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## SENATE COMMITTEE ON GOVERNANCE AND FINANCE

Senator Anna M. Caballero, Chair

2023 - 2024 Regular

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**Bill No:** AB 1734  
**Author:** Jones-Sawyer  
**Version:** 4/20/23  
**Consultant:** Peterson

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**Tax Levy:** No  
**Fiscal:** Yes

### ***LOCAL GOVERNMENT: SURPLUS LAND ACT: EXEMPTIONS***

*Exempts certain housing and homelessness projects from the SLA in local agencies that have declared a local homelessness emergency and meet other requirements.*

#### **Background**

**Surplus Land Act.** Public agencies are major landlords in some communities, owning significant pieces of real estate. When properties become surplus to their needs, public officials want to sell the land to recoup their investments. The Surplus Land Act (SLA) spells out the steps local agencies must follow when they want to dispose of land. It requires local governments to give a “first right of refusal” to other governments and nonprofit housing developers, and to negotiate in good faith with them to try to come to agreement.

Before local officials can dispose of property, they must declare in a public meeting the land is no longer needed for the agency’s use and declare the land either “surplus land” or “exempt surplus land.” Agency use includes land that is being used, or is planned to be used pursuant to a written plan the local agency’s governing board adopts, or is disposed of to support agency work or operations. This includes, but is not limited to:

- Utility sites;
- Watershed property;
- Land being used for conservation purposes;
- Land for demonstration, exhibition, or education purposes related to greenhouse gas emissions; and
- Buffer sites near sensitive governmental uses, including, waste water treatment plants.

Agency use cannot include commercial or industrial uses or activities. However, if the local agency is a district, agency use can include certain commercial or industrial uses if the agency’s governing body takes action in a public meeting that the use of the site will directly further the express purpose of agency work or operations, or be expressly authorized by a statute provided the district complies with specified affordable housing requirements.

The SLA designates certain types of land as “exempt surplus land,” which does not have to meet the requirements of the SLA. All other surplus land must follow the procedures laid out in the SLA before a local agency can sell it. Exempt surplus land includes:

- Land a city or county transfers for less than fair market value to provide affordable housing subject to various requirements.

- Land less than 5,000 sq. ft. in area or the minimum legal residential building lot size for the jurisdiction, whichever is less, that is not contiguous to land a state or local agency uses for open-space or affordable housing, and sold to an owner of contiguous land.
- Land a local agency is exchanging for another property necessary for the agency's use, or transferring to another public entity or a federally recognized California Indian tribe.
- Land that is a former street, right-of-way, or easement, and the local agency conveys to an owner of an adjacent property.
- Land that is put out to open, competitive bid by a local agency, provided it invites other governments and nonprofit housing developers to participate in the competitive bid process, for specified affordable housing projects.
- Land subject to valid legal restrictions that would make housing a prohibited use, unless the restrictions can be mitigated or avoided. This does not include nonresidential land use designations.
- Land the state granted in trust to a local agency, or that a local agency acquired for trust purposes, where statutory provisions apply.
- Land school entities own that is subject to specified statutory exemptions;
- Certain former military bases the federal government conveyed to a local agency.
- Real property a district uses for an agency's use.
- Specified land the state transferred to a local agency before January 30, 2019, with at least 100 units per acre that meets certain affordability requirements.

Before agencies can enter into negotiations to sell surplus land, they must send a written notice of availability to various public agencies and nonprofit groups, referred to as "housing sponsors," notifying them land is available for the following purposes:

- Low- and moderate-income housing;
- Park and recreation, and open space;
- School facilities; or
- Infill opportunity zones or transit village plans.

Housing sponsors can notify the Department of Housing and Community Development (HCD) that they are interested in acquiring surplus land to develop affordable housing. HCD maintains a list of notices of availability on its website.

If another agency or housing sponsor wants to buy or lease the surplus land for one of these purposes, it must tell the disposing agency within 60 days, and if multiple entities want to purchase the land, the housing sponsor that proposes to provide the greatest level of affordable housing gets priority. The agency and the housing sponsor then have an additional 90 days to negotiate a mutually satisfactory price and terms in good faith. If they cannot agree, the agency that owns the surplus land can sell the land on the private market. The SLA says nothing in its provisions prevents a local agency from disposing of the land at or below fair market value, where not in conflict with other law.

**AB 1486 (Ting, 2019).** In 2019, the Legislature substantially revised the SLA to increase the emphasis on affordable housing and address concerns that some local agencies were bypassing the SLA's requirements (AB 1486, Ting). Among other changes, AB 1486 broadened the definition of surplus land and required land to be designated as surplus prior to the local agency selling the land, which ensures local agencies must comply with the SLA. AB 1486 prohibited local agencies from counting the sale of land for economic development purposes as being "for

the agency's use." This means local agencies must open their properties up to affordable housing developers first, even if they have different purposes in mind for the property. Additionally, AB 1486 instituted a requirement that if a property sold as surplus is not sold to a housing sponsor, but housing is developed on it later, 15% of the units must be sold or rented at an affordable cost to lower income households.

Finally, AB 1486 imposed penalties on local agencies that dispose of surplus land in violation of the SLA totaling 30% of the sales price of land disposed of in violation of the SLA for a first violation, and 50% of the price of the land for subsequent violations. These penalty revenues must be deposited in a local housing trust fund, or certain state affordable housing funds. AB 1486 established an enforcement process, as follows:

- Prior to agreeing to terms for the disposition of surplus land, a local agency must provide HCD a description of the notices of availability sent, and negotiations conducted with any responding entities, in regard to the disposal of the parcel of surplus land and a copy of any restrictions to be recorded against the property, in a form prescribed by HCD.
- HCD must submit written findings to the local agency within 30 days of receipt of the description of the disposal if the proposed disposal of the land will violate SLA.
- A local agency has at least 60 days to respond to the findings before HCD may take further action. The local agency must consider findings made by HCD and then either correct any issues found by HCD or respond in writing why the disposal complied with the SLA.
- If the local agency does not respond or does not address the issues, HCD must notify the local government and may notify the Attorney General the disposal violates the SLA.
- A local agency cannot be held liable for the penalties under the SLA if it does not notify the agency it is in violation within 30 days of receiving the description.

AB 1486 also provided that certain projects could use the previous version of the SLA before AB 1486 amended it, if the local agency, as of September 30, 2019, entered into an exclusive negotiating, or legally binding, agreement to dispose of property, provided the local agency completed the disposition by December 31, 2022. AB 1486 included a similar provision for land held in a Community Redevelopment Property Trust Fund, or designated in a long-range property management plan, for sale or retained for future development, so long as the local agency entered into the exclusive negotiating, or legally binding, agreement by December 31, 2020, and completed the disposition by December 31, 2022.

Subsequent measures have added additional projects that could use the previous version of the SLA before AB 1486 amended it, including:

- SB 51 (Durazo, 2021) provides that if a local agency issued a competitive request for proposals as of September 30, 2019, that included at least 100 residential units and at least 25% of the total units are restricted to lower income housing, and other factors specified, then the property is not subject to changes made to the Surplus Land Act made by AB 1486 (Ting).
- AB 175 (Committee on Budget, 2021) allowed a similar exemption for land entered into an exclusive negotiating agreement to dispose of property related to the Metro North Hollywood Joint Development Project, provided it completes disposition no later than December 31, 2024.

- SB 1373 (Kamlager, 2021) extends by two years (until December 31, 2024) the deadlines in the Surplus Land Act to complete disposition of a property subject to an exclusive negotiating agreement for a charter city with a population of over two million people.

**California's homelessness crisis.** According to the most recent point in time (PIT) count, 171,521 people were experiencing homelessness in California—representing 30% of the nation's homeless population. Two-thirds of the homeless population in California is unsheltered. Over half (51%) of all unsheltered people in the U.S. were in California. Existing homelessness counts are imperfect for a variety of reasons. They likely underestimate the number of individuals experiencing homelessness because the federal PIT count only measures the homeless population on one day of the year. Moreover, the PIT count does not capture everyone experiencing homelessness, as some do not wish to be counted and others cannot be counted because their location is unknown to those counting. California has the largest concentration of severely unaffordable housing markets in the nation and the statewide average home value reached a new record in June 2022 at \$793,300. Over three-quarters (78%) of extremely low-income households in California are paying more than half of their income on housing costs compared to just 6% of moderate-income households.

The Committee has held two homelessness informational hearings over the past two years. In the joint hearing held by this Committee and four others on February 24, 2021, titled “A Perfect Storm: Confronting California's Homelessness Crisis during the Pandemic,” the Committees examined the impact of homelessness on the state, and found that the way the homelessness crisis has evolved because of the pandemic is relatively unknown because the available data predates the pandemic.

**Recent state expenditures to address homelessness.** To help address the persistent crisis, in recent years the state has increased funding for various homelessness programs. From 2018-19 to 2021-22, the state has allocated \$2.65 billion to California Interagency Council on Homelessness (Cal ICH) homelessness programs. The largest of these programs is the Homeless Housing, Assistance, and Prevention Program (HHAPP), which provides block grants to large cities, counties, continuums of care (CoCs), and tribal governments, for a variety of solutions for those experiencing homelessness or at risk of homelessness. These solutions can include rapid rehousing, operating subsidies, street outreach, services coordination, delivery of permanent and innovative housing solutions, and homelessness prevention. The state has also invested billions more for other housing and homelessness programs in other state agencies. This includes Project Homekey, a program HCD administers to purchase and rehabilitate housing, including hotels, motels, vacant apartment buildings, and other types of housing, and convert them into permanent, long-term housing for people experiencing or at-risk of homelessness. The state allocated \$2.25 billion to Project Homekey between 2018-19 and 2021-22.

**Low-barrier navigation centers.** Presently there are two main options to streamline the development of shelters, interim interventions, and low barrier navigation centers. The first is through the housing element, which requires local governments to identify at least one zoning designation (that allows residential including mixed uses) where shelters and other interim interventions are allowed as a permitted use without a conditional use or other discretionary permit. The local government may impose specified objective standards to these shelters and interim interventions. The second is through a specific streamlining approval process for low-barrier navigation centers.

AB 101 (Committee on Budget, 2019) streamlines approval of low-barrier navigation centers. Specifically, this bill defines low-barrier navigation centers as high-quality, low-barrier, service-enriched shelters focused on moving people into permanent housing while connecting them with services. Until January 1, 2027, AB 101 requires low-barrier navigation center developments to be a use by-right, as defined, in areas zoned for mixed uses and nonresidential zones permitting multifamily uses if the development meets certain requirements. A navigation center is low barrier if it includes best practices to reduce barriers to entry, such as allowing tenants to have partners, pets, possessions, and privacy.

**City of Los Angeles.** The City of Los Angeles is California's largest city with approximately 3.8 million residents. While the City of Los Angeles represents less than 10% of the State's total population, it is home to almost 25% of the State's unsheltered population. According to the 2022 Greater Los Angeles Homeless Count, there are nearly 42,000 unhoused Californians in Los Angeles alone. Housing availability is a key contributing factor. 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%. Over one-quarter of residents are severely cost-burdened, contributing to the homelessness emergency in the City.

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 8% (14,200) of these units in the next eight years.

On May 27, 2022, HCD certified the City's housing element was compliant, meaning it complied with the requirements of state housing laws.

On March 10, 2023, Los Angeles received its pro-housing designation from HCD acknowledging the City had taken efforts to streamline multifamily developments, upzone near jobs and transit, and create affordable housing in areas that have excluded lower-income households and people of color.

Since taking office in December 2022, Los Angeles Mayor Karen Bass has taken steps to address the housing and homelessness crises. The Mayor declared, and the city council ratified, a citywide state of emergency to address homelessness. Under the state of emergency, the City can take steps to lift rules and regulations that slow housing production, expedite housing contracts, and allow the City to acquire rooms, properties, and land to provide housing.

The Mayor also issued the following executive directives:

- No. 1, which required all affordable housing projects to be approved within 60 days and permitted within five days.
- No. 3, which expedited the identification and disposition of city-owned land that is vacant, surplus, or underutilized.

Los Angeles Mayor Karen Bass wants to allow local agencies that declare a local emergency related to homelessness, have a compliant housing element, and are designated pro-housing by HCD to exclude land that is disposed of for the following purposes from the SLA.

**Proposed Law**

Assembly Bill 1734 exempts from the SLA land disposed of for:

- Emergency shelters that are low-barrier navigation centers;
- Supportive housing;
- Transitional housing; or
- Affordable housing where 100% of the units are affordable to lower-income households, 20% of which can be for moderate-income households.

Before a local agency disposes of land described above, it must:

- Have a compliant housing element;
- Be designated prohousing; and
- Declare a local homelessness emergency.

A local agency that disposes of land pursuant to AB 1734 must submit an annual report to HCD that includes:

- Location of disposed land; and
- Number of emergency shelter beds and housing units approved and produced on the land.

HCD may request additional information, but is not authorized to require this data to be submitted as a disposition precondition.

If the local agency's disposal of this land violates these requirements, the local agency is liable for the following civil penalties:

- For the first violation, 30% of the greater of the final sale price or fair market value of the land at time of disposition; and
- For any additional violations, 50% of the greater of the final sale price or fair market value of the land at time of disposition.

An independent appraisal of the land must determine the fair market value. Any of the following can bring an action to enforce these penalties:

- Entities entitled to receive notices of availability under the SLA;
- A person who would have been eligible to apply for residence in affordable housing had the agency not violated AB 1734;
- A housing organization;
- A beneficially interested person or entity; and
- HCD.

These penalties must be deposited into a local housing trust fund, or certain state affordable housing funds. Local agencies cannot pay these penalties out of funds dedicated to affordable housing. The local agency must commit to spending the penalties deposited into a local housing trust fund within five years of deposit for the sole purpose of financing new affordable housing units. After five years, the funds revert to the state to deposit in existing state affordable housing funds for the sole purpose of building new affordable housing units in the same jurisdiction.

The measure defines its terms.

### **State Revenue Impact**

No estimate.

### **Comments**

1. Purpose of the bill. According to the author, “California has the largest population of people experiencing homelessness in the nation, yet only builds a fraction of the affordable housing needed. Like most of the state, the City of Los Angeles is experiencing a housing crisis. Just last year, there were nearly 42,000 unhoused individuals in LA alone. Under Mayor Karen Bass’ leadership, LA has taken critical steps to address homelessness and expedite affordable housing production. Unfortunately, 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 jurisdictions that have declared a local emergency on homelessness and are compliant with state housing law more quickly dispose of publicly owned property to develop emergency shelters and transitional supportive or affordable housing.”

2. Bigger changes needed? Prior to the enactment of AB 1486, state law did not require local agencies to always designate land as surplus prior to disposing of it, which meant they could enter into negotiations to dispose of land to further local priorities such as economic development without going through the Surplus Land Act process. AB 1486 excluded economic development from being considered “agency’s use”; made changes that complicate the ability of local governments to dispose of large parcels that need infrastructure investments to support other uses; and otherwise clamped down on the ability of local governments to dispose of their property for the purposes that they consider to best serve their constituents. As a result, the Legislature has seen a parade of bills attempting to address issues with the Surplus Land Act that have come to light since the enactment of AB 1486. Several of these bills have enacted, or would create, exemptions to the Surplus Land Act to enable the development of worthy causes, including the development of affordable housing on an important transit corridor in the San Diego Area (SB 51, Durazo, 2021), the Metro North Hollywood Joint Development project (AB 175, Committee on Budget, 2021), the Tustin military base (SB 719, Min, 2021), several economic development projects in the City of Los Angeles (SB 1373, Kamlager, 2021), and the former military base at Alameda Point (AB 1319, Bonta, 2022). AB 1734 is the latest member of the parade, seeking to allow certain local agencies that have compliant housing elements, pro-housing designations, and have declared a local homelessness emergency to exempt parcels for specified housing projects. The Committee may wish to consider whether the previous changes to the Surplus Land Act should be revisited more broadly so such exemptions become less necessary.

3. Striking a balance. AB 1734 allows cities and counties that have compliant housing elements, pro-housing designations, and have declared a local homelessness emergency to dispose of land for affordable housing and other types of emergency or supportive housing without going through the SLA. On the one hand, this provides additional flexibility to cities and counties that have demonstrated to HCD that their housing policies align with state goals. On the other hand, conditioning this flexibility on these designations severely limits the cities and counties that would receive additional flexibility to build more housing outside the SLA. HCD has only designated 22 cities and counties as pro-housing, with a few dozen more under review. On the

one hand, extending this flexibility to all cities and counties may reward bad actors who have stood in the way of housing. On the other hand, limiting this flexibility to just those cities and counties that are pro-housing *and* have compliant housing elements misses many cities and counties that also desperately need to build affordable housing and housing to serve individuals experiencing homelessness. To ensure the measure continues to reward good actors while providing necessary flexibility to respond to local homeless emergencies, the Committee may wish to consider amending the bill to remove the requirement that cities and counties be designated pro-housing, but retain the requirement for them to have compliant housing elements, and declare a local homelessness emergency.

4. Proceed with caution. Under the SLA, prior to agreeing to terms for the disposition of surplus land, a local agency must provide HCD a description of the notices of availability sent, and negotiations conducted with any responding entities, in regard to the disposal of the parcel of surplus land and a copy of any restrictions to be recorded against the property, in a form HCD prescribes. HCD must then submit written findings to the local agency within 30 days of receipt of the description of the disposal if the proposed disposal of the land will violate SLA. This gives the local agency a chance to cure the potential violation before finalizing the disposal. AB 1734 creates a separate penalty provision that does not require the local agency and HCD to work together to identify potential violations before a disposal occurs. If the local agency does not proactively reach out to HCD to identify any potential issues, it could be subject to fines through AB 1734's civil penalty provisions. Local agencies that use AB 1734's provisions will have to determine whether to proceed with disposals that entities like HCD may challenge in court.

5. Parade isn't over. The Legislature is considering numerous other proposals that provide specific provisions or exemptions regarding surplus land:

- SB 34 (Umberg, 2023) creates a process for HCD to determine whether land disposals in Orange County violate the SLA. The bill is currently pending in the Assembly Local Government Committee.
- SB 229 (Umberg, 2023) requires a local agency to hold an open and public meeting if HCD notifies the local agency that its disposal of a parcel violates the SLA. The bill is currently pending in the Assembly Local Government Committee.
- SB 693 (Seyarto, 2023) exempts certain parcels in the City of Murrieta from the SLA. The bill is currently pending in the Senate Governance and Finance Committee.
- SB 747 (Caballero, 2023) makes numerous changes to the Surplus Land Act, including expanding the definition of agency use, and exempt surplus land. The bill is currently pending in the Assembly Local Government Committee.
- AB 457 (Joe Patterson, 2023) creates an exemption from the SLA for parcels abutting a state highway right-of-way that a local agency identified in its circulation element or capital improvement plan for future roadway development.
- AB 480 (Ting, 2023) changes the penalty provisions of the SLA and makes procedural changes to noticing provisions that apply to "surplus land" and "exempt surplus land" disposed of by local agencies subject to the SLA. The bill is also scheduled for this Committee's June 28<sup>th</sup> meeting.
- AB 837 (Alvarez, 2023) creates an exemption from the SLA for land acquired by a local agency for the development of a university and innovation district. The bill is also scheduled for this Committee's June 28<sup>th</sup> meeting.



- AB 983 (Cervantes, 2023) expands the definition of exempt surplus land to include land designated in an adopted downtown revitalization plan not to exceed 1.1 square miles and includes residential, commercial, office, civic, and hospitality uses. The bill is currently pending in the Assembly Local Government Committee.
- AB 1469 (Kalra, 2023) allows the Santa Clara Valley Water District to take actions to assist unsheltered people living along streams, riparian corridors, or otherwise within the district's jurisdiction, to provide solutions or improve outcomes for the unsheltered individuals, in consultation with a city or the County of Santa Clara. AB 1469 includes a provision that use of land for these purposes meets the definition of "agency use," which is exempt from the SLA. The bill is also scheduled for this Committee's June 28<sup>th</sup> meeting.

SB 747 seeks to address broader concerns over the SLA compared to many of these bills that provide more tailored flexibility to particular agencies, or types of projects. If enacted, SB 747 could reduce the need to pursue one-off legislation. To help address broader SLA concerns without the need for piecemeal legislation, the Committee may wish to consider amending the bill to make its enactment contingent on SB 747's enactment.

6. Coming and going. The Senate Rules Committee has ordered a double referral of AB 1734: first to the Senate Governance and Finance Committee to hear issues related to disposal of land owned by local governments, and second to the Senate Housing Committee.

### **Assembly Actions**

Assembly Housing and Community Development Committee:	7-0
Assembly Local Government Committee:	8-0
Assembly Appropriations Committee:	15-0
Assembly Floor:	79-0

### **Support and Opposition** (6/23/23)

Support: Karen Bass - Mayor of Los Angeles (Sponsor)

City of Long Beach

LA Family Housing

Los Angeles Unified School District

St. Joseph Center

The United Way of Greater Los Angeles

Opposition: None submitted.

**-- END --**