

Date of Hearing: June 19, 2024

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Juan Carrillo, Chair

SB 1439 (Ashby) – As Amended June 10, 2024

SENATE VOTE: 37-0

SUBJECT: Surplus Land Act: exempt surplus land: health facilities: City of Sacramento

SUMMARY: Creates a new exemption under the Surplus Land Act (SLA) for specified parcels in the City of Sacramento, if the parcels are being or will be developed for specified health facilities. Specifically, **this bill:**

- 1) Establishes a new category of exempt surplus land under the SLA for land that is being or will be developed for a health facility that will be a disproportionate share hospital or will be eligible for the 340B Drug Program and meets all of the following requirements:
 - a) The land is located on one of 12 specified parcels within the City of Sacramento.
 - b) The land is not identified in the sites inventory in the applicable housing element for lower-income households.
 - c) The land will be subject to a recorded deed restriction for a period of 55 years that it will remain either a disproportionate share hospital or eligible for the 340B Drug Program.
- 2) Requires a local agency, before using this exemption, to adopt written findings that the land meets the requirements of the bill and include a description of how the development of the land for a health facility aligns with the public interest and goals of the SLA.
- 3) Specifies that if the health facility fails to meet the requirements of the deed restriction at any time while the deed restriction is in force, the owner of the health facility is liable for a civil penalty of 30 percent of the greater of the final sale price or the fair market value of the land at the time of disposition. Fair market value shall be determined by an independent appraisal.
- 4) Provides that the civil penalty above may be enforced by those entities authorized under existing law to enforce the SLA.
- 5) Specifies procedures for the deposit of the penalty into a local housing trust fund or the state Building Homes and Jobs Trust Fund or Housing Rehabilitation Loan Fund, as specified.
- 6) Defines its terms, including to define a health facility as a facility, place, or building that is organized, maintained, and operated for the diagnosis, care, prevention, and treatment of human illness, physical or mental, including convalescence and rehabilitation and including care during and after pregnancy.
- 7) Includes findings and declarations stating the need for a special statute because of the unique nature of the identified sites.

FISCAL EFFECT: This bill is keyed fiscal.

COMMENTS:

- 1) **Bill Summary.** SB 1439 creates a new exemption under the SLA for specific parcels in Sacramento disposed of to a health facility that is either a disproportionate share hospital or is eligible for the federal 340B Drug Program. The list of parcels include 9 parcels identified as surplus by Sacramento Regional Transit (SacRT), the disposing agency, and 3 parcels still in use by SacRT. The health facility must maintain its status as a disproportionate share hospital or its eligibility for the 340B Drug Program; if the health facility does not maintain its status, it may face penalties equal to 30% of the sale price or appraised market value, whichever is higher. The bill requires that any penalties collected must be used for the development of affordable housing in the same jurisdiction of the surplus land.

This bill is sponsored by Sutter Health.

- 2) **Author's Statement.** According to the author, "SB 1439 introduces an exemption within the Surplus Land Act for Sutter Health to construct a healthcare facility on the Regional Transit lots located along 29th street in Sacramento. This land will have a state-of-the-art cancer, serving Senate District 8 and surrounding regions.

"According to a study from UC Davis, Sacramento County has a higher cancer mortality rate than the state average, indicating a significant need for a new facility in our region. Cancer is the second leading cause of death in California, with 189,000 new cases and over 60,000 deaths annually. There is an urgent need for increased accessibility to critical, lifesaving care, especially for Medi-Cal and Medicare patients diagnosed with cancer.

"California is also experiencing a healthcare provider shortage and a crisis in access to medical services. An estimated 7 million Californians live in areas with insufficient healthcare providers. The Kaiser Family Foundation reported that only about half of the state's primary care needs were met in 2022. This shortage further emphasizes the necessity for improved healthcare infrastructure and resources in our region.

"Sutter Health has shown its dedication to community investment by partnering with Federally Qualified Health Centers (FQHCs), such as WellSpace Health and the Sacramento Native American Health Center, supporting their development and success while serving a large population of Medi-Cal patients. With this new specialty care facility in Sacramento, Sutter Health will be able to provide patients from FQHCs with essential care that would otherwise be challenging to obtain. By accommodating more patients and offering a broader range of medical services, healthcare facilities can contribute to better health outcomes and overall community well-being."

- 3) **Surplus Land Act.** Public agencies are major landlords in some communities, owning significant pieces of real estate. When properties become surplus to an agency's needs, public officials want to dispose, which means to sell or lease for fifteen years or longer, the land to recoup their investments. The SLA spells out the steps local agencies must follow when they want to dispose of land. It requires local governments to give a "first right of refusal" to other public agencies, nonprofit housing developers, schools, and parks and recreation departments. After notifying these groups that the land is available, the disposing agency must negotiate in good faith with these interested parties to try to come to agreement

for 90 days before the local agency can dispose of the surplus land.

- 4) **Agency's Use.** Generally, before local officials can dispose of property, they must declare that the land is no longer needed for the agency's use in a public meeting and declare the land either "surplus land" or "exempt surplus land." AB 480 (Ting), Chapter 788, Statutes of 2023 allows certain types of exempt surplus land to be declared ministerially, in-lieu of the public hearing, the local agency must publish a notice and allow for public comment for a minimum of 30 days. Land that is being used for an agency work or operations is not surplus and therefore is not disposed. Pursuant to GOV § 54221 (c), "agency's use" includes land that is being used, or is planned to be used pursuant to a written plan adopted by the local agency.

As a general rule, "agency's use" cannot include commercial or industrial uses or activities, and land disposed of for the purpose of investment or generating revenue cannot be considered necessary for the agency's use. As a result, cities and counties are limited in their ability to dispose of properties for economic development or revenue generation purposes. However, most special districts are not subject to those restrictions on agency's use as long as they can demonstrate that use of the site will do one of the following:

- a) Directly further the express purpose of agency work or operations.
- b) Be expressly authorized by a statute governing the local agency.

The SLA designates certain types of land as "exempt surplus land." Statute provides that the entirety of the SLA does not apply to disposals of exempt surplus land. However, some exemptions have requirements for eligibility. If the disposal is not consistent with the exemption claimed, the disposition may be illegal. All other surplus land must follow the procedures laid out in the SLA before a local agency can dispose of it.

- 5) **Process of the SLA.** Before agencies can enter into negotiations to dispose of surplus land, they must send a written notice of availability to various public agencies and nonprofit affordable housing developers, commonly referred to as "housing sponsors," notifying them that land is available for the following purposes:

- a) Low- and moderate-income housing;
- b) Park and recreation, and open space;
- c) School facilities; or
- d) Infill opportunity zones or transit village plans.

Housing sponsors can notify the Department of Housing and Community Development (HCD) if they are interested in acquiring surplus land to develop affordable housing. HCD maintains a list of notices of availability on its website.

If another agency or housing sponsor wants to buy or lease the surplus land for one of these purposes, it must tell the disposing agency within 60 days, and if multiple entities want to purchase the land, the housing sponsor that proposes to provide the greatest level of affordable housing gets priority. The agency and the housing sponsor then have an

additional 90 days to negotiate a mutually satisfactory price and terms in good faith. If they cannot agree, the agency that owns the surplus land can sell the land on the private market. If surplus land is not sold to an affordable housing developer, but housing is developed on it later, 15 percent of the units must be sold or rented at an affordable cost to lower income households.

The SLA says that nothing in its provisions:

- a) Limits the power of any local agency to sell or lease surplus land at fair market value or less than fair market value;
 - b) Prevents a local agency from obtaining fair market value;
 - c) Limits a local agency's authority or discretion to approve land use, zoning, or other entitlement decisions in connection with surplus land; or
 - d) Requires a local agency to dispose of land just because it is surplus.
 - e) Local agencies that dispose of surplus land in violation of the SLA face penalties totaling 30 percent of the sales price or the appraised fair market value at the time of disposition for the first violation, and 50 percent for subsequent violations. These penalty revenues must be deposited in a local housing trust fund. The enforcement process in the SLA requires that: Prior to agreeing to terms for the disposition of surplus land, a local agency must provide HCD a description of the notices of availability sent, and negotiations conducted with any responding entities, as specified.
 - f) HCD must submit written findings to the local agency within 30 days of receipt of the description of the disposal if the proposed disposal of the land will violate SLA.
 - g) A local agency has at least 60 days to respond to the findings before HCD may take further action. The local agency must consider findings made by HCD and then either correct any issues found by HCD or respond in writing why the disposal complied with the SLA.
 - h) If the local agency does not respond or does not address the issues, HCD must notify the local government and may notify the Attorney General that the disposal violates the SLA.
 - i) A local agency cannot be held liable for the penalties under the SLA if HCD does not notify the agency that the agency is in violation within 30 days of receiving the description.
- 6) **SLA Reform.** In 2023, AB 480 (Ting), Chapter 788 and SB 747 (Caballero), Chapter 786 made significant changes to the SLA. Together the bills attempted to strike a balance between ensuring comprehensive coverage of dispositions, while enacting exemptions and other changes that would streamline the process for local governments. Specifically, AB 480 and SB 747:
- a) Define "dispose" in the law to include leases of longer than 15 years that are entered into on or after January 1, 2024, but excludes leases of terms shorter than 15 years and leases where no development or demolition will occur;

- b) Apply penalties to leases that violate the SLA, but provide that penalties don't apply to non-substantive violations of the SLA;
 - c) Add numerous categories of exempt surplus land, such as properties of smaller than one-half acre, specified mixed-use developments and developments on larger sites that include affordability requirements, airport land, and others;
 - d) Authorize disposal of certain categories of exempt surplus land without a public hearing, as long as specified notice is provided;
 - e) Establish additional types of activities that explicitly qualify as "agency's use"; and
 - f) Extend provisions that allow projects with an exclusive negotiating agreement in place to follow a previous version of the SLA.
- 7) **Agency's Use, Exemptions, and Disposals.** As described above, the SLA does not apply to land used by a public agency for its own operations because such property is not "surplus" as defined in the law. Special districts that provide healthcare services can already use their land for healthcare services as agency's use, because providing healthcare supports the agency's work or operations. If the public agency wanted to dispose of the land to an entity whose use of the land furthers the agency's public purpose without first offering it to affordable housing developers, the agency would need to declare the land exempt under the agency's use exemption in existing law [GOV § 54221 (f)(1)(N)].

If a healthcare provider wants to acquire property from a public agency to build a healthcare facility, the agency must offer that property to affordable housing developers, schools, parks and recreation departments, and other public agencies before opening up the bidding process to other potential buyers. With certain exceptions, agencies have discretion in setting conditions on the disposition, which includes requesting market value for the land. Existing law prohibits a local agency from disallowing residential use as condition of the disposal, reducing the allowable number of residential units or the maximum lot coverage to below what is allowed by zoning or the general plan, or requiring design standards that have a substantial adverse effect on the viability of a housing development for lower and moderate-income households [GOV § 54223 (b)]. The local agency also has discretion on making use of existing exemptions in the SLA; even where an exemption applies, a local agency may choose not to exercise it.

In the aforementioned example, the local agency could choose to not dispose to the health care provider for a multitude of reasons. Even with an applicable exemption, the local agency could choose to dispose to an affordable housing developer, a market rate housing developer, a school, a developer of commercial or mixed-use project or any other project that meets their conditions of disposal.

- 8) **Transit Agency Exemptions.** Transit agencies are treated differently from special districts and do not have the flexibility provided by the "agency use" exemption of the SLA. Transit agencies have their own exemption in the SLA [GOV § 54220 (f) (1) (S)]. Under this exemption, a transit agency is provided more flexibility if the agency adopts a land use plan or policy that designates at least 50 percent of the gross acreage covered by the adopted land use plan or policy for residential purposes. The adopted land use plan or policy must also

require the development of at least 300 residential units, or at least 10 residential units per gross acre, averaged across all land covered by the land use plan or policy, whichever is greater.

As of June 3, 2024, SacRT does not have a system-wide land use plan for building housing.

- 9) **Affected Parties.** The sponsor of the bill is Sutter Health, a nonprofit healthcare system headquartered in Sacramento which, according to their website, serves 3 million Californians.

SacRT provides transportation services in the Sacramento region, operating 82 bus routes, 43 miles of light rail serving 53 light rail stations, and ADA paratransit services. Some SacRT facilities are located near Sutter Health's existing medical facilities, including a bus maintenance facility located at 29th and N Streets that is adjacent to a Sutter Health medical campus.

- 10) **Parcels Identified in the Bill.** The introduced version of the bill created a new category of exempt surplus land for land that is being or will be developed for a health facility. Before using this exemption to dispose of land, the agency must adopt written findings that include a description of how the development of the land with health facilities aligns with the public interest and the goals of the SLA.

Amendments in Senate Local Government Committee limited the bill's exemption to apply to specific parcels in Sacramento. Those nine parcels, are consistent with parcels identified as surplus in SacRT's notice of availability dated January 17, 2024. Those parcels are listed below:

- a) 1516 29th Street (Assessor Parcel Numbers 007-0274-012 and 007-0274-013).
- b) 2831 P Street (Assessor Parcel Number 007-0274-026).
- c) 2811 O Street (Assessor Parcel Numbers 007-0273-014 and 007-0273-015).
- d) 2824 N Street (Assessor Parcel Number 007-0273-004).
- e) 2812 N Street (Assessor Parcel Number 007-0273-003).
- f) 1400 29th Street (Assessor Parcel Numbers 007-0273-008 and 007-0273-022).

Recent author amendments add three additional parcels that have not been identified as surplus by SacRT and currently house SacRT's bus maintenance facility. Those parcels are listed below:

- a) 1323 28th Street (Assessor Parcel Number 007-0174-003).
- b) 1301 28th Street (Assessor Parcel Number 007-0174-004).
- c) 2830 Capitol Avenue (Assessor Parcel Number 007-0174-005).

- 11) **Guidance on Implementation.** The HCD has authority to adopt guidance and implement the Surplus Land Act. HCD is currently in the process of developing guidelines to implement the law as amended by AB 480 (Ting) and SB 747 (Caballero).

Local agencies often work with HCD early on to ensure that the disposal is compliant with state law.

- 12) **Policy Considerations.** The Committee was wish to consider the following:

- a) **Late to the Party.** SacRT posted a notice of availability for nine parcels neighboring the Sutter Health campus on January 17, 2024. These nine parcels have been identified in this bill as nine of the twelve parcels eligible for the exemption. As of June 14, 2024, these parcels are still going through the SLA process and are currently in in the “good faith negotiations” stage of the disposal process.

As above, a local agency must first declare land surplus or exempt surplus before taking steps to dispose of it. SacRT has already declared nine of the twelve parcels as surplus. It is unclear what utility an exemption, new or existing, could bring if the land has already been declared surplus and is nearing the end of the disposition process. The Committee may wish to consider the necessity of this bill if nine of the identified parcels have already begun the SLA process.

- b) **Is the SLA a Barrier?** While providing access to health care is a noble mission and ensuring access to health care for lower income populations is critical, this bill seeks to create an exemption for both land that has already been identified as surplus and has begun the disposition process and for land that hasn’t been identified surplus and is currently in use. The surplus parcels could be eligible for a bid from any interested party before the legislative year is over and well before the bill could go into effect if it were signed into law.

In regards to the parcels in the bill that have not been identified as surplus, it is not clear that the SLA is a barrier since the parcels are not surplus and are currently being used for SacRT’s bus maintenance.

- c) **Dibs! Carving up Public Land that is Still in Use.** The SLA requires that land that has been identified as surplus by a public agency is first offered to schools, for open space purposes, and to nonprofit affordable housing developers. Any land that is disposed by a local agency must be declared surplus land or exempt surplus land by the public agency. Existing law provides that only the public agency can identify and declare their land surplus. The recent amendments to the bill identify an additional three parcels that have not been identified as surplus by SacRT.

Since the major revisions of the SLA via AB 1486 (Ting), Chapter 664, Statutes of 2019, legislation proposing exemptions to the SLA have been sponsored by local governments seeking to dispose of their land or nonprofit affordable housing developers. The Committee may wish to consider the precedent this legislation could set for situations where public agencies are seen as an obstacle to a private entity wishing to expand its footprint.

- 13) **Related Legislation.** SB 1134 (Caballero) deletes the HCD’s exemption from the Administrative Procedures Act when developing or adopting guidelines to implement the SLA and specifies that each parcel of land be treated as a distinct unit of surplus land, unless

the parcels are contiguous and disposed simultaneously to the same receiving entity.. SB 1134 is pending in this committee.

- 14) **Previous Legislation.** AB 480 (Ting), Chapter 788, Statutes of 2023 makes numerous changes to the SLA, including the disposal process, the authority of the Department of Housing and Community Development (HCD), and penalties for violations.

AB 1734 (Jones-Sawyer), Chapter 769, Statutes of 2023, creates, until January 1, 2034, a specific process under the SLA for the disposition of land in the City of Los Angeles for affordable housing and low barrier navigation centers.

AB 457 (Joe Patterson) created an SLA exemption for parcels that abut state highway right of way that a local agency identified in its circulation element or capital improvement plan for future roadway development. AB 457 was substantially amended into a different subject matter.

AB 837 (Alvarez) of 2023 creates an SLA exemption for land acquired by a local agency for the development of a university and innovation district. AB 837 is pending in the Senate Local Government Committee. However, substantially similar policy adopted via a budget trailer bill was enacted into law in 2023.

AB 983 (Cervantes) of 2023 would have categorized as exempt surplus land, properties that are designated in an adopted downtown revitalization plan, as specified. AB 983 was held in the Assembly Local Government Committee.

AB 2319 (Bonta) Chapter 963, 2022, created an exemption from the Surplus Lands Act (SLA) for the Alameda Naval Air Station (Alameda Point).

AB 1271 (Ting) of 2021 would have expanded the types of land exempt from the SLA, imposed new procedural requirements on local agencies disposing of surplus land, and made various technical changes to the SLA. AB 1271 was held in Assembly Housing Committee.

AB 1486 (Ting) Chapter 664, Statutes of 2019, expanded the scope of local agencies subject to the SLA, revised the definitions of “surplus land” and “exempt surplus land,” revised the noticing requirements relative to local agencies, housing sponsors and HCD, and added penalties for local agencies that sell land in violation of the SLA.

SB 747 (Caballero), Chapter 786, Statutes of 2023, makes numerous changes to the Surplus Lands Act (SLA), including modifying SLA procedures, defining disposals of surplus land to include leases of longer than 15 years, altering the definition of exempt surplus land, and other changes.

SB 719 (Min) of 2021 would have provided that land comprising the former Tustin Marine Corps Air Station is exempt surplus land for the purposes of the SLA if certain affordability standards for residential developments and other conditions are met.

- 15) **Arguments in Support.** Sutter Health, sponsor of this bill, writes, “As the Sacramento region continues to grow, we need to continue to ensure the community has adequate access to health care. Currently, Sutter Medical Center, Sacramento, our flagship hospital in the

Sacramento region, runs at or over capacity, and we are now embarking on plans to expand the last remaining shell space in our current footprint. Additionally, Sutter Medical Center, Sacramento is surrounded by developed land or Regional Transit property, so the only real way we could expand our services would be to acquire land currently owned by RT – which would be subject to the SLA process.

“Current law, as stated in Section 54221 of the Government Code, establishes the framework for the disposal of surplus land by local agencies across California. The code outlines exemptions for how surplus land can be disposed which include, but are not limited to, housing developments, specific government uses such as waste disposal or wastewater treatment plants, infrastructure projects including wireless facilities or utility sites, as well as commercial or industrial use.”

- 16) **Arguments in Opposition.** The Public Interest Law Project, San Diego Housing Federation, Non-Profit Housing of Northern California, East Bay Housing Organization, California Housing Partnership, and Housing California write in opposition, “Our organizations have a shared mission of increasing the supply of affordable housing for lower-income households. We have been deeply engaged in helping to strengthen and implement the SLA for many years and worked closely last year with Assemblymember Ting, Senator Caballero, and many stakeholders on the improvements to the SLA in AB 480 and SB 747.

“The SLA is a landmark housing law that requires local public agencies, when disposing of public land they no longer need, to first make the land available for affordable housing development or other specified public purposes, such as parks. Under the SLA, affordable housing developers and other public entities have the first right to bid on and negotiate for the purchase of surplus public sites, but the agency disposing of the land may sell or lease it for other purposes if no agreement is reached during the time period specified in the law.

“This process has been effective in delivering lower-income units where they may not have been previously possible. Since 2021, surplus land transactions tracked by the California Department of Housing and Community Development (HCD) have resulted in over 17,150 housing units, including over 10,750 units affordable to lower-income households.”

- 17) **Double-Referral.** This bill is double-referred to the Assembly Housing and Community Development Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Sutter Health [Sponsor]
 Association of California Healthcare Districts
 California Ambulatory Surgery Association
 California Hospital Association
 California Professional Firefighters
 Providence
 Sacramento LGBT Community Center
 Sacramento Native American Health Center
 Scripps Health

Wellspace Health

Opposition

California Coalition for Rural Housing
California Housing Partnership Corporation
Community Housingworks
East Bay Housing Organizations
Homes & Hope
House Sacramento
Housing California
J Gould Consulting
Midpen Housing
Mutual Housing California
Non-profit Housing Association of Northern California (NPH)
Organize Sacramento
Public Advocates
Public Interest Law Project
Resources for Community Development
Sacramento Housing Alliance
San Diego Housing Federation

Analysis Prepared by: Linda Rios / L. GOV. / (916) 319-3958