

Date of Hearing: April 10, 2019

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 1486 (Ting) – As Amended March 28, 2019

SUBJECT: Local agencies: surplus land.

SUMMARY: Expands surplus property requirements for both the state and local agencies. Specifically, **this bill:**

- 1) Expands the provisions of the Surplus Lands Act for local agencies, as follows:
 - a) Expands the definition of “local agency” in the Surplus Land Act to additionally include sewer, water, and utility districts, local and regional park districts, joint powers authority, successor agency to a former redevelopment agency (RDA), housing authority, or other political subdivision of this state and instrumentality thereof that is empowered to acquire and hold real property. Declares, for purposes of this definition, that the term “district” as defined, is declaratory of, and not a change in, existing law;
 - b) Revises the definition of “surplus land” to mean land owned by any local agency that is not necessary for the agency’s *governmental operations*. Defines “governmental operations” to mean land that is being used for the express purpose of agency work or operations, including utility sites, watershed property, land being used for conservation purposes, and buffer sites near sensitive governmental uses, including, but not limited to, waste water treatment plants.
 - c) Defines “dispose of” to mean sell, lease, transfer, or otherwise convey any interest in real property owned by a local agency.
 - d) Requires that land shall be presumed to be “surplus land” when a local agency initiates an action to dispose of it. Declares that “surplus land” includes land held in the Community Redevelopment Property Trust Fund, as specified, and land that has been designated in the long-range property management plan, as specified, either for sale or for retention for future development and that was not subject to an exclusive negotiating agreement or legally binding agreement to dispose of the land, as specified.
 - e) Expands the definition of “exempt surplus land” to include:
 - i) Surplus land held by the local agency for the express purpose of exchange for another property necessary for its governmental operations;
 - ii) Surplus land held by the local agency for the express purpose of transfer to another local agency for its governmental operations;
 - iii) A lease of land expressly designated for a local agency’s future governmental operations that is leased on an interim basis prior to development;
 - iv) An easement for utility, conservation, or governmental purposes;

- v) A lease of land with an existing structure and lease furthering an express governmental operation of the local agency, including but not limited to, a concession lease on recreational property;
 - vi) A financing lease in furtherance of governmental operations, including, but not limited to, a lease and lease-back transaction;
 - vii) A lease of undeveloped land, provided that the construction of any permanent structure is not permitted under the lease;
 - viii) A short-term lease of one year or less that may be renewed or extended on an annual basis for temporary or seasonal activities;
 - ix) A lease of more than one year, but less than 10 years, that is not eligible for renewal or extension;
 - x) The renewal of an existing lease of one or more years for the same purpose, provided the lease was in effect as of January 1, 2018;
 - xi) Leases of existing agency-owned facilities for short-term use, such as park facilities, community rooms, and other uses where a facility is being rented on a temporary, short term basis of days or months;
 - xii) Surplus land that is put out to open, competitive bid by a local agency, provided all entities, as specified, will be invited to participate in the bid process, for either of the following purposes:
 - (1) A housing development, which may have ancillary commercial ground floor uses, that restricts 100% of the residential units to persons and families of low or moderate income, with at least 75% of the residential units restricted to lower income households, as defined, with an affordable sales price or an affordable rent, as defined, for a minimum of 55 years, and in no event shall the maximum affordable sales price or rent level be higher than 20% below the median market rents or sales prices for the neighborhood in which the site is located; or,
 - (2) A mixed-use development that is more than one acre in area, that includes not less than 300 housing units, and that restricts at least 25% of the residential units to lower income households, as defined, with an affordable sales price or an affordable rent, as defined, for a minimum of 55 years;
 - xiii) Surplus land that is subject to legal restrictions that would make housing prohibited or incompatible on the site due to state or federal statutes, voter-approved measures, or other legal restrictions that are not imposed by the local agency. States that existing zoning alone is not a legal restriction that would make housing prohibited or incompatible;
- f) Requires a written notice of availability to 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. Expands the notice to also include electronic mail (email), if possible;
- g) Specifies that any surplus land disposed of by a public agency shall be permitted for residential use, notwithstanding local zoning designations, if 100% of the units, except for units occupied by onsite management staff, or sold or rented at an affordable housing costs, as defined, or an affordable rent, as defined, to lower income households. Provides that this provision shall not apply to exempt surplus land;
 - h) Specifies that negotiations between a disposing agency and an entity desiring to purchase or lease land, as specified, shall be limited to sales price and lease terms, including the amount and timing of any payments;
 - i) Requires, in the event that the disposing agency receives notices of interest from multiple entities that proposed the same number of housing units, that first priority shall be given to the entity that proposes the deepest average level of affordability for the affordable units. Allows a local agency to negotiate concurrently with all entities that provide notice of interest to purchase or lease land for the purpose of developing affordable housing;
 - j) Provides that the failure by a local agency to comply with the provisions of the Surplus Land Act shall invalidate the transfer or conveyance of real property to a purchase or encumbrancer for value, unless the local agency makes an alternative site available, as specified, that can accommodate an equal or greater number of housing units as the original site; and,
 - k) Clarifies that the existing 15% minimum affordability requirement applies whenever surplus land is used for housing;
- 2) Modifies an existing requirement in law that requires each local agency to make an inventory of all lands held, owned, or controlled by it or any of its departments to determine what land is in excess of its foreseeable needs for its *governmental operations*, and requires this information to be reported to HCD no later than April 1, of each year, beginning 2021.
 - 3) Requires HCD to create 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. Requires the inventory to be available no later than September 30, 2021.
 - 4) Requires a city or county, by April 1 of each year, in the Annual Progress Report submitted to HCD and the Governor's Office of Planning and Research (OPR), to additionally include a listing of sites owned or leased by the city or county that have been sold, leased or otherwise disposed of in the prior year, and a listing of sites with leases that expired in the prior year. Specifies that the list shall include the entity to whom each site was transferred and the intended use for the site.
 - 5) Expands, in a city or county's identification of sites required pursuant to Housing Element law, the requirements for cities and counties to additionally include information about certain sites owned by a local agency (as defined by the Surplus Land Act), thereby requiring cities and counties to account for sites owned by a special district or school district, including the following:

- a) Residentially zoned zones that are capable of being developed at a higher density owned or lease by any local agency; and,
 - b) Sites zoned for nonresidential use that can be redeveloped for residential use, and for which the housing element includes a program to rezone the site, as necessary, rezoned for, to permit residential use, includes sites owned or leased by a local agency.
- 6) Requires, in a city or county's identification of sites, if a piece of property is owned by the city or county preparing the housing element, the description of nonvacant sites to also include whether there are any plans to dispose of the property during the planning period, and how the agency will comply with the Surplus Land Act.
- 7) Adds the Surplus Land Act to provisions that allow HCD to notify the city or county and notify the Office of the Attorney General that that city or county is in violation of state law.
- 8) Modifies requirements for state surplus property, as follows:
- a) Clarifies the existing requirement that each state agency shall make a review of all proprietary state lands, as specified that that agency has jurisdiction to determine what, if any, land is in excess its foreseeable needs *for governmental operations*;
 - b) Requires DGS, when authority is granted for the sale or other disposition of lands declared excess, and DGS has determined that the use of land is not needed by any other state agency, to sell the land or otherwise dispose of it, as specified, and modifies this process;
 - c) Requires, for land that DGS has determined is not needed by any other state agency, DGS to request authorization to dispose of no less than 10% of the land on an annual basis pursuant to 8)b), above;
 - d) Requires that surplus land that DGS has disposed of to be permitted by right, regardless of local zoning designations, for a residential use if 100% of the residential units, except for the units occupied by onsite management staff, are sold or rented at an affordable housing cost, or affordable rent, as defined, to lower income households, as defined; and,
 - e) Requires DGS to make every effort to conclude the pending disposition of surplus land pursuant to 8)c), above, that is has received authorization to dispose of within 24 months of the date the sale, exchange, or transfer of land was approved by DGS.
- 9) Provides that reimbursement to local agencies and school districts shall be made, if the Commission on State Mandates determines that this act contains costs mandated by the state.

EXISTING LAW:

- 1) Requires each local agency, on or before December 31 of each year, 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, including air rights, if any, is in excess of its foreseeable needs. Requires a description of each parcel found to be so in excess of needs to be made a matter of public record. Allows any citizen, limited dividend corporation, housing corporation or nonprofit corporation, upon request, to be provided with a list of said parcels without charge.

- 2) Defines “surplus land” as 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.
- 3) 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.
- 4) 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.
- 5) Allows a county to establish a central inventory of surplus property.

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

COMMENTS:

- 1) **Bill Summary.** This bill makes numerous changes to the local Surplus Lands Act, and to state surplus land statutes. For the local Surplus Lands Act, this bill significantly expands the Act to:
 - a) Specify that the definition of “surplus” land is land not needed for the agency’s own *governmental operations*, and then defines this term;
 - b) Modifies the definition of “disposal” to mean sell, lease, transfer, or otherwise convey any interest in real property owned by a local agency, thus expanding the Act to local agency leases;
 - c) Lists out numerous exemptions on what is considered “exempt surplus land;”
 - d) Modifies procedures for notification of surplus lands, and how the local agency can negotiate with the interested party or parties on that land; and,
 - e) Allows any surplus land disposed of by a public agency to be permitted for residential use, regardless of local zoning designations, if 100% of the units are sold or rented at an affordable housing cost or affordable rent.

In addition to these provisions, the bill also requires all local agencies, as the bill defines, to make an inventory of all lands held, owned, or controlled by it, in excess of its foreseeable needs for its governmental operations, and report this information to HCD each year. The bill also places additional requirements on cities and counties in the provisions of law that require a city or county to develop an inventory of land suitable for residential development to account for these surplus lands, and allows HCD to notify the Attorney General if a city or county is in violation of provisions of the Surplus Lands Act.

This bill is sponsored by the Nonprofit Housing Association of Northern California and the San Diego Housing Federation.

- 2) **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 1486 clarifies and strengthens provisions in the Surplus Lands Act that will promote the use of public land for affordable housing projects."
- 3) **Executive Order on Surplus Property.** On January 15, 2019, Governor Gavin Newsom signed Executive Order N-06-19 that requires DGS to create an inventory of all state-owned parcels that are in excess of state agencies' foreseeable needs by, among other things, conducting a comprehensive survey of all state-owned land, and required that the inventory be completed by April 30, 2019. The Executive Order also requires DGS, HCD and the Housing Finance Agency to collaborate to develop two new screening tools for prioritizing affordable housing development on excess state land by March 29, 2019, and to issue requests for proposals on individual parcels and accept proposals from developers of affordable housing.
- 4) **Prior and Related Legislation.** AB 2135 (Ting), Chapter 644, Statutes of 2014, amended the procedure for the disposal of surplus land by local agencies and expanded the provisions relating to the prioritization of affordable housing development if the surplus land will be used for residential development.

AB 2065 (Ting, 2018), would have amended the Surplus Lands Act expand the types of local agencies required to comply with the Act, require a "written notice of availability" of property to specified entities prior to disposal of property, require that notice to be sent to housing sponsors that have notified both HCD and the COG of their interest in surplus land, placed parameters on the negotiations to dispose of the property, and would have provided that the existing 15% affordability requirements applies whenever surplus public land is used for housing. AB 2065 was held in the Appropriations Committee. Most of the changes contained in 2065 are in also in AB 1486.

AB 1255 (R. Rivas), currently pending in this Committee, requires cities and counties 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.

- 5) **Policy Considerations.** The Committee may wish to consider the following issues:
 - a) **Local Agency Leases.** Opposition from local governments argue that the bill redefines and substantially broadens the term "dispose of" to include the sale, *lease*, transfer, or other conveyance of an interest in real property, which would pose many problems for public agencies. According to these groups, the bill narrowly exempts certain very specific leasing scenarios from the requirements of the bill, but fails to address the global problems associated with making the surplus land requirements applicable to leasing or conveyance of easements of other nonpossessory interests. They write that local governments lease property in a wide array of circumstances in support of their governmental operations and public purposes, not all of which can be predicted or micromanaged in advance as this bill attempts. They ask that the author amend the definition of "disposal" in AB 1486 to apply only to the *sale* of surplus land.

- b) **Parameters of 100% Affordable Housing Provisions.** Concerns have been raised about the broad nature of the provisions related to allowing any surplus land disposed of by a public agency to be permitted for residential use, regardless of local zoning designations, if 100% of the units are sold or rented at an affordable housing cost or affordable rent. The sponsor notes that these provisions are intended to apply to projects that receive some level of state subsidy.
- c) **Implementation Issues.** There are several technical implementation issues that should be addressed, including consistency in terminology. These issues include:
 - i) **Local Inventory Required in Provisions other than the Surplus Lands Act.** This bill expands the provisions of the local Surplus Lands Act, yet requires an inventory to be completed by local agencies in a completely unrelated section of laws. In order to address this issue, the provisions of Government Code Section 50569 should be deleted and then added into Government Code 54230, which is in the Surplus Lands Act.
 - i) **Governmental Operations Definition.** The bill creates a new definition of “governmental operations” in the Surplus Lands Act. This term is also added to the DGS section of the bill, however there is no definition included in this unrelated code section. For consistency, it should be added.
 - ii) **Housing Element Language.** This bill requires cities and counties to inventory the surplus land of *all local agencies* in the bill’s requirements for cities and counties to make an inventory of land suitable for residential development. This should be corrected to return back to existing law so that the impact is only on a city or county.
- 6) **Committee Amendments.** In order to address these issues, the Committee may wish to consider the following amendments:
 - a) Remove new “dispose of” definition added by the bill, and delete corresponding lease exemption language contained in local Surplus Land Act provisions.
 - b) Include language in the 100% affordable units section to specify that “This provision shall not apply if the site is ineligible for any public financing for affordable housing.”
 - c) Fix the implementation issues listed above.
- 7) **Arguments in Support.** Supporters argue that many local agencies have attempted to circumvent both the letter and intent of the Surplus Lands Act, and that this bill will bring greater clarity and improvement to the enforcement of the Act.
- 8) **Arguments in Opposition.** Opponents argue that the new definition of “disposal” is problematic for many public agencies that have valid reasons to lease or otherwise protect land they own, and note that the bill would place onerous new requirements on public agencies disposing of surplus land.
- 9) **Double-Referral.** This bill is double-referred to the Housing and Community Development Committee.

REGISTERED SUPPORT / OPPOSITION:**Support**

Nonprofit Housing Association of Northern California [SPONSOR]
San Diego Housing Federation [SPONSOR]
Bay Area Council
Building Industry Association of the Bay Area
Burbank Housing Development Corporation
California Community Builders
California Housing Consortium
California Rural Legal Assistance Foundation
California YIMBY
Chan Zuckerberg Initiative
Community Legal Services In East Palo Alto
EAH Housing
East Bay Asian Local Development Corporation
East Bay Housing Organizations
Enterprise Community Partners, Inc.
Habitat For Humanity East Bay/Silicon Valley
Housing California
North Bay Leadership Council
Related California
San Diego Housing Federation
San Francisco Foundation (if amended)
San Francisco Housing Action Coalition
Silicon Valley At Home (Sv@Home)
TMG Partners
Urban Displacement Project, UC-Berkeley
Western Center on Law & Poverty, Inc.
Working Partnerships USA (if amended)

Opposition

Association of California Healthcare Districts (unless amended)
Association of California Water Agencies (unless amended)
California Association of Sanitation Agencies (unless amended)
California Land Title Association (unless amended)
California Municipal Utilities Association (unless amended)
California Special Districts Association (unless amended)
California State Association of Counties (unless amended)
Chino Valley Independent Fire District (unless amended)
Coachella Valley Water District
Costa Mesa Sanitary District (unless amended)
Crestline Sanitation District (unless amended)
Cucamonga Valley Water District (unless amended)
Eastern Kern County Resource Conservation District (unless amended)
El Dorado Hills Community Services District (unless amended)

Opposition (continued)

Fresno County Mosquito And Vector Control District (unless amended)
Georgetown Divide Public Utility District (unless amended)
Goleta Sanitary Water Resource Recovery District (unless amended)
Goleta West Sanitary District (unless amended)
Greenfield County Water District (unless amended)
Humboldt Bay Municipal Water District (unless amended)
Indian Wells Valley Water District (unless amended)
Irvine Ranch Water District (unless amended)
Kern County Cemetery District (unless amended)
Leucadia Wastewater District (unless amended)
Mckinleyville Community Services District (unless amended)
Merced County Mosquito Abatement District (unless amended)
Mesa Water District (unless amended)
North County Fire Protection District (unless amended)
North Tahoe Fire Protection District (unless amended)
Northern Salinas Valley Mosquito Abatement District
Orange County Mosquito Abatement District (unless amended)
Orange County Water District (unless amended)
Palo Verde Cemetery District (unless amended)
Placentia Library District (unless amended)
Rainbow Municipal Water District
Rural County Representatives of California (unless amended)
Santa Margarita Water District (unless amended)
San Bernardino Valley Water District (unless amended)
South Coast Water District (unless amended)
Stallion Springs Community Services District (unless amended)
Tahoe City Public Utility District (unless amended)
Three Valleys Municipal Water District (unless amended)
Town of Discovery Bay Community Services District (unless amended)
Tulare Public Cemetery District (unless amended)
Urban Counties of California (unless amended)
Valley Center Municipal Water District (unless amended)
Ventura Port District (unless amended)
Vista Irrigation District (unless amended)
West Side Recreation and Park District (unless amended)
Yucaipa Valley Water District

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