

SENATE THIRD READING  
SB 240 (Ochoa Bogh)  
As Amended May 2, 2023  
Majority vote

## SUMMARY

Adds housing for formerly incarcerated individuals as a priority in the disposal of state surplus land and provides that these projects are a use by-right.

### Major Provisions

- 1) Authorizes a local agency or nonprofit affordable housing sponsor to be considered as a potential priority buyer of surplus state real property upon demonstration that the property is to be used by the agency or housing sponsor for formerly incarcerated individuals, as specified.
- 2) Provides that development of surplus state real property by a local agency or nonprofit affordable housing sponsor for an affordable housing project for formerly incarcerated individuals is a by-right.

## COMMENTS

*Excess and Surplus State Land.* The State of California owns over 3,100 properties and over 44,000 parcels totaling nearly seven million acres in size. Most of these are actively in use by the state's departments and agencies, or are non-developable land. Each year, state agencies review their lands, identify real properties which are excess to their needs, and report them to the Department of General Services (DGS). Until recently, DGS's prioritization for the disposal had been to transfer surplus properties to other state agencies, sell them to local governments, sell them to affordable housing developers, or sell them on the open market, in that order. During the period between 2010 and 2020, DGS disposed of 64 properties, of which seven were utilized for affordable housing.

In January 2019, Governor Newsome issued Executive Order (EO) N-06-19, which ordered DGS and the California Department of Housing and Community Development (HCD) to identify and inventory excess state-owned property for affordable housing projects. The EO reoriented DGS's priorities to focus on facilitating the conversion of excess property to affordable housing. Within the three months required, DGS reviewed over 44,000 parcels, and identified 92 properties potentially suitable for housing. Since the beginning of implementation in 2019, DGS has awarded 16 of these state properties, totaling 24 projects, for affordable housing development, each of which is proceeding through the planning, development, or construction phase. Collectively, these properties will provide approximately 5,000 units of affordable housing through a low-cost (\$1/year), long term (99+ years) ground lease with the state. In 2023, DGS will select and award at least 5 more additional sites for development of affordable housing.

If excess state lands are not viable for affordable housing development, DGS will then offer the properties to other state agencies in order to maximize state use of existing facilities. If no state agencies express interest, DGS will ask to include the properties in the annual surplus property bill and requests legislative authorization to sell or dispose of those properties. 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 the right of first refusal for 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 add "housing for formerly incarcerated individuals" to the types of activities that would qualify for discounted surplus property.*

*Approving Housing Developments.* Before new housing can be built, housing developers must obtain one or more permits from local planning departments and must also obtain approval from local planning commissions, city councils, or county board of supervisors. Some housing projects can be permitted by city or county planning staff ministerially or without further approval from elected officials. Projects reviewed ministerially require only an administrative review designed to ensure they are consistent with existing general plan and zoning rules, as well as meet standards for building quality, health, and safety. Most large housing projects are not allowed ministerial review. Instead, these projects are vetted through both public hearings and administrative review. Most housing projects that require discretionary review and approval are subject to review under the California Environmental Quality Act (CEQA), while projects permitted ministerially generally are not.

In addition to bypassing the CEQA process and the potential for litigation, housing streamlining provides more certainty as to what is required for permitting approval, and generally also requires approval within specified timelines. The certainty and shortened approval timelines are particularly beneficial to affordable housing developers seeking funding from multiple federal, state, and local public funding sources. Additionally, this certainty provides more opportunities for multifamily developers to build in jurisdictions that are not housing friendly. Some local governments have intentionally made entitlement and permitting onerous to such a degree developers – and in particular affordable housing developers—have avoided working in those jurisdictions altogether. Longer, uncertain permitting situations are risky for developers, and could kill projects all together. Streamlining unlocks more land opportunities, particularly in higher-resources, unfriendly housing cities.

*This bill would allow surplus state land developed by a local agency or nonprofit affordable housing sponsor for an affordable housing project or housing for formerly incarcerated individuals a use by-right, making the development ministerial in nature.*

### **According to the Author**

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 (CPM) line of \$36,900. The Legislature must look for every available opportunity to incentivize stakeholders to build affordable housing.

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 the timely development of affordable housing is further prioritized in statute.

### **Arguments in Support**

According to the California Apartment Association, "this bill would be a positive step to address California's homelessness crisis by ensuring that affordable housing is developed for individuals who need assistance transitioning outside of the criminal justice system back into our communities."

### **Arguments in Opposition**

None on file.

## **FISCAL COMMENTS**

According to the Assembly Appropriations Committee, costs of an unknown, but potentially significant, amount in forgone revenue to the state, to the extent providing by-right affordable housing development and adding an additional priority and discounted use for surplus state real property increases disposal of such property for lower sales prices (Special Fund for Economic Uncertainties or fund that paid for the property).

## **VOTES**

### **SENATE FLOOR: 40-0-0**

**YES:** Allen, Alvarado-Gil, Archuleta, Ashby, Atkins, Becker, Blakespear, Bradford, Caballero, Cortese, Dahle, Dodd, Durazo, Eggman, Glazer, Gonzalez, Grove, Hurtado, Jones, Laird, Limón, McGuire, Menjivar, Min, Newman, Nguyen, Niello, Ochoa Bogh, Padilla, Portantino, Roth, Rubio, Seyarto, Skinner, Smallwood-Cuevas, Stern, Umberg, Wahab, Wiener, Wilk

### **ASM ACCOUNTABILITY AND ADMINISTRATIVE REVIEW: 6-0-1**

**YES:** Petrie-Norris, Dixon, Bains, Davies, Stephanie Nguyen, Rodriguez  
**ABS, ABST OR NV:** Wilson

### **ASM HOUSING AND COMMUNITY DEVELOPMENT: 8-0-0**

**YES:** Wicks, Joe Patterson, Wendy Carrillo, Grayson, Kalra, Quirk-Silva, Sanchez, Ward

### **ASM APPROPRIATIONS: 16-0-0**

**YES:** Holden, Megan Dahle, Bryan, Calderon, Wendy Carrillo, Dixon, Mike Fong, Hart, Lowenthal, Mathis, Papan, Pellerin, Sanchez, Soria, Weber, Wilson

## **UPDATED**

VERSION: May 2, 2023

CONSULTANT: Bernie Orozco / A. & A.R. / (916) 319-3600

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