

Date of Hearing: June 19, 2024

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Juan Carrillo, Chair

SB 1134 (Caballero) – As Amended June 10, 2024

SENATE VOTE: 39-0

SUBJECT: Surplus land

SUMMARY: Deletes the Department of Housing and Community Development's (HCD's) exemption from the Administrative Procedures Act (APA) when developing or adopting guidelines to implement the Surplus Land Act (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. Specifically, **this bill:**

- 1) Provides that, for the purposes of the SLA each parcel of land must be considered a distinct unit of surplus land, except that contiguous parcels that are disposed of simultaneously to the same receiving entity, or any entity working in concert with another receiving entity, must be treated as a single unit of land.
- 2) Deletes the HCD's exemption from the APA when developing standards, forms, or definitions and adopting, amending, or repealing guidelines to implement the SLA, as specified.
- 3) Provides that any rule, policy, or standard of general application issued by HCD to implement the SLA shall be subject to the rulemaking provisions of the APA

EXISTING LAW:

- 1) Establishes the SLA which, among other provisions, provides the following:
 - a) Defines "surplus land" as land owned by any local agency that is determined to be no longer necessary for the agency's use;
 - b) Requires each local agency to annually make an inventory of all lands, surplus lands, and all lands held in excess of foreseeable needs, to make this inventory a matter of public record, and to share this information with HCD in its annual progress report;
 - c) Requires a local agency to declare land either "surplus land" or "exempt surplus land," as supported by written findings, before a local agency may take any action to dispose of it;
 - d) Exempts certain types of surplus land owned by local agencies from the requirements of the SLA;
 - e) Provides the following regarding disposal of non-exempt surplus land:
 - i) Requires a local agency that is disposing of non-exempt surplus land to notify certain public entities and housing sponsors that surplus land is available for low- and moderate- income housing, parks, recreation, open space, school facilities, and infill opportunity zones or transit village plans;

- ii) Requires that, if another agency or housing sponsor wants to buy or lease the surplus land for one of these purposes, it must inform the disposing agency of its interest within 60 days;
 - iii) Specifies that, if multiple entities want to purchase the land, the housing sponsor that proposes to provide the greatest level of affordable housing gets priority. The disposing agency and the entity 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 dispose of the land on the private market; and
 - iv) Requires a local agency, prior to agreeing to the terms for the disposition of surplus land, to provide specified information about its disposition process to HCD. Requires HCD to submit to the local agency, within 30 days, written findings of any process violations that have occurred. The law provides a local agency at least 30 days to either correct the violations or adopt a resolution with findings explaining why the process is not in violation.
- f) Provides that a local agency that disposes of land in violation of the SLA following a notification from HCD is liable for a penalty of 30 percent of the final sale price or appraised market value at the time of the disposition for the first violation and 50 percent for subsequent violations. Requires that penalty assessments must be deposited into a local housing trust fund, the state Building Homes and Jobs Fund, or the Housing Rehabilitation Loan Fund, as specified. (GOV § 54220-54234)
- 2) Provides HCD an exemption from the APA in adopting guidelines to implement specified provisions of the SLA. (GOV § 54230 -54230.5)
 - 3) Establishes the APA, which specifies the procedures and requirements necessary for the creation of regulations to implement statute. (GOV § 11340 et seq.)

FISCAL EFFECT: This bill is keyed fiscal.

COMMENTS:

- 1) **Bill Summary.** This bill repeals the HCD's exemption from the APA when reviewing, adopting, amending, or repealing guidelines to establish uniform standards for implementation of the SLA. The bill also requires each parcel of surplus land to be considered a distinct unit of surplus land with the exception of contiguous parcels disposed of simultaneously to the same receiving entity or any entity working in concert with another receiving entity.

This bill is author sponsored.

- 2) **Author's Statement.** According to the author, "Last year, I authored SB 747 to make numerous improvements to the Surplus Land Act to ensure local governments have the clarity and tools to further economic and affordable housing development. This year, SB 1134 continues this work by ensuring that the Department of Housing and Community Development follows the Administrative Procedures Act when promulgating Surplus Land Act regulations. The Administrative Procedures Act (APA) is an integral democratic tool for ensuring that HCD clearly articulates and processes the regulations. The APA also requires

that all regulations be approved by the Office of Administrative Law, which reviews regulations to ensure they are clear, necessary, and legally valid. It is important that we hold all state agencies to the same standards of public transparency and review, which SB 1134 helps achieve.”

- 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 includes selling or leasing the land for more than 15 years, 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 local agencies, including schools and parks and recreation departments, and nonprofit affordable housing developers, and to negotiate in good faith with them to try to come to agreement. This means that local agencies must first open their properties up to public agencies and nonprofit affordable housing developers, commonly referred to as housing sponsors, even if they have a different purpose in mind for the property.
- 4) **Agency’s Use.** 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.” “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.

Transit districts can only dispose of property for commercial or revenue generation purposes if they meet specific requirements for developing affordable housing across their portfolio of properties, and have made a certain amount of progress towards building that housing.

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 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 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.

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:

- a) 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.
- b) 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.
- c) 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.
- d) 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.

- e) 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, SB 747 and AB 480:
- 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) **Administrative Procedures Act.** The APA establishes standard provisions that apply to rulemaking proceedings as well as the adjudicative procedures related to administrative hearings. Similar to other laws with broad application, such as the Fair Political Practices Act or the Brown Act, the APA is structured in a way that it can be applied broadly to a wide universe of public entities, officials, or actions. The APA applies broadly to state agencies unless a statute specifically exempts an agency or action from the APA.
- a) **Rulemaking Actions Under the APA.** The Office of Administrative Law (OAL) administers the rulemaking provisions of the APA and reviews rulemaking proceedings prepared by state agencies. The APA establishes procedures that all agencies must follow when developing regulations that implement or clarify statutory provisions. While the specific scope of an agency’s authority to implement a particular statute is typically embedded in that statute, the APA establishes uniform procedures that agencies must comply with when adopting regulations. This includes, but is not limited to, the following requirements for rulemaking agencies proposing to add, amend or repeal regulations:
 - i) Requirements for rulemaking agencies to prepare an initial statement of reasons (ISOR) explaining the specific purpose and necessity of each section of the regulation;
 - ii) Requirements for rulemaking agencies to prepare an estimate of the economic impact of the proposed regulations;

- iii) Requirements for rulemaking agencies to hold an initial 45-day comment period on the initial draft of the regulations and subsequent 15-day comment periods on any proposed changes to the initial regulations that occur during the rulemaking period;
- iv) Requirements for rulemaking agencies to hold a public hearing if requested by interested parties;
- v) Requirements for rulemaking agencies to prepare written responses to written comments received during the 45-day or any subsequent 15-day comment period as well as any oral comments received at a public hearing;
- vi) Requirements to prepare a final statement of reasons (FSOR) recognizing changes made throughout the rulemaking process and deviations from the ISOR; and,
- vii) Requirements to complete the rulemaking and submit the rulemaking record to OAL for review and approval within one year.

OAL reviews rulemaking proceedings to ensure compliance with the APA, such as whether the agency has sufficiently demonstrated that specific provisions of the regulations are necessary to implement the statute, whether the agency has complied with the timelines and disclosure requirements of the APA, and whether the agency responded to all germane comments submitted to the agency regarding the rulemaking proceeding.

- b) **Hearings Under the APA.** The APA additionally establishes standards for informal and formal hearings conducted either directly by state agencies and commissions or by the Office of Administrative Hearings (OAH) on their behalf. The statute provides a standard process and code of procedures that govern hearings and ensure the rights of parties to the hearing are protected. The statute governs hearing procedures for more than 1,500 state and local agencies. The statute is written broadly enough to be applicable to and govern the array of state administrative hearings on a variety of subjects. For example, APA hearing requirements apply to hearings related to appeals of penalties issued for violations of environmental regulations, actions to suspend or revoke a medical license, actions related to financial audits of local education agencies, administrative fines assessed by the Department of Corrections, and many more.

The adjudicative procedures embedded in the APA include requirements for the conduct of informal and formal administrative hearings. These include, but are not limited to, the following:

- i) Requirements for the hearing to provide an opportunity for the subject of the action to be heard and to present and rebut evidence;
- ii) Requirements for parties to the hearing to receive a copy of the governing procedures related to the action;
- iii) Requirements for allowing public observation of a hearing;
- iv) Requirements governing disqualification of hearing officers due to conflicts of interest;
- v) Requirements governing ex parte communications;

- vi) Requirements for providing language assistance; and,
- vii) Requirements specifying the time, form and manner for which decisions shall be issued.

As the APA applies broadly to guidance, decisions, and other actions issued or taken by state and local agencies, it is not uncommon for specific statutes to include an APA exemption. For example, guidelines related to the administration of grant programs are commonly exempt from the APA. Additionally, situations of great urgency can be subject to an emergency rulemaking process, which includes many of the standard rulemaking requirements but allows a rulemaking to be completed in an expedited fashion but subjects the emergency regulations to expiration.

- 8) **Policy Considerations.** By requiring that any rule, policy, or standard issued by HCD in implementing the SLA be subject to the rulemaking provision of the APA, it is unclear where the guidelines as of December 31, 2023, or any guidelines issued this year, will stand if this bill were to become law. This provision of the bill does not apply retroactively and there is no requirement in the bill to set a deadline as to when HCD will need to adopt regulations via the APA. By not specifying where existing guidelines stand, the bill creates a gray area that could impact the implementation and application of the SLA. The author may wish to consider continuing to work with relevant policy committees to clarify this issue.
- 9) **Related Legislation.** SB 1439 (Ashby) exempts specified parcels in the City of Sacramento from the SLA if the parcels would be used for specified health facilities. SB 1439 is pending in this committee.
- 10) **Previous Legislation.** AB 480 (Ting), Chapter 788, Statutes of 2023 made numerous changes to the SLA, including the disposal process, the authority of the HCD, and penalties for violations.

SB 747 (Caballero), Chapter 786, Statutes of 2023, made numerous changes to the 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.
- 11) **Arguments in Support.** The California Special Districts Association, California Association of Sanitation Agencies, California State Association of Counties, Rural County Representatives of California, and Urban Counties of California have a support if amended position and write, “Local agencies continue to be challenged by implementation of carefully negotiated language in the Surplus Lands Act in numerous bills over the last five years. Requiring HCD to utilize the APA process will provide important opportunities for stakeholder input in the spirit of transparency, clarity on the law, and improved understanding of implementation procedures.

“Counties, cities, and special districts have worked in good faith to address legislative concerns about use of the SLA, including clarifying statutory definitions of “exempt surplus lands”. As a result, we are concerned about a proposed amendment to Section 54222.3 in the current version of the bill that suggests that HCD has authority to regulate the disposal of exempt surplus lands via utilizing the APA. We understand that this language was an

inadvertent drafting error that will be corrected in a future version of the measure and appreciate the author's responsiveness to our concerns. .”

12) **Arguments in Opposition.** None on file.

REGISTERED SUPPORT / OPPOSITION:

Support

Habitat for Humanity (Previous Version)

Support if Amended

California Association of Sanitation Agencies

California Special Districts Association

California State Association of Counties (CSAC)

Rural County Representatives of California (RCRC)

Urban Counties of California (UCC)

Opposition

None on file.

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