

AMENDED IN ASSEMBLY MARCH 28, 2023

CALIFORNIA LEGISLATURE—2023–24 REGULAR SESSION

ASSEMBLY BILL

No. 1485

Introduced by Assembly Member Haney
(Principal coauthor: Senator Wiener)

February 17, 2023

An act to amend Section 65585 of the Government Code, relating to housing.

LEGISLATIVE COUNSEL’S DIGEST

AB 1485, as amended, Haney. Housing element: enforcement: Attorney General.

The Planning and Zoning Law requires each county and city to adopt a comprehensive, long-term general plan for the physical development of the county or city and requires that general plan to include, among other mandatory elements, a housing element. Existing law authorizes the ~~department~~ *Department of Housing and Community Development* to notify the office of the Attorney General, that a city, county, or city and county is in violation of state law if the department finds that the housing element or an amendment to the housing element does not substantially comply with specified provisions of the Planning and Zoning Law, or that the local government has taken action or failed to act in violation of specified provisions of law relating to housing, including, among others, the Housing Accountability Act, the Density Bonus Law, and the Housing Crisis Act of 2019.

Existing law provides that an intervention takes place when a nonparty becomes a party to an action or proceeding between other persons by, among other things, joining a plaintiff in claiming what is sought by the complaint. Existing law requires the court to permit a nonparty to

intervene in the action or proceeding if a provision of law confers an unconditional right to intervene.

~~This bill would permit the Office of the Attorney General to intervene as a matter of unconditional right in any legal action addressing a violation of the housing laws for which the department may notify the office of the Attorney General that a city, county, or city and county has violated, as described above.~~

This bill would permit both the department and the office of the Attorney General to intervene as a matter of unconditional right in any legal action addressing a violation of the specified housing laws described above, including, among others, the Housing Accountability Act, the Density Bonus Law, and the Housing Crisis Act of 2019.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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 (e) 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
12 revision or draft amendment to the department. The local
13 government of the planning agency shall make the first draft
14 revision of a housing element available for public comment for at
15 least 30 days and, if any comments are received, the local
16 government shall take at least 10 business days after the 30-day
17 public comment period to consider and incorporate public
18 comments into the draft revision prior to submitting it to the
19 department. For any subsequent draft revision, the local
20 government shall post the draft revision on its internet website and
21 shall email a link to the draft revision to all individuals and
22 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 ~~which~~ *that* explain the reasons the legislative body

believes that the draft element or draft amendment substantially complies with this ~~article~~ *article*, despite the findings of the department.

(g) Promptly following the adoption of its element or amendment, the planning agency shall submit a copy to the department.

(h) The department shall, within 90 days, review adopted housing elements or amendments and report its findings to the planning agency.

(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 (1) Housing Accountability Act (Section 65589.5).
- 2 (2) Section 65863.
- 3 (3) Chapter 4.3 (commencing with Section 65915).
- 4 (4) Section 65008.
- 5 (5) Housing Crisis Act of 2019 (Chapter 654, Statutes of 2019,
- 6 Sections 65941.1, 65943, and 66300).
- 7 (6) Section 8899.50.
- 8 (7) Section 65913.4.
- 9 (8) Article 11 (commencing with Section 65650).
- 10 (9) Article 12 (commencing with Section 65660).
- 11 (10) Section 65913.11.
- 12 (11) Section 65400.
- 13 (12) Section 65863.2.
- 14 (13) Chapter 4.1 (commencing with Section 65912.100).
- 15 (k) Commencing July 1, 2019, prior to the Attorney General
- 16 bringing any suit for a violation of the provisions identified in
- 17 subdivision (j) related to housing element compliance and seeking
- 18 remedies available pursuant to this subdivision, the department
- 19 shall offer the jurisdiction the opportunity for two meetings in
- 20 person or via telephone to discuss the violation, and shall provide
- 21 the jurisdiction written findings regarding the violation. This
- 22 paragraph does not affect any action filed prior to the effective
- 23 date of this section. The requirements set forth in this subdivision
- 24 do not apply to any suits brought for a violation or violations of
- 25 paragraphs (1) and (3) to (9), inclusive, of subdivision (j).
- 26 (l) In any action or special proceeding brought by the Attorney
- 27 General relating to housing element compliance pursuant to a
- 28 notice or referral under subdivision (j), the Attorney General may
- 29 request, upon a finding of the court that the housing element does
- 30 not substantially comply with the requirements of this article
- 31 pursuant to this section, that the court issue an order or judgment
- 32 directing the jurisdiction to bring its housing element into
- 33 substantial compliance with the requirements of this article. The
- 34 court shall retain jurisdiction to ensure that its order or judgment
- 35 is carried out. If a court determines that the housing element of
- 36 the jurisdiction substantially complies with this article, it shall
- 37 have the same force and effect, for purposes of eligibility for any
- 38 financial assistance that requires a housing element in substantial
- 39 compliance and for purposes of any incentives provided under

1 Section 65589.9, as a determination by the department that the
2 housing element substantially complies with this article.

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

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

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

39 (A) If the court finds that the fees imposed pursuant to
40 paragraphs (1) and (2) are insufficient to bring the jurisdiction into

1 compliance with the order or judgment, the court may multiply
2 the fine determined pursuant to paragraph (1) by a factor of six.
3 In the event that the jurisdiction fails to pay fines imposed by the
4 court in full and on time, the court may require the Controller to
5 intercept any available state and local funds and direct such funds
6 to the Building Homes and Jobs Trust Fund to correct the
7 jurisdiction's failure to pay. The intercept of the funds by the
8 Controller for this purpose shall not violate any provision of the
9 California Constitution.

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

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

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

32 (n) Nothing in this section shall limit the authority of the office
33 of the Attorney General to bring a suit to enforce state law in an
34 independent capacity. The office of the Attorney General may seek
35 all remedies available under law including those set forth in this
36 ~~section, and shall be permitted to intervene as a matter of~~
37 ~~unconditional right, under subparagraph (A) of paragraph (1) of~~
38 ~~subdivision (d) of Section 387 of the Code of Civil Procedure, in~~
39 ~~any legal action addressing a violation of any law set forth in~~
40 ~~subdivision (j): section.~~

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

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

13 (q) *In any suit brought to enforce either this article or any state*
14 *law listed under subdivision (j), the department and the office of*
15 *the Attorney General shall each have the unconditional right to*
16 *intervene under subparagraph (A) of paragraph (1) of subdivision*
17 *(d) of Section 387 of the Code of Civil Procedure. The office of*
18 *the Attorney General shall have this unconditional right whether*
19 *intervening in an independent capacity or pursuant to a notice or*
20 *referral from the department.*

May 3, 2023

The Honorable D Haney
California State Assembly
1021 O Street, Suite 5310
P.O. Box 942849
Sacramento, CA 94249-0017

RE: OPPOSE AB 1485 (Haney) – Housing element: enforcement: Attorney General

Dear Senator Haney,

This bill would permit the Attorney General and the Department of Housing and Community Development to intervene as a matter of unconditional right in any legal action addressing housing laws. The right to intervene as a matter of unconditional right should certainly not be extended.

For those reasons, the City of Huntington Beach opposes AB 1485. Should you have any questions about our position on this bill or about ACC-OC, please contact Ursula Luna-Reynosa, Community Development Director, at 714-536-5276 or Ursula.Luna-Reynosa@surfcity-hb.org.

Sincerely,

Tony Strickland
Mayor

CC: Senator Janet Nguyen
Senator Dave Min
Assembly Member Chris Holden, Chair of the Appropriations Committee
Assembly Member Diane Dixon
Assembly Member Tri Ta
ACC-OC Board of Directors (via email)
Bismarck Obando, Director of Public Affairs (bismarck@calcities.org)
League of California Cities (cityletters@calcities.org)