

ASSEMBLY BILL

No. 1497

Introduced by Assembly Member Niello
(Coauthor: Senator Maldonado)

February 23, 2007

An act to amend Sections 65583 and 65584.04 of the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 1497, as introduced, Niello. Local government: housing elements.

(1) Existing law requires local governments to adopt a general plan that consists of several elements, including the housing element. The housing element must contain, among other things, an inventory of land suitable for residential development.

This bill would exempt from the inventory of land suitable for residential development, land that is currently under a Williamson Act contract, if it meets specified criteria, and land that is owned by the state or the federal government, as specified.

(2) Existing law requires each council of governments or delegate subregion, as applicable, at least 2 years prior to a scheduled revision of the housing element, to develop a proposed methodology for distributing the existing and projected regional housing need, as specified. Each council of governments or delegate subregion, as applicable, must consider a number of specified factors to the extent that sufficient data is available from local governments.

This bill would also require each council of governments or delegate subregion, as applicable, to analyze the inventory of land suitable for residential development and identify the number of housing sites that are contingent upon the rezoning of agricultural lands currently subject

to a Williamson Act contract, as specified, and make reductions to the housing allocations based upon the number of sites subject to a Williamson Act contract. By imposing new duties on local officials, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 65583 of the Government Code is
2 amended to read:

3 65583. The housing element shall consist of an identification
4 and analysis of existing and projected housing needs and a
5 statement of goals, policies, quantified objectives, financial
6 resources, and scheduled programs for the preservation,
7 improvement, and development of housing. The housing element
8 shall identify adequate sites for housing, including rental housing,
9 factory-built housing, and mobilehomes, and shall make adequate
10 provision for the existing and projected needs of all economic
11 segments of the community. The element shall contain all of the
12 following:

13 (a) An assessment of housing needs and an inventory of
14 resources and constraints relevant to the meeting of these needs.
15 The assessment and inventory shall include all of the following:

16 (1) An analysis of population and employment trends and
17 documentation of projections and a quantification of the locality's
18 existing and projected housing needs for all income levels,
19 including extremely low income households, as defined in
20 subdivision (b) of Section 50105 and Section 50106 of the Health
21 and Safety Code. These existing and projected needs shall include
22 the locality's share of the regional housing need in accordance
23 with Section 65584. Local agencies shall calculate the subset of
24 very low income households allotted under Section 65584 that

1 qualify as extremely low income households. The local agency
2 may either use available census data to calculate the percentage
3 of very low income households that qualify as extremely low
4 income households or presume that 50 percent of the very low
5 income households qualify as extremely low income households.
6 The number of extremely low income households and very low
7 income households shall equal the jurisdiction's allocation of very
8 low income households pursuant to Section 65584.

9 (2) An analysis and documentation of household characteristics,
10 including level of payment compared to ability to pay, housing
11 characteristics, including overcrowding, and housing stock
12 condition.

13 (3) An inventory of land suitable for residential development,
14 including vacant sites and sites having potential for redevelopment,
15 and an analysis of the relationship of zoning and public facilities
16 and services to these sites-, *subject to all of the following:*

17 (A) *Land that is currently under a Williamson Act Contract*
18 *shall not be included in the inventory if it meets all of the following*
19 *criteria:*

20 (i) *The local agency has not received a written request of*
21 *nonrenewal for the Williamson Act contract.*

22 (ii) *There is no approved or pending nonrenewal of the*
23 *Williamson Act contract under Section 51245 of the Government*
24 *Code.*

25 (iii) *The local government has made written findings that the*
26 *land under the Williamson Act contract is in active production of*
27 *food or fiber, and is likely to remain so for the planning period of*
28 *the next housing element.*

29 (B) *Land that is owned by the state or federal government shall*
30 *not be included in the inventory of land suitable for development.*

31 (4) An analysis of potential and actual governmental constraints
32 upon the maintenance, improvement, or development of housing
33 for all income levels, including the types of housing identified in
34 paragraph (1) of subdivision (c), and for persons with disabilities
35 as identified in the analysis pursuant to paragraph (6), including
36 land use controls, building codes and their enforcement, site
37 improvements, fees and other exactions required of developers,
38 and local processing and permit procedures. The analysis shall
39 also demonstrate local efforts to remove governmental constraints
40 that hinder the locality from meeting its share of the regional

1 housing need in accordance with Section 65584 and from meeting
2 the need for housing for persons with disabilities identified
3 pursuant to paragraph (6).

4 (5) An analysis of potential and actual nongovernmental
5 constraints upon the maintenance, improvement, or development
6 of housing for all income levels, including the availability of
7 financing, the price of land, and the cost of construction.

8 (6) An analysis of any special housing needs, such as those of
9 the elderly, persons with disabilities, large families, farmworkers,
10 families with female heads of households, and families and persons
11 in need of emergency shelter.

12 (7) An analysis of opportunities for energy conservation with
13 respect to residential development.

14 (8) An analysis of existing assisted housing developments that
15 are eligible to change from low-income housing uses during the
16 next 10 years due to termination of subsidy contracts, mortgage
17 prepayment, or expiration of restrictions on use. “Assisted housing
18 developments,” for the purpose of this section, shall mean
19 multifamily rental housing that receives governmental assistance
20 under federal programs listed in subdivision (a) of Section
21 65863.10, state and local multifamily revenue bond programs,
22 local redevelopment programs, the federal Community
23 Development Block Grant Program, or local in-lieu fees. “Assisted
24 housing developments” shall also include multifamily rental units
25 that were developed pursuant to a local inclusionary housing
26 program or used to qualify for a density bonus pursuant to Section
27 65916.

28 (A) The analysis shall include a listing of each development by
29 project name and address, the type of governmental assistance
30 received, the earliest possible date of change from low-income use
31 and the total number of elderly and nonelderly units that could be
32 lost from the locality’s low-income housing stock in each year
33 during the 10-year period. For purposes of state and federally
34 funded projects, the analysis required by this subparagraph need
35 only contain information available on a statewide basis.

36 (B) The analysis shall estimate the total cost of producing new
37 rental housing that is comparable in size and rent levels, to replace
38 the units that could change from low-income use, and an estimated
39 cost of preserving the assisted housing developments. This cost
40 analysis for replacement housing may be done aggregately for

1 each five-year period and does not have to contain a
2 project-by-project cost estimate.

3 (C) The analysis shall identify public and private nonprofit
4 corporations known to the local government which have legal and
5 managerial capacity to acquire and manage these housing
6 developments.

7 (D) The analysis shall identify and consider the use of all federal,
8 state, and local financing and subsidy programs which can be used
9 to preserve, for lower income households, the assisted housing
10 developments, identified in this paragraph, including, but not
11 limited to, federal Community Development Block Grant Program
12 funds, tax increment funds received by a redevelopment agency
13 of the community, and administrative fees received by a housing
14 authority operating within the community. In considering the use
15 of these financing and subsidy programs, the analysis shall identify
16 the amounts of funds under each available program which have
17 not been legally obligated for other purposes and which could be
18 available for use in preserving assisted housing developments.

19 (b) (1) A statement of the community's goals, quantified
20 objectives, and policies relative to the maintenance, preservation,
21 improvement, and development of housing.

22 (2) It is recognized that the total housing needs identified
23 pursuant to subdivision (a) may exceed available resources and
24 the community's ability to satisfy this need within the content of
25 the general plan requirements outlined in Article 5 (commencing
26 with Section 65300). Under these circumstances, the quantified
27 objectives need not be identical to the total housing needs. The
28 quantified objectives shall establish the maximum number of
29 housing units by income category, including extremely low income,
30 that can be constructed, rehabilitated, and conserved over a
31 five-year time period.

32 (c) A program which sets forth a five-year schedule of actions
33 the local government is undertaking or intends to undertake to
34 implement the policies and achieve the goals and objectives of the
35 housing element through the administration of land use and
36 development controls, provision of regulatory concessions and
37 incentives, and the utilization of appropriate federal and state
38 financing and subsidy programs when available and the utilization
39 of moneys in a low- and moderate-income housing fund of an
40 agency if the locality has established a redevelopment project area

1 pursuant to the Community Redevelopment Law (Division 24
2 (commencing with Section 33000) of the Health and Safety Code).
3 In order to make adequate provision for the housing needs of all
4 economic segments of the community, the program shall do all of
5 the following:

6 (1) Identify actions that will be taken to make sites available
7 during the planning period of the general plan with appropriate
8 zoning and development standards and with services and facilities
9 to accommodate that portion of the city's or county's share of the
10 regional housing need for each income level that could not be
11 accommodated on sites identified in the inventory completed
12 pursuant to paragraph (3) of subdivision (a) without rezoning, and
13 to comply with the requirements of Section 65584.09. Sites shall
14 be identified as needed to facilitate and encourage the development
15 of a variety of types of housing for all income levels, including
16 multifamily rental housing, factory-built housing, mobilehomes,
17 housing for agricultural employees, supportive housing single-room
18 occupancy units, emergency shelters, and transitional housing.

19 (A) Where the inventory of sites, pursuant to paragraph (3) of
20 subdivision (a), does not identify adequate sites to accommodate
21 the need for groups of all household income levels pursuant to
22 Section 65584, the program shall identify sites that can be
23 developed for housing within the planning period pursuant to
24 subdivision (h) of Section 65583.2.

25 (B) Where the inventory of sites pursuant to paragraph (3) of
26 subdivision (a) does not identify adequate sites to accommodate
27 the need for farmworker housing, the program shall provide for
28 sufficient sites to meet the need with zoning that permits
29 farmworker housing use by right, including density and
30 development standards that could accommodate and facilitate the
31 feasibility of the development of farmworker housing for low- and
32 very low income households.

33 (2) Assist in the development of adequate housing to meet the
34 needs of extremely low, very low, low-, and moderate-income
35 households.

36 (3) Address and, where appropriate and legally possible, remove
37 governmental constraints to the maintenance, improvement, and
38 development of housing, including housing for all income levels
39 and housing for persons with disabilities. The program shall remove
40 constraints to, or provide reasonable accommodations for housing

1 designed for, intended for occupancy by, or with supportive
2 services for, persons with disabilities.

3 (4) Conserve and improve the condition of the existing
4 affordable housing stock, which may include addressing ways to
5 mitigate the loss of dwelling units demolished by public or private
6 action.

7 (5) Promote housing opportunities for all persons regardless of
8 race, religion, sex, marital status, ancestry, national origin, color,
9 familial status, or disability.

10 (6) Preserve for lower income households the assisted housing
11 developments identified pursuant to paragraph (8) of subdivision
12 (a). The program for preservation of the assisted housing
13 developments shall utilize, to the extent necessary, all available
14 federal, state, and local financing and subsidy programs identified
15 in paragraph (8) of subdivision (a), except where a community has
16 other urgent needs for which alternative funding sources are not
17 available. The program may include strategies that involve local
18 regulation and technical assistance.

19 (7) The program shall include an identification of the agencies
20 and officials responsible for the implementation of the various
21 actions and the means by which consistency will be achieved with
22 other general plan elements and community goals. The local
23 government shall make a diligent effort to achieve public
24 participation of all economic segments of the community in the
25 development of the housing element, and the program shall
26 describe this effort.

27 (d) Except as otherwise provided in this article, amendments to
28 this article that alter the required content of a housing element
29 shall apply to both of the following:

30 (1) A housing element or housing element amendment prepared
31 pursuant to subdivision (e) of Section 65588 or Section 65584.02,
32 where a city, county, or city and county submits a first draft to the
33 department for review pursuant to Section 65585 more than 90
34 days after the effective date of the amendment to this section.

35 (2) Any housing element or housing element amendment
36 prepared pursuant to subdivision (e) of Section 65588 or Section
37 65584.02, where the city, county, or city and county fails to submit
38 the first draft to the department before the due date specified in
39 Section 65588 or 65584.02.

1 SEC. 2. Section 65584.04 of the Government Code is amended
2 to read:

3 65584.04. (a) At least two years prior to a scheduled revision
4 required by Section 65588, each council of governments, or
5 delegate subregion as applicable, shall develop a proposed
6 methodology for distributing the existing and projected regional
7 housing need to cities, counties, and cities and counties within the
8 region or within the subregion, where applicable pursuant to this
9 section. The methodology shall be consistent with the objectives
10 listed in subdivision (d) of Section 65584.

11 (b) (1) No more than six months prior to the development of a
12 proposed methodology for distributing the existing and projected
13 housing need, each council of governments shall survey each of
14 its member jurisdictions to request, at a minimum, information
15 regarding the factors listed in subdivision (d) that will allow the
16 development of a methodology based upon the factors established
17 in subdivision (d).

18 (2) The council of governments shall seek to obtain the
19 information in a manner and format that is comparable throughout
20 the region and utilize readily available data to the extent possible.

21 (3) The information provided by a local government pursuant
22 to this section shall be used, to the extent possible, by the council
23 of governments, or delegate subregion as applicable, as source
24 information for the methodology developed pursuant to this section.
25 The survey shall state that none of the information received may
26 be used as a basis for reducing the total housing need established
27 for the region pursuant to Section 65584.01.

28 (4) If the council of governments fails to conduct a survey
29 pursuant to this subdivision, a city, county, or city and county may
30 submit information related to the items listed in subdivision (d)
31 prior to the public comment period provided for in subdivision
32 (c).

33 (c) Public participation and access shall be required in the
34 development of the methodology and in the process of drafting
35 and adoption of the allocation of the regional housing needs.
36 Participation by organizations other than local jurisdictions and
37 councils of governments shall be solicited in a diligent effort to
38 achieve public participation of all economic segments of the
39 community. The proposed methodology, along with any relevant
40 underlying data and assumptions, and an explanation of how

1 information about local government conditions gathered pursuant
2 to subdivision (b) has been used to develop the proposed
3 methodology, and how each of the factors listed in subdivision (d)
4 is incorporated into the methodology, shall be distributed to all
5 cities, counties, any subregions, and members of the public who
6 have made a written request for the proposed methodology. The
7 council of governments, or delegate subregion, as applicable, shall
8 conduct at least one public hearing to receive oral and written
9 comments on the proposed methodology.

10 (d) To the extent that sufficient data is available from local
11 governments pursuant to subdivision (b) or other sources, each
12 council of governments, or delegate subregion as applicable, shall
13 include the following factors to develop the methodology that
14 allocates regional housing needs:

15 (1) Each member jurisdiction's existing and projected jobs and
16 housing relationship.

17 (2) The opportunities and constraints to development of
18 additional housing in each member jurisdiction, including all of
19 the following:

20 (A) Lack of capacity for sewer or water service due to federal
21 or state laws, regulations or regulatory actions, or supply and
22 distribution decisions made by a sewer or water service provider
23 other than the local jurisdiction that preclude the jurisdiction from
24 providing necessary infrastructure for additional development
25 during the planning period.

26 (B) The availability of land suitable for urban development or
27 for conversion to residential use, the availability of underutilized
28 land, and opportunities for infill development and increased
29 residential densities. The council of governments may not limit
30 its consideration of suitable housing sites or land suitable for urban
31 development to existing zoning ordinances and land use restrictions
32 of a locality, but shall consider the potential for increased
33 residential development under alternative zoning ordinances and
34 land use restrictions.

35 (C) Lands preserved or protected from urban development under
36 existing federal or state programs, or both, designed to protect
37 open space, farmland, environmental habitats, and natural resources
38 on a long-term basis.

39 (D) County policies to preserve prime agricultural land, as
40 defined pursuant to Section 56064, within an unincorporated area.

1 (3) The distribution of household growth assumed for purposes
2 of a comparable period of regional transportation plans and
3 opportunities to maximize the use of public transportation and
4 existing transportation infrastructure.

5 (4) The market demand for housing.

6 (5) Agreements between a county and cities in a county to direct
7 growth toward incorporated areas of the county.

8 (6) The loss of units contained in assisted housing developments,
9 as defined in paragraph (8) of subdivision (a) of Section 65583,
10 that changed to non-low-income use through mortgage prepayment,
11 subsidy contract expirations, or termination of use restrictions.

12 (7) High-housing costs burdens.

13 (8) The housing needs of farmworkers.

14 (9) The housing needs generated by the presence of a private
15 university or a campus of the California State University or the
16 University of California within any member jurisdiction.

17 (10) Any other factors adopted by the council of governments.

18 (e) The council of governments, or delegate subregion, as
19 applicable, shall explain in writing how each of the factors
20 described in subdivision (d) was incorporated into the methodology
21 and how the methodology is consistent with subdivision (d) of
22 Section 65584. The methodology may include numerical weighting.

23 (f) Any ordinance, policy, voter-approved measure, or standard
24 of a city or county that directly or indirectly limits the number of
25 residential building permits issued by a city or county shall not be
26 a justification for a determination or a reduction in the share of a
27 city or county of the regional housing need.

28 (g) In addition to the factors identified pursuant to subdivision
29 (d), the council of governments, or delegate subregion, as
30 applicable, shall identify any existing local, regional, or state
31 incentives, such as a priority for funding or other incentives
32 available to those local governments that are willing to accept a
33 higher share than proposed in the draft allocation to those local
34 governments by the council of governments or delegate subregion
35 pursuant to Section 65584.05.

36 (h) *In addition to the factors described in subdivision (d), each*
37 *council of governments or delegate subregion, as applicable, shall*
38 *analyze the inventory of land suitable for residential development*
39 *and identify the number of housing sites that are contingent upon*
40 *the rezoning of agricultural lands currently subject to a contract*

1 *under the Williamson Act. Each council of governments or delegate*
2 *subregion, as applicable, shall make proportionate reductions to*
3 *the housing allocations for a county or city in the amount of acres*
4 *equal to the total number of sites that are subject to the Williamson*
5 *Act and are determined to be required for residential development*
6 *to meet a city or county's regional housing need.*

7 ~~(h)~~

8 (i) Following the conclusion of the 60-day public comment
9 period described in subdivision (c) on the proposed allocation
10 methodology, and after making any revisions deemed appropriate
11 by the council of governments, or delegate subregion, as applicable,
12 as a result of comments received during the public comment period,
13 each council of governments, or delegate subregion, as applicable,
14 shall adopt a final regional, or subregional, housing need allocation
15 methodology and provide notice of the adoption of the
16 methodology to the jurisdictions within the region, or delegate
17 subregion as applicable, and to the department.

18 SEC. 3. If the Commission on State Mandates determines that
19 this act contains costs mandated by the state, reimbursement to
20 local agencies and school districts for those costs shall be made
21 pursuant to Part 7 (commencing with Section 17500) of Division
22 4 of Title 2 of the Government Code.