
SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION

Senator Bill Dodd

Chair

2023 - 2024 Regular

Bill No:	SB 240	Hearing Date:	4/11/2023
Author:	Ochoa Bogh, et al.		
Version:	3/16/2023 Amended		
Urgency:	No	Fiscal:	Yes
Consultant:	Felipe Lopez		

SUBJECT: Surplus state real property: affordable and transition housing

DIGEST: This bill authorizes a local agency or nonprofit affordable housing sponsors to be considered as a potential priority buyer of surplus state real property upon demonstration that the property is to be used for transitional housing for formerly incarcerated individuals, as specified. Additionally, the bill provides that the development of surplus state real property by a local agency or nonprofit housing for an affordable housing project or transitional housing for formerly incarcerated individuals is by right, making the development ministerial in nature and exempt from requirements under the California Environmental Quality Act (CEQA).

ANALYSIS:

Existing law:

- 1) Establishes the Department of General Services (DGS) for purposes of, among other things, planning, acquiring, constructing, and maintaining state buildings and property.
- 2) Authorizes DGS, subject to legislative approval, to sell, lease, exchange, or transfer various specified properties for current market value, or upon such other terms and conditions that DGS determines are in the best interest of the state.
- 3) Requires, by executive order, DGS to, among other things, create a digitized inventory of all excess state land, create screening tools for prioritizing affordable housing development on excess state land, and issue requests for proposals and select affordable housing developments on excess state land, as described.

- 4) Establishes criteria for state agencies to use in determining and reporting excess lands. A state agency must report land as surplus that is:
 - a) Not currently utilized, or is underutilized, for any existing or ongoing programs;
 - b) Land for which the agency cannot identify a specific utilization relative to future needs; and,
 - c) Land not identified by the state agency within its master plan for facility development.
- 5) Requires DGS to dispose of surplus state real property in a specified manner, and prescribes the priority of disposition of the property before DGS may offer it for sale to private entities or individuals.
- 6) Authorizes DGS to sell surplus real property to a local agency or to a nonprofit affordable housing sponsor for affordable housing projects at a sales price less than fair market value if DGS determines that such a discount will enable housing for persons and families of low or moderate income.
- 7) Requires DGS, in consultation with the California Department of Housing and Community Development, to develop criteria to evaluate the suitability of excess state-owned parcels for affordable housing, as specified.
- 8) Authorizes the Department of Transportation, if it determines that real property or an interest therein acquired by the state for highway purposes is no longer necessary for those purposes, to sell to DGS surplus property at less than the property's current fair market value, to the extent permissible, if the property is used for the development of affordable housing.
- 9) Requires, under the California Environmental Quality Act (CEQA), a lead agency, as defined, to prepare and certify the completion of an environmental impact report on a project that it proposes to carry out or approve that may have significant effect on the environment.
- 10) Requires, under CEQA, a lead agency to prepare a mitigated negative evidence that the project, as revised, would have a significant effect on the environment.
- 11) Provides that CEQA does not apply to the approval of ministerial projects.
- 12) Provides that supportive housing, in which 100% of units are dedicated to low-income households and are receiving public funding to ensure affordability,

shall be used by right in all zones where multifamily and mixed uses are allowed, as specified.

This bill:

- 1) Authorizes a local agency or nonprofit affordable housing sponsors to be considered as a potential priority buyer of surplus state real property upon demonstration that the property is to be used for transitional housing for formerly incarcerated individuals, as specified.
- 2) Provides that the development of surplus state real property by a local agency or nonprofit housing for an affordable housing project or transitional housing for formerly incarcerated individuals is by right, making the development ministerial in nature and exempt from CEQA requirements.

Background

Purpose of the Bill. According to the author's office, "the lack of new housing development has continued to increase the cost of housing in California to the point the vast majority of housing units are unaffordable. According to the Department of Finance, the median price of a single-family home peaked in May 2022 at \$898,980. To afford this, a family would need a combined income of \$180,000, more than twice California's median household income and almost five times the California Poverty Measure line of \$36,900. The Legislature must look for every available opportunity to incentivize stakeholders to build affordable housing."

The author's office further argues that, "the Legislature has already found that the 'provision of decent housing for all Californians is a state goal of the highest priority' and that the 'disposal of surplus state real property is a direct and substantial public purpose of statewide concern.' SB 240 will address these concerns by ensuring timely development of affordable housing is further prioritized in statute."

Current Process for Disposal of Surplus Property. DGS is currently responsible for the disposition of state-owned property that has been declared surplus to future state needs. The Legislature must declare the property to be surplus and must authorize the Director of DGS to sell, exchange, lease, or transfer the surplus property according to specified procedures set forth in law.

Generally, current law requires surplus property to be transferred or sold at market value, or upon such other terms and conditions that DGS determines are in the best

interest of the state. Current law gives right of first refusal on any surplus property to a local agency and then to a nonprofit affordable housing sponsor, prior to being offered for sale to private entities or individuals in the open market. In addition, DGS is authorized to sell surplus property to a local agency or to a nonprofit affordable housing sponsor at a sales price less than fair market value if DGS determines that such a discount will enable housing for individuals or families of low or moderate income.

This bill would additionally add “transitional housing for formerly incarcerated individuals” to the provisions discussed above. This would authorize DGS to sell surplus property to a local agency or to a nonprofit affordable housing sponsor at a sales price less than fair market value if DGS determines that such a discount will enable transitional housing for formerly incarcerated individuals.

CEQA Exemption. The California Environmental Quality Act generally requires a lead agency to prepare and certify the completion of an environmental impact report on a project that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect.

CEQA does include a number of exemptions, including projects that are considered ministerial. A ministerial project is one that requires only conformance with a fixed standard or objective measurement and requires little or no personal judgement by a public official as to the wisdom or manner of carrying out the project. The public official merely applies the law to the facts as presented but uses no discretion or judgement in reaching a decision.

This bill would provide that the development of surplus state real property by a local agency or nonprofit affordable housing sponsors for the development of affordable housing projects or transitional housing for formerly incarcerated individuals is by right, making the development ministerial in nature and exempt from CEQA requirements.

Executive Order N-06-19. In January 2019, Governor Newsom issued Executive Order (EO) N-06-19, which directed DGS and HCD to identify and inventory excess state-owned property for affordable housing projects. Within the required three months, DGS reviewed over 44,000 parcels, and identified 92 properties that were potentially suitable for housing. As of March 2022, DGS had offered 19 of these properties for affordable housing development, each of which is proceeding through the planning, development, or construction phase. The properties will provide approximately 1,700 affordable housing units.

Last year the Legislature passed and the Governor signed a number of bills to permanently set in statute many of the provisions of EO N-06-19. In doing so, the state has facilitated the process of developing affordable housing on state properties without the need for DGS to obtain authorization to declare a state property surplus. It is therefore not surprising that since the issuance of EO N-06-19, it does not appear that any state properties have been sold to local agencies or affordable housing sponsors for purposes of affordable housing outside of the provisions of EO N-06-19. This is likely because those properties that DGS and HCD have found are suitable for housing are already captured under the executive order long before the state declares those properties surplus. If so, the impact on this bill in the development of affordable housing or transitional housing for formerly incarcerated individuals might be marginal.

Prior/Related Legislation

SB 387 (Dodd, 2023) would authorize DGS, with the consent of the agency concerned, to lease real property under the jurisdiction of a state agency, department, or district agricultural association in support of broadband development in the state, at an amount less than fair market value. (Pending in the Senate Governmental Organization Committee)

SB 561 (Dodd, Chapter 446, Statutes of 2022) requires DGS to develop criteria to evaluate the suitability of state-owned parcels determined to be used for affordable housing and to conduct a comprehensive survey of state-owned parcels using that criteria by January 1, 2024, and every four years thereafter.

AB 2233 (Quirk-Silva, Chapter 428, Statutes of 2022) requires DGS to develop a plan to facilitate the development of affordable housing on state-owned excess land, as specified.

AB 2592 (McCarty, Chapter 439, Statutes of 2022) requires DGS to prepare and report to the Legislature a streamlined plan to transition underutilized multistory state buildings into housing, as specified.

SB 886 (Wiener, Chapter 663, Statutes of 2022) exempts, until January 1, 2030, faculty and staff housing projects and student housing projects meeting specified requirements from CEQA.

SB 1336 (Wiener, 2022) would have provided that housing is a “use by right” on land owned by a religious institution or nonprofit college, as specified. (Never Heard in the Assembly Natural Resources Committee)

SB 899 (Wiener, 2020) would have provided that housing is a use by right on land owned by a religious institution or nonprofit college. (Held in the Assembly Appropriations Suspense File)

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

SUPPORT:

California Apartment Association

OPPOSITION:

Affordable Housing Management Association, Pacific Southwest
Apartment Association of Orange County
East Bay Rental Housing Association

ARGUMENTS IN SUPPORT: According to the California Apartment Association, “current surplus property disposal laws require the state to offer surplus property to local entities for the development of low and moderate-income housing, open spaces, public parks, and government-owned facilities. SB 240 would expand that authority to serve critically overlook population: formerly incarcerated individuals. SB 240 would be a positive step to address California’s homelessness crisis by ensuring that affordable housing is developed for individuals who need assistance transiting outside of the criminal justice system back into our communities.”

ARGUMENTS IN OPPOSITION: Opponents argue that, “SB 240 does not comport with appropriate government scrutiny and could potentially cause unintended consequences – further isolating formerly incarcerated individuals. We also believe there are alternative ways in which [the author’s] goal to advance awareness of Surplus Property for affordable housing can be attained.”

DUAL REFERRAL: Governmental Organization Committee & Housing Committee