



CITY OF HUNTINGTON BEACH

2000 MAIN STREET, HUNTINGTON BEACH, CALIFORNIA 92648-2702

GRACEY VAN DER MARK MAYOR

May 8, 2024

The Honorable David Alvarez
California State Assembly
1020 O Street, Rm 5320
Sacramento, CA 95829

Re: AB 1886 (Alvarez)—Oppose

Dear Assemblymember Alvarez:

On behalf of the City of Huntington Beach, I write in opposition to AB 1886, which would specify a housing element without amendments is only considered approved if the update is approved by the Department of Housing and Community Development (HCD) or by a court determination, among other things.

Under current law, local governments have a statutory deadline to submit housing elements to HCD and HCD is required to respond on whether the draft complies with the law. If HCD determines it doesn't comply with the standards, a discussion ensues, and local governments may resubmit their revised plans. AB 1886 makes a rebuttable presumption that HCDs determination is valid, regardless of if there are revisions unfounded.

As an alternative to the process, in the instance that a local government submits their housing element without amendments to HCD, the process is called self-certification. AB 1886 eliminates the opportunity for self-certification regardless of whether HCD would concur with the submitted element. The only other recourse remaining in this bill would be for a local government to go to court to make such a determination, leading to an unnecessary commitment of resources, court and staff time.

Finally, whether a housing element is determined to be updated and compliant or not have serious repercussions on local governments that jeopardizes the critical need for local land use planning.

Sincerely,

Gracey Van Der Mark
Mayor

Cc: Huntington Beach City Council

AMENDED IN ASSEMBLY APRIL 15, 2024

AMENDED IN ASSEMBLY APRIL 1, 2024

CALIFORNIA LEGISLATURE—2023–24 REGULAR SESSION

ASSEMBLY BILL

No. 1886

Introduced by Assembly Member Alvarez

January 22, 2024

An act to amend Sections 65585 and 65589.5 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 1886, as amended, Alvarez. Housing Element Law: substantial compliance: Housing Accountability Act.

(1) The Planning and Zoning Law requires a city or county to adopt a general plan for land use development within its boundaries that includes, among other things, a housing element. Existing law, commonly referred to as the Housing Element Law, prescribes requirements for a city's or county's preparation of, and compliance with, its housing element, and requires the Department of Housing and Community Development to review and determine whether the housing element substantially complies with the Housing Element Law, as specified. If the department finds that a draft housing element or amendment does not substantially comply with the Housing Element Law, existing law requires the legislative body of the city or county to either (A) change the draft element or amendment to substantially comply with the Housing Element Law or (B) adopt the draft housing element or amendment without changes and make specified findings as to why the draft element or amendment substantially complies with the Housing Element Law despite the findings of the department.

Existing law requires a planning agency to promptly submit an adopted housing element or amendment to the department and requires the department to review the adopted housing element or amendment and report its findings to the planning agency within 60 days.

This bill would require a planning agency that makes the above-described findings as to why a draft housing element or amendment substantially complies with the Housing Element Law despite the findings of the department to submit those findings to the department. The bill would require the department to review those findings in its review of an adopted housing element or amendment. The bill would create a rebuttable presumption of validity for the department's findings as to whether the adopted element or amendment substantially complies with the Housing Element Law. Because the bill would require planning agencies to submit specified findings to the department with an adopted housing element or amendment, the bill would impose a state-mandated local program.

This bill would provide that a housing element or amendment is considered substantially compliant with the Housing Element Law when the local agency has adopted a housing element or amendment and the department or a court of competent jurisdiction determines the adopted housing element or amendment to be in substantial compliance with the Housing Element Law. The bill would specify that a determination of substantial compliance continues until the department or a court of competent jurisdiction determines otherwise or the end of the applicable housing element cycle. The bill would provide that these provisions are declaratory of existing law.

(2) Existing law, the Housing Accountability Act, among other things, prohibits a local agency from disapproving, or conditioning approval in a manner that renders infeasible, a housing development project for very low, low-, or moderate-income households unless the local agency makes written findings as to one of certain sets of conditions, as specified. One set of conditions is that (A) the jurisdiction has adopted a housing element that is in substantial compliance with the Housing Element Law, and (B) the jurisdiction has met or exceeded its share of the regional housing need allocation for the planning period for the income category proposed for the housing development project.

~~This bill would provide that, for purposes of disapproving or conditionally approving a housing development project for very low, low-, or moderate-income households, a housing element or amendment is considered substantially compliant with the Housing Element Law~~

~~when the local agency has adopted a housing element or amendment and the department or a court of competent jurisdiction determines the adopted housing element or amendment to be in substantial compliance with the Housing Element Law. The bill would specify that a determination of substantial compliance continues until the department or a court of competent jurisdiction determines otherwise or the end of the applicable housing element cycle. The bill would provide that these provisions are declaratory of existing law.~~

~~(3) The Housing Accountability Act also requires~~

~~Existing law subjects a housing development project to only be subject to the ordinances, policies, and standards adopted and in effect when a preliminary application was submitted, except as specified.~~

~~This bill would provide that require a housing element or amendment must to be considered in substantial compliance with the Housing Element Law only if the element or amendment was determined to be in substantial compliance when a preliminary application or complete application was submitted, as specified. The bill would provide that this provision is declaratory of existing law.~~

~~(4)~~

~~(3) 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 no reimbursement is required by this act for a specified reason.~~

~~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 65585 of the Government Code is~~
2 ~~amended to read:~~
3 ~~65585. (a) In the preparation of its housing element, each city~~
4 ~~and county shall consider the guidelines adopted by the department~~
5 ~~pursuant to Section 50459 of the Health and Safety Code. Those~~
6 ~~guidelines shall be advisory to each city or county in the~~
7 ~~preparation of its housing element.~~
8 ~~(b) (1) At least 90 days prior to adoption of a revision of its~~
9 ~~housing element pursuant to subdivision (c) of Section 65588, or~~
10 ~~at least 60 days prior to the adoption of a subsequent amendment~~
11 ~~to this element, the planning agency shall submit a draft element~~

1 ~~revision or draft amendment to the department. The local~~
2 ~~government of the planning agency shall make the first draft~~
3 ~~revision of a housing element available for public comment for at~~
4 ~~least 30 days and, if any comments are received, the local~~
5 ~~government shall take at least 10 business days after the 30-day~~
6 ~~public comment period to consider and incorporate public~~
7 ~~comments into the draft revision prior to submitting it to the~~
8 ~~department. For any subsequent draft revision, the local~~
9 ~~government shall post the draft revision on its internet website and~~
10 ~~shall email a link to the draft revision to all individuals and~~
11 ~~organizations that have previously requested notices relating to~~
12 ~~the local government's housing element at least seven days before~~
13 ~~submitting the draft revision to the department.~~

14 ~~(2) The planning agency staff shall collect and compile the~~
15 ~~public comments regarding the housing element received by the~~
16 ~~city, county, or city and county and provide these comments to~~
17 ~~each member of the legislative body before it adopts the housing~~
18 ~~element.~~

19 ~~(3) The department shall review the draft and report its written~~
20 ~~findings to the planning agency within 90 days of its receipt of the~~
21 ~~first draft submittal for each housing element revision pursuant to~~
22 ~~subdivision (e) of Section 65588 or within 60 days of its receipt~~
23 ~~of a subsequent draft amendment or an adopted revision or adopted~~
24 ~~amendment to an element. The department shall not review the~~
25 ~~first draft submitted for each housing element revision pursuant~~
26 ~~to subdivision (e) of Section 65588 until the local government has~~
27 ~~made the draft available for public comment for at least 30 days~~
28 ~~and, if comments were received, has taken at least 10 business~~
29 ~~days to consider and incorporate public comments pursuant to~~
30 ~~paragraph (1).~~

31 ~~(c) In the preparation of its findings, the department may consult~~
32 ~~with any public agency, group, or person. The department shall~~
33 ~~receive and consider any written comments from any public~~
34 ~~agency, group, or person regarding the draft or adopted element~~
35 ~~or amendment under review.~~

36 ~~(d) In its written findings, the department shall determine~~
37 ~~whether the draft element or draft amendment substantially~~
38 ~~complies with this article.~~

39 ~~(e) Prior to the adoption of its draft element or draft amendment,~~
40 ~~the legislative body shall consider the findings made by the~~

1 department. If the department's findings are not available within
2 the time limits set by this section, the legislative body may act
3 without them.

4 (f) If the department finds that the draft element or draft
5 amendment does not substantially comply with this article, the
6 legislative body shall take one of the following actions:

7 (1) Change the draft element or draft amendment to substantially
8 comply with this article.

9 (2) Adopt the draft element or draft amendment without changes.
10 The legislative body shall include in its resolution of adoption
11 written findings that explain the reasons the legislative body
12 believes that the draft element or draft amendment substantially
13 complies with this article despite the findings of the department.

14 (g) Promptly following the adoption of its element or
15 amendment, the planning agency shall submit a copy of the adopted
16 element or amendment and any findings made pursuant to
17 paragraph (2) of subdivision (f) to the department.

18 (h) (1) The department shall, within 60 days, review adopted
19 housing elements or amendments and any findings pursuant to
20 paragraph (2) of subdivision (f), make a finding as to whether the
21 adopted element or amendment is in substantial compliance with
22 this article, and report its findings to the planning agency.

23 (2) (A) For purposes of subdivision (d) of Section 65589.5, a
24 housing element or amendment shall be considered to be in
25 substantial compliance with this article when both of the following
26 conditions are satisfied:

27 (i) The local agency adopts the housing element or amendment
28 in accordance with this section.

29 (ii) The department or a court of competent jurisdiction
30 determines the adopted housing element or amendment to be in
31 substantial compliance with this article.

32 (B) A housing element or amendment shall continue to be
33 considered in substantial compliance with this article until either
34 of the following occur:

35 (i) The department or a court of competent jurisdiction
36 determines that the adopted housing element or amendment is no
37 longer in substantial compliance with this article.

38 (ii) The end of the applicable housing element cycle.

39 (C) This paragraph does not constitute a change in, but is
40 declaratory of, existing law.

~~(3) In any legal proceeding initiated to enforce the provisions of this article, the department's findings made pursuant to this subdivision and subdivision (b) shall create a rebuttable presumption of validity as to whether the adopted element or amendment substantially complies with this article.~~

~~(i) (1) (A) The department shall review any action or failure to act by the city, county, or city and county that it determines is inconsistent with an adopted housing element or Section 65583, including any failure to implement any program actions included in the housing element pursuant to Section 65583. The department shall issue written findings to the city, county, or city and county as to whether the action or failure to act substantially complies with this article, and provide a reasonable time no longer than 30 days for the city, county, or city and county to respond to the findings before taking any other action authorized by this section, including the action authorized by subparagraph (B).~~

~~(B) If the department finds that the action or failure to act by the city, county, or city and county does not substantially comply with this article, and if it has issued findings pursuant to this section that an amendment to the housing element substantially complies with this article, the department may revoke its findings until it determines that the city, county, or city and county has come into compliance with this article.~~

~~(2) The department may consult with any local government, public agency, group, or person, and shall receive and consider any written comments from any public agency, group, or person, regarding the action or failure to act by the city, county, or city and county described in paragraph (1), in determining whether the housing element substantially complies with this article.~~

~~(j) The department shall notify the city, county, or city and county and may notify the office of the Attorney General that the city, county, or city and county is in violation of state law if the department finds that the housing element or an amendment to this element, or any action or failure to act described in subdivision (i), does not substantially comply with this article or that any local government has taken an action in violation of the following:~~

~~(1) Housing Accountability Act (Section 65589.5).~~

~~(2) Section 65863.~~

~~(3) Chapter 4.3 (commencing with Section 65915).~~

~~(4) Section 65008.~~

1 ~~(5) Housing Crisis Act of 2019 (Chapter 654, Statutes of 2019,~~
2 ~~Sections 65941.1, 65943, and 66300).~~

3 ~~(6) Section 8899.50.~~

4 ~~(7) Section 65913.4.~~

5 ~~(8) Article 11 (commencing with Section 65650).~~

6 ~~(9) Article 12 (commencing with Section 65660).~~

7 ~~(10) Section 65913.11.~~

8 ~~(11) Section 65400.~~

9 ~~(12) Section 65863.2.~~

10 ~~(13) Chapter 4.1 (commencing with Section 65912.100).~~

11 ~~(14) Section 65905.5.~~

12 ~~(15) Section 65852.2.~~

13 ~~(16) Section 65852.21.~~

14 ~~(17) Section 65852.22.~~

15 ~~(18) Section 65852.23.~~

16 ~~(19) Section 65852.24.~~

17 ~~(20) Section 65852.26.~~

18 ~~(21) Section 66411.7.~~

19 ~~(22) Section 65913.16.~~

20 ~~(23) Article 2 (commencing with Section 66300.5) of Chapter~~
21 ~~12.~~

22 ~~(24) Section 65852.28.~~

23 ~~(25) Section 65913.4.5.~~

24 ~~(26) Section 66499.41.~~

25 ~~(k) Commencing July 1, 2019, prior to the Attorney General~~
26 ~~bringing any suit for a violation of the provisions identified in~~
27 ~~subdivision (j) related to housing element compliance and seeking~~
28 ~~remedies available pursuant to this subdivision, the department~~
29 ~~shall offer the jurisdiction the opportunity for two meetings in~~
30 ~~person or via telephone to discuss the violation, and shall provide~~
31 ~~the jurisdiction written findings regarding the violation. This~~
32 ~~paragraph does not affect any action filed prior to the effective~~
33 ~~date of this section. The requirements set forth in this subdivision~~
34 ~~do not apply to any suits brought for a violation or violations of~~
35 ~~paragraphs (1) and (3) to (9), inclusive, of subdivision (j).~~

36 ~~(l) In any action or special proceeding brought by the Attorney~~
37 ~~General relating to housing element compliance pursuant to a~~
38 ~~notice or referral under subdivision (j), the Attorney General may~~
39 ~~request, upon a finding of the court that the housing element does~~
40 ~~not substantially comply with the requirements of this article~~

1 pursuant to this section, that the court issue an order or judgment
2 directing the jurisdiction to bring its housing element into
3 substantial compliance with the requirements of this article. The
4 court shall retain jurisdiction to ensure that its order or judgment
5 is carried out. If a court determines that the housing element of
6 the jurisdiction substantially complies with this article, it shall
7 have the same force and effect, for purposes of eligibility for any
8 financial assistance that requires a housing element in substantial
9 compliance and for purposes of any incentives provided under
10 Section 65589.9, as a determination by the department that the
11 housing element substantially complies with this article.

12 (1) If the jurisdiction has not complied with the order or
13 judgment after 12 months, the court shall conduct a status
14 conference. Following the status conference, upon a determination
15 that the jurisdiction failed to comply with the order or judgment
16 compelling substantial compliance with the requirements of this
17 article, the court shall impose fines on the jurisdiction, which shall
18 be deposited into the Building Homes and Jobs Trust Fund. Any
19 fine levied pursuant to this paragraph shall be in a minimum
20 amount of ten thousand dollars (\$10,000) per month, but shall not
21 exceed one hundred thousand dollars (\$100,000) per month, except
22 as provided in paragraphs (2) and (3). In the event that the
23 jurisdiction fails to pay fines imposed by the court in full and on
24 time, the court may require the Controller to intercept any available
25 state and local funds and direct such funds to the Building Homes
26 and Jobs Trust Fund to correct the jurisdiction's failure to pay.
27 The intercept of the funds by the Controller for this purpose shall
28 not violate any provision of the California Constitution.

29 (2) If the jurisdiction has not complied with the order or
30 judgment after three months following the imposition of fees
31 described in paragraph (1), the court shall conduct a status
32 conference. Following the status conference, if the court finds that
33 the fees imposed pursuant to paragraph (1) are insufficient to bring
34 the jurisdiction into compliance with the order or judgment, the
35 court may multiply the fine determined pursuant to paragraph (1)
36 by a factor of three. In the event that the jurisdiction fails to pay
37 fines imposed by the court in full and on time, the court may
38 require the Controller to intercept any available state and local
39 funds and direct such funds to the Building Homes and Jobs Trust
40 Fund to correct the jurisdiction's failure to pay. The intercept of

1 the funds by the Controller for this purpose shall not violate any
2 provision of the California Constitution.

3 (3) If the jurisdiction has not complied with the order or
4 judgment six months following the imposition of fees described
5 in paragraph (1), the court shall conduct a status conference. Upon
6 a determination that the jurisdiction failed to comply with the order
7 or judgment, the court may impose the following:

8 (A) If the court finds that the fees imposed pursuant to
9 paragraphs (1) and (2) are insufficient to bring the jurisdiction into
10 compliance with the order or judgment, the court may multiply
11 the fine determined pursuant to paragraph (1) by a factor of six.
12 In the event that the jurisdiction fails to pay fines imposed by the
13 court in full and on time, the court may require the Controller to
14 intercept any available state and local funds and direct such funds
15 to the Building Homes and Jobs Trust Fund to correct the
16 jurisdiction's failure to pay. The intercept of the funds by the
17 Controller for this purpose shall not violate any provision of the
18 California Constitution.

19 (B) The court may order remedies available pursuant to Section
20 564 of the Code of Civil Procedure, under which the agent of the
21 court may take all governmental actions necessary to bring the
22 jurisdiction's housing element into substantial compliance pursuant
23 to this article in order to remedy identified deficiencies. The court
24 shall determine whether the housing element of the jurisdiction
25 substantially complies with this article and, once the court makes
26 that determination, it shall have the same force and effect, for all
27 purposes, as the department's determination that the housing
28 element substantially complies with this article. An agent appointed
29 pursuant to this paragraph shall have expertise in planning in
30 California.

31 (4) This subdivision does not limit a court's discretion to apply
32 any and all remedies in an action or special proceeding for a
33 violation of any law identified in subdivision (j).

34 (m) In determining the application of the remedies available
35 under subdivision (l), the court shall consider whether there are
36 any mitigating circumstances delaying the jurisdiction from coming
37 into compliance with state housing law. The court may consider
38 whether a city, county, or city and county is making a good faith
39 effort to come into substantial compliance or is facing substantial
40 undue hardships.

1 ~~(n) Nothing in this section shall limit the authority of the office~~
2 ~~of the Attorney General to bring a suit to enforce state law in an~~
3 ~~independent capacity. The office of the Attorney General may seek~~
4 ~~all remedies available under law including those set forth in this~~
5 ~~section.~~

6 ~~(o) Notwithstanding Sections 11040 and 11042, if the Attorney~~
7 ~~General declines to represent the department in any action or~~
8 ~~special proceeding brought pursuant to a notice or referral under~~
9 ~~subdivision (j), the department may appoint or contract with other~~
10 ~~counsel for purposes of representing the department in the action~~
11 ~~or special proceeding.~~

12 ~~(p) Notwithstanding any other provision of law, the statute of~~
13 ~~limitations set forth in subdivision (a) of Section 338 of the Code~~
14 ~~of Civil Procedure shall apply to any action or special proceeding~~
15 ~~brought by the office of the Attorney General or pursuant to a~~
16 ~~notice or referral under subdivision (j), or by the department~~
17 ~~pursuant to subdivision (o).~~

18 ~~SECTION 1. Section 65585 of the Government Code is~~
19 ~~amended to read:~~

20 65585. (a) In the preparation of its housing element, each city
21 and county shall consider the guidelines adopted by the department
22 pursuant to Section 50459 of the Health and Safety Code. Those
23 guidelines shall be advisory to each city or county in the
24 preparation of its housing element.

25 (b) (1) At least 90 days prior to adoption of a revision of its
26 housing element pursuant to subdivision (e) of Section 65588, or
27 at least 60 days prior to the adoption of a subsequent amendment
28 to this element, the planning agency shall submit a draft element
29 revision or draft amendment to the department. The local
30 government of the planning agency shall make the first draft
31 revision of a housing element available for public comment for at
32 least 30 days and, if any comments are received, the local
33 government shall take at least 10 business days after the 30-day
34 public comment period to consider and incorporate public
35 comments into the draft revision prior to submitting it to the
36 department. For any subsequent draft revision, the local
37 government shall post the draft revision on its internet website and
38 shall email a link to the draft revision to all individuals and
39 organizations that have previously requested notices relating to

1 the local government's housing element at least seven days before
2 submitting the draft revision to the department.

3 (2) The planning agency staff shall collect and compile the
4 public comments regarding the housing element received by the
5 city, county, or city and county and provide these comments to
6 each member of the legislative body before it adopts the housing
7 element.

8 (3) The department shall review the draft and report its written
9 findings to the planning agency within 90 days of its receipt of the
10 first draft submittal for each housing element revision pursuant to
11 subdivision (e) of Section 65588 or within 60 days of its receipt
12 of a subsequent draft amendment or an adopted revision or adopted
13 amendment to an element. The department shall not review the
14 first draft submitted for each housing element revision pursuant
15 to subdivision (e) of Section 65588 until the local government has
16 made the draft available for public comment for at least 30 days
17 and, if comments were received, has taken at least 10 business
18 days to consider and incorporate public comments pursuant to
19 paragraph (1).

20 (c) In the preparation of its findings, the department may consult
21 with any public agency, group, or person. The department shall
22 receive and consider any written comments from any public
23 agency, group, or person regarding the draft or adopted element
24 or amendment under review.

25 (d) In its written findings, the department shall determine
26 whether the draft element or draft amendment substantially
27 complies with this article.

28 (e) Prior to the adoption of its draft element or draft amendment,
29 the legislative body shall consider the findings made by the
30 department. If the department's findings are not available within
31 the time limits set by this section, the legislative body may act
32 without them.

33 (f) If the department finds that the draft element or draft
34 amendment does not substantially comply with this article, the
35 legislative body shall take one of the following actions:

36 (1) Change the draft element or draft amendment to substantially
37 comply with this article.

38 (2) Adopt the draft element or draft amendment without changes.
39 The legislative body shall include in its resolution of adoption
40 written findings that explain the reasons the legislative body

1 believes that the draft element or draft amendment substantially
2 complies with this article despite the findings of the department.

3 (g) Promptly following the adoption of its element or
4 amendment, the planning agency shall submit a copy ~~to~~ *of the*
5 *adopted element or amendment and any findings made pursuant*
6 *to paragraph (2) of subdivision (f) to the department.*

7 (h) (1) The department shall, within 60 days, review adopted
8 housing elements or amendments and *any findings pursuant to*
9 *paragraph (2) of subdivision (f), make a finding as to whether the*
10 *adopted element or amendment is in substantial compliance with*
11 *this article, and report its findings to the planning agency.*

12 (2) (A) *A housing element or amendment shall be considered*
13 *to be in substantial compliance with this article when both of the*
14 *following conditions are satisfied:*

15 (i) *The local agency adopts the housing element or amendment*
16 *in accordance with this section.*

17 (ii) *The department or a court of competent jurisdiction*
18 *determines the adopted housing element or amendment to be in*
19 *substantial compliance with this article.*

20 (B) *A housing element or amendment shall continue to be*
21 *considered in substantial compliance with this article until either*
22 *of the following occur:*

23 (i) *The department or a court of competent jurisdiction*
24 *determines that the adopted housing element or amendment is no*
25 *longer in substantial compliance with this article.*

26 (ii) *The end of the applicable housing element cycle.*

27 (C) *This paragraph does not constitute a change in, but is*
28 *declaratory of, existing law.*

29 (3) *In any legal proceeding initiated to enforce the provisions*
30 *of this article, the department's findings made pursuant to this*
31 *subdivision and subdivision (b) shall create a rebuttable*
32 *presumption of validity as to whether the adopted element or*
33 *amendment substantially complies with this article.*

34 (i) (1) (A) The department shall review any action or failure
35 to act by the city, county, or city and county that it determines is
36 inconsistent with an adopted housing element or Section 65583,
37 including any failure to implement any program actions included
38 in the housing element pursuant to Section 65583. The department
39 shall issue written findings to the city, county, or city and county
40 as to whether the action or failure to act substantially complies

1 with this article, and provide a reasonable time no longer than 30
2 days for the city, county, or city and county to respond to the
3 findings before taking any other action authorized by this section,
4 including the action authorized by subparagraph (B).

5 (B) If the department finds that the action or failure to act by
6 the city, county, or city and county does not substantially comply
7 with this article, and if it has issued findings pursuant to this section
8 that an amendment to the housing element substantially complies
9 with this article, the department may revoke its findings until it
10 determines that the city, county, or city and county has come into
11 compliance with this article.

12 (2) The department may consult with any local government,
13 public agency, group, or person, and shall receive and consider
14 any written comments from any public agency, group, or person,
15 regarding the action or failure to act by the city, county, or city
16 and county described in paragraph (1), in determining whether the
17 housing element substantially complies with this article.

18 (j) The department shall notify the city, county, or city and
19 county and may notify the office of the Attorney General that the
20 city, county, or city and county is in violation of state law if the
21 department finds that the housing element or an amendment to this
22 element, or any action or failure to act described in subdivision
23 (i), does not substantially comply with this article or that any local
24 government has taken an action in violation of the following:

- 25 (1) Housing Accountability Act (Section 65589.5).
- 26 (2) Section 65863.
- 27 (3) Chapter 4.3 (commencing with Section 65915).
- 28 (4) Section 65008.
- 29 (5) Housing Crisis Act of 2019 (Chapter 654, Statutes of 2019,
30 Sections 65941.1, 65943, and 66300).
- 31 (6) Section 8899.50.
- 32 (7) Section 65913.4.
- 33 (8) Article 11 (commencing with Section 65650).
- 34 (9) Article 12 (commencing with Section 65660).
- 35 (10) Section 65913.11.
- 36 (11) Section 65400.
- 37 (12) Section 65863.2.
- 38 (13) Chapter 4.1 (commencing with Section 65912.100).
- 39 (14) Section 65905.5.
- 40 (15) Chapter 13 (commencing with Section 66310).

1 (16) Section 65852.21.

2 (17) Section 65852.24.

3 (18) Section 66411.7.

4 (19) Section 65913.16.

5 (20) Article 2 (commencing with Section 66300.5) of Chapter
6 12.

7 (21) Section 65852.28.

8 (22) Section 65913.4.5.

9 (23) Section 66499.41.

10 (k) Commencing July 1, 2019, prior to the Attorney General
11 bringing any suit for a violation of the provisions identified in
12 subdivision (j) related to housing element compliance and seeking
13 remedies available pursuant to this subdivision, the department
14 shall offer the jurisdiction the opportunity for two meetings in
15 person or via telephone to discuss the violation, and shall provide
16 the jurisdiction written findings regarding the violation. This
17 paragraph does not affect any action filed prior to the effective
18 date of this section. The requirements set forth in this subdivision
19 do not apply to any suits brought for a violation or violations of
20 paragraphs (1) and (3) to (9), inclusive, of subdivision (j).

21 (l) In any action or special proceeding brought by the Attorney
22 General relating to housing element compliance pursuant to a
23 notice or referral under subdivision (j), the Attorney General may
24 request, upon a finding of the court that the housing element does
25 not substantially comply with the requirements of this article
26 pursuant to this section, that the court issue an order or judgment
27 directing the jurisdiction to bring its housing element into
28 substantial compliance with the requirements of this article. The
29 court shall retain jurisdiction to ensure that its order or judgment
30 is carried out. If a court determines that the housing element of
31 the jurisdiction substantially complies with this article, it shall
32 have the same force and effect, for purposes of eligibility for any
33 financial assistance that requires a housing element in substantial
34 compliance and for purposes of any incentives provided under
35 Section 65589.9, as a determination by the department that the
36 housing element substantially complies with this article.

37 (1) If the jurisdiction has not complied with the order or
38 judgment after 12 months, the court shall conduct a status
39 conference. Following the status conference, upon a determination
40 that the jurisdiction failed to comply with the order or judgment

1 compelling substantial compliance with the requirements of this
2 article, the court shall impose fines on the jurisdiction, which shall
3 be deposited into the Building Homes and Jobs Trust Fund. Any
4 fine levied pursuant to this paragraph shall be in a minimum
5 amount of ten thousand dollars (\$10,000) per month, but shall not
6 exceed one hundred thousand dollars (\$100,000) per month, except
7 as provided in paragraphs (2) and (3). In the event that the
8 jurisdiction fails to pay fines imposed by the court in full and on
9 time, the court may require the Controller to intercept any available
10 state and local funds and direct such funds to the Building Homes
11 and Jobs Trust Fund to correct the jurisdiction's failure to pay.
12 The intercept of the funds by the Controller for this purpose shall
13 not violate any provision of the California Constitution.

14 (2) If the jurisdiction has not complied with the order or
15 judgment after three months following the imposition of fees
16 described in paragraph (1), the court shall conduct a status
17 conference. Following the status conference, if the court finds that
18 the fees imposed pursuant to paragraph (1) are insufficient to bring
19 the jurisdiction into compliance with the order or judgment, the
20 court may multiply the fine determined pursuant to paragraph (1)
21 by a factor of three. In the event that the jurisdiction fails to pay
22 fines imposed by the court in full and on time, the court may
23 require the Controller to intercept any available state and local
24 funds and direct such funds to the Building Homes and Jobs Trust
25 Fund to correct the jurisdiction's failure to pay. The intercept of
26 the funds by the Controller for this purpose shall not violate any
27 provision of the California Constitution.

28 (3) If the jurisdiction has not complied with the order or
29 judgment six months following the imposition of fees described
30 in paragraph (1), the court shall conduct a status conference. Upon
31 a determination that the jurisdiction failed to comply with the order
32 or judgment, the court may impose the following:

33 (A) If the court finds that the fees imposed pursuant to
34 paragraphs (1) and (2) are insufficient to bring the jurisdiction into
35 compliance with the order or judgment, the court may multiply
36 the fine determined pursuant to paragraph (1) by a factor of six.
37 In the event that the jurisdiction fails to pay fines imposed by the
38 court in full and on time, the court may require the Controller to
39 intercept any available state and local funds and direct such funds
40 to the Building Homes and Jobs Trust Fund to correct the

1 jurisdiction's failure to pay. The intercept of the funds by the
2 Controller for this purpose shall not violate any provision of the
3 California Constitution.

4 (B) The court may order remedies available pursuant to Section
5 564 of the Code of Civil Procedure, under which the agent of the
6 court may take all governmental actions necessary to bring the
7 jurisdiction's housing element into substantial compliance pursuant
8 to this article in order to remedy identified deficiencies. The court
9 shall determine whether the housing element of the jurisdiction
10 substantially complies with this article and, once the court makes
11 that determination, it shall have the same force and effect, for all
12 purposes, as the department's determination that the housing
13 element substantially complies with this article. An agent appointed
14 pursuant to this paragraph shall have expertise in planning in
15 California.

16 (4) This subdivision does not limit a court's discretion to apply
17 any and all remedies in an action or special proceeding for a
18 violation of any law identified in subdivision (j).

19 (m) In determining the application of the remedies available
20 under subdivision (l), the court shall consider whether there are
21 any mitigating circumstances delaying the jurisdiction from coming
22 into compliance with state housing law. The court may consider
23 whether a city, county, or city and county is making a good faith
24 effort to come into substantial compliance or is facing substantial
25 undue hardships.

26 (n) Nothing in this section shall limit the authority of the office
27 of the Attorney General to bring a suit to enforce state law in an
28 independent capacity. The office of the Attorney General may seek
29 all remedies available under law including those set forth in this
30 section.

31 (o) Notwithstanding Sections 11040 and 11042, if the Attorney
32 General declines to represent the department in any action or
33 special proceeding brought pursuant to a notice or referral under
34 subdivision (j), the department may appoint or contract with other
35 counsel for purposes of representing the department in the action
36 or special proceeding.

37 (p) Notwithstanding any other provision of law, the statute of
38 limitations set forth in subdivision (a) of Section 338 of the Code
39 of Civil Procedure shall apply to any action or special proceeding
40 brought by the office of the Attorney General or pursuant to a

1 notice or referral under subdivision (j), or by the department
2 pursuant to subdivision (o).

3 SEC. 2. Section 65589.5 of the Government Code is amended
4 to read:

5 65589.5. (a) (1) The Legislature finds and declares all of the
6 following:

7 (A) The lack of housing, including emergency shelters, is a
8 critical problem that threatens the economic, environmental, and
9 social quality of life in California.

10 (B) California housing has become the most expensive in the
11 nation. The excessive cost of the state's housing supply is partially
12 caused by activities and policies of many local governments that
13 limit the approval of housing, increase the cost of land for housing,
14 and require that high fees and exactions be paid by producers of
15 housing.

16 (C) Among the consequences of those actions are discrimination
17 against low-income and minority households, lack of housing to
18 support employment growth, imbalance in jobs and housing,
19 reduced mobility, urban sprawl, excessive commuting, and air
20 quality deterioration.

21 (D) Many local governments do not give adequate attention to
22 the economic, environmental, and social costs of decisions that
23 result in disapproval of housing development projects, reduction
24 in density of housing projects, and excessive standards for housing
25 development projects.

26 (2) In enacting the amendments made to this section by the act
27 adding this paragraph, the Legislature further finds and declares
28 the following:

29 (A) California has a housing supply and affordability crisis of
30 historic proportions. The consequences of failing to effectively
31 and aggressively confront this crisis are hurting millions of
32 Californians, robbing future generations of the chance to call
33 California home, stifling economic opportunities for workers and
34 businesses, worsening poverty and homelessness, and undermining
35 the state's environmental and climate objectives.

36 (B) While the causes of this crisis are multiple and complex,
37 the absence of meaningful and effective policy reforms to
38 significantly enhance the approval and supply of housing affordable
39 to Californians of all income levels is a key factor.

1 (C) The crisis has grown so acute in California that supply,
2 demand, and affordability fundamentals are characterized in the
3 negative: underserved demands, constrained supply, and protracted
4 unaffordability.

5 (D) According to reports and data, California has accumulated
6 an unmet housing backlog of nearly 2,000,000 units and must
7 provide for at least 180,000 new units annually to keep pace with
8 growth through 2025.

9 (E) California's overall home ownership rate is at its lowest
10 level since the 1940s. The state ranks 49th out of the 50 states in
11 home ownership rates as well as in the supply of housing per capita.
12 Only one-half of California's households are able to afford the
13 cost of housing in their local regions.

14 (F) Lack of supply and rising costs are compounding inequality
15 and limiting advancement opportunities for many Californians.

16 (G) The majority of California renters, more than 3,000,000
17 households, pay more than 30 percent of their income toward rent
18 and nearly one-third, more than 1,500,000 households, pay more
19 than 50 percent of their income toward rent.

20 (H) When Californians have access to safe and affordable
21 housing, they have more money for food and health care; they are
22 less likely to become homeless and in need of
23 government-subsidized services; their children do better in school;
24 and businesses have an easier time recruiting and retaining
25 employees.

26 (I) An additional consequence of the state's cumulative housing
27 shortage is a significant increase in greenhouse gas emissions
28 caused by the displacement and redirection of populations to states
29 with greater housing opportunities, particularly working- and
30 middle-class households. California's cumulative housing shortfall
31 therefore has not only national but international environmental
32 consequences.

33 (J) California's housing picture has reached a crisis of historic
34 proportions despite the fact that, for decades, the Legislature has
35 enacted numerous statutes intended to significantly increase the
36 approval, development, and affordability of housing for all income
37 levels, including this section.

38 (K) The Legislature's intent in enacting this section in 1982 and
39 in expanding its provisions since then was to significantly increase
40 the approval and construction of new housing for all economic

1 segments of California's communities by meaningfully and
2 effectively curbing the capability of local governments to deny,
3 reduce the density for, or render infeasible housing development
4 projects and emergency shelters. That intent has not been fulfilled.

5 (L) It is the policy of the state that this section be interpreted
6 and implemented in a manner to afford the fullest possible weight
7 to the interest of, and the approval and provision of, housing.

8 (3) It is the intent of the Legislature that the conditions that
9 would have a specific, adverse impact upon the public health and
10 safety, as described in paragraph (2) of subdivision (d) and
11 paragraph (1) of subdivision (j), arise infrequently.

12 (b) It is the policy of the state that a local government not reject
13 or make infeasible housing development projects, including
14 emergency shelters, that contribute to meeting the need determined
15 pursuant to this article without a thorough analysis of the economic,
16 social, and environmental effects of the action and without
17 complying with subdivision (d).

18 (c) The Legislature also recognizes that premature and
19 unnecessary development of agricultural lands for urban uses
20 continues to have adverse effects on the availability of those lands
21 for food and fiber production and on the economy of the state.
22 Furthermore, it is the policy of the state that development should
23 be guided away from prime agricultural lands; therefore, in
24 implementing this section, local jurisdictions should encourage,
25 to the maximum extent practicable, in filling existing urban areas.

26 (d) A local agency shall not disapprove a housing development
27 project, including farmworker housing as defined in subdivision
28 (h) of Section 50199.7 of the Health and Safety Code, for very
29 low, low-, or moderate-income households, or an emergency
30 shelter, or condition approval in a manner that renders the housing
31 development project infeasible for development for the use of very
32 low, low-, or moderate-income households, or an emergency
33 shelter, including through the use of design review standards,
34 unless it makes written findings, based upon a preponderance of
35 the evidence in the record, as to one of the following:

36 (1) The jurisdiction has adopted a housing element pursuant to
37 this article that has been revised in accordance with Section 65588,
38 is in substantial compliance with this article, and the jurisdiction
39 has met or exceeded its share of the regional housing need
40 allocation pursuant to Section 65584 for the planning period for

1 the income category proposed for the housing development project,
2 provided that any disapproval or conditional approval shall not be
3 based on any of the reasons prohibited by Section 65008. If the
4 housing development project includes a mix of income categories,
5 and the jurisdiction has not met or exceeded its share of the regional
6 housing need for one or more of those categories, then this
7 paragraph shall not be used to disapprove or conditionally approve
8 the housing development project. The share of the regional housing
9 need met by the jurisdiction shall be calculated consistently with
10 the forms and definitions that may be adopted by the Department
11 of Housing and Community Development pursuant to Section
12 65400. In the case of an emergency shelter, the jurisdiction shall
13 have met or exceeded the need for emergency shelter, as identified
14 pursuant to paragraph (7) of subdivision (a) of Section 65583. Any
15 disapproval or conditional approval pursuant to this paragraph
16 shall be in accordance with applicable law, rule, or standards.

17 (2) The housing development project or emergency shelter as
18 proposed would have a specific, adverse impact upon the public
19 health or safety, and there is no feasible method to satisfactorily
20 mitigate or avoid the specific, adverse impact without rendering
21 the development unaffordable to low- and moderate-income
22 households or rendering the development of the emergency shelter
23 financially infeasible. As used in this paragraph, a “specific,
24 adverse impact” means a significant, quantifiable, direct, and
25 unavoidable impact, based on objective, identified written public
26 health or safety standards, policies, or conditions as they existed
27 on the date the application was deemed complete. The following
28 shall not constitute a specific, adverse impact upon the public
29 health or safety:

30 (A) Inconsistency with the zoning ordinance or general plan
31 land use designation.

32 (B) The eligibility to claim a welfare exemption under
33 subdivision (g) of Section 214 of the Revenue and Taxation Code.

34 (3) The denial of the housing development project or imposition
35 of conditions is required in order to comply with specific state or
36 federal law, and there is no feasible method to comply without
37 rendering the development unaffordable to low- and
38 moderate-income households or rendering the development of the
39 emergency shelter financially infeasible.

1 (4) The housing development project or emergency shelter is
2 proposed on land zoned for agriculture or resource preservation
3 that is surrounded on at least two sides by land being used for
4 agricultural or resource preservation purposes, or which does not
5 have adequate water or wastewater facilities to serve the project.

6 (5) The housing development project or emergency shelter is
7 inconsistent with both the jurisdiction's zoning ordinance and
8 general plan land use designation as specified in any element of
9 the general plan as it existed on the date the application was
10 deemed complete, and the jurisdiction has adopted a revised
11 housing element in accordance with Section 65588 that is in
12 substantial compliance with this article. For purposes of this
13 section, a change to the zoning ordinance or general plan land use
14 designation subsequent to the date the application was deemed
15 complete shall not constitute a valid basis to disapprove or
16 condition approval of the housing development project or
17 emergency shelter.

18 (A) This paragraph cannot be utilized to disapprove or
19 conditionally approve a housing development project if the housing
20 development project is proposed on a site that is identified as
21 suitable or available for very low, low-, or moderate-income
22 households in the jurisdiction's housing element, and consistent
23 with the density specified in the housing element, even though it
24 is inconsistent with both the jurisdiction's zoning ordinance and
25 general plan land use designation.

26 (B) If the local agency has failed to identify in the inventory of
27 land in its housing element sites that can be developed for housing
28 within the planning period and are sufficient to provide for the
29 jurisdiction's share of the regional housing need for all income
30 levels pursuant to Section 65584, then this paragraph shall not be
31 utilized to disapprove or conditionally approve a housing
32 development project proposed for a site designated in any element
33 of the general plan for residential uses or designated in any element
34 of the general plan for commercial uses if residential uses are
35 permitted or conditionally permitted within commercial
36 designations. In any action in court, the burden of proof shall be
37 on the local agency to show that its housing element does identify
38 adequate sites with appropriate zoning and development standards
39 and with services and facilities to accommodate the local agency's

1 share of the regional housing need for the very low, low-, and
2 moderate-income categories.

3 (C) If the local agency has failed to identify a zone or zones
4 where emergency shelters are allowed as a permitted use without
5 a conditional use or other discretionary permit, has failed to
6 demonstrate that the identified zone or zones include sufficient
7 capacity to accommodate the need for emergency shelter identified
8 in paragraph (7) of subdivision (a) of Section 65583, or has failed
9 to demonstrate that the identified zone or zones can accommodate
10 at least one emergency shelter, as required by paragraph (4) of
11 subdivision (a) of Section 65583, then this paragraph shall not be
12 utilized to disapprove or conditionally approve an emergency
13 shelter proposed for a site designated in any element of the general
14 plan for industrial, commercial, or multifamily residential uses. In
15 any action in court, the burden of proof shall be on the local agency
16 to show that its housing element does satisfy the requirements of
17 paragraph (4) of subdivision (a) of Section 65583.

18 (e) Nothing in this section shall be construed to relieve the local
19 agency from complying with the congestion management program
20 required by Chapter 2.6 (commencing with Section 65088) of
21 Division 1 of Title 7 or the California Coastal Act of 1976
22 (Division 20 (commencing with Section 30000) of the Public
23 Resources Code). Neither shall anything in this section be
24 construed to relieve the local agency from making one or more of
25 the findings required pursuant to Section 21081 of the Public
26 Resources Code or otherwise complying with the California
27 Environmental Quality Act (Division 13 (commencing with Section
28 21000) of the Public Resources Code).

29 (f) (1) Except as provided in subdivision (o), nothing in this
30 section shall be construed to prohibit a local agency from requiring
31 the housing development project to comply with objective,
32 quantifiable, written development standards, conditions, and
33 policies appropriate to, and consistent with, meeting the
34 jurisdiction's share of the regional housing need pursuant to Section
35 65584. However, the development standards, conditions, and
36 policies shall be applied to facilitate and accommodate
37 development at the density permitted on the site and proposed by
38 the development.

39 (2) Except as provided in subdivision (o), nothing in this section
40 shall be construed to prohibit a local agency from requiring an

1 emergency shelter project to comply with objective, quantifiable,
2 written development standards, conditions, and policies that are
3 consistent with paragraph (4) of subdivision (a) of Section 65583
4 and appropriate to, and consistent with, meeting the jurisdiction's
5 need for emergency shelter, as identified pursuant to paragraph
6 (7) of subdivision (a) of Section 65583. However, the development
7 standards, conditions, and policies shall be applied by the local
8 agency to facilitate and accommodate the development of the
9 emergency shelter project.

10 (3) Except as provided in subdivision (o), nothing in this section
11 shall be construed to prohibit a local agency from imposing fees
12 and other exactions otherwise authorized by law that are essential
13 to provide necessary public services and facilities to the housing
14 development project or emergency shelter.

15 (4) For purposes of this section, a housing development project
16 or emergency shelter shall be deemed consistent, compliant, and
17 in conformity with an applicable plan, program, policy, ordinance,
18 standard, requirement, or other similar provision if there is
19 substantial evidence that would allow a reasonable person to
20 conclude that the housing development project or emergency
21 shelter is consistent, compliant, or in conformity.

22 (g) This section shall be applicable to charter cities because the
23 Legislature finds that the lack of housing, including emergency
24 shelter, is a critical statewide problem.

25 (h) The following definitions apply for the purposes of this
26 section:

27 (1) "Feasible" means capable of being accomplished in a
28 successful manner within a reasonable period of time, taking into
29 account economic, environmental, social, and technological factors.

30 (2) "Housing development project" means a use consisting of
31 any of the following:

32 (A) Residential units only.

33 (B) Mixed-use developments consisting of residential and
34 nonresidential uses with at least two-thirds of the square footage
35 designated for residential use.

36 (C) Transitional housing or supportive housing.

37 (3) "Housing for very low, low-, or moderate-income
38 households" means that either (A) at least 20 percent of the total
39 units shall be sold or rented to lower income households, as defined
40 in Section 50079.5 of the Health and Safety Code, or (B) 100

1 percent of the units shall be sold or rented to persons and families
2 of moderate income as defined in Section 50093 of the Health and
3 Safety Code, or persons and families of middle income, as defined
4 in Section 65008 of this code. Housing units targeted for lower
5 income households shall be made available at a monthly housing
6 cost that does not exceed 30 percent of 60 percent of area median
7 income with adjustments for household size made in accordance
8 with the adjustment factors on which the lower income eligibility
9 limits are based. Housing units targeted for persons and families
10 of moderate income shall be made available at a monthly housing
11 cost that does not exceed 30 percent of 100 percent of area median
12 income with adjustments for household size made in accordance
13 with the adjustment factors on which the moderate-income
14 eligibility limits are based.

15 (4) "Area median income" means area median income as
16 periodically established by the Department of Housing and
17 Community Development pursuant to Section 50093 of the Health
18 and Safety Code. The developer shall provide sufficient legal
19 commitments to ensure continued availability of units for very low
20 or low-income households in accordance with the provisions of
21 this subdivision for 30 years.

22 (5) Notwithstanding any other law, until January 1, 2030,
23 "deemed complete" means that the applicant has submitted a
24 preliminary application pursuant to Section 65941.1 or, if the
25 applicant has not submitted a preliminary application, has
26 submitted a complete application pursuant to Section 65943.

27 (6) "Disapprove the housing development project" includes any
28 instance in which a local agency does any of the following:

29 (A) Votes on a proposed housing development project
30 application and the application is disapproved, including any
31 required land use approvals or entitlements necessary for the
32 issuance of a building permit.

33 (B) Fails to comply with the time periods specified in
34 subdivision (a) of Section 65950. An extension of time pursuant
35 to Article 5 (commencing with Section 65950) shall be deemed to
36 be an extension of time pursuant to this paragraph.

37 (C) Fails to meet the time limits specified in Section 65913.3.

38 (D) (i) Fails to make a determination of whether the project is
39 exempt from the California Environmental Quality Act (Division
40 13 (commencing with Section 21000) of the Public Resources

Code), or commits an abuse of discretion, as defined in this subparagraph, if all of the following conditions are satisfied:

(I) There is substantial evidence in the record before the local agency that the housing development project is not located in either of the following:

(ia) On a site specified in subparagraphs (A) to (C), inclusive, or subparagraphs (E) to (K), inclusive, of paragraph (6) of subdivision (a) of Section 65913.4.

(ib) Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code.

(II) The housing development project is located on a legal parcel or parcels within an urbanized area and meets one or more of the following criteria:

(ia) The housing development project is located within one-half mile walking distance to either a high-quality transit corridor or a major transit stop.

(ib) The housing development project is located in a very low vehicle travel area.

(ic) The housing development project is proximal to six or more amenities pursuant to subclause (IV) of clause (ii) as of the date of submission of the application for the project.

(id) Parcels that are developed with urban uses adjoin at least 75 percent of the perimeter of the project site or at least three sides of a four-sided project site. For purposes of this clause, parcels that are only separated by a street or highway shall be considered to be adjoined.

(III) The density of the housing development project meets or exceeds 15 dwelling units per acre.

(IV) Both of the following criteria are met:

(ia) There is substantial evidence in the record before the local agency that the housing development project is eligible for an exemption sought by the applicant.

(ib) If the exemption sought by the applicant is subject to an exception under the Guidelines for Implementation of the California Environmental Quality Act (Chapter 3 (commencing with Section 15000) of Division 6 of Title 14 of the California

1 Code of Regulations), there is substantial evidence in the record
2 before the local agency that the application of that categorical
3 exemption is not barred by one of the exceptions set forth in
4 Section 15300.2 of those guidelines.

5 (V) (ia) The applicant has given timely written notice to the
6 local agency of the action or inaction that the applicant believes
7 constitutes a failure to make a determination or an abuse of
8 discretion, as defined in this subparagraph, and the local agency
9 did not make a lawful determination within 90 days of the
10 applicant's written notice. The applicant's written notice shall
11 contain all of the following:

12 (Ia) The information specified in paragraphs (1), (2), (5), and
13 (6) of subdivision (a) of Section 15062 of Title 14 of the California
14 Code of Regulations.

15 (Ib) A citation to the section of Title 14 of the California Code
16 of Regulations or the statute under which the applicant asserts that
17 the project is exempt.

18 (Ic) A brief statement of reasons supporting the assertion that
19 the project is exempt.

20 (Id) A copy of the excerpts from the record constituting
21 substantial evidence that the criteria of subclauses (I) to (IV),
22 inclusive, are satisfied.

23 (ib) Within five working days of receiving the applicant's
24 written notice required by sub-subclause (ia), the local agency
25 shall file the notice with the county clerk of each county in which
26 the project will be located. The county clerk shall post the notice
27 and make it available for public inspection in the manner set forth
28 in subdivision (c) of Section 21152 of the Public Resources Code.
29 Compliance with this sub-subclause is not a condition that must
30 be satisfied in order to find that the local agency has disapproved
31 the housing development project under this subparagraph.

32 (ic) The local agency may, by providing a written response to
33 the applicant within 90 additional days of the applicant's written
34 notice, extend the time period to make a lawful determination by
35 no more than 90 days if the extension is necessary to determine if
36 there is substantial evidence in the record that the housing
37 development project is eligible for the exemption sought by the
38 applicant.

39 (id) If the local agency has given the applicant written notice
40 of the local agency's determination that the project is not exempt,

1 the applicant's notice shall be deemed timely if and only if it is
2 delivered to the local agency within 35 days of the date that the
3 local agency gave the applicant notice of the local agency's
4 determination.

5 (ie) If the local agency has not given the applicant the written
6 notice described in sub-subclause (id), the applicant's notice shall
7 be deemed timely if given after 60 days from the date on which
8 the project application has been received and accepted as complete
9 by the lead agency, or 60 days from the date on which the project
10 application has been determined or deemed to be complete within
11 the meaning of Section 65943, whichever is earlier.

12 (ii) For purposes of this subparagraph, the following definitions
13 apply:

14 (I) "Abuse of discretion" means that the conditions set forth in
15 subclauses (I) to (IV), inclusive, of clause (i) are satisfied, but the
16 local agency does not determine that the project is exempt from
17 the California Environmental Quality Act (Division 13
18 commencing with Section 21000) of the Public Resources Code).
19 This subclause sets forth the exclusive definition of "abuse of
20 discretion" for purposes of this subparagraph.

21 (II) "High-quality transit corridor" has the same meaning defined
22 in subdivision (b) of Section 21155 of the Public Resources Code.

23 (III) "Major transit stop" has the same meaning as defined in
24 Section 21064.3 of the Public Resources Code.

25 (IV) "Proximal" to an amenity means either of the following:

26 (ia) Within one-half mile of either of the following amenities:

27 (Ia) A bus station.

28 (Ib) A ferry terminal.

29 (ib) Within one mile, or for a parcel in a rural area, as defined
30 in Section 50199.21 of the Health and Safety Code, within two
31 miles, of any of the following amenities:

32 (Ia) A supermarket or grocery store.

33 (Ib) A public park.

34 (Ic) A community center.

35 (Id) A pharmacy or drugstore.

36 (Ie) A medical clinic or hospital.

37 (If) A public library.

38 (Ig) A school that maintains a kindergarten or any of grades 1
39 to 12, inclusive.

1 (V) “Urbanized area” has the same meaning as defined in
2 Section 21071 of the Public Resources Code.

3 (VI) (ia) “Very low vehicle travel area” means an urbanized
4 area, as designated by the United States Census Bureau, where the
5 existing residential development generates vehicle miles traveled
6 per capita that is below 85 percent of either regional vehicle miles
7 traveled per capita or city vehicle miles traveled per capita.

8 (ib) For purposes of sub-subclause (ia), “area” may include a
9 travel analysis zone, hexagon, or grid.

10 (ic) For the purposes of determining “regional vehicle miles
11 traveled per capita” pursuant to sub-subclause (ia), a “region” is
12 the entirety of incorporated and unincorporated areas governed by
13 a multicounty or single-county metropolitan planning organization,
14 or the entirety of the incorporated and unincorporated areas of an
15 individual county that is not part of a metropolitan planning
16 organization.

17 (iii) This subparagraph shall not be construed to require a local
18 agency to determine that a project is exempt if, on the record before
19 the local agency, the project is not eligible for exemption.

20 (iv) This subparagraph shall become inoperative on January 1,
21 2031.

22 (E) Fails to adopt a negative declaration or addendum for the
23 project, to certify an environmental impact report for the project,
24 or to approve another comparable environmental document, such
25 as a sustainable communities environmental assessment pursuant
26 to Section 21155.2 of the Public Resources Code, as required
27 pursuant to the California Environmental Quality Act (Division
28 13 (commencing with Section 21000) of the Public Resources
29 Code), if all of the following conditions are satisfied:

30 (i) There is substantial evidence in the record before the local
31 agency that the site of the housing development project is not
32 located on either of the following:

33 (I) On a site specified in subparagraphs (A) to (C), inclusive,
34 or subparagraphs (E) to (K), inclusive, of paragraph (6) of
35 subdivision (a) of Section 65913.4.

36 (II) Within a very high fire hazard severity zone, as determined
37 by the Department of Forestry and Fire Protection pursuant to
38 Section 51178, or within a high or very high fire hazard severity
39 zone as indicated on maps adopted by the Department of Forestry

1 and Fire Protection pursuant to Section 4202 of the Public
2 Resources Code.

3 (ii) The housing development project is located on a legal parcel
4 or parcels within an urbanized area and meets one or more of the
5 following criteria:

6 (I) The housing development project is located within one-half
7 mile walking distance to either a high-quality transit corridor or a
8 major transit stop.

9 (II) The housing development project is located in a very low
10 vehicle travel area.

11 (III) The housing development project is proximal to six or more
12 amenities pursuant to subclause (IV) of clause (vii) as of the date
13 of submission of the application for the project.

14 (IV) Parcels that are developed with urban uses adjoin at least
15 75 percent of the perimeter of the project site or at least three sides
16 of a four-sided project site. For purposes of this clause, parcels
17 that are only separated by a street or highway shall be considered
18 to be adjoined.

19 (iii) The density of the housing development project meets or
20 exceeds 15 dwelling units per acre.

21 (iv) There has been prepared a negative declaration, addendum,
22 environmental impact report, or comparable environmental review
23 document that, if duly adopted, approved, or certified by the local
24 agency, would satisfy the requirements of the California
25 Environmental Quality Act (Division 13 (commencing with Section
26 21000) of the Public Resources Code) with respect to the project.

27 (v) The local agency or a body or official to which the agency
28 has delegated authority to adopt, approve, or certify the negative
29 declaration addendum, environmental impact report, or comparable
30 environmental review document has held a meeting at which
31 adoption, approval, or certification of the environmental review
32 document was on the agenda and the environmental review
33 document could have been adopted, approved, or certified, as
34 applicable, but the agency did either of the following:

35 (I) Committed an abuse of discretion, as defined in this
36 subparagraph.

37 (II) Failed to decide whether to require further study or to adopt,
38 approve, or certify the environmental document.

39 (vi) (I) The applicant has given timely written notice to the
40 local agency of the action or inaction that the applicant believes

1 constitutes a failure to decide or an abuse of discretion, and the
2 local agency did not make a lawful determination about whether
3 to adopt, approve, or certify the environmental review document
4 within 90 days of the applicant's written notice. The applicant's
5 written notice shall include a copy of those excerpts from the record
6 that constitute substantial evidence that the criteria of clauses (i)
7 to (iv), inclusive, are satisfied.

8 (II) If the local agency has voted to require further study, rather
9 than adopting, approving, or certifying the negative declaration,
10 addendum, environmental impact report, or comparable
11 environmental review document in the form it was presented for
12 the agency's consideration, the applicant's notice shall be deemed
13 timely if and only if it is delivered to the local agency within 35
14 days of the date that the local agency gave written notice of its
15 decision to the applicant.

16 (III) If the local agency has not voted to require further study,
17 rather than adopting, approving, or certifying the negative
18 declaration, addendum, environmental impact report, or comparable
19 environmental review document in the form it was presented for
20 the agency's consideration, the applicant's notice shall be deemed
21 timely if given after the time period specified in Section 21151.5
22 of the Public Resources Code or another applicable provision of
23 that code for completing the addendum, negative declaration,
24 environmental impact report, or other comparable environmental
25 review document, as applicable, has passed. If the Public Resources
26 Code does not specifically describe the deadline to complete the
27 applicable environmental document, a 180-day deadline is the
28 applicable time period.

29 (vii) For purposes of this subparagraph, the following definitions
30 apply:

31 (I) (ia) "Abuse of discretion" means either of the following:

32 (Ia) If the local agency fails to adopt a negative declaration,
33 "abuse of discretion" means that the agency, in bad faith or without
34 substantial evidence in the record to support a fair argument that
35 further environmental study is necessary to identify or analyze
36 potentially significant impacts on the physical environment,
37 decided to require further environmental study rather than adopting
38 the negative declaration.

39 (Ib) If the local agency fails to adopt an addendum for the
40 project, certify an environmental impact report for the project, or

1 approve another comparable environmental document, “abuse of
2 discretion” means that the agency, in bad faith or without
3 substantial evidence in the record that further environmental study
4 is legally required to identify or analyze potentially significant
5 impacts on the physical environment, decided to require further
6 environmental study rather than adopting, approving, or certifying
7 the environmental review document.

8 (ib) This subclause sets forth the exclusive definition of “abuse
9 of discretion” for purposes of this subparagraph.

10 (II) “High-quality transit corridor” has the same meaning defined
11 in subdivision (b) of Section 21155 of the Public Resources Code.

12 (III) “Major transit stop” has the same meaning as defined in
13 Section 21064.3 of the Public Resources Code.

14 (IV) “Proximal” to an amenity means either of the following:

15 (ia) Within one-half mile of either of the following amenities:

16 (Ia) A bus station.

17 (Ib) A ferry terminal.

18 (ib) Within one mile, or for a parcel in a rural area, as defined
19 in Section 50199.21 of the Health and Safety Code, within two
20 miles, of any of the following amenities:

21 (Ia) A supermarket or grocery store.

22 (Ib) A public park.

23 (Ic) A community center.

24 (Id) A pharmacy or drugstore.

25 (Ie) A medical clinic or hospital.

26 (If) A public library.

27 (Ig) A school that maintains a kindergarten or any of grades 1
28 to 12, inclusive.

29 (V) “Urbanized area” has the same meaning as defined in
30 Section 21071 of the Public Resources Code.

31 (VI) (ia) “Very low vehicle travel area” means an urbanized
32 area, as designated by the United States Census Bureau, where the
33 existing residential development generates vehicle miles traveled
34 per capita that is below 85 percent of either regional vehicle miles
35 traveled per capita or city vehicle miles traveled per capita.

36 (ib) For purposes of sub-subclause (ia), “area” may include a
37 travel analysis zone, hexagon, or grid.

38 (ic) For the purposes of determining “regional vehicle miles
39 traveled per capita” pursuant to sub-subclause (ia), a “region” is
40 the entirety of incorporated and unincorporated areas governed by

1 a multicounty or single-county metropolitan planning organization,
2 or the entirety of the incorporated and unincorporated areas of an
3 individual county that is not part of a metropolitan planning
4 organization.

5 (viii) This subparagraph shall become inoperative on January
6 1, 2031.

7 (7) (A) For purposes of this section, “lawful determination”
8 means any final decision about whether to approve or disapprove
9 a statutory or categorical exemption or a negative declaration,
10 addendum, environmental impact report, or comparable
11 environmental review document under the California
12 Environmental Quality Act (Division 13 (commencing with Section
13 21000) of the Public Resources Code) that is not an abuse of
14 discretion, as defined in clause (ii) of subparagraph (D) of
15 paragraph (6) or clause (vii) of subparagraph (E) of paragraph (6).

16 (B) This paragraph shall become inoperative on January 1, 2031.

17 (8) “Lower density” includes any conditions that have the same
18 effect or impact on the ability of the project to provide housing.

19 (9) Until January 1, 2030, “objective” means involving no
20 personal or subjective judgment by a public official and being
21 uniformly verifiable by reference to an external and uniform
22 benchmark or criterion available and knowable by both the
23 development applicant or proponent and the public official.

24 (10) Notwithstanding any other law, until January 1, 2030,
25 “determined to be complete” means that the applicant has submitted
26 a complete application pursuant to Section 65943.

27 (i) If any city, county, or city and county denies approval or
28 imposes conditions, including design changes, lower density, or
29 a reduction of the percentage of a lot that may be occupied by a
30 building or structure under the applicable planning and zoning in
31 force at the time the housing development project’s application is
32 complete, that have a substantial adverse effect on the viability or
33 affordability of a housing development for very low, low-, or
34 moderate-income households, and the denial of the development
35 or the imposition of conditions on the development is the subject
36 of a court action which challenges the denial or the imposition of
37 conditions, then the burden of proof shall be on the local legislative
38 body to show that its decision is consistent with the findings as
39 described in subdivision (d), and that the findings are supported

1 by a preponderance of the evidence in the record, and with the
2 requirements of subdivision (o).

3 (j) (1) When a proposed housing development project complies
4 with applicable, objective general plan, zoning, and subdivision
5 standards and criteria, including design review standards, in effect
6 at the time that the application was deemed complete, but the local
7 agency proposes to disapprove the project or to impose a condition
8 that the project be developed at a lower density, the local agency
9 shall base its decision regarding the proposed housing development
10 project upon written findings supported by a preponderance of the
11 evidence on the record that both of the following conditions exist:

12 (A) The housing development project would have a specific,
13 adverse impact upon the public health or safety unless the project
14 is disapproved or approved upon the condition that the project be
15 developed at a lower density. As used in this paragraph, a “specific,
16 adverse impact” means a significant, quantifiable, direct, and
17 unavoidable impact, based on objective, identified written public
18 health or safety standards, policies, or conditions as they existed
19 on the date the application was deemed complete.

20 (B) There is no feasible method to satisfactorily mitigate or
21 avoid the adverse impact identified pursuant to paragraph (1), other
22 than the disapproval of the housing development project or the
23 approval of the project upon the condition that it be developed at
24 a lower density.

25 (2) (A) If the local agency considers a proposed housing
26 development project to be inconsistent, not in compliance, or not
27 in conformity with an applicable plan, program, policy, ordinance,
28 standard, requirement, or other similar provision as specified in
29 this subdivision, it shall provide the applicant with written
30 documentation identifying the provision or provisions, and an
31 explanation of the reason or reasons it considers the housing
32 development to be inconsistent, not in compliance, or not in
33 conformity as follows:

34 (i) Within 30 days of the date that the application for the housing
35 development project is determined to be complete, if the housing
36 development project contains 150 or fewer housing units.

37 (ii) Within 60 days of the date that the application for the
38 housing development project is determined to be complete, if the
39 housing development project contains more than 150 units.

1 (B) If the local agency fails to provide the required
2 documentation pursuant to subparagraph (A), the housing
3 development project shall be deemed consistent, compliant, and
4 in conformity with the applicable plan, program, policy, ordinance,
5 standard, requirement, or other similar provision.

6 (3) For purposes of this section, the receipt of a density bonus,
7 incentive, concession, waiver, or reduction of development
8 standards pursuant to Section 65915 shall not constitute a valid
9 basis on which to find a proposed housing development project is
10 inconsistent, not in compliance, or not in conformity, with an
11 applicable plan, program, policy, ordinance, standard, requirement,
12 or other similar provision specified in this subdivision.

13 (4) For purposes of this section, a proposed housing development
14 project is not inconsistent with the applicable zoning standards
15 and criteria, and shall not require a rezoning, if the housing
16 development project is consistent with the objective general plan
17 standards and criteria but the zoning for the project site is
18 inconsistent with the general plan. If the local agency has complied
19 with paragraph (2), the local agency may require the proposed
20 housing development project to comply with the objective
21 standards and criteria of the zoning which is consistent with the
22 general plan, however, the standards and criteria shall be applied
23 to facilitate and accommodate development at the density allowed
24 on the site by the general plan and proposed by the proposed
25 housing development project.

26 (k) (1) (A) (i) The applicant, a person who would be eligible
27 to apply for residency in the housing development project or
28 emergency shelter, or a housing organization may bring an action
29 to enforce this section. If, in any action brought to enforce this
30 section, a court finds that any of the following are met, the court
31 shall issue an order pursuant to clause (ii):

32 (I) The local agency, in violation of subdivision (d), disapproved
33 a housing development project or conditioned its approval in a
34 manner rendering it infeasible for the development of an emergency
35 shelter, or housing for very low, low-, or moderate-income
36 households, including farmworker housing, without making the
37 findings required by this section or without making findings
38 supported by a preponderance of the evidence.

39 (II) The local agency, in violation of subdivision (j), disapproved
40 a housing development project complying with applicable,

1 objective general plan and zoning standards and criteria, or imposed
2 a condition that the project be developed at a lower density, without
3 making the findings required by this section or without making
4 findings supported by a preponderance of the evidence.

5 (III) (ia) Subject to sub-subclause (ib), the local agency, in
6 violation of subdivision (o), required or attempted to require a
7 housing development project to comply with an ordinance, policy,
8 or standard not adopted and in effect when a preliminary
9 application was submitted.

10 (ib) This subclause shall become inoperative on January 1, 2030.

11 (ii) If the court finds that one of the conditions in clause (i) is
12 met, the court shall issue an order or judgment compelling
13 compliance with this section within 60 days, including, but not
14 limited to, an order that the local agency take action on the housing
15 development project or emergency shelter. The court may issue
16 an order or judgment directing the local agency to approve the
17 housing development project or emergency shelter if the court
18 finds that the local agency acted in bad faith when it disapproved
19 or conditionally approved the housing development or emergency
20 shelter in violation of this section. The court shall retain jurisdiction
21 to ensure that its order or judgment is carried out and shall award
22 reasonable attorney's fees and costs of suit to the plaintiff or
23 petitioner, provided, however, that the court shall not award
24 attorney's fees in either of the following instances:

25 (I) The court finds, under extraordinary circumstances, that
26 awarding fees would not further the purposes of this section.

27 (II) (ia) In a case concerning a disapproval within the meaning
28 of subparagraph (D) or (E) of paragraph (6) of subdivision (h), the
29 court finds that the local agency acted in good faith and had
30 reasonable cause to disapprove the housing development project
31 due to the existence of a controlling question of law about the
32 application of the California Environmental Quality Act (Division
33 13 (commencing with Section 21000) of the Public Resources
34 Code) or implementing guidelines as to which there was a
35 substantial ground for difference of opinion at the time of the
36 disapproval.

37 (ib) This subclause shall become inoperative on January 1, 2031.

38 (B) Upon a determination that the local agency has failed to
39 comply with the order or judgment compelling compliance with
40 this section within 60 days issued pursuant to subparagraph (A),

1 the court shall impose fines on a local agency that has violated this
2 section and require the local agency to deposit any fine levied
3 pursuant to this subdivision into a local housing trust fund. The
4 local agency may elect to instead deposit the fine into the Building
5 Homes and Jobs Trust Fund. The fine shall be in a minimum
6 amount of ten thousand dollars (\$10,000) per housing unit in the
7 housing development project on the date the application was
8 deemed complete pursuant to Section 65943. In determining the
9 amount of fine to impose, the court shall consider the local
10 agency's progress in attaining its target allocation of the regional
11 housing need pursuant to Section 65584 and any prior violations
12 of this section. Fines shall not be paid out of funds already
13 dedicated to affordable housing, including, but not limited to, Low
14 and Moderate Income Housing Asset Funds, funds dedicated to
15 housing for very low, low-, and moderate-income households, and
16 federal HOME Investment Partnerships Program and Community
17 Development Block Grant Program funds. The local agency shall
18 commit and expend the money in the local housing trust fund
19 within five years for the sole purpose of financing newly
20 constructed housing units affordable to extremely low, very low,
21 or low-income households. After five years, if the funds have not
22 been expended, the money shall revert to the state and be deposited
23 in the Building Homes and Jobs Trust Fund for the sole purpose
24 of financing newly constructed housing units affordable to
25 extremely low, very low, or low-income households.

26 (C) If the court determines that its order or judgment has not
27 been carried out within 60 days, the court may issue further orders
28 as provided by law to ensure that the purposes and policies of this
29 section are fulfilled, including, but not limited to, an order to vacate
30 the decision of the local agency and to approve the housing
31 development project, in which case the application for the housing
32 development project, as proposed by the applicant at the time the
33 local agency took the initial action determined to be in violation
34 of this section, along with any standard conditions determined by
35 the court to be generally imposed by the local agency on similar
36 projects, shall be deemed to be approved unless the applicant
37 consents to a different decision or action by the local agency.

38 (2) For purposes of this subdivision, "housing organization"
39 means a trade or industry group whose local members are primarily
40 engaged in the construction or management of housing units or a

1 nonprofit organization whose mission includes providing or
2 advocating for increased access to housing for low-income
3 households and have filed written or oral comments with the local
4 agency prior to action on the housing development project. A
5 housing organization may only file an action pursuant to this
6 section to challenge the disapproval of a housing development by
7 a local agency. A housing organization shall be entitled to
8 reasonable attorney's fees and costs if it is the prevailing party in
9 an action to enforce this section.

10 (l) If the court finds that the local agency (1) acted in bad faith
11 when it disapproved or conditionally approved the housing
12 development or emergency shelter in violation of this section and
13 (2) failed to carry out the court's order or judgment within 60 days
14 as described in subdivision (k), the court, in addition to any other
15 remedies provided by this section, shall multiply the fine
16 determined pursuant to subparagraph (B) of paragraph (1) of
17 subdivision (k) by a factor of five. For purposes of this section,
18 "bad faith" includes, but is not limited to, an action that is frivolous
19 or otherwise entirely without merit.

20 (m) (1) Any action brought to enforce the provisions of this
21 section shall be brought pursuant to Section 1094.5 of the Code
22 of Civil Procedure, and the local agency shall prepare and certify
23 the record of proceedings in accordance with subdivision (c) of
24 Section 1094.6 of the Code of Civil Procedure no later than 30
25 days after the petition is served, provided that the cost of
26 preparation of the record shall be borne by the local agency, unless
27 the petitioner elects to prepare the record as provided in subdivision
28 (n) of this section. A petition to enforce the provisions of this
29 section shall be filed and served no later than 90 days from the
30 later of (1) the effective date of a decision of the local agency
31 imposing conditions on, disapproving, or any other final action on
32 a housing development project or (2) the expiration of the time
33 periods specified in subparagraph (B) of paragraph (5) of
34 subdivision (h). Upon entry of the trial court's order, a party may,
35 in order to obtain appellate review of the order, file a petition
36 within 20 days after service upon it of a written notice of the entry
37 of the order, or within such further time not exceeding an additional
38 20 days as the trial court may for good cause allow, or may appeal
39 the judgment or order of the trial court under Section 904.1 of the
40 Code of Civil Procedure. If the local agency appeals the judgment

1 of the trial court, the local agency shall post a bond, in an amount
2 to be determined by the court, to the benefit of the plaintiff if the
3 plaintiff is the project applicant.

4 (2) (A) A disapproval within the meaning of subparagraph (D)
5 of paragraph (6) of subdivision (h) shall be final for purposes of
6 this subdivision, if the local agency did not make a lawful
7 determination within the time period set forth in subclause (V) of
8 clause (i) of that subparagraph after the applicant's timely written
9 notice.

10 (B) This paragraph shall become inoperative on January 1, 2031.

11 (3) (A) A disapproval within the meaning of subparagraph (E)
12 of paragraph (6) of subdivision (h) shall be final for purposes of
13 this subdivision, if the local agency did not make a lawful
14 determination within 90 days of the applicant's timely written
15 notice.

16 (B) This paragraph shall become inoperative on January 1, 2031.

17 (n) In any action, the record of the proceedings before the local
18 agency shall be filed as expeditiously as possible and,
19 notwithstanding Section 1094.6 of the Code of Civil Procedure or
20 subdivision (m) of this section, all or part of the record may be
21 prepared (1) by the petitioner with the petition or petitioner's points
22 and authorities, (2) by the respondent with respondent's points and
23 authorities, (3) after payment of costs by the petitioner, or (4) as
24 otherwise directed by the court. If the expense of preparing the
25 record has been borne by the petitioner and the petitioner is the
26 prevailing party, the expense shall be taxable as costs.

27 (o) (1) (A) Subject to paragraphs (2), (6), and (7), and
28 subdivision (d) of Section 65941.1, a housing development project
29 shall be subject only to the ordinances, policies, and standards
30 adopted and in effect when a preliminary application including all
31 of the information required by subdivision (a) of Section 65941.1
32 was submitted.

33 (B) For purposes of a local agency's approval, conditional
34 approval, or disapproval of a housing development project pursuant
35 to subdivision (d), a housing element or amendment shall be
36 considered in substantial compliance with this article only if the
37 element or amendment was in substantial compliance, as
38 determined by the department or a court of competent jurisdiction,
39 when a preliminary application, including all of the information
40 required by subdivision (a) of Section 65941.1, was submitted or,

1 if a preliminary application was not submitted, when a complete
2 application pursuant to Section 65943 was submitted. This
3 subparagraph does not constitute a change in, but is declaratory
4 of, existing law.

5 (2) Paragraph (1) shall not prohibit a housing development
6 project from being subject to ordinances, policies, and standards
7 adopted after the preliminary application was submitted pursuant
8 to Section 65941.1 in the following circumstances:

9 (A) In the case of a fee, charge, or other monetary exaction, to
10 an increase resulting from an automatic annual adjustment based
11 on an independently published cost index that is referenced in the
12 ordinance or resolution establishing the fee or other monetary
13 exaction.

14 (B) A preponderance of the evidence in the record establishes
15 that subjecting the housing development project to an ordinance,
16 policy, or standard beyond those in effect when a preliminary
17 application was submitted is necessary to mitigate or avoid a
18 specific, adverse impact upon the public health or safety, as defined
19 in subparagraph (A) of paragraph (1) of subdivision (j), and there
20 is no feasible alternative method to satisfactorily mitigate or avoid
21 the adverse impact.

22 (C) Subjecting the housing development project to an ordinance,
23 policy, standard, or any other measure, beyond those in effect when
24 a preliminary application was submitted is necessary to avoid or
25 substantially lessen an impact of the project under the California
26 Environmental Quality Act (Division 13 (commencing with Section
27 21000) of the Public Resources Code).

28 (D) The housing development project has not commenced
29 construction within two and one-half years, or three and one-half
30 years for an affordable housing project, following the date that the
31 project received final approval. For purposes of this subparagraph:

32 (i) “Affordable housing project” means a housing development
33 that satisfies both of the following requirements:

34 (I) Units within the development are subject to a recorded
35 affordability restriction for at least 55 years for rental housing and
36 45 years for owner-occupied housing, or the first purchaser of each
37 unit participates in an equity sharing agreement as described in
38 subparagraph (C) of paragraph (2) of subdivision (c) of Section
39 65915.

1 (II) All of the units within the development, excluding managers’
2 units, are dedicated to lower income households, as defined by
3 Section 50079.5 of the Health and Safety Code.

4 (ii) “Final approval” means that the housing development project
5 has received all necessary approvals to be eligible to apply for,
6 and obtain, a building permit or permits and either of the following
7 is met:

8 (I) The expiration of all applicable appeal periods, petition
9 periods, reconsideration periods, or statute of limitations for
10 challenging that final approval without an appeal, petition, request
11 for reconsideration, or legal challenge having been filed.

12 (II) If a challenge is filed, that challenge is fully resolved or
13 settled in favor of the housing development project.

14 (E) The housing development project is revised following
15 submittal of a preliminary application pursuant to Section 65941.1
16 such that the number of residential units or square footage of
17 construction changes by 20 percent or more, exclusive of any
18 increase resulting from the receipt of a density bonus, incentive,
19 concession, waiver, or similar provision, including any other locally
20 authorized program that offers additional density or other
21 development bonuses when affordable housing is provided. For
22 purposes of this subdivision, “square footage of construction”
23 means the building area, as defined by the California Building
24 Standards Code (Title 24 of the California Code of Regulations).

25 (3) This subdivision does not prevent a local agency from
26 subjecting the additional units or square footage of construction
27 that result from project revisions occurring after a preliminary
28 application is submitted pursuant to Section 65941.1 to the
29 ordinances, policies, and standards adopted and in effect when the
30 preliminary application was submitted.

31 (4) For purposes of this subdivision, “ordinances, policies, and
32 standards” includes general plan, community plan, specific plan,
33 zoning, design review standards and criteria, subdivision standards
34 and criteria, and any other rules, regulations, requirements, and
35 policies of a local agency, as defined in Section 66000, including
36 those relating to development impact fees, capacity or connection
37 fees or charges, permit or processing fees, and other exactions.

38 (5) This subdivision shall not be construed in a manner that
39 would lessen the restrictions imposed on a local agency, or lessen
40 the protections afforded to a housing development project, that are

1 established by any other law, including any other part of this
2 section.

3 (6) This subdivision shall not restrict the authority of a public
4 agency or local agency to require mitigation measures to lessen
5 the impacts of a housing development project under the California
6 Environmental Quality Act (Division 13 (commencing with Section
7 21000) of the Public Resources Code).

8 (7) With respect to completed residential units for which the
9 project approval process is complete and a certificate of occupancy
10 has been issued, nothing in this subdivision shall limit the
11 application of later enacted ordinances, policies, and standards
12 that regulate the use and occupancy of those residential units, such
13 as ordinances relating to rental housing inspection, rent
14 stabilization, restrictions on short-term renting, and business
15 licensing requirements for owners of rental housing.

16 (8) (A) This subdivision shall apply to a housing development
17 project that submits a preliminary application pursuant to Section
18 65941.1 before January 1, 2030.

19 (B) This subdivision shall become inoperative on January 1,
20 2034.

21 (p) (1) Upon any motion for an award of attorney's fees
22 pursuant to Section 1021.5 of the Code of Civil Procedure, in a
23 case challenging a local agency's approval of a housing
24 development project, a court, in weighing whether a significant
25 benefit has been conferred on the general public or a large class
26 of persons and whether the necessity of private enforcement makes
27 the award appropriate, shall give due weight to the degree to which
28 the local agency's approval furthers policies of this section,
29 including, but not limited to, subdivisions (a), (b), and (c), the
30 suitability of the site for a housing development, and the
31 reasonableness of the decision of the local agency. It is the intent
32 of the Legislature that attorney's fees and costs shall rarely, if ever,
33 be awarded if a local agency, acting in good faith, approved a
34 housing development project that satisfies conditions established
35 in subclauses (I), (II), and (III) of clause (i) of subparagraph (D)
36 of paragraph (6) of subdivision (h) or clauses (i), (ii), and (iii) of
37 subparagraph (E) of paragraph (6) of subdivision (h).

38 (2) This subdivision shall become inoperative on January 1,
39 2031.

1 (q) This section shall be known, and may be cited, as the
2 Housing Accountability Act.

3 (r) The provisions of this section are severable. If any provision
4 of this section or its application is held invalid, that invalidity shall
5 not affect other provisions or applications that can be given effect
6 without the invalid provision or application.

7 SEC. 3. No reimbursement is required by this act pursuant to
8 Section 6 of Article XIII B of the California Constitution because
9 a local agency or school district has the authority to levy service
10 charges, fees, or assessments sufficient to pay for the program or
11 level of service mandated by this act, within the meaning of Section
12 17556 of the Government Code.