

Date of Hearing: March 29, 2023

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 480 (Ting) – As Amended March 14, 2023

SUBJECT: Surplus land.

SUMMARY: Changes the penalty provisions of the Surplus Land 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) Adds to the definition of “exempt surplus land” land that is owned by a California public-use airport on which residential use is prohibited pursuant to Federal Aviation Administration (FAA) Order 5190.6B, as specified.
- 3) 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, as specified.
- 4) Requires local agencies to notify the Department of Housing and Community Development (HCD) 30 days prior to disposing of exempt surplus land, as specified.
- 5) 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.
- 6) 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.
- 7) 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.
- 8) Makes a number of conforming and technical changes.
- 9) 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 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. 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).

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 additional information regarding surplus land dispositions on its internet website, creates a new category of exempt surplus land for property owned by public airports, 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, and makes additional minor and clarifying changes.

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

This bill is cosponsored by the following entities: East Bay Housing Organization, Non Profit Housing Association of Northern California, Public Interest Law Project, and 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, 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.
- 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 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.

- 5) **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. Of the 253 dispositions identified as exempt surplus land, 135 fell under

categories that would be subject to the simplified exemption notice process created by this bill. Those exempt dispositions are bolded in the chart below.

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%

- 6) **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 or the appraised value of the land at the time the land was disposed, whichever is greater.

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 violates 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 leases land to a private entity, there is no sales price or sales date to penalize. 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.

- 7) **Policy Considerations.** The Committee may wish to consider the following:
- Competing Measures.** Several authors introduced measures that seek to amend the SLA this year. The author and sponsors of this bill may wish to coordinate their efforts with other measures amending the SLA to avoid conflict and duplication.
 - Penalty Ambiguity.** 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. 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.

- c) **Administrative Declarations.** One provision of the bill seeks to simplify the exemption process for specific categories of “exempt surplus land” by allowing local agencies to declare those parcels are “exempt surplus land” administratively, rather than at a public meeting. Several stakeholders have questioned what would constitute an “administrative declaration.” The Committee may wish to consider clarifying this provision.
- d) **Airport Land.** This bill also seeks to clarify that airport land subject to specified FAA restrictions is exempt surplus land. This land is subject to documented restrictions that are readily identifiable. The Committee may wish to consider allowing this category of “exempt surplus land” to use the simplified exemption process.
- 8) **Committee Amendments.** In order to address some of the issues noted above, the Committee may wish to amend proposed Section 54221.5 as follows:
- “54221.5. (a) Before taking any action to dispose of land, a local agency shall declare that the land is either “surplus land” or “exempt surplus land” as specified in this section. The declaration shall be supported by written findings before the local agency may dispose of the land in a manner that is consistent with this section and the local agency’s policies.
- (b) Except as provided in subdivision (c), a local agency shall take formal action at a regular public meeting to declare that land is either “surplus land” or “exempt surplus land.”
- (c) Notwithstanding subdivision (b), a local agency ~~may declare administratively~~ *is not required to make a declaration at a public meeting for that* land *that* is “exempt surplus land” pursuant to subparagraphs (A), (B), (E), (H), ~~or~~ *(I) or (M)* of paragraph (1) of subdivision (f) of Section 54221 ~~if the declaration and provided that the local agency identifies that land in a notice that is~~ **findings are** published and available for public comment, including notice to the entities identified in subdivision (a) of section 54222, at least 30 days before the ~~declaration~~ *exemption* takes effect...”
- 9) **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 in this 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 this 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 the Housing and Community Development Committee.

- 10) **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.

- 11) **Arguments in Support.** The Public Interest Law Project writes in support, “AB 480 will strengthen the SLA 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. The bill works in

partnership with local governments, by providing new streamlining opportunities for compliance with the SLA, thus ensuring they are not overly burdened with unnecessary bureaucratic processes. It also ensures that the spirit of the SLA is protected with improved enforcement protocols and standardizing the process of notifying affordable housing builders of land availability and making those notices available to the public.”

- 12) **Arguments in Opposition.** The City of Salina writes in opposition, “Current [SLA], including [HCD] recent guidelines, have delayed City real estate transactions, and have increased the staff time required to fulfill HCD requirements. A specific example is the delay in the release of a Request for Proposals to develop affordable housing on County property through a city/county partnership because it was unclear as to the application of SLA and HCD guidelines to the long-term ground lease.

“AB 480 would further undermine the ability of local agencies to conduct appropriate economic development activities on properties they acquire or otherwise own, by expanding the HCD’s scope of authority to include the review of “*any action to dispose of land*,” which would include properties retained for agency use, properties declared “exempt surplus,” and properties that local agencies are authorized by other laws to acquire and dispose of for economic development purposes.”

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

REGISTERED SUPPORT / OPPOSITION:

Support

East Bay Housing Organization [SPONSOR]
 Non-profit Housing Association of Northern California [SPONSOR]
 Public Interest Law Project [SPONSOR]
 San Diego Housing Federation [SPONSOR]
 Association of California Airports
 California Airports Council

Oppose Unless Amended

City of Kerman

Opposition

California Associations for Local Economic Development
 Opportunity Stanislaus
 Calaveras County Economic & Community Development
 California Association for Local Economic Development
 City of Indian Wells
 City of Salinas
 Tulare Chamber of Commerce

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