

AMENDED IN SENATE AUGUST 16, 2021

AMENDED IN SENATE JULY 16, 2021

AMENDED IN SENATE JUNE 23, 2021

AMENDED IN ASSEMBLY APRIL 5, 2021

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 215

Introduced by Assembly Member Chiu

January 11, 2021

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

LEGISLATIVE COUNSEL'S DIGEST

AB 215, as amended, Chiu. ~~Housing element: regional housing need: relative progress determination.~~ *Planning and Zoning Law: housing element: violations.*

(1) Existing law, the Planning and Zoning Law, requires a city or county to adopt a general plan for land use development within its boundaries that includes, among other things, a housing element. That law requires *a planning agency, before adopting its housing element or amendment to its housing element, to submit a draft element or draft amendment to the Department of Housing and Community Development to determine whether the housing element is in substantial compliance with specified provisions of that law. Development, and requires the department to review the draft and report its written findings within 90 days of its receipt of the draft in the case of an adoption or within 60 days of its receipt in the case of a draft amendment.*

~~This bill, starting with the 6th housing element revision, would require the department to determine the relative progress toward meeting regional housing needs of each jurisdiction and council of governments, as specified. The bill would require the department to make this determination based on the information contained in the annual reports submitted by each jurisdiction, as specified. The bill would require the department to make this determination for all housing and for lower income housing by dividing the applicable entity's progress toward meeting its share of the regional housing need by its prorated share of the regional housing need, as specified. The bill would require the department to post the determinations of relative progress on its internet website by July 1 of the year in which relative progress is determined.~~

~~The bill would require specified jurisdictions to undertake a midcycle housing element consultation with the department if the jurisdiction's progress toward meeting its share of the regional housing need is less than its prorated share of the regional housing need and the relative progress of the jurisdiction for all housing or for lower income housing is less than half of the relative progress for the median jurisdiction affiliated with the council of governments, as specified. The bill would require the department to notify each jurisdiction that is required to conduct a midcycle housing element review and to publish a list of jurisdictions on its internet website, as specified. The bill would require the jurisdictions to undertake a midcycle housing element consultation to, within 6 months of receiving notice, provide the department with an analysis of the implementation status and efficacy of the scheduled programs of its housing element and any draft amendment to the schedule of programs in its housing element, as specified. The bill would require the department to review and provide written findings for a submitted analysis and any draft amendment, as specified.~~

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

~~*This bill would instead require the department to review the draft and report its written findings to the planning agency within 90 days of receiving the first draft submittal for each housing element revision or within 60 days of its receipt for a subsequent draft amendment or adoption.*~~

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

city and county is in violation of state law if the department finds that the housing element or an amendment to the housing element does not substantially comply with specified provisions of the Planning and Zoning Law, or that the local government has taken action or failed to act in violation of specified provisions of law. *Existing law authorizes the Attorney General to bring suit for a violation of those provisions.*

This bill would add the Housing Crisis Act of 2019 and various other provisions to those specified provisions of law; the list of laws that, when violated, requires the department to notify the jurisdiction and authorizes the Attorney General to bring an action to enforce state law. The bill would authorize the department to appoint other counsel to represent the department if the Attorney General declines to represent the department, and would specify the applicable statute of limitations for actions or proceedings brought by the Attorney General or other counsel pursuant to those provisions.

~~(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason:~~

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

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

1 SECTION 1. Section 65585 of the Government Code is
2 amended to read:

3 65585. (a) In the preparation of its housing element, each city
4 and county shall consider the guidelines adopted by the department
5 pursuant to Section 50459 of the Health and Safety Code. Those
6 guidelines shall be advisory to each city or county in the
7 preparation of its housing element.

8 (b) (1) At least 90 days prior to adoption of its housing element,
9 or at least 60 days prior to the adoption of an amendment to this
10 element, the planning agency shall submit a draft element or draft
11 amendment to the department.

12 (2) The planning agency staff shall collect and compile the
13 public comments regarding the housing element received by the
14 city, county, or city and county, and provide these comments to

1 each member of the legislative body before it adopts the housing
 2 element.

3 (3) The department shall review the draft and report its written
 4 findings to the planning agency within 90 days of its receipt of the
 5 ~~draft in the case of an adoption~~ *first draft submittal for each*
 6 *housing element revision pursuant to subdivision (e) of Section*
 7 *65588 or within 60 days of its receipt in the case of a* ~~draft~~
 8 ~~amendment~~ *subsequent draft amendment or in the case of an*
 9 *adoption.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (2) Section 65863 of the Government Code.

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

35 (4) Section 65008 of the Government Code.

36 (5) Housing Crisis Act of 2019—~~(Section 66300 of the~~
37 ~~Government Code).~~ *(Chapter 654, Statutes of 2019, Sections*
38 *65941.1, 65943, and 66300).*

39 (6) *Section 8899.50 (affirmatively furthering fair housing).*

1 (7) Section 65913.4 (streamlined ministerial approval process,
 2 Chapter 366, Statutes of 2017).
 3 (8) Article 11 (commencing with Section 65650).
 4 (9) Article 12 (commencing with Section 65660).
 5 (k) Commencing July 1, 2019, prior to the Attorney General
 6 bringing any suit for a violation of the provisions identified in
 7 subdivision (j) related to housing element compliance and seeking
 8 remedies available pursuant to this subdivision, the department
 9 shall offer the jurisdiction the opportunity for two meetings in
 10 person or via telephone to discuss the violation, and shall provide
 11 the jurisdiction written findings regarding the violation. This
 12 paragraph does not affect any action filed prior to the effective
 13 date of this section. The requirements set forth in this subdivision
 14 do not apply to any suits brought for a violation or violations of
 15 paragraphs (1), (3), and (4) of subdivision (j).
 16 (l) In any action or special proceeding brought by the Attorney
 17 General relating to housing element compliance pursuant to a
 18 notice or referral under subdivision (j), the Attorney General may
 19 request, upon a finding of the court that the housing element does
 20 not substantially comply with the requirements of this article
 21 pursuant to this section, that the court issue an order or judgment
 22 directing the jurisdiction to bring its housing element into
 23 substantial compliance with the requirements of this article. The
 24 court shall retain jurisdiction to ensure that its order or judgment
 25 is carried out. If a court determines that the housing element of
 26 the jurisdiction substantially complies with this article, it shall
 27 have the same force and effect, for purposes of eligibility for any
 28 financial assistance that requires a housing element in substantial
 29 compliance and for purposes of any incentives provided under
 30 Section 65589.9, as a determination by the department that the
 31 housing element substantially complies with this article.
 32 (1) If the jurisdiction has not complied with the order or
 33 judgment after twelve months, the court shall conduct a status
 34 conference. Following the status conference, upon a determination
 35 that the jurisdiction failed to comply with the order or judgment
 36 compelling substantial compliance with the requirements of this
 37 article, the court shall impose fines on the jurisdiction, which shall
 38 be deposited into the Building Homes and Jobs Trust Fund. Any
 39 fine levied pursuant to this paragraph shall be in a minimum
 40 amount of ten thousand dollars (\$10,000) per month, but shall not

1 exceed one hundred thousand dollars (\$100,000) per month, except
2 as provided in paragraphs (2) and (3). In the event that the
3 jurisdiction fails to pay fines imposed by the court in full and on
4 time, the court may require the Controller to intercept any available
5 state and local funds and direct such funds to the Building Homes
6 and Jobs Trust Fund to correct the jurisdiction's failure to pay.
7 The intercept of the funds by the Controller for this purpose shall
8 not violate any provision of the California Constitution.

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

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

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

39 (B) The court may order remedies available pursuant to Section
40 564 of the Code of Civil Procedure, under which the agent of the

1 court may take all governmental actions necessary to bring the
2 jurisdiction's housing element into substantial compliance pursuant
3 to this article in order to remedy identified deficiencies. The court
4 shall determine whether the housing element of the jurisdiction
5 substantially complies with this article and, once the court makes
6 that determination, it shall have the same force and effect, for all
7 purposes, as the department's determination that the housing
8 element substantially complies with this article. An agent appointed
9 pursuant to this paragraph shall have expertise in planning in
10 California.

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

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

21 (n) Nothing in this section shall limit the authority of the office
22 of the Attorney General to bring a suit to enforce state law in an
23 independent capacity. The office of the Attorney General may seek
24 all remedies available under law including those set forth in this
25 section.

26 (o) *Notwithstanding Sections 11040 and 11042, if the Attorney*
27 *General declines to represent the department in any action or*
28 *special proceeding brought pursuant to a notice or referral under*
29 *subdivision (j) the department may appoint or contract with other*
30 *counsel for purposes of representing the department in the action*
31 *or special proceeding.*

32 (p) *Notwithstanding any other provision of law, the statute of*
33 *limitations set forth in subdivision (a) of Section 338 of the Code*
34 *of Civil Procedure shall apply to any action or special proceeding*
35 *brought by the Office of the Attorney General or pursuant to a*
36 *notice or referral under subdivision (j), or by the department*
37 *pursuant to subdivision (o).*

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All matter omitted in this version of the bill appears in the bill as amended in the Senate, July 16, 2021. (JR11)

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