

Date of Hearing: April 26, 2023

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 1734 (Jones-Sawyer) – As Amended April 20, 2023

SUBJECT: Local Government: Surplus Land Act: exemptions.

SUMMARY: Specifies that land disposed of by certain local agencies for emergency shelters and various types of housing is excluded from the Surplus Land Act (SLA). Specifically, **this bill:**

- 1) Excludes certain dispositions of land that occur in local agencies that meet specified criteria from the SLA. Specifically, this bill allows local agencies that meet the following criteria to dispose of land for the purposes noted in 2) below without regard to the SLA:
 - a) The local agency has a housing element that is determined by the Department of Housing and Community Development (HCD) to comply with existing law.
 - b) The local agency is designated as a prohousing jurisdiction by HCD.
 - c) The local agency declares a local emergency related to homelessness pursuant to existing law.
- 2) Allows a local agency that meets all of the criteria above to dispose of land for the following purposes without regard for the SLA except as explicitly prescribed in the bill:
 - a) Emergency shelters that meet existing statutory criteria for “Low Barrier Navigation Center.”
 - b) Supportive housing, as defined in existing law.
 - c) Transitional housing, as defined in existing law.
 - d) Affordable housing.
- 3) Provides that while land dispositions specified in 2) above that occur in jurisdictions that meet the criteria in 1) above are not subject to the procedures of the SLA, local agencies that dispose of land under the authorization of this bill must submit an annual report to HCD that identifies the following for each disposition:
 - a) The location of the disposed land.
 - b) The number of emergency shelter beds and housing units approved on the land.
 - c) The number of emergency shelter beds and housing units produced on the land.
- 4) Authorizes HCD to request additional information from local agencies regarding land disposed of pursuant to this section.

- 5) Specifies that this bill does not authorize HCD to require the submission of data related to land dispositions authorized under this bill as a precondition of the disposition.
- 6) Provides that if a local agency disposes of land in violation of this bill the agency shall be liable for a civil penalty calculated as follows:
 - a) For a first violation, 30 percent of the greater of the final sale price or the fair market value of the land at the time of disposition.
 - b) For a second or subsequent violation, 50 percent of the greater of the final sale price or the fair market value of the land at the time of disposition.
 - c) Provides that the fair market value of the land shall be determined by an independent appraisal of the land.
- 7) Authorizes HCD, entities identified in the SLA, as well as person who would have been eligible to apply for residency in affordable housing had the agency not violated this bill to bring an action to enforce the penalty provisions of the bill.
- 8) Provides the following with respect to assessed penalties:
 - a) A penalty shall, except as otherwise provided, be deposited into a local housing trust fund. The local agency may elect to instead deposit the penalty moneys into the Building Homes and Jobs Trust Fund or the Housing Rehabilitation Loan Fund. Penalties shall not be paid out of funds already dedicated to affordable housing, including, but not limited to, Low and Moderate Income Housing Asset Funds, funds dedicated to housing for very low, low-, and moderate-income households, and federal HOME Investment Partnerships Program and Community Development Block Grant Program funds. The local agency shall commit and expend the penalty moneys deposited into the local housing trust fund within five years of deposit for the sole purpose of financing newly constructed housing units that are affordable to extremely low, very low, or low-income households.
 - b) Five years after deposit of the penalty moneys into the local housing trust fund, if the funds have not been expended, the funds shall revert to the state and be deposited in the Building Homes and Jobs Trust Fund or the Housing Rehabilitation Loan Fund for the sole purpose of financing newly constructed housing units located in the same jurisdiction as the surplus land and that are affordable to extremely low, very low, or low-income households. Expenditure of any penalty moneys deposited into the Building Homes and Jobs Trust Fund or the Housing Rehabilitation Loan Fund shall be subject to appropriation by the Legislature.
- 9) Defines “affordable housing” to mean a housing development with 100 percent of all units in the development, but exclusive of a manager’s unit or units, sold or rented to lower income households, as defined by Section 50079.5 of the Health and Safety Code, except that up to 20 percent of the units in the development may be for moderate-income households, as defined in Section 50053 of the Health and Safety Code.

EXISTING LAW:

- 1) Requires each city and county to prepare, adopt, and administer a general plan for their jurisdiction, which must include a housing element, to shape the future growth of its community (Government Code § 65300 – 65404).
- 2) Establishes the SLA which, among other provisions, provides the following:
 - a) 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, if any, is in excess of its foreseeable needs. Requires a description of each parcel found to be in excess of needs to be made a matter of public record and requires the agency to report this information to HCD no later than April 1.
 - b) Defines “surplus land” as land owned by any local agency that is determined to be no longer necessary for the agency’s use.
 - c) Exempts certain types of surplus land owned by local agencies from the requirements of the SLA.
 - d) Requires a local agency that is disposing of surplus land to notify certain public entities and housing sponsors that surplus land is available for one of the following purposes:
 - i) Low- and moderate-income housing.
 - ii) Park and recreation, and open space.
 - iii) School facilities.
 - iv) Infill opportunity zones or transit village plans.
 - e) 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, 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 disposing agency and the entity have an additional 90 days to negotiate a mutually satisfactory price and terms in good faith. If they can’t agree, the agency that owns the surplus land can dispose of the land on the private market.
 - f) 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.
 - g) 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 for a first violation and 50 percent for subsequent violations. Requires that penalty assessments shall be deposited into a local housing trust fund, the state Building Homes

and Jobs Fund, or the Housing Rehabilitation Loan Fund, as specified (Government Code § 54220-54234).

- 3) Establishes the following with respect to Low Barrier Navigation Centers:
 - a) Specifies that a Low Barrier Navigation Center development is a use by right in areas zoned for mixed use and nonresidential zones permitting multifamily uses, if it meets specified requirements.
 - b) Requires a local jurisdiction to permit a Low Barrier Navigation Center development provided that it meets the following requirements:
 - i) It offers services to connect people to permanent housing through a services plan that identifies services staffing.
 - ii) It is linked to a coordinated entry system, so that staff in the interim facility or staff who colocate in the facility may conduct assessments and provide services to connect people to permanent housing. “Coordinated entry system” means a centralized or coordinated assessment system developed pursuant to Section 576.400(d) or Section 578.7(a)(8), as applicable, of Title 24 of the Code of Federal Regulations, as those sections read on January 1, 2020, and any related requirements, designed to coordinate program participant intake, assessment, and referrals.
 - iii) It complies with Chapter 6.5 (commencing with Section 8255) of Division 8 of the Welfare and Institutions Code.
 - iv) It has a system for entering information regarding client stays, client demographics, client income, and exit destination through the local Homeless Management Information System as defined by Section 578.3 of Title 24 of the Code of Federal Regulations (Government Code § 65662).
- 4) Defines the following terms and standards:
 - a) “Low Barrier Navigation Center” means a housing first, low-barrier, service-enriched shelter focused on moving people into permanent housing that provides temporary living facilities while case managers connect individuals experiencing homelessness to income, public benefits, health services, shelter, and housing. “Low Barrier” means best practices to reduce barriers to entry, and may include, but is not limited to, the following:
 - i) The presence of partners if it is not a population-specific site, such as for survivors of domestic violence or sexual assault, women, or youth.
 - ii) Pets.
 - iii) The storage of possessions.
 - iv) Privacy, such as partitions around beds in a dormitory setting or in larger rooms containing more than two beds, or private rooms (Government Code § 65662).
 - b) “Supportive housing,” means housing with no limit on length of stay, that is occupied by the target population, and that is linked to onsite or offsite services that assist the

supportive housing resident in retaining the housing, improving their health status, and maximizing their ability to live and, when possible, work in the community (Health and Safety Code § 50675.14).

- c) “Transitional housing,” means buildings configured as rental housing developments, but operated under program requirements that require the termination of assistance and recirculating of the assisted unit to another eligible program recipient at a predetermined future point in time that shall be no less than six months from the beginning of the assistance (Government Code § 65582).

FISCAL EFFECT: This bill is keyed fiscal.

COMMENTS:

- 1) **Author’s Statement and Bill Summary.** According to the author, “California has the largest population of people experiencing homelessness in the nation but builds only a fraction of the affordable housing needed. Though the Surplus Land Act was designed to promote an increase in the supply of affordable housing, existing exemptions for affordable housing projects often lead to a prolonged process and unfulfilled projects. AB 1734 will enable pro-housing government and transit agencies to dispose of publicly owned property for the development of shelters, transitional housing, supportive housing, or affordable housing.”

This bill creates a new category of land dispositions that the SLA does not apply to, provided that those dispositions occur in local agencies that meet specified criteria. Specifically, this bill allows local agencies that declare a local emergency related to homelessness, have a compliant housing element, and are designated pro-housing by HCD to exclude land that is disposed of for the following purposes from the SLA:

- a) Emergency shelters.
- b) Supportive housing.
- c) Transitional housing.
- d) Affordable housing.

This bill requires jurisdictions that dispose of land under its provisions to submit annual reports to HCD regarding the dispositions that occur. This bill also subjects these jurisdictions to penalties if they are found to have disposed of land in violation of the provisions in the bill.

Finally, this bill excludes these transactions from the SLA and therefore excludes these transactions from HCD’s SLA oversight authority except as explicitly prescribed in the bill.

This bill is sponsored by Los Angeles Mayor Karen Bass.

- 2) **Homelessness in Los Angeles.** Like most of California, there is an acute housing crisis in Los Angeles. In 2019, the City of Los Angeles had a higher percentage of cost-burdened renter households than any other major American city, at nearly 60 percent. Over one-quarter of residents are severely cost-burdened, contributing to the homelessness emergency in the City. According to the 2022 Greater Los Angeles Homeless Count, there are nearly 42,000

unhoused Californians in Los Angeles alone. While the City of Los Angeles represents less than 10 percent of the State's total population, it is home to almost 25 percent of the State's unsheltered population.

A major cause of the housing crisis is the mismatch between the supply and demand of affordable housing. Through the Regional Housing Needs Assessment process (RHNA), the Southern California Association of Governments (SCAG) has determined that the City of Los Angeles needs to plan for 184,721 homes by 2029 that are affordable to lower income households. However, if the production rates from the previous RHNA cycle continue, the City of Los Angeles would create just eight percent (14,200) of these units in the next eight years.

Since taking office in mid-December, City of Los Angeles Mayor Bass has taken several steps to address homeless and expedite production of affordable housing. This includes declaring a citywide State of Emergency regarding homelessness (as ratified by the city council), requiring all affordable housing projects to be approved within 60 days and permitted within five days (Executive Directive No. 1), and expediting the identification and disposition of city-owned land that is vacant, surplus, or underutilized (Executive Directive No. 3).

- 3) **Local Surplus Lands.** The SLA spells out the steps local agencies must follow when they dispose of land they no longer need. Before local officials can dispose of property, they must declare that the land is no longer necessary for the agency's use in a public meeting and declare the land either "surplus land" or "exempt surplus land." The SLA designates certain types of land as "exempt surplus land," which is not subject to the requirements of the SLA. All other surplus land must follow the procedures laid out in the SLA.

After a local agency declares that a piece of land is surplus to its needs (and is not exempt), the agency must send a written notice of availability to various public agencies and nonprofit groups, referred to as "housing sponsors," notifying them that land is available for any of the following purposes:

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

If another agency or housing sponsor wants to purchase or lease the surplus land for one of these purposes, it must tell the disposing agency within 60 days. Except where the surplus land is currently used for park or recreational purposes, the local agency must give priority to the housing sponsor that proposes to provide the greatest level of affordable housing on the land. If the surplus land is currently used for park or recreational purposes, the disposing agency must give first priority to an entity that agrees to continue to use the site for park or recreational purposes.

If the local agency and any of the prioritized entities are not able to negotiate a mutually satisfactory price after 90 days of good faith negotiations, the local agency may proceed to sell the land on the open market.

- 4) **Exemptions from the SLA.** The SLA exempts a series of potential land dispositions from its requirements. Exempt dispositions are not required to go through the solicitation and negotiation process outlined in the SLA. This reflects the reality that certain dispositions provide intrinsic value to residents, will provide one of the desired outcomes (provision of affordable housing, or preservation of parklands) envisioned in the SLA, or that the land that is being disposed of is incompatible with housing. For example, surplus land that will be developed with a large mixed-use development that dedicates at least 25 percent of the units to lower income households is considered “exempt surplus land,” as the affordability levels provided are equivalent to the minimum requirements of the SLA. This exemption allows local agencies to more expeditiously dispose of land while achieving one of the desired outcomes of the SLA.
- 5) **Local Noticing Requirements.** Prior to disposing of surplus land, the SLA requires local agencies to declare that the land is surplus land or “exempt surplus land” at a public meeting. This action increases the transparency related to the disposal of surplus land, making stakeholders aware of the potential to acquire surplus land, or to protest a designation of surplus land as exempt.

The SLA provides for a series of categories and several subcategories of surplus land that is deemed “exempt surplus land.” Certain categories of “exempt surplus land” are subjective and could be widely interpreted; in this case, declaring land exempt at a public hearing adds a useful layer of disclosure. However, certain categories of “exempt surplus land” are patently objective and not subject to interpretation. Requiring local agencies to declare these parcels are exempt at a public meeting adds an unnecessary layer of procedure to the disposition of objectively “exempt surplus land.” Disposition of these categories of “exempt surplus land” should still require public notice; however, the appropriate level of notice can be achieved through a notice that is made public prior to the disposal.

- 6) **Land Dispositions under the SLA.** HCD provided data to the Committee on local land dispositions that occurred since the updates to the SLA took effect in January of 2021. HCD reviewed 237 standard land dispositions i.e. land that is subject to the provisions of the SLA and does not fall under a category of “exempt surplus land.” According to HCD, these standard dispositions led to 21 projects that are currently in the development pipeline and are expected to generate 2,994 housing units, of which 1,832 will be affordable units.

HCD reported that it reviewed another 525 dispositions that were either determined to be necessary for the agency’s use or categorized as “exempt surplus land” i.e. non-standard dispositions. Local agencies are not required to identify land that continues to be necessary for an agency use to HCD as surplus or exempt surplus land. That land is not surplus and is excluded from the disposition requirements of the SLA, constituting a de facto exemption. However, local agencies often consult with HCD to verify that an intended disposition meets the statutory definition of “agency use.” HCD provided expanded data on 290 of the most recent non-standard dispositions. Of the non-standard definitions, 253 were categorized as “exempt surplus land” and 37 dispositions were determined to be necessary for the local agency’s use.

Exemption Category	Exempt Dispositions	Percent of Exempt Dispositions
Affordable housing (f)(1)(A)	36	12 %
Small lot (f)(1)(B)	38	13%
Property exchange for agency use (f)(1)(C)	24	8%
Agency to agency transfer (f)(1)(D)	63	22%
Former street, right-of-way, easement (f)(1)(E)	22	8%
Mixed-use affordable housing (f)(1)(F)(i) and (ii)	8	3%
Valid Legal Restriction (f)(1)(G)	18	6%
Trust land (f)(1)(H)	9	3%
Education Code (f)(1)(I)	30	10%
Former military base (f)(1)(J)	5	2%

7) **Related Legislation.** AB 457 (Joe Patterson) creates 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 is pending on the Assembly Floor.

AB 480 (Ting) changes the penalty provisions of the SLA and makes procedural changes to noticing provisions that apply to “surplus land” and “exempt surplus land” disposed of by local agencies subject to the SLA. AB 480 is pending in the Housing and Community Development Committee.

AB 837 (Alvarez) 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 Housing and Community Development Committee.

AB 983 (Cervantes) categorizes as exempt surplus land, properties that are designated in an adopted downtown revitalization plan, as specified. AB 983 is pending in this Committee.

AB 1607 (Wendy Carrillo) exempts land transferred within Los Angeles County to the Los Angeles County Affordable Housing Solutions Agency from the SLA. AB 1607 is pending in this Committee.

8) **Previous Legislation.** AB 1784 (Seyarto) of 2022 would have created an SLA exemption for low density parcels located in jurisdictions that meet or exceed their 6th cycle Regional Housing Needs Allocation (RHNA) production targets for Very Low Income (VLI) and Low Income (LI) housing on an annual basis. AB 1784 was held in the Housing and Community Development Committee.

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

AB 2357 (Ting) of 2022 was substantially similar to this bill. AB 2357 was held in the Governance and Finance Committee.

SB 361 (Umberg) of 2022 would have required the City of Anaheim to comply with additional transparency requirements prior to disposing of surplus land. SB 361 was ordered to the inactive file on the Assembly Floor.

SB 1373 (Kamlager), Chapter 724, Statutes of 2022, extended the authority for the City of Los Angeles to complete disposition of certain surplus property in accordance with the SLA as it read on December 31, 2019.

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 the Housing and Community Development Committee.

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. SB 719 was held in this 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.

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.

9) **Arguments in Support.** City of Los Angeles Mayor Karen Bass writes in support, “My Administration is acting with urgency to meet the moment, in partnership with the State, to build more housing, faster. To save lives, restore our neighborhoods, and house Angelenos immediately, we must urgently prioritize underutilized existing publicly owned property. Unfortunately, the Surplus Land Act has proven to be an impediment to utilizing City-owned property.”

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

11) **Double-Referral.** This bill was double-referred to the Housing and Community Development Committee, where it passed on a 7-0 vote on April 19, 2023.

REGISTERED SUPPORT / OPPOSITION:

Support

Los Angeles Mayor Karen Bass [SPONSOR]
 Central City Association
 Downtown Women's Center
 John Burton Advocates for Youth
 LA Family Housing
 Los Angeles Unified School District
 Safe Place for Youth

St. Joseph Center
The People Concern
The United Way of Greater Los Angeles

Opposition

None on file

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