

Date of Hearing: April 20, 2022

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 2357 (Ting) – As Amended April 5, 2022

SUBJECT: Surplus land.

SUMMARY: 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. Specifically, **this bill:**

- 1) Specifies that “exempt surplus land” that is exempt due to a valid legal restriction on the land that is not imposed by the local agency is only exempt if the legal restrictions are documented and verified in writing by the relevant agencies that impose the restrictions.
- 2) Authorizes local agencies to declare specified types of “exempt surplus land” administratively with 30 days public notice rather than through a formal public hearing of the agency’s governing body.
- 3) Requires local agencies to notify the Department of Housing and Community Development (HCD) 30 days prior to disposing of exempt surplus land.
- 4) Specifies that written notices of availability of surplus land that local agencies are required to provide must be prepared in a form prescribed by HCD.
- 5) Requires HCD to provide a link on its internet website to all notices of availability of surplus land that it receives from local agencies and a list of all entities, including housing sponsors, that have notified HCD of their interest in acquiring surplus land for the purpose of developing affordable housing.
- 6) Amends the penalty provisions of the SLA to require that local agencies that dispose of surplus land in violation of the SLA are liable for a penalty that is a specified percentage of the independently appraised fair market value of the surplus land at the time of the disposition, if the appraised value is greater than the sales price.
- 7) Provides that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to current law governing state mandated local costs.

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

COMMENTS:

- 1) **Bill Summary and Author's Statement.** This bill makes a number of changes to the SLA. This bill allows penalties for violations of the SLA to be linked to the appraised value of the land at the time it is disposed of, if the appraised value is greater than the sales price of the land. The bill also requires HCD to post certain information on its internet website, and authorizes local agencies to declare specified types of exempt surplus land administratively, if they notify HCD, and other specified entities 30 days prior to disposal.

According to the author, "California is facing a housing crisis and unused public land has the potential to promote affordable housing development throughout the state. These properties are key to building housing that is connected to transit, schools, and jobs. In fact, most affordable housing in California is built on what used to be public land. AB 2357 clarifies

and strengthens provisions in the Surplus Land Act that will promote the use of public land for affordable housing.”

This bill is sponsored by the Public Interest Law Project, the East Bay Housing Organization, Non Profit Housing Association of Northern California, and the San Diego Housing Federation.

- 2) **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.

- 3) **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.

- 4) **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 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 11 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 an administrative declaration that is made public prior to the disposal.

- 5) **Penalties and Leases.** Local agencies that dispose of surplus land in violation of the SLA are subject to penalties indexed to the final sales price of the land. Supporters of this bill are concerned that a local agency could avoid or reduce the penalties associated with violations of the SLA by selling surplus land for below market value, potentially in exchange for other concessions from the developer receiving the land (e.g. keeping a sports team located within the local agency's jurisdiction in exchange for a discounted sales price). As the penalties are indexed to the sales price of land sold in violation of the SLA, if a local agency sells public land for substantially less than market value the associated penalty will be correspondingly reduced. The supporters of this bill propose to remedy this by linking the penalties to the sales price of the appraised value of the land at the time the land was disposed of.

The SLA guidelines adopted by HCD include local agency leases of surplus land as a type of disposition of land subject to the SLA. In practice, according to HCD, this means that if a local agency leases surplus land without following the procedures outlined in the SLA, the local agency will have violated the SLA. However, the current penalty provisions of the SLA are explicitly linked to the final sales price at the time the land is *sold*. When a local agency that leases land to a private entity there is no sales price and there is no sale date to link the penalty to, therefore it is unclear what penalty, if any, could be applied to land that is *leased* in a manner that HCD finds in violation of the SLA.

- 6) **Policy Considerations.** The Committee may wish to consider the following:
 - a) The amendments to the SLA proposed in this bill link the penalty for violations to the sales price of the land, or the value of the land at the time of *disposition*. This could allow for the levying of penalties on leases of surplus land as leasing is a type of disposition of surplus land. If leasing surplus land without complying with the procedures of the SLA constitutes a violation of the SLA, it is appropriate to apply some form of penalty to the violation. However, leases, which involve an ongoing relationship between the local agency and the tenant, are substantially different transactions from sales, which are point in time transactions.

The value of an undeveloped parcel may be minimal at the initiation of a lease, but could increase in value substantially as a result of improvements made to the land by the tenant as a condition of the lease. Does the value of land at the time a lease is initiated constitute

the appropriate point to apply penalties for leases issued in violation of the SLA? The committee may wish to ask the author to continue to work with committee staff to refine language related to assessing penalties on land leased in violation of the SLA.

- b) 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.

- 7) **Related Legislation.** AB 1784 (Seyarto) 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). AB 1784 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

- 8) **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, Statues 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.** The Public Interest Law Project writes in support, “AB 2357 will strengthen the Surplus Lands Act by closing enforcement loopholes in the SLA, creating an administrative declaration process for specific types of exempt surplus lands, standardizing public notices of availability, and additional technical changes for consistency and clarity.”
- 10) **Arguments in Opposition.** This City of Tustin is opposed unless amended and writes, “The City continues to advocate for reasonable, consistent and achievable requirements under the SLA and has looked forward to seeing a cleanup bill to address many of the implementation issues that are hindering and slowing housing projects down as local agencies attempt to address and meet conflicting standards in the SLA when disposing of public property. The current version of AB 2357 does not address any of these significant issues or provide relief or clarity for local agencies. For these and the other reasons described above, the City of Tustin opposes AB 2357 unless amended.”
- 11) **Double-Referral.** This bill is double-referred to the Housing and Community Development Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

East Bay Housing Organizations [SPONSOR]
Non-profit Housing Association of Northern California [SPONSOR]
San Diego Housing Federation [SPONSOR]
The Public Interest Law Project [SPONSOR]
California Housing Partnership Corporation
Public Advocates
Sv@home Action Fund

Oppose Unless Amended

City of Tustin.

Opposition.

None on file.

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