SENATE COMMITTEE ON LOCAL GOVERNMENT

Senator María Elena Durazo, Chair
2025 - 2026 Regular

Bill No:	SB 1367	**Hearing Date:**	4/22/26
Author:	Cervantes	**Fiscal:**	Yes
Version:	4/16/26	**Consultant:**	Favorini-Csorba

PLANNING AND ZONING: DETENTION FACILITIES

Prohibits cities and counties from approving new private detention facilities.

Background

The California Constitution allows cities and counties to "make and enforce within its limits, all local, police, sanitary and other ordinances and regulations not in conflict with general laws." It is from this fundamental power (commonly called the police power) that cities and counties derive their authority to regulate behavior to preserve the health, safety, and welfare of the public—including land use authority.

Planning and Zoning Law. State law provides additional powers and duties for cities and counties regarding land use. The Planning and Zoning Law requires every county and city to adopt a general plan that sets out planned uses for all of the area covered by the plan. A general plan must include seven mandatory elements: land use, circulation, housing, conservation, open space, noise, and safety. The general plan must also either include an eighth element on environmental justice, or incorporate environmental justice concerns throughout the other elements (SB 1000, Levya, 2016).

Cities' and counties' major land use decisions—including most zoning ordinances and other aspects of development permitting—must be consistent with their general plans. The Planning and Zoning Law also establishes a planning agency in each city and county, which may be a separate planning commission, administrative body, or the legislative body of the city or county itself. Cities and counties must provide a path to appeal a decision to the planning commission and/or the city council or county board of supervisors.

Local governments use their police power to enact zoning ordinances that shape development, including by designating the particular uses that are allowed within the community, distance between various kinds of uses, the physical form of buildings in the community, and others. These ordinances can also include conditions on development to address community or environmental impacts, or other particular site-specific considerations.

Local governments have broad authority to define the specific approval processes needed to satisfy these considerations. Most new land uses require "discretionary" approvals from local governments, such as a conditional use permit or a change in zoning laws. This process requires hearings by the local planning commission and public notice and may require additional approvals.

Private detention facilities in California. The Legislature has enacted several laws in recent years related to the conditions of private detention facilities. AB 3228 (Bonta, 2020) requires any private detention facility operator to comply with, and adhere to, the detention standards of care and confinement agreed upon in the facility's contract for operations, and allows individuals to sue if a private detention facility violates the requirement to comply with detention standards of care and confinement. AB 263 (Arambula, 2021) requires a private detention facility operator to comply with, and adhere to, all local and state public health orders and occupational safety and health regulations. Finally, SB 1132 (Durazo, 2024) authorizes a county or city health officer to investigate a private detention facility.

The author wants to limit the ability of private entities to construct detention centers in California.

Proposed Law

Senate Bill 1367 prohibits, notwithstanding any other law, a city or county from approving either:

- A new land use in a manner that authorizes construction of a detention facility; or
- A change of use that permits use of an existing building as a detention facility.

The bill defines detention facility to mean any structure, whether temporary or permanent, operated by a private entity on behalf of a governmental entity for the temporary holding of persons charged with a criminal offense or detained for civil or administrative purposes.

SB 1367 contains a severability clause.

Comments

1. Purpose of the bill. According to the author, "SB 1367 will prohibit cities and counties from approving new land uses that would allow the construction of detention facilities or permit the conversion of existing buildings into such facilities. The goal of SB 1367 is to protect California residents from the rapid expansion of private detention facilities, particularly those not designed for long-term human habitation.

"Facilities that are unsuitable for holding people, whether for short or long periods, can strain local infrastructure and pose serious risks to the well-being of detainees. Many of these facilities lack essential features such as proper ventilation, temperature control, sewage and waste management systems, and adequate access to clean water, among other critical deficiencies. These systems of detention which have existed for generations fundamentally transform into something even more sinister and more prone to abuse."

2. Local control. State law generally lets cities and counties determine what kinds of uses to allow within their jurisdiction, and to specify the conditions that must be met in order for new uses to be approved. SB 1367 constrains their discretion by prohibiting cities and counties from approving new detention facilities that private entities may want to build, or changes in use for existing privately-owned structures to be used as detention facilities.

3. Law of the land. "The Constitution's Supremacy Clause generally immunizes the Federal Government from state laws that [1] directly regulate or [2] discriminate against it."[1] However, generally applicable laws may apply to the federal government, so long as those laws do not discriminate against or directly regulate it.[2] Determining whether a particular law discriminates against or directly regulates the federal government is nuanced. For example, courts have found that laws that merely increase the cost or difficulty of federal operations are not necessarily direct regulations, and a state has greater ability to regulate a contractor of the federal government than to regulate the government itself. In *GEO Group v. Inslee*, the Ninth Circuit Court of Appeals upheld a Washington State law regulating health and safety at private detention facilities. The Court noted that Washington's law does not "require [Immigration and Customs Enforcement] to entirely transform its approach to detention in the state or else abandon its facilities."[3]

SB 1367 enters this legal landscape. The bill prohibits cities and counties from approving new land uses or changes of use for private detention facilities holding individuals for civil or criminal matters. Because immigration violations are generally civil offenses, this bill could restrict new construction of, or expansion of, privately-owned facilities that detain immigrants on behalf of the federal government. Currently, the federal government contracts with seven private detention facilities operating in California in four counties—San Bernardino County, Kern County, San Diego County, and Imperial County.

There is reason to believe that SB 1367 may withstand judicial scrutiny. First, SB 1367 treats all private entities operating detention facilities in California uniformly, regardless of whether they are used to detain individuals on behalf of local, state, and federal governments. Second, SB 1367 also avoids direct regulation of the federal government, in contrast to previous legislative efforts. In *GEO Group v. Newsom*, the Ninth Circuit struck down AB 32 (Bonta, 2019) because it directly prohibited the operation of private detention facilities statewide.[4] SB 1367, conversely, does not prohibit *operation* of detention facilities; the bill only restricts local government actions to approve *new* land uses or changes of use. Those facilities that are currently in operation in the state could continue in existence, and the federal government can continue to contract with those facilities. Additionally, SB 1367 regulates local land-use approvals, an area historically controlled by state and local governments. Courts apply a presumption against preempting a state law when a state regulates an area of historic state power.[5] Ultimately, the courts may decide if SB 1367 applies to private detention facilities used for immigration purposes.

4. Mandate. The California Constitution requires the state to reimburse local governments for the costs of new or expanded state mandated local programs. Because SB 1367 adds to the duties of local officials, Legislative Counsel says the bill imposes a new state mandate. SB 1367 disclaims the state's responsibility for providing reimbursement by citing local governments' authority to charge for the costs of implementing the bill's provisions.

5. Charter city. The California Constitution allows cities that adopt charters to control their own "municipal affairs." In all other matters, charter cities must follow the general, statewide laws.

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[1] *United States v. Washington*, 596 U.S. 832, 835, 142 S. Ct. 1976, 213 L. Ed. 2d 336 (2022)
[2] *GEO Group, Inc. v. Inslee*, 151 F.4th 1107 (9th Cir. 2025)
[3] *Ibid.*
[4] *GEO Group, Inc. v. Newsom*, 50 F.4th 745 (9th Cir. 2022)
[5] *Ibid.*

Because the Constitution doesn't define "municipal affairs," the courts determine whether a topic is a municipal affair or whether it's an issue of statewide concern. SB 1367 says that its statutory provisions apply to charter cities. To support this assertion, the bill includes a legislative finding that protecting California residents from the negative impacts of private detention centers is a matter of statewide concern.

Support and Opposition (4/17/2026)

Support: ACLU California Action

Opposition: Riverside County Sheriff's Office

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