Date of Hearing: June 28, 2023

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
SB 747 (Caballero) – As Amended May 18, 2023

SENATE VOTE: 38-0

SUBJECT: Land use: economic development: surplus land.

SUMMARY: Makes numerous changes to the Surplus Land Act (SLA) to clarify procedures and provide local agencies with economic development opportunities pursuant to Economic Opportunity Law (EOL), as specified. Specifically, **this bill**:

1) Specifies that the provisions of EOL are an alternative to any other authority granted to, or procedures required by law for, cities and counties to acquire, sell, lease, or otherwise transfer property owned by cities or counties.

2) Makes the following substantive and non-substantive changes to the SLA:

   a) Specifies that the SLA does not apply to properties that a local agency proposes to sell, lease or transfer pursuant to EOL.

   b) Adds new categories of land to the list of "exempt surplus land," including all of the following:

      i) Land that is jointly developed or used for specified joint developments between a transit operator and another public agency.

      ii) Land purchased using federal funds and for which a federal agency has authorized its use for specific purposes.

      iii) Land transferred to a community land trust that meets all of the following conditions:

         (1) The property is being developed or rehabilitated as an owner-occupied single-family dwelling, an owner-occupied unit in a multifamily dwelling, a member-occupied unit in a limited equity housing cooperative, or a rental housing development.

         (2) Improvements will be available for use and ownership or for rent by low- and moderate-income households.

         (3) Includes a deed restriction or other instrument that requires an enforceable restriction on the sale or resale value of owner-occupied units, or the affordability of rental units, to be recorded before the lien date following the community land trust's acquisition of the property.

      iv) Additional categories of exempt surplus land that the Department of Housing and Community Development (HCD) determines, including sites that are not suitable for housing.

c) Modifies the existing definition of "exempt surplus land" as follows:

   i) Expands the exemption for the sale of smaller parcels that are not contiguous to land a state or local agency owns and uses for open space or affordable housing to include leases of this property.

   ii) Expands the exemption for local agencies transferring surplus land to another public entity to include transfers to third-party intermediaries for future dedication for the receiving agency's use.

   iii) Adds parking lots to the type of exempt surplus land that can be conveyed to an owner of an adjacent property.

   iv) Removes the requirement for certain affordable housing projects to be put out to open, competitive bids to qualify as exempt surplus land.

   v) Expands the current exemption for mixed-use developments over one acre and over 300 housing units with at least 25% units reserved for lower-income households to include any mixed-use development with more than one publicly owned parcel that restricts at least 25% of units to lower-income households.

   vi) Specifies that for surplus land exempt due to valid legal restrictions, valid legal restrictions include:

      (1) Existing constraints under ownership rights or contractual obligations that prevent the use of the property for housing.

      (2) Conservation or other easements or encumbrances that prevent housing development.

      (3) Existing leases, or other contractual obligations or restrictions.

      (4) A voter-approval requirement to transfer the property.

   vii) Provides that feasible methods to mitigate or avoid a valid legal restriction do not include a requirement that the local agency acquire additional property rights or property interests belonging to third parties.

   viii) Requires local agencies to include the relevant legal restrictions in its adopted written findings for the disposal of exempt surplus land.

d) Expands the definition of "agency's use" to include parcels used or planned for use for transit or transit-oriented development, port property used to support logistics, airports, state tidelands, sites for broadband equipment or wireless facilities, and buffer sites near waste disposal sites.

e) Provides that the SLA's definition of district, for which "agency use" can include commercial or industrial uses, includes the following types of districts if the land is located within the jurisdiction of a city, county, or city and county that has adopted a substantially compliant housing element and has been designated as pro-housing: infrastructure financing districts, enhanced infrastructure financing districts, community

revitalization and investment authorities, affordable housing authorities, transit village development districts, and climate resilience districts.

f) Adds a definition of "dispose" to mean the sale of surplus land, or the lease of surplus land for longer than 15 years, including renewal options included in the initial lease.

g) Modifies SLA procedures in the following ways:

   i) Allows a local agency to administratively declare land as "exempt surplus land" if it meets all the following criteria:

      (1) The land is located within a city, county, or city and county that has adopted a substantially compliant housing element, as specified.

      (2) The land is located within a city, county, or city and county that is designated as pro-housing, as specified.

   ii) Removes a requirement for a local agency to send a notification of availability for surplus land prior to disposing of the property, or entering negotiations for its disposal, if it is disposing of the property to, or entering negotiations with, an affordable housing developer proposing to develop an affordable housing project that meets or exceeds the SLA's 25% affordability threshold.

   iii) Requires a local agency that proceeds with a disposal of surplus land to consider the matter at a public meeting within 30 days after receiving a notice of violation from HCD.

   iv) Extends deadlines for surplus land disposals where a city or county entered into a legally binding agreement to dispose of the property prior to September 30, 2019, and the transferee has exercised one or more unilateral extension options included in the original agreement, until December 31, 2025, before they become subject to the SLA.

h) Requires HCD to solicit public comments on its proposed guidelines prior to adopting, amending, or repealing them, and requires HCD to consider and respond to public comments in writing.

i) Requires HCD to provide the local agency an appeals process to overturn an adverse action taken by HCD, which must be overseen by an independent trier of fact, as specified.

j) States that the SLA shall not be interpreted to require a local agency to dispose of land that is determined to be surplus.

k) States that the SLA shall not apply when it conflicts with any other provision or authority of statutory law.

l) Makes technical and organizational changes to the SLA.

EXISTING LAW:

1) Establishes EOL, which provides a process for a city, county, or city and county to sell or lease properties, that are returned to them as part of the long-range property management plan of a former redevelopment agency, for economic development purposes. EOL provides that its provisions are an alternative to any other authority granted to local agencies to dispose of their property. The disposal process under EOL includes various steps, including a requirement for the local agency to pass a resolution or ordinance approving the sale or lease of the property, which must include a finding that the property's sale or lease will assist in the creation of economic opportunity. (Government Code (GC) § 52200 – 52200.6).

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: According to the Senate Appropriations Committee:

1) HCD estimates total costs of approximately $2.93 million and 8.0 PY of staff for each of the first two years, and ongoing costs of approximately $2.76 million and 7.0 PY of staff each year thereafter (General Fund). These cost include resources for the following:

   a) 4.0 PY of staff to implement changes to the SLA, including updating guidelines, engaging with local entities for technical assistance, resolving disputes, and incorporating new exemptions into educational materials.

   b) 1.0 PY of IT support (limited 2-year position) to implement an appeal tracking system, and 3.0 PY of new legal staff to establish and administer an appeals process by which local agencies can contest determinations before an "independent trier of fact," based on an assumed 20 appeals each year.

   c) Annual ongoing costs of approximately $1.06 million for an interagency agreement with the Office of Administrative Hearings (OAH) to retain their services as an "independent trier of fact."

2) Unknown, likely minor state-mandated costs for local agencies to revise procedures for identifying and disposing of surplus lands. Local costs may be reimbursable by the state, subject to a determination by the Commission on State Mandates, should a local agency file a claim (General Fund).

COMMENTS:

1) **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.

2) **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.

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) **Land Dispositions under the SLA.** HCD recently 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.

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%

5) **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

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.

AB 480 (Ting), which this Committee approved in April, proposes to allow a subset of exemption dispositions (bolded in the chart above) to be disposed of after posting a public notice, allowing for quicker disposal than could be achieved through making a declaration at a formal meeting of the governing body. The exemptions identified in AB 480 constitute 46 percent of exempt dispositions identified by HCD. This bill would allow a local agency that owns land located within a jurisdiction that is identified by HCD as a pro-housing jurisdiction with a substantially compliant housing element to use an administrative notice process for every exemption category currently in the SLA as well as several other categories created by this bill. According to HCD, as of February 2023, only nine cities and two counties were designated as pro-housing jurisdictions. The mechanics of the administrative notice procedure proposed in this bill are similar to the streamlined public notice process created in AB 480 for a smaller subset of exemptions.

6) **Administrative Procedures.** The Administrative Procedures Act (APA) establishes standard provisions that apply to rulemaking proceedings as well as the adjudicative procedures related to administrative hearings. Similar to other laws with broad application, such as the Fair Political Practices Act or the Ralph M. Brown Act (Brown Act), the APA is structured in a way that it can be applied to a wide universe of public entities, officials, or actions. The APA applies broadly to state agencies unless a statute specifically exempts an agency or action from the APA.

    a) **Rulemaking Actions Under the APA.** The Office of Administrative Law (OAL) administers the rulemaking provisions of the APA and reviews rulemaking proceedings prepared by state agencies. The APA establishes procedures that all agencies must follow when developing regulations that implement or make clear statutory provisions. While the specific scope of an agency's authority to implement a particular statute is typically embedded in that statute, the APA establishes uniform procedures that agencies must comply with when adopting regulations. This includes, but is not limited to, the following requirements for rulemaking agencies proposing to add, amend or repeal regulations:

        i) Requirements for rulemaking agencies to prepare an initial statement of reasons (ISOR) explaining the specific purpose and necessity of each section of the regulation.

        ii) Requirements for rulemaking agencies to prepare an estimate of the economic impact of the proposed regulations.

        iii) Requirements for rulemaking agencies to hold an initial 45-day comment period on the initial draft of the regulations and subsequent 15-day comment periods on any proposed changes to the initial regulations that occur during the rulemaking period.

        iv) Requirements for rulemaking agencies to hold a public hearing if requested by interested parties.

v) Requirements for rulemaking agencies to prepare written responses to written comments received during the 45-day or any subsequent 15-day comment period as well as any oral comments received at a public hearing.

vi) Requirements to prepare a final statement of reasons (FSOR) recognizing changes made throughout the rulemaking process and deviations from the ISOR.

vii) Requirements to complete the rulemaking and submit the rulemaking record to OAL for review and approval within one year.

OAL reviews rulemaking proceedings to ensure compliance with the APA, such as whether the agency has sufficiently demonstrated that specific provisions of the regulations are necessary to implement the statute, whether the agency has complied with the timelines and disclosure requirements of the APA, and whether the agency responded to all germane comments submitted to the agency regarding the rulemaking proceeding.

b) **Hearings Under the APA.** The APA additionally establishes standards for informal and formal hearings conducted either directly by state agencies and commissions or by the OAH on their behalf. The statute provides a standard process and code of procedures that govern hearings and ensure the rights of parties to the hearing are protected. The statute governs hearing procedures for more than 1,500 state and local agencies. The statute is written broadly enough to be applicable to and govern the array of state administrative hearings on a variety of subjects. For example, APA hearing requirements apply to hearings related to appeals of penalties issued for violations of environmental regulations, actions to suspend or revoke a medical license, actions related to financial audits of local education agencies, administrative fines assessed by the Department of Corrections, and many more.

The adjudicative procedures embedded in the APA include requirements for the conduct of informal and formal administrative hearings.

7) **Author's Statement and Bill Summary.** According to the author, "For decades, redevelopment agencies (RDA) were responsible for community revitalization and economic development. Among their many activities, RDAs were authorized to set aside funds to acquire property that could later be used to revitalize communities by attracting new business, jobs, and housing. However, RDAs were not without controversy due to the scope of their authority and lack of clarity in law for how properties acquired should be dealt with. In 2011, RDAs were dissolved and the [SLA] became the primary statute that determined how local governments may dispose of land held in 'surplus.' Under the SLA, a local agency must issue notice and prioritize the development of affordable housing for surplus land it wishes to dispose of. While affordable housing production is critical to meet California's growing demand for housing, without jobs and other economic development alongside it, communities will continue to lose out. The SLA has limited the authority of local governments to develop affordable housing and pursue the economic opportunities best suited for their communities. SB 747 continues to prioritize affordable housing production while also providing much needed statutory clarity to allow for a more tailored, community-driven approach to disposal and development of surplus land."

This bill makes a series of substantive changes to EOL and the SLA.

Changes to EOL reassert EOL as an alternative disposition mechanism, authorizing local agencies to use EOL authority to dispose of surplus land in lieu of the SLA.

Changes to the SLA include the following:

a) Expand and modify the list of categories of land that qualify as "exempt surplus land" and create a new set of procedures for local agencies to identify land as "exempt surplus land.

b) Expand and revise the definition of land that is being used for "agency use" and is therefore not surplus land.

c) Define leases of greater than 15 years as a form of disposal of surplus land.

d) Require HCD to solicit comments prior to updating SLA guidelines and to establish an appeal process for local agencies to contest adverse decisions.

e) Make other procedural and technical changes.

This bill is sponsored by the author.

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

f) **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.

g) **Streamlined Declarations.** One provision of this bill seeks to simplify the exemption process for qualifying local agencies by allowing these agencies to declare parcels "exempt surplus land" administratively, rather than at a public meeting of their governing board. In previous legislation before this Committee, several stakeholders questioned what would constitute an "administrative declaration." The Committee may wish to consider clarifying this provision.

h) **APA Exemptions for the SLA.** The SLA exempts certain actions taken by HCD from the APA. As the APA applies broadly to guidance, decisions, and other actions issued or taken by state and local agencies, it is not uncommon for specific statutes to include an APA exemption. For example, guidelines related to the administration of grant programs are commonly exempt from the APA. Additionally, situations of great urgency can be subject to an emergency rulemaking process, which includes many of the standard rulemaking requirements but allows a rulemaking to be completed in an expedited fashion.

The APA exemption granted to HCD's SLA enforcement authority is extraordinary. Under the SLA, HCD can levy fines equivalent to 30 percent of the sales price for a first offense. In the case of the City of Anaheim, HCD alleged an SLA violation that would have required a fine of $96 million (this fine amount was leveraged into a settlement agreement that ultimately dissipated under a separate criminal investigation). State agencies with substantially less drastic enforcement authority (e.g., fines of no more than $1,000 per violation) are subject to the APA for both their rulemaking detailing

violations, and hearings governing appeals of those violations. The APA ensures due process in relatively pedestrian proceedings as well as administrative proceedings of great consequence.

This bill requires guidelines and procedures HCD adopts relative to enforcement of the SLA to include comment periods and appeals processes that partially mirror the standard processes required by the APA. This is a step toward inserting more public input in SLA proceedings; however, the Committee may wish to consider whether it is appropriate to continue to exempt such significant penalties from the due process protections afforded by the APA.

i) **Transit Oriented Development.** This bill adds parcels planned to be used for transit and transit-oriented development, to the list of activities that qualify as "agency use" and are therefore excluded from the disposition procedures of the SLA. "Transit-oriented development" could be interpreted to mean a variety of types of development. The Committee may wish to define this term.

j) **Affordable Housing Authority.** This bill defines "district" as including affordable housing authorities. It is unclear why these entities would need to be specified in the SLA as their presumable purpose is to provide affordable housing. The Committee may wish to consider striking this term from the proposed definition of district.

k) **Parking Lots.** The SLA currently considers former streets, rights of way, and easements that are conveyed to an owner of an adjacent property to be exempt surplus land. This bill would add parking lots to this list of land that may be exempt when conveyed to an adjacent owner. The Committee may wish to consider limiting this to parking lots of a specific size.

l) **Voter Approval.** This bill proposes to define valid legal restrictions to include "a requirement for voter approval to transfer the property." This could allow existing or prospective NIMBY voter initiatives that broadly restrict the ability of local agencies to transfer property to create an SLA exemption. This could incentivize local communities to adopt new initiatives in order to sidestep the SLA. The Committee may wish to consider whether this provision is appropriate.

m) **Contractual Requirements**. This bill amends an existing category of exempt surplus land that deems land subject to valid legal restrictions as a category of exempt surplus land. This bill defines valid legal restrictions to include existing leases or other contractual obligations or restrictions, as well as existing constraints under ownership rights or contractual obligations that prevent the use of the property for housing. The language relative to valid legal restrictions does not have a start date for "existing" restrictions. This could authorize local agencies to enter into new contractual agreements that render surplus land exempt. This may create a loophole for local agencies to skirt the SLA. This bill also amends Section 54234 to create a new category of exemption for legally binding agreements entered into prior to September 30, 2019. This language appears unnecessary and duplicative given the proposed amendments to the language that exempts surplus land subject to existing valid legal restrictions. The Committee may wish to consider specifying a start date and addressing the duplication created by Section 9.

n) **Leases.** This bill specifies that the SLA applies to lease terms that exceed 15 years in length. As noted in AB 457 (Joe Patterson), which the committee approved earlier this year, including short-term leases in the SLA can frustrate the ability of local agencies to productively use land. For example, a local agency may acquire property in order to develop a highway overcrossing. Once the land is acquired, the agency may require decades to plan and generate revenue for the project. As currently structured, the SLA prevents local agencies from executing leases that would allow them to use the land productively until a project is ready to break ground. This is due to the fact that many entities will refuse to accept a short-term lease if the property requires temporary improvements. The Committee may wish to consider if 15 years is the correct length of time for long-term leases.

9) **Committee Amendments.** In order to address some of the issues noted above, the Committee may wish to consider the following amendments:

a) **Streamlined Declarations.** Recast the language that authorizes pro-housing local agencies that have substantially compliant housing elements to make streamlined exemption decisions as follows:

i) Replace the language stating that a local agency may "administratively declare" land as exempt surplus land with language stating that an eligible local agency that elects to not make a declaration at a public meeting shall identify exempt surplus land in a notice that is published and available for public comment, including notice to the entities specified in the SLA at least 30 days prior to the exemption taking effect.

ii) In addition to allowing pro housing local agencies to use this exemption process, incorporate the provisions of AB 480, which allow this exemption process to be used by all agencies for specific categories of exempt surplus land.

b) **APA Exemption.** In lieu of creating new administrative public comment procedures for the SLA guidelines, strike the existing APA exemptions from the SLA.

c) **Transit Oriented Development**. Define transit oriented development as follows: "Transit-oriented development" means a project that meets both the location and affordability requirements to qualify as an eligible project pursuant to guidelines established by the Department of Housing and Community Development for the Transit Oriented Development Implementation Program commencing with Section 53560 of the Health and Safety Code."

d) **Affordable Housing Authority.** Strike the reference to affordable housing authorities from the definition of district.

e) **Parking Lots.** Limit the exemption for transferring parking lots to adjacent property owners to parking lots that are less than ½ acre in size.

f) **Voter Approval.** Strike provisions that make voter approval a valid legal restriction.

g) **Contractual Requirements.** Specify that existing legal restrictions are restrictions entered into prior to January 1, 2019 and delete Section 9 of the bill.

10) **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 34 (Umberg) Prohibits the County of Orange or a city located within the County of Orange from proceeding with disposal of surplus land if HCD issues a notice of violation of the SLA. SB 34 is pending in this Committee.

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

11) **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, 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.

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

13) **Arguments in Support.** The California Building Industry Association writes in support, "the SLA is generating increasing confusion and time delays for local agencies seeking to acquire, sell or lease property for a spectrum of public uses consistent with their underlying public purposes, mission and statutory authority including permissible economic development uses, which jeopardizes financing and increases costs.

    "SB 747 addresses these concerns through an array of helpful changes to the SLA…"

14) **Arguments in Opposition.** The San Francisco Housing Accelerator Fund writes in opposition, "The [SLA] is a landmark housing law that requires public agencies, including cities, when disposing of public land they no longer need, to first make it available for affordable housing development. The SLA creates a timeline for local jurisdictions to dispose of surplus land, one that gives the first right to bid on it to affordable housing builders but allows for local jurisdictions to move forward with their plans if no agreement is struck. Since January 2021, surplus land transactions tracked by [HCD] have resulted in 8,387 housing units, including over 5,800 units of housing affordable to lower-income households."

REGISTERED SUPPORT / OPPOSITION:

Support

Antelope Valley Economic Development & Growth Enterprise
Calaveras County Economic & Community Development

California Association for Local Economic Development (CALED)
California Building Industry Association
California Business Properties Association
California Transit Association
City of Bakersfield
City of Bell Gardens
City of Bellflower
City of Brentwood
City of Camarillo
City of Carlsbad
City of Corona
City of Elk Grove
City of Fowler
City of Fullerton
City of Indian Wells
City of Inglewood
City of Kerman
City of Lakewood
City of Merced
City of Montclair
City of Murrieta
City of Norwalk
City of Oceanside
City of Ontario
City of Palmdale
City of Paramount
City of Salinas
City of San Marcos
City of Suisun City
City of Tustin
City of Vista
City of West Sacramento
City of Inglewood
Irvine Ranch Water District
Kosmont Companies
San Bernardino County
Solano Economic Development Corporation
Tulare Chamber of Commerce

Support if Amended

Association of California Healthcare Districts (ACHD)
California Association of Sanitation Agencies
California Special Districts Association
Irvine Ranch Water District

Opposition

California Housing Consortium
California Housing Partnership Corporation
Eah Housing
East Bay Housing Organization - Ebho
Housing California
Mercy Housing California
Midpen Housing Corporation
Non-profit Housing Association of Northern California (NPH)
Public Interest Law Project
San Diego Housing Federation
Session Real Estate, INC.
Southern California Association of Non-profit Housing (SCANPH)
The San Francisco Housing Accelerator Fund
Western Center on Law & Poverty

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