Date of Hearing: June 15, 2022

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
SB 361 (Umberg) – As Amended June 6, 2022

SENATE VOTE: Not Relevant.

SUBJECT: Surplus land.

SUMMARY: Deletes the penalty provisions of the Surplus Land Act (SLA) and prohibits local agencies from proceeding with disposal of property if the department of Housing and Community Development (HCD) issues a notice of violation (NOV). Specifically, **this bill**:

1) Deletes the penalty provisions in the SLA that make a local agency liable for a penalty of 30 percent of the final sales price (first offense) or 50 percent of the final sales price of a parcel that is disposed of in violation of the SLA.

2) Provides that, if HCD submits a NOV to a local agency informing the agency that it is disposing of a parcel in violation of the SLA, the local agency must cure or correct the alleged violation within 60 days of receipt of the NOV, unless HCD deems the alleged violation not to be a violation in less than 60 days.

3) Provides that a disposing agency that fails to cure or correct an alleged violation within 60 days shall not dispose of the parcel specified in the NOV until HCD determines that the disposing agency has complied with the SLA.

4) Requires a local agency that receives a NOV, pursuant to the terms specified in the bill, to hold an open and public session to review and consider the proposed lease or sale and the substance of the violation.

5) Requires the governing body of a local agency to comply with existing public notice requirements, and to disclose the notice of the public session on the local agency's internet website and in a conspicuous public place at the office of the local agency at least 14 days prior to the public session at which the proposed lease or sale and the NOV will be considered.

6) Prohibits a local agency's governing body from taking final action to ratify or approve a proposed disposal until holding a public session, as required by the bill.

7) Finds and declares that the public meeting and notification requirements of the bill further the purposes of the California Constitution as it relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies.

8) Includes findings that the bill is necessary to give the public adequate notice of and opportunity to comment in an open and public session on the proposed disposition and use of surplus public property by a local agency in cases where the local agency has not complied with the statutory requirements for the disposal of surplus land by a local agency pursuant to the SLA.

9) Provides that no reimbursement is required by this bill because the only costs that may be incurred by a local agency or school district under this bill would result from a legislative mandate that is within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution.

10) Provides that that if the Commission on State Mandates determines that this act contains other 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) Establishes the following conditions on local agencies related to the disposition of local surplus land via the SLA:

    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, beginning in 2021.

    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 day. 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 purchasing 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.

2) Establishes requirements related to the conduct and proceedings of public commissions, boards and councils, and other public agencies under the Ralph M. Brown Act (Brown Act). Specifically:

a) The Brown Act generally requires meetings to be noticed in advance, including the posting of an agenda, and generally requires meetings to be open and accessible to the public. The Brown Act also generally requires members of the public to have an opportunity to comment on agenda items, and generally prohibits deliberation or action on items not listed on the agenda.

b) The Brown Act provides specified exemptions for certain proceedings that a local legislative body may conduct during a closed session, including meetings with the local agency's negotiator prior to the purchase, sale, exchange, or lease of real property by or for the local agency, as specified.

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

COMMENTS:

1) **Author's Statement.** According to the author, "Recent events in Anaheim have shed light on unforeseen consequences within the Surplus Land Act. In April of 2021, the California Department of Housing and Community Development sent the City of Anaheim a letter, warning that it could be in violation of the state's Surplus Land Act. Despite this notification, and the potential of receiving a $96 million fine, the City of Anaheim continued to push the deal through. To accommodate the fine, City officials planned to simply transfer the $96 million from the $123 million in affordable housing that was already included in the stadium land deal. Thereby, negating the intended effects of the Surplus Land Act's fine enforcement. In order to avoid this in the future, it is necessary to create stronger disincentives to deter local authorities and private entities from circumventing the Surplus Land Act. Therefore, SB 361 would prohibit a disposing agency from disposing of a parcel of land until the department of Housing and Community Development has determined that the disposing agency is no longer in violation of the Surplus Land Act and would require that the disposing agency to provide notice at least 14 days prior to a public session, for the purpose of reviewing the deal, taking place."

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) **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. This could allow a local agency to 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 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 leases land to a private entity, there is no sales price or date to base the penalty on. Therefore, it is unclear what penalty, if any, could apply to land *leased* in a manner that HCD finds in violation of the SLA.

   AB 2357 (Ting), which this Committee approved in April, seeks to remedy this by linking the penalty to the fair market value of the property at the time of disposition, or the sales price of the property, whichever is greater.

5) **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 Office of the Attorney General 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 ongoing 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 the Attorney General 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 determined that the city might have violated the judgment, 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."

Shortly after 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 investing 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.

6) **The Brown Act.** The Brown Act was enacted in 1953 and has been amended numerous times since then. The legislative intent of the Brown Act was expressly declared in its original statute, which remains unchanged:

"The Legislature finds and declares that the public commissions, boards and councils and other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly. The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created."

The Brown Act generally requires meetings to be noticed in advance, including the posting of an agenda, and generally requires meetings to be open and accessible to the public. The Brown Act also generally requires members of the public to have an opportunity to comment on agenda items, and generally prohibits deliberation or action on items not listed on the agenda.

Closed sessions are allowed under the Brown Act for specified purposes. One of those purposes is to meet with the local agency's negotiator for certain real estate transactions.

7) **Bill Summary.** This bill deletes the penalty provisions of the SLA and provides that a disposing agency that fails to cure or correct an alleged violation within 60 days of receiving a NOV from HCD shall not dispose of the parcel specified in the NOV until HCD determines that the disposing agency has complied with the SLA.

This bill also requires a local agency that receives a NOV from HCD pursuant to the terms specified in the bill to hold an open public session to review and consider the proposed lease or sale and the substance of the violation.

This bill is author sponsored.

8) **Policy Considerations.** The Committee may wish to consider the following.

   a) **SLA Violations and Penalties.** This bill would eliminate the penalty provisions that AB 1486 added to the SLA in 2019. In its place, the bill would provide that, if HCD issues a NOV, then a local agency must halt its transaction. However, under the terms of this bill, if HCD fails to notify a local agency within 30 days, a local agency can continue to dispose of any property in violation of the SLA without any threat of penalty for that violation. The penalty provisions in the SLA are new and relatively untested. In fact, while HCD has provided technical advice to many agencies, the City of Anaheim is the only local agency that the state has pursued enforcement against under the revised SLA. Additionally, as noted above, this Committee recently approved legislation strengthening the penalty provisions of the SLA. The Committee may wish to consider if it is appropriate to amend the SLA to allow violations to occur without penalty.

   b) **Real Estate Transactions and the Brown Act.** This bill requires local agencies to hold an open public session "to review and consider the proposed lease or sale and the substance of the notice of violation" issued by HCD with regard to the SLA. The Brown act exempts a variety of actions and proceedings from public session requirements, including negotiations regarding real estate transactions as these negotiations could be compromised if confidential information and negotiating tactics are made public. The Committee may wish to consider if this information should be made public as punishment for an alleged violation of the SLA.

9) **Committee Amendments.** The Committee may wish to consider the following amendments:

   a) **Penalties.** Remove the proposed deletion of the existing SLA penalties from the bill.

   b) **District Bill.** Amend the bill to make the new procedures only apply to Orange County and the cities located within the county.

   c) **Brown Act Clarification.** Clarify that the jurisdictions subject to the bill are not required to discuss information regarding the sale or lease of property that is protected as privileged information under the Brown Act.

   d) **Sunset.** Sunset the terms of the bill on January 1, 2030.

10) **Related Legislation.** AB 1784 (Seyarto) exempts low density parcels located in jurisdictions that meet or exceed their 6th cycle regional housing needs allocation production targets for very low income and low income housing on an annual basis from the SLA. AB 1784 was held in the Housing and Community Development Committee.

    AB 2319 (Bonta) creates an exemption from the SLA for the Alameda Naval Air Station. AB 2319 is pending in the Senate Governance and Finance Committee.

    AB 2357 (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 2357 is pending in the Senate Governance and Finance 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.

SB 1373 (Kamlager) extends the authority for local agencies to complete disposition of certain surplus property in accordance with the SLA as it read on December 31, 2019. SB 1373 is pending in this Committee.

11) **Previous Legislation.** AB 175 (Committee on Budget), Chapter 255, Statutes of 2021, among other provisions, provided that surplus land disposal procedures existing on December 31, 2019, apply to the Metro North Hollywood Joint Development Project if a local agency has entered into an ENA or legally binding agreement to dispose of related property as of September 2019. Provides that the disposition shall be completed no later than December 31, 2024.

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 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.

SB 51 (Durazo), Chapter 130, Statutes of 2021, among other provisions, provided that surplus land disposal procedures existing on December 31, 2019, apply to a parcel that a local agency that issued a competitive request for proposals as of September 30, 2019, that included at least 100 residential units and at least 25 percent of the total units are restricted to lower income housing, and other specified factors.

12) **Proposition 42.** Proposition 42 was passed by voters on June 3, 2014, and requires all local governments to comply with the Public Records Act and the Brown Act and with any subsequent changes to those Acts. Proposition 42 also eliminated reimbursement to local agencies for costs of complying with the Public Records Act and the Brown Act.

This bill contains language that says that the Legislature finds and declares that Section 2 of the bill furthers the purpose of the California Constitution as it relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies. Pursuant to paragraph (7) of subdivision (b) of Section 3 of Article I of the Constitution, the bill also includes a finding that states, "This act is necessary to give the public adequate notice of and opportunity to comment in an open and public session on the proposed disposition and use of surplus public property by a local agency in cases where the local agency has not complied with the statutory requirements for the disposal of surplus land by a local agency."

Section 4 of the bill specifies that no reimbursement for local agencies to implement the bill's provisions is necessary because "the only costs that may be incurred by a local agency or school district…would result from a legislative mandate that is within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution."

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

14) **Arguments in Support.** None on file.

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

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Opposition

None on file

Analysis Prepared by: Hank Brady / L. GOV. / (916) 319-3958