

Date of Hearing: April 20, 2022

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 1748 (Seyarto) – As Amended April 6, 2022

SUBJECT: Exempt surplus land: regional housing need.

SUMMARY: Exempts 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 from the Surplus Lands Act (SLA). Specifically, **this bill:**

- 1) Adds to the list of “exempt surplus land” that is not subject to the provisions of the SLA land that is zoned for a density of up to 30 units, if both of the following apply:
 - a) Residential properties within a radius of 500 feet of the land are zoned to have an allowable density of fewer than 30 units.
 - b) The land is located in a jurisdiction that meets or exceeds its proportionate annual progress toward the development of VLI and LI units for the 6th RHNA cycle.
- 2) Makes a technical change to the definition of “exempt surplus land.”

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, 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 beginning in 2021.
- 2) Defines “surplus land” as land owned by any local agency that is determined to be no longer necessary for the agency’s use.
- 3) Exempts certain types of surplus land owned by local agencies from the requirements of the SLA.
- 4) 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:
 - a) Low- and moderate-income housing.
 - b) Park and recreation, and open space.
 - c) School facilities.
 - d) Infill opportunity zones or transit village plans.
- 5) 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.

- 6) 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.
- 7) 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.

FISCAL EFFECT: None.

COMMENTS:

- 1) **Bill Summary and Author's Statement.** This bill allows local agencies that meet or exceed their production of VLI and LI housing for the 6th RHNA cycle on an annual basis to exempt surplus land that is zoned and surrounded by low density development from the requirements of the SLA.

According to the author, "AB 1748 is a simple approach to incentivize cities to meet their housing needs while also rewarding those cities who meet those needs with greater flexibility in their city planning. Small incentives to local government through the desire for more flexibility will only help the state meet its overall housing numbers."

- 2) **VLI and LI Housing Production.** Under Housing Element Law, HCD works with the Department of Finance to develop each region's projected population growth. Based on these projections, HCD allocates a RHNA share to each MPO/COG for an 8 year cycle (housing cycle). The MPO or COG in turn develops a methodology for distributing its RHNA share among the jurisdictions in its region. For each housing cycle, each jurisdiction is allocated a number of units by income category that it must plan for. Jurisdictions submit an annual progress report (APR) to HCD that includes the number of building permits issued for each income category.

Cumulatively, the APRs represent the state's progress toward meeting its housing production targets for each cycle. The most recent APR data represents the progress the state made toward the 5th cycle targets for each income category. While several jurisdictions are meeting their targets in various income categories, the statewide data demonstrates that there is a severe underproduction of affordable housing. At the same time, production of above moderate income housing is the only income category that exceeded production targets. This is due to a range of factors, including market demand and the lack of subsidies and incentives available for affordable housing production. Below is a chart demonstrating progress in the 5th RHNA cycle.

5th RHNA Cycle APR Summary

Income Category	RHNA Goal	Units Permitted	Deficit/Surplus
Very low income (\leq 50% AMI)	278,424	31,637	(-)246,787
Low income (51%-80% AMI)	185,525	31,188	(-) 154,337
Moderate income (80%-120% AMI)	204,917	83,356	(-) 121,561
Above moderate income (\geq 120% of AMI)	487,906	489,812	(+) 1,906

- 3) **The 6th RHNA Cycle.** As noted above, Housing Element Law requires local jurisdictions to plan to meet their existing and projected housing needs, including their share of the regional housing need. In the period between the 5th and 6th revisions of the housing element, legislative changes were made to the RHNA process and methodology to ensure that housing needs reflected not just current demand, but unmet demand as well. As such, throughout the state, many cities and counties will be required to plan for substantially more growth than before. For example, in the 5th RHNA Cycle, the Southern California Association of Governments (SCAG) received a RHNA of 409,000 – 438,000. By contrast, in the 6th RHNA Cycle, SCAG received a RHNA of 1,341,827.

The RHNA targets are not arbitrary; they constitute substantive targets that are subject to specified statutory criteria that ensure each jurisdiction in the state is adequately planning for several categories of housing. Upon completion of this cycle of housing element revisions, the state is expected to have sufficiently zoned land to accommodate the state’s housing deficit.

- 4) **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.

- 5) **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, are necessary for an agency's use, will provide one of the desired outcomes (provision of affordable housing, or preservation of park lands) 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 the same desired outcome of the SLA.
- 6) **Adding Exemptions to the SLA.** The SLA mandates that local agencies prioritize affordable housing when they dispose of surplus land. As noted the SLA currently exempts the disposal of several categories of land, including land used to develop affordable housing. This recognizes that certain land dispositions are consistent with the purpose of the SLA's goals of creating affordable housing. The SLA also exempts land that is not suitable for the development of affordable housing.

This bill seeks to create a new category of exemption that recognizes local agencies that prioritize the production of VLI and LI housing, as demonstrated by the number of those units built within the local agency's jurisdiction in the previous year meeting or exceeding their RHNA targets. This bill also limits the land eligible for this exemption to parcels zoned for low-density development, which is typically less suitable for development of affordable housing than land zoned for high-density developments. One of the express purposes of the SLA and Housing Element Law is to increase the development of affordable housing. To the extent that the exemptions created by this bill result in local agencies taking actions that verifiably increase the development of affordable housing, this bill appears consistent with those laws.

- 7) **Policy Considerations.** The Committee may wish to consider the following: several authors have introduced measures that seek to amend the SLA. The author and sponsors of this bill may wish to coordinate their efforts with other measures amending the SLA to avoid conflict and duplication.
- 8) **Related Legislation.** AB 2357 (Ting) Changes the penalty provisions of the Surplus Lands Act (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 2357 is pending in this Committee.

AB 2319 (Bonta) creates an exemption from the Surplus Lands Act (SLA) for the Alameda Naval Air Station (Alameda Point). AB 2319 is pending in this Committee.

SB 719 (Min) provides 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 is pending in this Committee

- 9) **Previous Legislation.** AB 1271 (Ting) of 2021 would have expanded the types of land exempt from the Surplus Lands Act (SLA), imposed new procedural requirements on local agencies disposing of surplus land, and would make various technical changes to the SLA. AB 1271 was held the Housing and Community Development 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.

- 10) **Arguments in Support.** None on file.

- 11) **Arguments in Opposition.** The Non-profit Housing Association of Northern California writes in opposition, “By allowing for the disposition of surplus land without first making the land available for affordable housing for jurisdictions that have met arbitrary development goals, AB 1748 would severely undermine the purpose of the Surplus Land Act. The exemptions listed in the bill are much too broad and would absolve jurisdictions of their long-term affordable housing responsibilities, including for future regional housing needs allocation cycles, simply because they have met partial housing unit goals that do not fully meet the needs of low-income Californians.”

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

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

California Housing Partnership
Non-profit Housing Association of Northern California
Public Advocates
SV@home Action Fund

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