not all projects would be treated equally related to fees. This language also fails to consider that some of the fees necessary to provide essential services to a development may be imposed by special districts that are not under the control of the city or county.

- **Unclear Terms.** SB 167 also provides a definition of “Impose Conditions” that includes any instance in which an applicant proposes conditions in response to *pressure* or opposition from a local agency. “Pressure” is undefined and objective, and could include typical process discussions such as the raising of concerns by a local planning agency.
- **Court Fines.** SB 167 would also require the court to impose a minimum fine of \$100,000 per housing unit in the development project on a local agency for violating the provisions of this bill. Further, this bill requires the court to consider the local agency’s process in attaining its target allocation of the Regional Housing Needs Assessment (RHNA) in determining the amount of fine to impose in addition to the \$100,000. The RHNA is a planning tool and was not designed to be used as a production goal or target. We are strongly opposed to this section of the bill.
- **Expansion of Ability to File Lawsuit.** SB 167 also allows applicants to go to court to challenge a local decision that is not final. This would increase litigation and make it even more difficult for local governments to approve projects.
- **Standard of Review Changed.** SB 167 would change the standard of review from “substantial evidence” to “clear and convincing.” It is our understanding that substantial evidence is widely used in land use law and is well understood by local governments. Clear and convincing evidence is almost impossible for local governments to meet and is based on numerous assumptions about future economic decisions. We think this change is unnecessary and problematic.

In closing, this bill makes sweeping changes at a time when affordable housing and the homeless crisis are looming large at the local level. These kind of substantial changes need to be reviewed carefully to ensure that there are no unintended consequences that would further hamstring our ability to approve affordable housing and provide housing to those in need.

For the above reasons, CSAC, UCC and RCRC oppose SB 167. If you have any questions, please contact Jolena Voorhis with UCC at (916) 327-7531; DeAnn Baker with CSAC at (916) 327-7500 or Tracy Rhine with RCRC at (916) 447-4806.

Sincerely,

DeAnn Baker
CSAC

Jolena L. Voorhis
UCC

Tracy Rhine
RCRC

cc: Member, Senate Transportation & Housing Committee
Alison Hughes, Consultant, Senate Transportation & Housing Committee
Doug Yoakam, Senate Republican Consultant

AMENDED IN SENATE APRIL 17, 2017
AMENDED IN SENATE MARCH 29, 2017
AMENDED IN SENATE MARCH 14, 2017

SENATE BILL

No. 167

Introduced by Senator Skinner
(Principal coauthor: Assembly Member Bocanegra)

January 23, 2017

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 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 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 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.

(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.

(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.

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.

(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,
17 reduced mobility, urban sprawl, excessive commuting, and air
18 quality deterioration.

19 (4) Many local governments do not give adequate attention to
20 the economic, environmental, and social costs of decisions that

1 result in disapproval of housing development projects, reduction
2 in density of housing projects, and excessive standards for housing
3 development projects.

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

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

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

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

1 need met by the jurisdiction shall be calculated consistently with
2 the forms and definitions that may be adopted by the Department
3 of Housing and Community Development pursuant to Section
4 65400. In the case of an emergency shelter, the jurisdiction shall
5 have met or exceeded the need for emergency shelter, as identified
6 pursuant to paragraph (7) of subdivision (a) of Section 65583. Any
7 disapproval or conditional approval pursuant to this paragraph
8 shall be in accordance with applicable law, rule, or standards.

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

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

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

35 (5) The housing development project or emergency shelter is
36 inconsistent with both the jurisdiction’s zoning ordinance and
37 general plan land use designation as specified in any element of
38 the general plan as it existed on the date the application was
39 deemed complete, and the jurisdiction has adopted a revised
40 housing element in accordance with Section 65588 that is in

1 substantial compliance with this article. For purposes of this
2 section, a change to the zoning ordinance or general plan land use
3 designation subsequent to the date the application was deemed
4 complete shall not constitute a valid basis to disapprove or
5 condition approval of the housing development project or
6 emergency shelter.

7 (A) This paragraph cannot be utilized to disapprove or
8 conditionally approve a housing development project if the housing
9 development project is proposed on a site that is identified as
10 suitable or available for very low, low-, or moderate-income
11 households in the jurisdiction's housing element, and consistent
12 with the density specified in the housing element, even though it
13 is inconsistent with both the jurisdiction's zoning ordinance and
14 general plan land use designation.

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

31 (C) If the local agency has failed to identify a zone or zones
32 where emergency shelters are allowed as a permitted use without
33 a conditional use or other discretionary permit, has failed to
34 demonstrate that the identified zone or zones include sufficient
35 capacity to accommodate the need for emergency shelter identified
36 in paragraph (7) of subdivision (a) of Section 65583, or has failed
37 to demonstrate that the identified zone or zones can accommodate
38 at least one emergency shelter, as required by paragraph (4) of
39 subdivision (a) of Section 65583, then this paragraph shall not be
40 utilized to disapprove or conditionally approve an emergency

1 shelter proposed for a site designated in any element of the general
2 plan for industrial, commercial, or multifamily residential uses. In
3 any action in court, the burden of proof shall be on the local agency
4 to show that its housing element does satisfy the requirements of
5 paragraph (4) of subdivision (a) of Section 65583.

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

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

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

36 (3) This section does not prohibit a local agency from imposing
37 fees and other exactions otherwise authorized by law that are
38 essential to provide necessary public services and facilities to the
39 housing development project or emergency shelter, provided the
40 project remains feasible.

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

4 (h) The following definitions apply for the purposes of this
5 section:

6 (1) “Feasible” means capable of being accomplished in a
7 successful manner within a reasonable period of time, taking into
8 account economic, environmental, social, and technological factors.

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

11 (A) Residential units only.

12 (B) Mixed-use developments consisting of residential and
13 nonresidential uses in which nonresidential uses are limited to
14 neighborhood commercial uses and to the first floor of buildings
15 that are two or more stories. As used in this paragraph,
16 “neighborhood commercial” means small-scale general or specialty
17 stores that furnish goods and services primarily to residents of the
18 neighborhood.

19 (C) Transitional housing or supportive housing.

20 (3) “Housing for very low, low-, or moderate-income
21 households” means that either (A) at least 20 percent of the total
22 units shall be sold or rented to lower income households, as defined
23 in Section 50079.5 of the Health and Safety Code, or (B) 100
24 percent of the units shall be sold or rented to persons and families
25 of moderate income as defined in Section 50093 of the Health and
26 Safety Code, or persons and families of middle income, as defined
27 in Section 65008 of this code. Housing units targeted for lower
28 income households shall be made available at a monthly housing
29 cost that does not exceed 30 percent of 60 percent of area median
30 income with adjustments for household size made in accordance
31 with the adjustment factors on which the lower income eligibility
32 limits are based. Housing units targeted for persons and families
33 of moderate income shall be made available at a monthly housing
34 cost that does not exceed 30 percent of 100 percent of area median
35 income with adjustments for household size made in accordance
36 with the adjustment factors on which the moderate-income
37 eligibility limits are based.

38 (4) “Area median income” means area median income as
39 periodically established by the Department of Housing and
40 Community Development pursuant to Section 50093 of the Health

1 and Safety Code. The developer shall provide sufficient legal
2 commitments to ensure continued availability of units for very low
3 or low-income households in accordance with the provisions of
4 this subdivision for 30 years.

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

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

9 (B) Fails to comply with the time periods specified in
10 subdivision (a) of Section 65950. An extension of time pursuant
11 to Article 5 (commencing with Section 65950) shall be deemed to
12 be an extension of time pursuant to this paragraph.

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

31 (j) When a proposed housing development project complies
32 with applicable, objective general plan or zoning standards and
33 criteria, including design review standards, in effect at the time
34 that the housing development project’s application is determined
35 to be complete, but the local agency proposes to disapprove the
36 project or to approve it upon the condition that the project be
37 developed at a lower density, the local agency shall base its
38 decision regarding the proposed housing development project upon
39 written findings supported by clear and convincing evidence on
40 the record that both of the following conditions exist:

1 (1) The housing development project would have a specific,
2 adverse impact upon the public health or safety unless the project
3 is disapproved or approved upon the condition that the project be
4 developed at a lower density. As used in this paragraph, a “specific,
5 adverse impact” means a significant, quantifiable, direct, and
6 unavoidable impact, based on objective, identified written public
7 health or safety standards, policies, or conditions as they existed
8 on the date the application was deemed complete.

9 (2) There is no feasible method to satisfactorily mitigate or
10 avoid the adverse impact identified pursuant to paragraph (1), other
11 than the disapproval of the housing development project or the
12 approval of the project upon the condition that it be developed at
13 a lower density.

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

33 (B) The court shall also impose fines on a local agency that has
34 violated this section and require the local agency to deposit any
35 fine levied pursuant to this subdivision into a housing trust fund.
36 The fine shall be in a minimum amount of one hundred thousand
37 dollars (\$100,000) per housing unit in the housing development
38 project on the date the application was deemed complete pursuant
39 to Section 65943. In determining the amount of fine to impose,
40 the court shall consider the local agency’s progress in attaining its

1 target allocation of the regional housing need pursuant to Section
2 65584 and any prior violations of this section. Fines shall not be
3 paid out of funds already dedicated to affordable housing,
4 including, but not limited to, redevelopment, funds dedicated to
5 housing for very low, low-, and moderate-income households, and
6 federal HOME Investment Partnerships Program and Community
7 Development Block Grant Program funds. The local agency shall
8 commit the money in the housing trust fund within five years for
9 the sole purpose of financing newly constructed housing units
10 affordable to extremely low, very low, or low-income households.

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

22 (2) For purposes of this subdivision, “housing organization”
23 means a trade or industry group whose local members are primarily
24 engaged in the construction or management of housing units or a
25 nonprofit organization whose mission includes providing or
26 advocating for increased access to housing for low income
27 households and have filed written or oral comments with the local
28 agency prior to action on the housing development project. A
29 housing organization may only file an action pursuant to this
30 section to challenge the disapproval of a housing development by
31 a local agency. A housing organization shall be entitled to
32 reasonable attorney’s fees and costs if it is the prevailing party in
33 an action to enforce this section.

34 (I) If the court finds that the local agency (1) acted in bad faith
35 when it disapproved or conditionally approved the housing
36 development or emergency shelter in violation of this section and
37 (2) failed to carry out the court’s order or judgment within 60 days
38 as described in subdivision (k), the court, in addition to any other
39 remedies provided by this section, may award punitive damages
40 to the petitioner. For purposes of this section, “bad faith” includes,

1 but is not limited to, the failure to comply with subdivision (o) or
2 an action that is frivolous or otherwise entirely without merit.

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

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

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

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

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