

Date of Hearing: April 11, 2018

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 2065 (Ting) – As Introduced February 7, 2018

SUBJECT: Local agencies: surplus land.

SUMMARY: Revises and expands provisions in the Surplus Land Act. Specifically, **this bill:**

- 1) Revises, for purposes of the Surplus Land Act, the following terms:
 - a) Expands the definition of “local agency” to additionally include a sewer, water, utility, and local and regional park district, joint powers authorities, successor agency to a former redevelopment agency, housing authority, or other political subdivision of the state and any instrumentality thereof that is empowered to acquire and hold real property, thereby expanding the entities required to comply with the Surplus Land Act;
 - b) Expands the definition of “surplus land” to mean land owned by any local agency that is not necessary for the agency’s governmental operations, except property being held by the agency expressly for the purpose of exchange for another property necessary for its governmental operations. States that land shall be presumed to be “surplus land” when a local agency initiates an action to dispose of it;
 - c) Revises the definition of “exempt surplus land” to remove references to the enterprise zone program; and,
 - d) Adds a definition of “dispose of” to mean sell, lease, transfer, or otherwise convey any interest in real property owned by a local agency.
- 2) Revises requirements related to a local agency disposing of property and sending a written offer to sell or lease to instead require any local agency to send a written *notice of availability* of the property to specified entities, prior to disposing of that property or participating in any formal or informal negotiations to dispose of that property.
- 3) Requires that the notice of availability additionally be sent to housing sponsors that have notified the applicable regional council of governments (COG), or, in the case of a local agency without a COG, the Department of Housing and Community Development (HCD) of their interest in surplus land.
- 4) Requires written notices to be sent by electronic mail (e-mail), if possible.
- 5) Requires negotiations between the disposing agency and the entity to be limited to sales price and lease terms, including the amount and timing of any payments.
- 6) Requires priority to be given to the entity that proposes the deepest average level of affordability for the affordable units, in the event that more than one entity proposes the same number of units that meets the requirements of existing law.

- 7) Requires that a written notice of availability be sent to a successor agency to a former redevelopment agency, for surplus land to be used for the purpose of developing property located within an infill opportunity zone.
- 8) Defines, for purposes of the section of law in the Surplus Land Act that details the process that a local agency disposing of surplus land must give first priority to an entity when it receives multiple offers to purchase or lease land, the term “priority,” to mean “an entity negotiating in good faith exclusively with the entity” in accordance with another specified section of the Surplus Land Act.
- 9) Provides that if no entity to which a notice of availability was given responds to that notice, and 10 or more residential units are developed on that property, that not less than 15% of the total number of units developed on the parcels shall be sold or rented at affordable housing cost, as defined. Requires this provision to apply, even if the local agency fails to comply with other provisions of the Surplus Land Act that do not invalidate the transfer or conveyance of real property, as specified.
- 10) Specifies that if the Commission on State Mandates determines that the bill’s provisions contain costs mandated by the state, that reimbursement to local agencies and school districts shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.
- 11) Makes other minor, technical, and conforming changes.

EXISTING LAW:

- 1) States, pursuant to the Surplus Land Act, the importance of making surplus government land, prior to disposition, available for purposes, including low- and moderate-income housing, park and recreation purposes or for open space purposes, and for the sale or lease of surplus land to facilitate the creation of affordable housing near transit.
- 2) Defines, for purposes of the Surplus Land Act, “local agency” to mean every city, county, city and county, and district, including school districts of any kind or class, empowered to acquire and hold real property.
- 3) Requires, pursuant to the Surplus Land Act:
 - a) Any local agency disposing of surplus land to send, prior to disposing of that property, a written offer to sell or lease the property, as follows:
 - i) A written offer to sell or lease for the purpose of developing low- and moderate-income housing shall be sent to any local public entity, as defined, within whose jurisdiction the surplus land is located. Housing sponsors shall be sent, upon written request, a written offer to sell or lease surplus land for the purpose of developing low- and moderate-income housing. Requires notices to be sent by first class mail, as specified;
 - ii) A written offer to sell or lease for park and recreational purposes or open-space purposes shall be sent:

- (1) To any park or recreation department of any city within which the land may be situated;
 - (2) To any park or recreation department of the county within which the land is situated;
 - (3) To any regional park authority having jurisdiction within the area in which the land is situated; and,
 - (4) To the State Resources agency or any agency that may succeed to its powers.
- iii) A written offer to sell or lease land suitable for school facilities construction or use by a school district for open-space purposes shall be sent to any school district in whose jurisdiction the land is located;
 - iv) A written offer to sell or lease for enterprise zone purposes;
 - v) A written offer to sell or lease for the purpose of developing property located within an infill opportunity zone, as defined, or within an area covered by a transit village plan, as specified.
- b) Requires the entity or association desiring to purchase or lease the surplus land to notify in writing the disposing agency of its intent to purchase or lease the land within 60 days after receipt of the agency's notification of intent to sell the land.
 - c) Allows the land to be disposed of without further regard should the disposing agency and the entity not agree on price or terms after a good faith negotiation period of not less than 90 days.
 - d) Requires, in the event that any local agency disposing of surplus land receives offers for the purchase or lease of that land from more than one of the entities to which notice was given, the local agency to give first priority to the entity that agrees to use the site for housing, as specified.
 - e) States that the failure by a local agency to comply with the Surplus Land Act does not invalidate the transfer or conveyance of real property to a purchaser or encumbrancer for value.
 - f) Provides that if the local agency does not agree to price and terms with an entity to which notice and an opportunity to purchase or lease are given and disposes of the surplus land to an entity that uses the property for the development of 10 or more residential units, the entity or a successor-in-interest shall provide not less than 15% of the total number of units developed on the parcels at affordable housing cost, as defined.

FISCAL EFFECT: This bill is keyed fiscal and contains a state-mandated local program.

COMMENTS:

- 1) **Background on Surplus Land Act.** Local agencies are required to inventory the land they own every year. If land is no longer needed, a local agency must follow certain procedures prior to disposal of this "surplus" land. The intent behind the disposal procedures is to

promote the use of surplus land towards affordable housing, parks and recreation purposes, open-space purposes, and transit-oriented development. The disposal procedures provide a Right of First Refusal to entities agreeing to use the land for, amongst other things, affordable housing.

Prior to disposing of surplus land, local agencies must make a written offer to sell or lease surplus land for the purpose of developing low- or moderate-income housing to "housing sponsors" upon written request, as well as any local public entity within the jurisdiction where the surplus land is located. A local agency wishing to dispose of surplus land must also provide a written offer to additional entities, depending on the type of proposed development, for park and recreational purposes, school facilities construction or use by a school district for open space purposes, enterprise purposes, and infill opportunity zones, or transit village plans.

If one of these entities is interested in buying or leasing the land, it must notify the local agency within 60 days of receipt of the offer. If a notified entity is interested but cannot agree with the agency upon the price or terms, the local agency must enter into good faith negotiations with the entity for at least 90 days. If 90 days have passed without an agreement, then the local agency may sell or lease the land without further regard to the Right of First Refusal requirements under the disposal procedures.

AB 2135 (Ting), Chapter 677, Statutes of 2014, made a number of changes to the Surplus Land Act relating to the prioritization of affordable housing. The bill provided that, in the event that any local agency disposing of surplus land receives offers for the purchase or lease of that land from more than one notified entity, the local agency must give first priority to the entity that agrees to make available at least 25% of the units in the development at an affordable housing cost to low-income households, subject to exceptions relating to land used or designated for park and recreational use. If more than one notified entity agrees to make available at least 25% of the units in the development at an affordable housing cost to low-income individuals, then the local agency must give priority to the entity that proposes to provide the greatest number of affordable units at the deepest level of affordability.

AB 2135 additionally specified that if the local agency does not agree to price and terms with a notified entity and the surplus land is developed with 10 or more residential units, at least 15% of the units in the development must be at an affordable housing cost to low-income households. The bill also increased the time a local agency has to conduct good faith negotiations with certain entities from 60 days to 90 days.

- 2) **Bill Summary.** This bill makes a number of changes to the Surplus Land Act and is sponsored by the Non-Profit Housing Association of California. This bill:
- a) Expands the definition of "local agency" to additionally include a sewer, water, utility, and local and regional park district, joint powers authorities, successor agency to a former redevelopment agency, housing authority, or other political subdivision of the state and any instrumentality thereof that is empowered to acquire and hold real property, thereby expanding the entities required to comply with the Surplus Land Act;
 - b) Revises requirements related to a local agency disposing of property and sending a written offer to sell or lease to instead require any local agency to send a written *notice of*

availability of the property to specified entities, prior to disposing of that property or participating in any formal or informal negotiations to dispose of that property, and requires written notices to be sent by email, if possible;

- c) Requires that the notice of availability additionally be sent to housing sponsors that have notified the applicable regional COG, or, in the case of a local agency without a COG, HCD, of their interest in surplus land;
 - d) Requires negotiations between the disposing agency and the entity to be limited to sales price and lease terms, including the amount and timing of any payments; and,
 - e) Provides that the existing 15% minimum affordability requirement applies whenever surplus public land is used for housing development, even if no entity responds to the notice of availability, and states that this requirement still applies, even if the local agency fails to comply with other provisions of the Surplus Land Act.
- 3) **Author's Statement.** According to the author, "California is facing an affordable housing crisis and unused public land has the potential to promote affordable housing development throughout the state. AB 2065 will strengthen provisions in existing law that guarantee affordable housing developers get first priority to purchase surplus land from local governments and agencies."
- 4) **Policy Considerations.** A coalition of local agencies, including the Association of Healthcare Districts, the California Association of Sanitary Agencies, the California Municipal Utilities Association, the California Special Districts Association, and the Rural County Representatives of California have an "Oppose Unless Amended" position on the bill, and raise the following concerns:
- a) The new definition of "disposal" is problematic for public agencies that have valid reasons to lease or otherwise protect land they own (for instance, conservation easements may be sold or granted for sensitive species protection or as mitigation, or property held for future facility needs may be leased out until the property is sold). The coalition asks the author to consider amending the definition to apply only to the sale of surplus land;
 - b) The coalition asks for amendments that would require public agencies to only offer land for sale that is considered suitable for school facilities or affordable housing; and,
 - c) Lastly, the coalition notes that there could be good reasons for an agency to have information negotiations, and that if the agency complies with the Surplus Land Act by providing notice and negotiation in good faith, that should be all that is required.

The Committee may wish to ask the author about the issues raised above.

- 5) **Committee Amendments.** In order to correct an error in the bill, the Committee may wish to consider the following committee amendment:

On page 9, line 26:

(c) *For purposes of this section, ~~a local agency~~ “priority” means that the local agency shall negotiate in good faith to an entity by negotiating in good faith exclusively with the entity in accordance with Section 54223.*

- 6) **Arguments in Support.** Supporters argue that many local agencies have attempted to circumvent both the letter and the intent of the Surplus Land Act, and that this bill will bring greater clarity and provide for more efficient distribution of surplus land to increase the supply of affordable housing.
- 7) **Arguments in Opposition.** Opponents note that the bill would place onerous new requirements on public agencies disposing of surplus land, and that language in the bill needs to be revised to make it workable for all types of public agencies and situations.

REGISTERED SUPPORT / OPPOSITION:

Support

Non-Profit Housing Association of Northern California [SPONSOR]
 Bay Area Council
 Burbank Housing Development Corporation
 California Apartment Association
 California Housing Consortium
 California Housing Partnership Corporation
 California YIMBY
 Corporation for Supportive Housing
 EAH Housing
 East Bay Housing Organizations
 Habitat for Humanity California
 Housing Leadership Council
 San Diego Housing Federation
 San Francisco Housing Action Coalition
 Silicon Valley at Home
 Southern California Association of Non Profit Housing
 YIMBY Action

Opposition

Association of California Healthcare Districts (unless amended)
 California Association of Sanitary Agencies (unless amended)
 California Municipal Utilities Association (unless amended)
 California Special Districts Association (unless amended)
 Rural County Representatives of California (unless amended)

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