

Date of Hearing: April 10, 2019

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 1255 (Robert Rivas) – As Amended April 3, 2019

**SUBJECT:** Surplus public land: database.

**SUMMARY:** Requires local governments to include an inventory of surplus sites that are infill, “high-density” sites in the housing element and requires Department of General Services (DGS) to create a searchable database of surplus sites. Specifically, **this bill:**

- 1) Requires a local government to include an inventory of all land owned by a city or county that is in excess of its foreseeable needs in its housing element inventory of adequate sites.
- 2) Requires the inventory to identify the infill sites as defined in Public Resources Code Section 21061.3 and “high-density sites.”
- 3) Requires each city and county to provide the Department of General Services (DGS) a list of all the sites by December 31 of each year. Requires DGS to create a searchable database of infill, high-density surplus sites.
- 4) Defines “high-density site” to mean a site zoned for residential development that permits at least twenty-four dwelling units per acre.
- 5) Authorizes the Department of Housing and Community Development (HCD) to develop a form for jurisdictions to submit their inventory of sites to allow the data to be easily formatted.
- 6) Makes a number of findings and declarations.

**EXISTING LAW:**

- 1) Defines an “infill site” to mean an urbanized area that meets either of the following criteria:
  - a) The site has not been previously developed for urban uses and both of the following apply:
    - i) The site is immediately adjacent to parcels that are developed with qualified urban uses, or at least 75% of the perimeter of the site adjoins parcels that are developed with qualified urban uses, and the remaining 25% of the site adjoins parcels that have previously been developed for qualified urban uses; and,
    - ii) No parcel within the site has been created within the past 10 years, unless the parcel was created as a result of the plan of a redevelopment agency; and,
  - b) The site has been previously developed for qualified urban uses.
- 2) Provides, pursuant to the Surplus Lands Act:

- a) A county may establish a central inventory of surplus property;
- b) Defines “surplus land” to mean land owned by any local agency that is determined to be no longer necessary for the agency’s use, except property being held by the agency for the purpose of exchange or property meeting other exemptions;
- c) Requires that a local agency must provide 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; and,
- d) Provides that a local agency wishing to dispose of surplus land must also provide a written offer to additional entities, depending on the type of proposed usage, 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.

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

**COMMENTS:**

- 1) **Bill Summary and Author’s Statement.** This bill requires a city or county to include an inventory of all land owned by a city or county that is in excess of its enforceable needs in its housing element inventory of adequate sites, and requires the inventory to identify both infill and high-density sites. This inventory is required to be submitted to DGS annually, and DGS must create a database of these sites. This bill is sponsored by the author.

According to the author, “AB 1255 creates an inventory of unused city and county property for potential housing opportunities while leaving decisions on use to local control. Building upon [the] Governor[’s] call to identify and catalog surplus property, AB 1255 requires cities and counties to identify their unused properties that qualify as infill or high density, and to report that information to DGS by December 31, each year. Further building upon the Governor’s proposal for state property, DGS would be required to create a database that would be available to the public and searchable on its website.”

- 2) **Surplus Lands Act.** If land is no longer needed or is not being held for exchange, 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 60 days. If 60 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.

If the land is going to be used for residential development and a local agency receives multiple offers from notified entities, the local agency is required to give first priority to the entity that agrees to use the site for affordable housing for low- or moderate-income individuals and families. In the event that a local agency enters into a contract to sell or lease the land to a notified entity for park or recreation purposes, open-space purposes, school purposes, or for low- and moderate- income housing purposes, that contract may provide for a payment period of up to 20 years. While nothing in the disposal procedure limits the power of a local agency to sell or lease surplus land at fair market value or at less than fair market value, it also provides that nothing in the procedure shall be interpreted to empower any local agency to sell or lease surplus land at less than fair market value.

- 3) **Governor's Executive Order.** Earlier this year, the Governor issued Executive Order N-06-19 directing DGS to create a digitized inventory of all state land in excess of state agencies foreseeable needs no later than April 30, 2019. DGS, HCD, and the California Housing Finance Agency (CalHFA) are directed to develop two new screening tools for prioritizing affordable housing development on excess state lands – where housing is most likely to be economically feasible and where underproduction is impacting housing affordably. This screening tool will be used to map areas in the state on excess surplus sites where housing development is feasible and will help address underproduction. State agencies are encouraged to exchange excess state land with local governments for affordable housing and preservation. DGS and HCD will issue requests to develop parcels that are suitable for affordable housing.
- 4) **Housing Element Inventory of Adequate Sites:** Every local government is required to prepare a housing element as part of its general plan. The housing element process starts when HCD determines the number of new housing units a region is projected to need at all income levels (very low-, low-, moderate-, and above-moderate income) over the course of the next housing element planning period to accommodate population growth and overcome existing deficiencies in the housing supply. This number is known as the RHNA. The COG for the region, or HCD for areas with no COG, then assigns a share of the RHNA number to every city and county in the region based on a variety of factors. In preparing its housing element, a local government must show how it plans to accommodate its share of the RHNA. The housing element must include an inventory of sites already zoned for housing. If a community does not have enough sites within its existing inventory of residentially zoned land to accommodate its entire RHNA, then the community must adopt a program to rezone land within the first three years of the planning period.

This bill would require a city or county to include an inventory of surplus property that qualifies as infill sites and high density (24 units to the acre) in the housing element inventory of sites. The city or county would be required to send the information to DGS on December 31 of each year.

- 5) **Related Legislation.** AB 1486 (Ting) makes numerous changes to expand the scope of the local Surplus Lands Act, and includes a requirement for each local agency (including special districts, school districts, JPAs, and other local agencies) to make an inventory of all lands held, owned, or controlled by it or any of its departments, agencies, or authorities to determine what land is in excess of its foreseeable needs for its governmental operations. This information must be reported to HCD no later than April 1 of each year, beginning in 2021, and HCD is required to develop and maintain a searchable and downloadable public inventory of all publicly owned or controlled lands and their present uses in the state on its internet website, which shall be updated on an annual basis. The bill is currently pending in this Committee and will be heard on April 10, 2019.
- 6) **Policy Considerations.** The Committee may wish to consider the following:
- a) **Interplay with Existing Surplus Lands Act.** While this bill deals with land owned by a city or county that “is in excess of its foreseeable needs,” it does not contain a link to the existing process that cities and counties follow in the Surplus Lands Act. The Committee may wish to consider whether this creates duplicative processes for cities and counties.
  - b) **Narrow the Scope?** The Committee may wish to consider narrowing the scope of the bill to focus the inventory of land owned by the city or county *only* on infill and high-density sites, rather than the broader inventory of all land owned by a city or county that is in excess of its foreseeable needs. This narrowed scope would also help to avoid conflicts with AB 1486, which makes broader changes to the Surplus Land Act, generally, while this bill could focus more narrowly on surplus land that could potentially be used for housing.
- 2) **Committee Amendments.** In order to address the issues raised above, the Committee may wish to ask the author to amend the bill as follows:

Section 3. Section 65583 of the Government Code (a)(10)(A):

An inventory of ~~all~~ land owned by the city or county that is in excess of its foreseeable needs, pursuant to Article 8 of Chapter 5 of Part 1 of Division 2 of Title 5 in the Government Code, that ~~The inventory shall separately identify: infill sites as defined in Section 21061.3 of the Public Resources Code and high-density sites when creating the inventory.~~

(1) Land that qualifies as an infill site pursuant to Section 21061.3 of the Public Resources Code.

(2) Land that qualifies as a “high-density site” which is defined as a site zoned for residential development that permits at least 24 dwelling units per acre.

(B) Notwithstanding subdivision (a) of Section 65301, each city or county shall prepare the inventory required under subparagraph (A) using standards, forms, and definitions adopted by the Department of Housing and Community Development.

(C) By December 31 of each year, each city or county shall furnish to the Department of General Services a list of the sites identified under subparagraph (A).

~~(D) For purposes of this paragraph, a “high density site” is a site zoned for residential development that permits at least 24 dwelling units per acre.~~

- 7) **Arguments in Support.** Supporters argue that this bill seeks to identify solutions to the state’s housing crisis.
- 8) **Arguments in Opposition.** None on file.
- 9) **Double-Referral.** This bill was heard in the Housing and Community Development Committee on April 3, 2019, where it passed with an 8-0 vote.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Apartment Association  
California Association of Realtors  
Cities of Morgan Hill and Salinas

**Opposition**

None on file

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