

Date of Hearing: July 12, 2023

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Juan Carrillo, Chair

SB 34 (Umberg) – As Amended February 22, 2023

SENATE VOTE: 31-7

SUBJECT: Surplus land disposal: violations: Orange County.

SUMMARY: Prohibits the County of Orange or a city located within the County of Orange (Orange County jurisdiction) from proceeding with disposal of surplus land if the Department of Housing and Community Development (HCD) issues a notice of violation (NOV) of the Surplus Land Act (SLA). Specifically, **this bill:**

- 1) Requires an Orange County jurisdiction, if notified by HCD that its planned sale or lease of surplus land is in violation of the SLA, to cure or correct the alleged violation within 60 days, unless HCD deems the alleged violation not to be a violation in less than 60 days.
- 2) Prohibits an Orange County jurisdiction that has not cured or corrected an alleged violation within 60 days from disposing of the parcel until HCD determines that it has complied with the SLA or deems the alleged violation not to be a violation.
- 3) Authorizes an Orange County jurisdiction that receives a NOV alleging a violation of the SLA to provide information to HCD regarding actions taken to cure or correct the alleged violation within 60 days of receiving the NOV.
- 4) Requires HCD to determine if the Orange County jurisdiction's actions cure or correct the alleged violation and whether the planned disposal of surplus land would constitute a violation of the SLA within 30 days of receiving information pursuant to 3) above.
- 5) Repeals these provisions on January 1, 2030.
- 6) Finds and declares that a special law is necessary because of the unique circumstances facing Orange County.
- 7) Provides that 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 Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government 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 (GC) § 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 (GC § 54220-54234).

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

COMMENTS:

- 1) **Author’s Statement and Bill Summary.** According to the author, “SB 34 is a local pilot program in my district to address loopholes in the SLA by prohibiting an Orange County governmental entity from disposing of parcels of surplus lands once the HCD has determined

that the agency is in violation of the SLA. Additionally, this bill would require the County of Orange or any city within Orange County to cure or correct their alleged SLA violation within 60 days if notified by the department that its planned sale of surplus land is in violation of existing law. SB 34 is necessary for my district because of troubling circumstances such as the recent Anaheim Angels stadium deal from 2021. Despite being notified of a violation and the possible fine totaling \$96 million, the City of Anaheim proceeded to ignore the bidding process and finish processing the stadium land deal. Later, it was revealed through an FBI investigation that the politically motivated deal was also motivated by bribes. Furthermore, the FBI found widespread corruption of prominent figures throughout the entire County of Orange, thereby showing that the problem was not just limited to the City of Anaheim. Given these recent events, SB 34 is critically important to preventing unethical or illegally motivated government entities within Orange County from circumventing existing laws in regards to the SLA and affordable housing when leasing or selling public land.”

This bill prohibits Orange County jurisdictions from proceeding with disposal of surplus land if HCD issues a NOV alleging that the disposal would constitute a violation of the SLA. This bill also authorizes an Orange County jurisdiction to submit information to HCD regarding actions the jurisdiction took to correct the alleged violation within 60 days of receiving the NOV. Finally, this bill requires HCD to determine if the jurisdiction’s actions cure or correct the alleged violation and whether the planned disposal of surplus land would constitute a violation of the SLA within 30 days.

This bill is sponsored by the author.

- 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) **Changes to the SLA.** AB 1486 (Ting), Chapter 664, Statutes of 2019, substantially revised the SLA to increase the emphasis on affordable housing and address concerns that some local agencies were bypassing the Act's requirements. Among other changes, AB 1486 broadened the definition of surplus land and required land to be designated as surplus prior to the local agency selling the land, which ensures that the SLA is triggered such that a local agency must comply with it. AB 1486 prohibited local agencies from counting the sale of land for economic development purposes as being "for the agency's use." This means that local agencies must open their properties up to affordable housing developers first, even if they have a different purpose in mind for the property. Additionally, AB 1486 instituted a requirement that if a property sold as surplus is not sold to a housing sponsor, but housing is developed on it later, 15 percent of the units must be sold or rented at an affordable cost to lower income households. Finally, AB 1486 imposed penalties on local agencies that violate the SLA, totaling 30 percent of the sales price of land disposed of in violation of the Act for a first violation, and 50 percent of the price of the land for subsequent violations. These penalty revenues must be deposited in a local housing trust fund.

Prior to the enactment of AB 1486, state law did not require local agencies to always designate land as surplus prior to disposing of it, which meant they could enter into negotiations to dispose of land to further local priorities such as economic development without going through the SLA process. These types of dispositions often include exclusive negotiating agreements (ENAs) between a local agency and a prospective buyer under which a local agency agrees not to make similar deals with other potential buyers for a specified period. ENAs grant local agencies and buyers time to negotiate the terms of the disposition of the property, including development disposition agreements that result in restrictions on the use of the property to the uses desired by the local agency and other public benefits such as affordable housing requirements.

- 4) **Anaheim Stadium Deal.** The City of Anaheim's attempted sale of city owned property to the owner of the Anaheim Angels baseball team is the most high profile surplus land transaction that was subject to HCD enforcement under the SLA after AB 1486 strengthened the law. The attempted deal is a protracted affair that involves the following:
 - a) An initial sales agreement between the City of Anaheim and the Angels.
 - b) A NOV issued by HCD related to the transaction and alleged violations of the SLA.
 - c) A stipulated agreement between the city and the California Department of Justice (DOJ) to resolve alleged violations.
 - d) A revised disposition and development agreement (DDA) between the City of Anaheim and the Angels that sought to reflect the terms and requirements of the stipulated agreement.

- e) An FBI investigation that, to date, has led to the resignation of several high profile political figures, including the Mayor of Anaheim.

The original sales agreement between the City of Anaheim and the Angels included a total sales price of \$320 million. In exchange for development credits from the city, the Angels agreed to specific sales terms related to the property, including a guarantee for the Angels to produce at least 466 units of affordable housing on the site. Ultimately, the city provided development credits that reduced the cash price the Angels paid to the city to \$150 million.

HCD informed the City of Anaheim in April of 2021 that the planned disposition of the city-owned property at 2000 East Gene Autry Way and 2200 East Katella Boulevard (stadium property) was subject to the SLA, as amended by AB 1486, and that the City of Anaheim may be in violation of the SLA. The City of Anaheim argued that the transaction was initiated prior to the effective date of the SLA changes ushered in by AB 1486 and that the disposition was, therefore, subject to the previous version of the SLA and not in violation of the new terms of the SLA, which did not apply. Whether the SLA, as amended by AB 1486, or the previous version of the SLA applied to the stadium property transaction was never tested in court. Following several exchanges between the City of Anaheim and HCD through the Fall of 2021, HCD issued a NOV to the City of Anaheim on December 8, 2021, alleging that the city's sale of the stadium property violated the SLA.

Negotiations between the city and the state ensued for several months following HCD's issuance of the NOV. On April 25, 2022, the Attorney General announced a proposed stipulated judgement resolving the allegations that the city violated the SLA. The City of Anaheim voted to approve the stipulated judgement the following day. The stipulated judgement required the City of Anaheim to:

- a) Deposit approximately \$96 million into a local housing trust fund for the sole purpose of financing new extremely low, very low, and low-income housing in the City of Anaheim over five years.
- b) Provide DOJ with periodic detailed reports tracing those funds to specific affordable housing development projects, until the funds are fully disbursed.
- c) Commit an additional \$27 million in affordable housing credits to the Angels for the development of up to 466 affordable housing units on the Angel Stadium Property Site.
- d) Allow the Angels to leverage the \$27 million with development incentives and public financing to ensure the timely development of these units.

The \$96 million the city agreed to deposit in its housing trust fund represents 30 percent of the final sales price agreed to between the City of Anaheim and the Angels, and therefore represents the maximum penalty that the city could be required to deposit into its housing trust fund under the SLA. On May 6, 2022, The *Los Angeles Times* reported that the stipulated judgement and the DDA that the City of Anaheim negotiated with the Angels to carry out the terms of the stipulated judgement would result in 80 percent less affordable housing developed near the stadium. Specifically, in return for the Angels forfeiting \$96 million in development credits provided by the city in the original deal, the Angels reduced the share of affordable units they promised to develop. Specifically, the original deal required the development of at least 466 affordable units. Under the stipulated judgement, the Angels

only committed to develop 84 to 104 affordable units (depending on the depth of affordability). However, there was no penalty to the Angels if the units were not developed. The City of Anaheim agreed to dedicate the \$96 million in credits refunded to the city by the Angels to the production of affordable housing, which the city hoped would seed the development of 1,000 units of affordable housing elsewhere in Anaheim. City staff noted that building 1,000 units would require additional government funding, tax credits, and other incentives.

Following the *Los Angeles Times* report criticizing the stipulated judgement and the DDA, HCD called on the City of Anaheim to reject the new DDA with the Angels. HCD alleged that the DDA violated the terms of the stipulated judgement. It is unclear how HCD concluded that the city violated an agreement reached between the city and DOJ, or what provisions of the judgment HCD would seek to enforce. The stipulated judgement included a penalty equivalent to the maximum penalty authorized under the SLA. Therefore, it is unclear what further action HCD could legally compel the city to perform. At the time of HCD's announcement, a representative for the City of Anaheim stated, "The development plan is consistent with our agreement, and we remain committed to exploring additional affordable housing beyond what is called for."

Prior to the parties reaching any resolution on the status of the stipulated judgement and the subsequent DDA, the FBI revealed an ongoing investigation into Harry Sidhu, the Mayor of Anaheim, related to the sale of the stadium property. The FBI agent investigating the mayor wrote in his affidavit, "I believe Sidhu illustrated his intent to solicit campaign contributions, in the amount of \$1,000,000... in exchange for performing official acts intended to finalize the stadium deal for the Angels." Following the revelation of the investigation, Mayor Sidhu resigned and the City of Anaheim voted unanimously to halt the sale of the stadium property.

- 5) **Arguments in Support.** The California Housing Partnership writes in support, "Surplus public properties are an important source of cost-effective land for affordable housing. Current law provides priority for affordable housing when cities and counties dispose of such properties, but the law is only as good as it is enforced. SB 34 establishes reasonable checks and balances by stopping local governments from proceeding with a disposition while under an HCD notice of violation."
- 6) **Arguments in Opposition.** The California Special Districts Association is opposed unless amended and writes, "As written, the bill may create a concerning precedent for all local agencies statewide. Because SB 34 includes a reference to notices of violation from HCD in connection with a 'sale or lease' by a local agency, the bill may establish a statutory precedent that leases are subject to the SLA. Notwithstanding guidelines developed by HCD defining 'disposition of surplus land,' at this time the term 'dispose' is undefined in the SLA, and prior legislative efforts to define 'dispose' to include leases were unsuccessful. Removing and excluding the bill's reference to leases would in no way compromise or otherwise impact the ability of this legislation to address a planned sale of surplus land by the County of Orange or any city located within Orange County. However, including any reference to leases in the bill would be inconsistent with the clear, established legislative intent for the meaning of disposal of surplus land that is subject to the requirements of the SLA as currently written. We therefore oppose SB 34 unless it is amended to remove its reference to leases and HCD notices of violations in connection with planned leases."

- 7) **Double-Referral.** This bill is double-referred to the Housing and Community Development Committee.
- 8) **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 the Senate Governance and Finance Committee.

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 Senate Governance and Finance 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 Senate Governance and Finance 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 Senate Housing Committee.

AB 1734 (Jones-Sawyer) states that the SLA does not apply to the disposition of land for emergency shelter and affordable housing in jurisdictions that meet specified criteria. AB 1734 is pending in the Senate Governance and Finance Committee.

SB 229 (Umberg) requires a local agency to hold an open and public session to discuss a planned disposal of surplus land if it has been notified by HCD that its disposal of a parcel is in violation of the SLA. SB 229 is pending in this Committee.

SB 747 (Caballero) makes numerous changes to the Surplus Land Act to clarify procedures and provide local agencies with economic development opportunities, as specified. SB 747 is pending in this Committee.

- 9) **Previous Legislation.** 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.

REGISTERED SUPPORT / OPPOSITION:

Support

California Attorney General Rob Bonta
California Housing Partnership Corporation
Non-profit Housing Association of Northern California (NPH)

Opposition

California Association for Local Economic Development (CALED)

Oppose Unless Amended

Association of California Healthcare Districts (ACHD)
Association of California Healthcare Districts; the
California Special Districts Association
California State Association of Counties (CSAC)
City of Tustin
El Toro Water District
Irvine Ranch Water District
Mesa Water District
Orange County Sanitation District
Rancho California Water District
Rural County Representatives of California (RCRC)
Santa Margarita Water District
Trabuco Canyon Water District
Urban Counties of California (UCC)

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