

Date of Hearing: April 19, 2023

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

Buffy Wicks, Chair

AB 1734 (Jones-Sawyer) – As Amended April 11, 2023

SUBJECT: Local Government: Surplus Land Act: exemptions

SUMMARY: States that the Surplus Lands Act (SLA) does not apply to the disposition of land for emergency shelter and affordable housing in jurisdictions that meet specified criteria, including having a declared state of emergency related to homelessness. Specifically, **this bill:**

1) States that the SLA does not apply to the disposition of land in the following circumstances:

a) The disposition would be for any of the following:

i) Emergency shelters that meet the requirements of Low Barrier Navigation Centers;

ii) Supportive housing;

iii) Transitional housing; or

iv) Housing developments with 100 percent of all units in the development, but exclusive of a manager's unit or units, sold or rented to lower income households, except that up to 20 percent of the units in the development may be for moderate-income households.

b) The local agency disposing of the land meets all of the following criteria:

i) Adopted a housing element that is compliant with law, as determined by the Department of Housing and Community Development (HCD);

ii) Received a pro-housing designation by HCD; and

iii) Declared a local emergency related to homelessness.

2) Requires a local agency that disposes of land pursuant to 1) to submit an annual report to HCD that includes the number of emergency shelter beds, supportive housing units, transitional housing units or beds, affordable housing units, and total number of projects permitted and produced utilizing this authority.

EXISTING LAW:

1) Establishes the SLA which, among other provisions, provides the following:

a) Provides that the Legislature declares that a shortage of sites available for housing for persons and families of low and moderate income is a barrier to addressing urgent statewide housing needs and that surplus government land, prior to disposition, should be made available for that purpose;

- b) Defines “surplus land” as land owned by any local agency that is determined to be no longer necessary for the agency’s use;
 - c) Defines certain types of surplus land as “exempt surplus land,” including:
 - i) Land that is transferred for the construction of affordable housing, as specified;
 - ii) Land that is transferred to or exchanged with another government agency that will be utilized by that agency;
 - iii) Land that is difficult or impossible to build upon, as specified, such as small sites and sites subject to valid legal restrictions that prohibit housing; and
 - iv) Land whose future use meets specified criteria, such as land put to open bid for use as 100 percent affordable housing or larger mixed-use projects with at least 25 percent affordable housing.
 - d) Requires each local agency, on or before December 31 of each year, to make an inventory of all of its surplus land;
 - e) Requires a local agency to declare the surplus land to be either “surplus land” or “exempt surplus land,” as supported by written findings, before a local agency may take any action to dispose of it consistent with an agency’s policies or procedures.
 - f) Specifies that the SLA does not apply to the disposal of exempt surplus land;
 - g) Requires a local government to declare land to be “exempt surplus land,” supported by written findings, before the local agency may take any action to dispose of it;
 - h) Requires a local agency, prior to agreeing to the terms for the disposition of surplus land, to provide specified information about its disposition process to HCD. Requires HCD to submit to the local agency, within 30 days, written findings of any process violations that have occurred. The law provides a local agency at least 30 days to either correct the violations or adopt a resolution with findings explaining why the process is not in violation; and
 - i) Provides that a local agency that disposes of land in violation of the SLA following a notification from HCD is liable for a penalty of 30 percent of the final sale price for a first violation and 50 percent for subsequent violations. (Government Code (GC) Sections 54220-54234)
- 2) Defines “Low Barrier Navigation Center” to mean a Housing First, low-barrier, service-enriched shelter focused on moving people into permanent housing that provides temporary living facilities while case managers connect individuals experiencing homelessness to income, public benefits, health services, shelter, and housing. (GC 65660)
- 3) Defines supportive housing as housing with no limit on length of stay, that is occupied by the target population, and that is linked to onsite or offsite services that assist the supportive housing resident in retaining the housing, improving their health status, and maximizing their ability to live and, when possible, work in the community. (Health and Safety Code Section 50675.14)

- 4) Defines transitional housing to mean buildings configured as rental housing developments, but operated under program requirements that require the termination of assistance and recirculating of the assisted unit to another eligible program recipient at a predetermined future point in time that shall be no less than six months from the beginning of the assistance. (GC 65582)
- 5) Establishes the pro-housing program at HCD, which create incentives for jurisdictions that are compliant with housing element requirements and have enacted pro-housing local policies. (GC 65589.9)
- 6) Allows a local government to declare an emergency related to homelessness. During such an emergency, the local government, or officials designated thereby, may promulgate orders and regulations necessary to provide for the protection of life and property. (GC 8630-8634).

FISCAL EFFECT: Unknown.

COMMENTS:

Author's Statement: According to the author, "California has the largest population of people experiencing homelessness in the nation but builds only a fraction of the affordable housing needed. Though the Surplus Land Act was designed to promote an increase in the supply of affordable housing, existing exemptions for affordable housing projects often lead to a prolonged process and unfulfilled projects. AB 1734 will enable pro-housing government and transit agencies to dispose of publicly owned property for the development of shelters, transitional housing, supportive housing, or affordable housing."

Homelessness in Los Angeles: Like most of California, there is an acute housing crisis in Los Angeles. In 2019, the City of Los Angeles had a higher percentage of cost-burdened renter households than any other major American city, at nearly 60 percent. Over one-quarter of residents are severely cost-burdened, contributing to the homelessness emergency in the City. According to the 2022 Greater Los Angeles Homeless Count, there are nearly 42,000 unhoused Californians in Los Angeles alone. While the City of Los Angeles represents less than 10 percent of the State's total population, it is home to almost 25 percent of the State's unsheltered population.

A major cause of the housing crisis is the mismatch between the supply and demand of affordable housing. Through the Regional Housing Needs Assessment process (RHNA), the Southern California Association of Governments (SCAG) has determined that the City of Los Angeles needs to plan for 184,721 homes by 2029 that are affordable to lower income households. However, if the production rates from the previous RHNA cycle continue, the City of Los Angeles would create just eight percent (14,200) of these units in the next eight years.

Since taking office in mid-December, City of Los Angeles Mayor Bass has taken several steps to address homeless and expedite production of affordable housing. This includes declaring a citywide State of Emergency regarding homelessness (as ratified by the city council), requiring all affordable housing projects to be approved within 60 days and permitted within five days (Executive Directive No. 1), and expediting the identification and disposition of city-owned land that is vacant, surplus, or underutilized (Executive Directive No. 3).

Local Surplus Lands: The SLA prioritizes the use of a local agency’s surplus land for the development of affordable housing. It spells out the steps local agencies must follow when they dispose of land they no longer need. It gives first priority to housing projects that provide the greatest number of affordable units and the deepest levels of affordability. The exception to this is if the surplus land meets specified criteria that enables it to be considered “exempt surplus land.” These exemptions include:

- Land that is transferred for the construction of affordable housing, as specified;
- Land that is transferred to or exchanged with another government agency that will be utilized by that agency;
- Land that is difficult or impossible to build upon, such as small sites and sites subject to valid legal restrictions that prohibit housing; and
- Land whose future use meets specified criteria, such as land put to open bid for use as 100 percent affordable housing or larger mixed-use projects with at least 25 percent affordable housing.

The SLA includes internally conflicting direction on the requirements for local agencies seeking to dispose of exempt surplus land. According to Government Code (GC) Section 54222.3, the provisions of the SLA do not apply to the disposal of exempt surplus land – meaning that the rest of the Act would not apply once a site met the criteria for exemption. However, according to GC 54221(b)(1), local governments seeking to dispose exempt surplus land must declare land to be “exempt surplus land,” supported by written findings, before the local agency may take any action to dispose of it. HCD, which implements and enforces the SLA, has interpreted via its SLA Guidelines that “a local agency that determines that property is exempt from the SLA shall support such a determination with written findings and shall provide a copy of the written determination to HCD at least 30 days prior to disposition.”¹

This bill removes the applicability of the SLA in qualified jurisdictions for the production of Low Barrier Navigation Centers, supportive housing, transitional housing, and affordable housing. To qualify, the jurisdictions must have a declared local emergency related to homelessness, have a state-compliant housing element, and have been designated as a pro-housing jurisdiction by HCD. Currently, it is believed that the only jurisdiction to meet that requirement is the City of Los Angeles. However, that could change at any moment, as jurisdictions are added to the list of pro-housing jurisdictions and/or declare states of emergency related to homelessness.

The SLA requires jurisdictions wishing to dispose of land for the creation of Low Barrier Navigation Centers to dispose of the land through a competitive bidding process. This process requires noticing the availability of the land to local public entities and any housing developers that have conveyed to HCD their interest in being noticed. The noticed entities have 60 days to respond to the notice, after which the local agency could enter into negotiations with an entity that meets the proposed specifications. This negotiation process can also take several months. This bill would enable qualified jurisdictions to bypass this process and directly dispose of land for Low Barrier Navigation Centers.

¹ HCD’s SLA Guidelines, April 2021, Section 400(e): https://www.hcd.ca.gov/community-development/docs/sla_guidelines_final.pdf

As discussed above, the SLA also requires local agencies seeking to dispose of land for the production of affordable housing to make written findings that such land is “exempt surplus land.” It may be difficult for local agencies to write such findings in cities where the utilization of public land for affordable housing is politically contentious. This bill would enable qualified jurisdictions to bypass this process and directly dispose of the land for the creation of affordable housing, including supportive housing and transitional housing.

Arguments in Support: Supporters of the bill argue that, while well intentioned, the SLA could actually slow down the development of affordable housing. According to City of Los Angeles Mayor Karen Bass, “My Administration is acting with urgency to meet the moment, in partnership with the State, to build more housing, faster. To save lives, restore our neighborhoods, and house Angelenos immediately, we must urgently prioritize underutilized existing publicly owned property. Unfortunately, the Surplus Land Act has proven to be an impediment to utilizing City-owned property.”

Arguments in Opposition: None on file.

Committee Amendments: This bill would enable qualifying jurisdictions to avoid the oversight from HCD that is inherent to the SLA. This oversight is important for ensuring that local agencies uphold the letter and the spirit of the law to facilitate the production of affordable housing. To ensure that there is still proper oversight from HCD, **the committee may wish to amend the bill to do the following:**

- **Require that the annual report to HCD that is already in this bill provide disaggregated information for sites disposed of pursuant to this act, including the location of the sites, number of beds or units approved, and the number of beds or units produced;**
- **Enable HCD to seek additional information about these disposals, while clarifying that HCD may not require that information as a precondition of disposal;**
- **Enable HCD to enforce these provisions in a manner that is akin to their enforcement provisions in the SLA, except that the potential fines for non-compliance would be based on the greater of the final sales price or fair market value. This would serve as a greater deterrent than the current language in the SLA, which only factors in sales price, in instances where the local agency disposes of the property at below market value.**

Related Legislation:

AB 480 (Ting) of the current legislative session amends the noticing provisions that apply to “surplus land” and “exempt surplus land” disposed of by local agencies subject to the SLA, among other provisions. AB 480 is pending in this Committee.

AB 837 (Alvarez) of the current legislative session declares that the SLA does not apply to a particular project in Chula Vista that was acquired by the local agency before January 1, 2019 and is subject to an irrevocable offer of dedication of fee interest requiring that the land be developed for educational purposes. AB 837 is pending in this Committee.

AB 1607 (Wendy Carrillo) of the current legislative session declares that the SLA does not apply to the transfer of land within Los Angeles County to the Los Angeles County Affordable Housing Solutions Agency, and from within the San Francisco Bay Area to the Bay Area Housing Finance Authority. AB 1607 is pending in this Committee.

SB 747 (Caballero) of the current legislative session amends the SLA to increase the ability for local agencies to dispose of the land for with economic development opportunities. SB 747 is pending hearing in the Senate Committee on Housing.

AB 1486 (Ting), Chapter 664, Statutes of 2019: Expanded the scope of local agencies subject to the SLA, revised the definitions of “surplus land” and “exempt surplus land,” revised the noticing requirements relative to local agencies, housing sponsors and HCD, and added penalties for local agencies that sell land in violation of the SLA.

AB 2135 (Ting), Chapter 644, Statutes of 2014: Amended the procedure for the disposal of surplus land by local agencies and expanded the provisions relating to the prioritization of affordable housing development if the surplus land will be used for residential development.

Double Referred: This bill was also referred to the Assembly Committee on Local Government, where it will be heard should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Office of Los Angeles Mayor Karen Bass (Sponsor)
Central City Association
Downtown Women's Center
John Burton Advocates for Youth
LA Family Housing
Los Angeles Unified School District
Safe Place for Youth
The People Concern

Opposition

None on file.

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