



DEPARTMENT OF
PLANNING AND DEVELOPMENT

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August 23, 1994

Law and Legislation Committee
Sacramento, California

Honorable Members in Session:

SUBJECT: FUTURE HOUSING ELEMENT REFORM BILL (M94-038)

LOCATION AND COUNCIL DISTRICT: Citywide

RECOMMENDATION:

This report recommends that the Law and Legislation Committee review the attached version of Assembly Bill 51 that, when amended on August 8, proposed reform of State Planning Law regarding mandated housing elements. After discussion and review, the Committee may wish to direct staff to convey its support of the ideas embodied in this bill to the State of California.

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Patricia Mendoza, Associate Planner, 264-8268

FOR COMMITTEE MEETING OF: August 30, 1994

SUMMARY

This report describes Assembly Bill 51 (AB51), by Assembly Member Jim Costa, as amended on August 8, 1994. Since then, the bill has been greatly revised and no longer involves housing element reform. As presented to the Committee by Marc Brown on August 16, supporters of the former bill are continuing to discuss the issue of housing element reform. Those supporters, led by the California Rural Legal Assistance Foundation and the California Association of Realtors, will meet after the upcoming closure of the State legislature to prepare a bill for next year that addresses their previous concerns. They have asked this Committee to consider supporting the August 8 version of AB51.

At the August 16 meeting, the Law and Legislation Committee asked staff to prepare an analysis. The Committee discussed supporting the general concepts embodied in the August 8 version of the bill.

BACKGROUND INFORMATION

At the request of the Law and Legislation Committee, staff previously presented AB51 and Senate Bill 1839 for review. Both bills would have amended the State-mandated law requiring jurisdictions to adopt a five-year housing element as part of its general plan. An objective of housing element reform is to focus attention on the original intent of the law, i.e., to address California's housing needs. Reform would also mean streamlining requirements. Another objective is to achieve more compliance with the law. Supporters of the bills either dropped or gutted them when they were unable to reach a consensus on opposing issues.

As Mr. Brown presented to the Committee, several housing organizations are continuing the effort to amend State housing element law. They will meet in early September to prepare a bill for the next round of legislative work at the State. They have asked the Committee to support a future bill that would follow the August 8 version of AB51.

The staff report describes the significant features of the bill. It includes a comparison to existing law and a staff recommendation for each provision. To help frame the discussion, staff has also analyzed certain provisions of the bill as applied to the City of Sacramento's recent housing performance.

1. Self-Certification Process

- **Proposed amendments:** The proposed bill allows local jurisdictions the ability to self-certify its element if the following conditions are met: (1) The jurisdiction has issued building permits that equal or exceed its regional performance rate for new construction and (2) it provides at least 75% of its lower income housing needs and 50% of those dwellings must be affordable to very low income households.
- **Existing law:** Existing law does not allow cities or counties to self-certify the update of the housing element. Currently, a locality's element is subject to the discretionary review of HCD.
- **Recommendation:** Staff recommends support of the concept of self-certification. The conditions for self-certification, however, are largely dependent on economic factors that are beyond the City's control.

Analysis of Sacramento's 1985-1991 housing performance

Analysis of the 1985-1991 housing element cycle shows the City met the first condition stated in the bill. Because of several financial factors, however, Sacramento was unable to meet the second condition regarding lower income housing need. The City's performance is briefly summarized in the table on the next page.

Approximately 21,254 new housing units were constructed in the City of Sacramento during those five years according to building permit activity. In comparison to the City's total

regional housing needs for that period (14,400 housing units), the City easily exceeded its regional performance need as proposed under the first condition of the August 8 version of AB51.

The table below shows that assisted housing accounted for almost 23% of the City's total regional housing needs for the five-year planning period. However, the City would have difficulty in meeting the second condition of the proposed legislation for self-certification.

Assisted Housing Units in Comparison to Regional Housing Need for 1985-1991

| Income Levels | Regional Housing Needs | New Assisted Housing Units | Assisted Rehabilitated Housing Units | Total Assisted Housing Units |
|-----------------------|------------------------|----------------------------|--------------------------------------|------------------------------|
| Very Low Income | 2,563 | 468 | 1,231 | 1,699 |
| Low Income | 2,693 | 1,514 | 1,739 | 3,253 |
| Moderate Income | 3,542 | 1,288 | 0 | 1,288 |
| Above Moderate Income | 5,602 | 0 | 0 | 0 |
| Total Units | 14,400 | 3,270 | 2,970 | 6,240 |

Information in the table above is from the update to the City's housing element. The assisted housing numbers are compiled from records of SHRA-administered programs. That figure does not account for privately-financed units constructed during that period that were affordable to lower income households.

Through assisted new housing construction programs, Sacramento was only able to meet 38% of its total lower income housing needs. The City would have to account for new housing constructed by the private market to meet the 75% mark under the second condition for self-certification. If staff were to include rehabilitated or repaired housing through SHRA-administered programs, the City would have met approximately 94% of its lower income regional housing needs. Although those rehabilitated units are not new homes, one could argue that their repair reintroduced them to the housing supply for lower income households.

In recent years, the recession has had an impact on local housing activity. That economic factor constrained housing development in the area and may impede the City's ability to self-certify in the future. Recent construction of new homes shows that the number has been slowly declining since the peak building boom in 1986. Sacramento has witnessed construction decline from more than 4,000 to less than 2,000 new homes annually.

2. Time Extension

- Proposed amendments: The version of AB51 in review proposes a maximum one-year time extension for the preparation and adoption of all or part of the General Plan.
- Existing law: The law currently allows for a maximum two-year extension.

- **Recommendation:** Staff recommends that the Committee oppose this idea and support continuation of existing practice that offers more flexibility. Limited resources often warrant a local government's request for the maximum two-year extension permitted under current law.

3. Limitations on Local Action

- **Proposed amendments:** The bill prevents a locality from disapproving a project where at least 20% of the units would serve low or very low income households unless the locality adopted or self-certified a housing element.
- **Existing law:** There are no similar restrictions within the current law.
- **Recommendation:** Staff recommends opposition of this concept. Until the City adopts an updated housing element, Sacramento would be required to approve all proposed housing projects that had a minimum of 20% of the total units affordable to low or very low income households. The proposed requirements in the August 8 bill version are more restrictive than those in Council's guidelines for a future inclusionary ordinance. (The City Council directed staff to develop an inclusionary ordinance requiring 15% of ownership units and 10% of rental units be affordable to median income households).

4. Additional Streamlining Measures

- **Proposed amendments:** The bill eliminates required analysis of nongovernmental constraints and energy conservation opportunities. The bill also allows cities and counties to use its "Comprehensive Housing Assistance Strategy" (CHAS) document to satisfy certain housing element requirements.
- **Existing law:** Currently, the law requires analysis of non-governmental constraints and energy conservation opportunities. The law also does not allow cities to use existing documents such as the CHAS to meet certain requirements.
- **Recommendation:** Staff recommends support for those provisions that would eliminate the analysis in question. Those measures would offer minimal to substantial streamline of the work performed by the City.

Staff has based its review of the August 8 bill and recommendations on the City of Sacramento's perspective. It is staff's opinion that reform of existing housing element law would allow the City to focus staff resources on the implementation of housing programs and policies. It is staff's opinion that the City of Sacramento has made positive efforts to meet its local housing obligation by implementing several progressive housing programs that show its commitment toward meeting the housing need of all households. Besides considering the City of Sacramento's perspective, the Law and Legislation Committee might consider the statewide perspective.

FINANCIAL CONSIDERATIONS

A change in state housing element requirements may have future financial implications for the City through direct mandates for preparation of new housing elements and cost of future litigation.


POLICY CONSIDERATIONS

Support of the bill's concepts appears to be consistent with Council's priority of streamlining administrative work.

MBE/WBE

Support does not involve the procurement of goods or services.

Respectfully submitted,



DIANNE GUZMAN, AICP
Director of Planning & Development

Recommendation Approved:



ROBERT THOMAS
Deputy City Manager

AMENDED IN SENATE AUGUST 8, 1994
AMENDED IN SENATE JUNE 29, 1994
AMENDED IN SENATE JULY 6, 1993
AMENDED IN ASSEMBLY MAY 3, 1993
AMENDED IN ASSEMBLY APRIL 1, 1993
AMENDED IN ASSEMBLY MARCH 22, 1993

CALIFORNIA LEGISLATURE—1993-94 REGULAR SESSION

ASSEMBLY BILL

No. 51

**Introduced by Assembly Member Costa
(Coauthor: Assembly Member Goldsmith)**

December 15, 1992

An act to amend Sections 65361, 65400, 65582, 65583, 65584, 65585, and 65587 of, to add Sections 65584.5 and 65586.5 to, and to repeal Sections 65583.1, 65588, 65589.3, 65589.5, and 65589.6 of, the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 51, as amended, Costa. Housing: regional housing needs.

(1) Under existing law, each city, county, and city and county is required to prepare and adopt according to specified deadlines, a general plan for its jurisdiction. Existing law authorizes the Director of Planning and Research to grant extension of time for the preparation and adoption of all or part of the general plan for up to 2 years under certain circumstances.

This bill would amend this provision of law to authorize the Director of Planning and Research to grant extension of time for the preparation and adoption of all or part of the general

plan to only one year.

(2) Existing law requires that each planning agency provide an annual report to the legislative body on progress in meeting regional housing needs, as specified.

This bill would require that the annual report on progress in meeting regional housing needs for the previous calendar year shall be provided, using forms and definitions adopted by the Department of Housing and Community Development pursuant to the Administrative Procedure Act, to the legislative body on or before July 1 of each year.

(3) Existing law requires each city, county, and city and county to adopt for its jurisdiction, according to specified deadlines, a general plan that includes certain mandatory elements, including a housing element.

This bill would add specified conditions for these purposes.

(4) Existing law requires the housing element to include, among other things, a statement of goals, policies, quantified objectives, and scheduled programs for the preservation, improvement, and development of housing.

This bill would create a state-mandated local program by requiring every local government to adopt a housing element, either by itself or through a joint powers agreement with other local governments, that will address the housing needs of all economic segments of the community, as specified.

(5) Existing law authorizes the Department of Housing and Community Development to use a variety of methods to identify an adequate site for housing when evaluating a proposed or adopted housing element for consistency with state law, including redesignation of property to a more intense land use category and increasing the density allowed with one or more categories.

This bill would repeal this authority.

(6) Under existing law, either a council of governments or the Department of Housing and Community Development, in areas with no council of governments, is required to determine, in accordance with specified procedures, the share of a city or county of regional housing needs in all economic sectors of housing. Existing law requires the department to submit to each council of governments, or to

each city and county, specified information and data for use in the determination of the regional share of the statewide housing need.

This bill would create a state-mandated local program by revising the procedures to be followed by cities, counties, and councils of government to determine the projection of new construction housing needs and the need for housing for lower income households in the regions, as specified.

(7) Existing law authorizes a city or county to transfer a percentage of its share of the regional housing needs to another city or county if specified requirements are met.

This bill would create a state-mandated local program by revising the conditions under which the shares of regional housing needs to be net may be transferred among cities and counties.

(8) Existing law establishes a procedure for final adoption of a housing element or amendment to a housing element, including a provision, with a specified exception, that findings of the department are advisory.

This bill would make various changes to the procedures for adoption of a final housing element, including provisions that establish schedules to be followed by each local government or joint powers authority in the preparation and adoption of their housing elements and provisions that authorize local governments meeting specified requirements to submit a self-certification of compliance to the department.

Imposition

The bill would provide that any county with a total population of less than 40,000 that has not self-certified is not required to submit either a draft or adopted element to the department unless an interested party which has participated in the public adoption of the element files a request for review with the county, as specified.

Imposition of these new duties upon a city or county would constitute a state-mandated local program.

(9) Existing law establishes duties on the department for adoption of a housing element or amendment to a housing element.

This bill would impose new duties on the department, including the requirement that it adopt regulations, provide

forms to facilitate preparation, adoption, and implementation of the housing elements, provide assistance to local governments in preparing their analysis of housing needs, and provide additional and targeted technical assistance to local governments to facilitate achievement of performance objectives in the current planning period.

(10) Except as specified, existing law does not authorize the Director of Planning and Research to grant an extension of time to a city, county, or city and county to bring its housing element into conformity with established legal requirements. Existing law provides that any interested party may bring an action in court to review the conformity of the housing element with established legal requirements and provides that the court retains jurisdiction throughout the specified period for compliance.

This bill would grant the Director of Planning and Research the authority to grant an extension of time as specified and adds a provision that there will be a rebuttable presumption of the validity of the housing element if the jurisdiction has self-certified under the proposed procedures set out in this bill and a rebuttable presumption of invalidity of the housing element where the local government has not met its performance standards and cannot self-certify. This bill would also require a local agency to prepare written findings in those instances where the local agency proposes to disapprove or condition the project, using the specified process, requirements, and definitions.

The provisions summarized under ~~(9)~~ (10) would create a state-mandated local program by revising statutory procedures required to be followed by cities, counties, and councils of government.

(11) Existing law requires local governments to revise the housing element of its general plan as is appropriate, but not less than every 5 years, to reflect the results of the periodic review of the housing element.

This bill would repeal this requirement.

(12) Existing law provides that there shall be a rebuttable presumption of the validity of the housing element or amendment if the department has found that it substantially complies with the requirements of applicable law.

This bill would repeal this presumption.

(13) Existing law requires local agencies to make specified findings before disapproving or conditionally approving a housing development project affordable to low- and moderate-income households.

This bill would repeal this requirement.

(14) Existing law requires a city, county, or city and county to bear the burden of proof that its decision has conformed to specified conditions in any action taken to challenge the validity of the decision of the entity.

This bill would repeal this requirement.

(15) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates which do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to those statutory procedures and, if the statewide cost does not exceed \$1,000,000, shall be made from the State Mandates Claims Fund.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 65361 of the Government Code
- 2 is amended to read:
- 3 65361. (a) Notwithstanding any other provision of
- 4 law, upon application by a city or county, the Director of
- 5 Planning and Research shall grant a reasonable extension
- 6 of time not to exceed one year from the date of issuance
- 7 of the extension, for the preparation and adoption of all
- 8 or part of the general plan, if the legislative body of the
- 9 city or county, after a public hearing, makes any of the
- 10 following findings:

1 (1) Data required for the general plan shall be
2 provided by another agency and it has not yet been
3 provided.

4 (2) In spite of sufficient budgetary provisions and
5 substantial recruiting efforts, the city or county has not
6 been able to obtain necessary staff or consultant
7 assistance.

8 (3) A disaster has occurred requiring reassignment of
9 staff for an extended period or requiring a complete
10 reevaluation and revision of the general plan, or both.

11 (4) Local review procedures require an extended
12 public review process which has resulted in delaying the
13 decision by the legislative body.

14 (5) The city or county is jointly preparing all or part
15 of the general plan with one or more other jurisdictions
16 pursuant to an existing agreement and timetable for
17 completion.

18 (6) Other reasons exist that justify the granting of an
19 extension, so that the timely preparation and adoption of
20 a general plan is promoted.

21 (b) The director shall not grant an extension of time
22 for the preparation and adoption of a housing element
23 except in the case of a newly incorporated city or newly
24 formed county which cannot meet the deadline set by
25 Section 65360. Before the director grants an extension of
26 time pursuant to this subdivision, he or she shall consult
27 with the Director of Housing and Community
28 Development.

29 (c) The application for an extension shall contain all of
30 the following:

31 (1) A resolution of the legislative body of the city or
32 county adopted after public hearing setting forth in detail
33 the reasons why the general plan was not previously
34 adopted as required by law or needs to be revised,
35 including one or more of the findings made by the
36 legislative body pursuant to subdivision (a), and the
37 amount of additional time necessary to complete the
38 preparation and adoption of the general plan.

39 (2) A detailed budget and schedule for preparation
40 and adoption of the general plan, including plans for

1 citizen participation and expected interim action. The
2 budget and schedule shall be of sufficient detail to allow
3 the director to assess the progress of the applicant at
4 regular intervals during the term of the extension. The
5 schedule shall provide for adoption of a complete and
6 adequate general plan within two years of the date of the
7 application for the extension.

8 (3) A set of proposed policies and procedures which
9 would ensure, during the extension of time granted
10 pursuant to this section, that the land use proposed in an
11 application for a subdivision, rezoning, use permit,
12 variance, or building permit will be consistent with the
13 general plan proposal being considered or studied.

14 (d) The director may impose any conditions on
15 extensions of time granted that the director deems
16 necessary to ensure compliance with the purposes and
17 intent of this title. Those conditions shall apply only to
18 those parts of the general plan for which the extension
19 has been granted. In establishing those conditions, the
20 director may adopt or modify and adopt any of the
21 policies and procedures proposed by the city or county
22 pursuant to paragraph (3) of subdivision (c).

23 (e) During the extension of time specified in this
24 section, the city or county is not subject to the
25 requirement that a complete and adequate general plan
26 be adopted, the requirement that it be adopted within a
27 specific period of time, or the requirements of state law
28 that its decisions be consistent with those portions of the
29 general plan for which an extension has been granted.
30 However, development approvals shall be consistent
31 with the conditions imposed by the director pursuant to
32 subdivision (d) and any element or elements that have
33 been adopted and for which an extension of time is not
34 sought.

35 (f) If a city or county that is granted a time extension
36 pursuant to this section determines that it cannot
37 complete the elements of the general plan for which the
38 extension has been granted within the prescribed time
39 period, the city or county may request one additional
40 extension of time, which shall not exceed one year, if the

1 director determines that the city or county has made
2 substantial progress toward the completion of the general
3 plan. This subdivision shall not apply to an extension of
4 time granted pursuant to subdivision (b).

5 (g) An extension of time granted pursuant to this
6 section for the preparation and adoption of all or part of
7 a city or county general plan is exempt from Division 13
8 (commencing with Section 21000) of the Public
9 Resources Code.

10 SEC. 2. Section 65400 of the Government Code is
11 amended to read:

12 65400. After the legislative body has adopted all or
13 part of a general plan, the planning agency shall do both
14 of the following:

15 (a) Investigate and make recommendations to the
16 legislative body regarding reasonable and practical
17 means for implementing the general plan or element of
18 the general plan, so that it will serve as an effective guide
19 for orderly growth and development, preservation and
20 conservation of open-space land and natural resources,
21 and the efficient expenditure of public funds relating to
22 the subjects addressed in the general plan.

23 (b) Provide an annual report, by October 1 of each
24 year, to the legislative body, the Office of Planning and
25 Research, and the Department of Housing and
26 Community Development regarding:

27 (1) The status of the plan and progress in its
28 implementation, including the progress in meeting its
29 share of regional housing needs determined pursuant to
30 Section 65584 and local efforts to remove governmental
31 constraints to the maintenance, improvement, and
32 development of housing pursuant to subdivision (e) of
33 Section 65583.

34 (2) The degree to which its approved general plan
35 complies with the guidelines developed and adopted
36 pursuant to Section 65040.2, and the date of the last
37 revision to the general plan.

38 (3) The annual report required pursuant to this
39 subdivision shall be prepared through the use of forms
40 and definitions adopted by the Department of Housing

1 and Community Development pursuant to the
2 Administrative Procedure Act (Chapter 3.5
3 (commencing with Section 11340) of, Chapter 4
4 (commencing with Section 11370) of, and Chapter 5
5 (commencing with Section 11500) of, Part 1 of Division
6 3 of Title 2). This report shall be provided to the
7 legislative body on or before July 1 of each year.

8 SEC. 3. Section 65582 of the Government Code is
9 amended to read:

10 65582. For the purposes of this chapter, these terms
11 shall be defined as follows, unless defined specifically
12 within a paragraph or subdivision of this chapter:

13 (a) "Community," "locality," "local government," or
14 "jurisdiction" means a city, city and county, or county.

15 (b) "Council of governments" means a single or
16 multicounty council created by a joint powers agreement
17 pursuant to Chapter 5 (commencing with Section 6500)
18 of Division 1 of Title 1.

19 (c) "Department" means the Department of Housing
20 and Community Development.

21 (d) "Housing element" or "element" means the
22 housing element of the community's general plan, as
23 required pursuant to this article and subdivision (c) of
24 Section 65302.

25 (e) "Area median income" shall be as periodically
26 established by the Department of Housing and
27 Community Development pursuant to Section 50093 of
28 the Health and Safety Code.

29 (f) "Preservation," "preserve," and "preservation of
30 existing housing," shall mean the maintenance of units
31 with low-income use restrictions or units affordable to
32 low-income households, and may include mitigating the
33 loss of unity demolished by public or private action.

34 (g) "Unit" or "housing unit" shall mean a house, an
35 apartment, a group of rooms, or a single room, occupied
36 as separate living quarters. Separate living quarters are
37 those in which the occupants live and eat separately from
38 any other person in the building and which have direct
39 access from the outside of the building or through a
40 common hall.

1 (h) "Infrastructure" as used in this section shall
2 include sewage systems, water supply systems, or other
3 utility systems, and roads.

4 (i) "Overcrowded household" shall mean a housing
5 unity with more than one person per room not including
6 the bathroom.

7 (j) "Overpaying" shall mean households which are
8 paying in excess of either 25 percent or 30 percent of their
9 gross income for monthly housing costs.

10 (k) "Recycling" shall mean the change of use of a
11 parcel or parcels to a residential use or a more intensive
12 residential use.

13 (l) "Lower income households" means persons and
14 families of low incomes as defined by Section 50093 of the
15 Health and Safety Code.

16 (m) "Regulatory barriers" shall mean any local public
17 policy, as embodied in statutes, ordinances, regulations,
18 or administrative procedures and processes which
19 reduces the potential supply of housing and limits the
20 ability to develop, rehabilitate, assist, or preserve housing
21 units affordable to low- and moderate-income households
22 and population groups with special housing needs.

23 (n) "Natural disaster" shall mean earthquake,
24 tornado, flood, fire, or other acts of God, or the results
25 thereof.

26 (o) "Joint powers agreement" shall mean an
27 agreement between public agencies pursuant to
28 provisions of Chapter 5 (commencing with Section 6500)
29 of Division 7 of Title 1 that is established to promote and
30 facilitate compliance with this article.

31 (p) "Maintain the existing housing stock" shall mean
32 any actions which would ensure that the existing
33 affordable housing stock does not become substandard,
34 fall into disrepair, or become unsafe for habitation.

35 (q) "Improve the existing housing stock" shall mean
36 any actions taken to return substandard housing to safe,
37 adequate conditions.

38 (r) "Institutional resources" shall mean private
39 industry, nonprofit organizations, and public institutions
40 which the jurisdiction will engage in carrying out its

1 housing element programs and policies.

2 (s) "Comprehensive Housing Affordability Strategy"
3 and "CHAS" shall mean the plan required by Section
4 50465 of the Health and Safety Code as specified by the
5 Cranston-Gonzales National Affordable Housing Act of
6 1991.

7 (t) "Existing and projected resources" shall mean any
8 local resources which the jurisdiction can identify which
9 are either available now, or may reasonably expect to be
10 available in the future, to meet identified housing needs,
11 and financial resources which the jurisdiction will apply
12 for, or will assist a developer in applying.

13 (u) "Statewide housing need" shall mean the amount
14 and type of housing, as determined by the department,
15 in conjunction with the Office of Planning and Research
16 and other resources, necessary to provide safe, adequate
17 housing for the state's population, including, but not
18 limited to, any existing housing shortage, accommodation
19 of future population and employment growth,
20 affordability, losses due to deterioration, and the needs of
21 certain special populations.

22 (v) "Statewide Housing Plan" shall mean the plan
23 required by Sections 50450, 50451, and 50452 of the Health
24 and Safety Code.

25 (w) "Self-certify" and "self-certification" shall mean
26 that, upon completion of the reports and findings which
27 adequately address the requirements pursuant to
28 subdivision (a) of Section 65583, a local jurisdiction may
29 determine on its own behalf that the housing element
30 meets the requirements of this article.

31 (x) "Best faith effort" shall mean the local jurisdiction
32 has taken specific affirmative steps which facilitate and
33 support, and has not undertaken activities which
34 constrain, the development, rehabilitation, assistance, or
35 preservation of housing affordable to lower income
36 households.

37 (y) "Certify compliance" shall mean that the
38 department has reviewed the housing element and
39 makes findings that the jurisdiction's efforts meet
40 performance standards, the element demonstrates a best

1 faith effort, or the housing element complies with the
2 requirements of this article.

3 (z) "Conditionally certify compliance, conditional
4 certification, and conditionally certifies" shall mean that
5 the department has reviewed the housing element and
6 made findings identifying conditions, which if met by the
7 jurisdiction, would bring the housing element into
8 compliance with the requirements of this article.

9 SEC. 4. Section 65583 of the Government Code is
10 amended to read:

11 65583. Pursuant to the schedule in Section 65585,
12 every local government shall adopt a housing element in
13 order to address the housing needs of all economic
14 segments of the community. This chapter shall be
15 applicable to all cities and counties, including charter
16 cities. The housing element shall contain the following:

17 (a) A report on the performance of the jurisdiction in
18 meeting its new construction housing needs and needs
19 for housing for lower income households of the previous
20 planning period, as defined pursuant to Section 65584.
21 The report shall quantify and describe the jurisdiction's
22 progress in implementing its housing element. If the
23 jurisdiction's needs were not met in the previous
24 planning period, the performance report shall include an
25 analysis of the jurisdiction's efforts to achieve its
26 performance standards. The analysis may also identify
27 limitations in local institutional capacity that affected
28 implementation of the housing element and identify local
29 technical assistance needs.

30 (b) An analysis and quantification of the existing and
31 future housing needs of the jurisdiction, including the
32 new construction needs and the needs for housing for
33 lower income households both as defined in Section
34 65584. The analysis shall prioritize both new construction
35 needs and needs for housing for lower income households
36 relative to the specific and special housing needs of the
37 jurisdiction, including, but not limited to, rental and
38 ownership affordability needs, and, where applicable, the
39 needs of the homeless, the disabled, elderly, large
40 families, single-head households, farmworkers, and

1 others generally not served by the market. The analysis
2 shall also assess the need to preserve, maintain, and
3 improve the existing housing stock.

4 (c) An inventory, or reference to the jurisdiction's
5 land use element, which includes the amount and zoning
6 of vacant and underutilized land; an identification of sites
7 to accommodate the jurisdiction's new construction
8 needs as defined in Section 65584 with an assessment of
9 infrastructure availability and regulatory capacity for
10 residential development and redevelopment within the
11 planning period of the element.

12 (d) An inventory of the resources for housing
13 development, assistance, rehabilitation, and preservation
14 likely to be available to the jurisdiction within the
15 planning period. The resource inventory shall describe
16 institutional resources and quantify existing financial
17 resources and those which the jurisdiction expects to be
18 available through its efforts and the efforts of other
19 public, nonprofit, and other private institutions.

20 (e) An implementation strategy containing specific
21 actions the jurisdiction will take to meet the needs
22 identified in subdivision (b), including any need
23 transferred pursuant to subdivision (h) of Section 65584.
24 The strategy shall include a description of the agency or
25 official responsible for implementation of the entire
26 strategy, a schedule for implementation, and all of the
27 following:

28 (1) Programs to assist in the development,
29 rehabilitation, and preservation of housing.

30 (2) Land use actions to remove regulatory barriers
31 and to facilitate and encourage a variety of housing types
32 for households of all income levels.

33 (3) Actions to promote compliance with federal and
34 state fair housing laws.

35 (4) Efforts to achieve the public participation of all
36 income groups in the adoption and implementation of
37 the housing element.

38 (5) Proposed issues of the resources identified
39 pursuant to subdivisions (c) and (d).

40 (f) A local government may utilize existing plans

1 including the Comprehensive Housing Affordability
2 Strategy (CHAS) to address the appropriate
3 requirements of subdivisions (b), (d), and (e).

4 (g) For the purposes of maximizing utilization of
5 housing resources, local governments, through a joint
6 powers agreement, may adopt and implement a joint
7 housing element. Each party to the joint powers
8 agreement shall adopt the joint housing element as part
9 of their general plan. The joint housing element shall
10 disaggregate the components required pursuant to this
11 section for each party to the joint powers agreement.
12 Each party to the joint powers agreement is responsible
13 for meeting the requirements of this article.

14 SEC. 5. Section 65583.1 of the Government Code is
15 repealed.

16 SEC. 6. Section 65584 of the Government Code is
17 amended to read:

18 65584. (a) Based upon population projections
19 produced by the Department of Finance and based upon
20 the Statewide Housing Plan, and in consultation with
21 councils of government, the department shall provide
22 each council of governments with total projections of
23 new construction housing needs and the needs for
24 housing for lower income households for the region for
25 the next planning period at least two years prior to the
26 next required revision.

27 (b) In accordance with data provided by the
28 department, and in consultation with affected local
29 governments and in consideration of adopted general
30 plans, each council of governments shall adopt a regional
31 housing needs plan to allocate a fair share of the region's
32 new construction housing need and need for housing for
33 lower income households to each city and county in its
34 region.

35 (1) The allocation of new construction need shall
36 consider market demand for housing by type and tenure;
37 the current and potential availability of sites and public
38 facilities; commuting patterns and regional
39 transportation planning pursuant to Chapter 2.5
40 (commencing with Section 65080); and other regional

1 planning goals and policies as adopted by the council of
2 government.

3 (2) The allocation of need for housing for lower
4 income households shall consider the number of existing
5 lower income households overpaying, the number and
6 tenure of households living in substandard and
7 overcrowded conditions; projected population and
8 employment growth; and existing and projected
9 resources available from local, state, and federal sources.

10 (3) The allocations of new construction need and need
11 for housing for lower income households shall seek to
12 increase the housing opportunities for lower income
13 households in cities and counties that have a
14 disproportionately low percentage of lower income
15 households.

16 (c) For areas with no council of governments, the
17 department shall determine housing market areas and
18 define the allocations for cities and counties within these
19 areas pursuant to the provisions of this section.

20 (d) Before making its initial allocation as established in
21 subdivision (b), the council of governments or the
22 department, as the case may be, shall distribute the data
23 and methodology to be used in the allocation and shall
24 solicit and consider public comments and
25 recommendations. The comments and recommendations
26 shall be related to factors to be considered in paragraphs
27 (1) and (2) of subdivision (b). The council of
28 governments or the department, shall specifically solicit
29 input from local governments regarding resources
30 expected to be available during the planning period. A
31 draft allocation plan shall be distributed for public
32 comment at least 120 days prior to adoption to all affected
33 jurisdictions and the department. The final adopted
34 allocation plan shall include responses to all comments
35 received on the draft allocation plan.

36 (e) The council of governments, or the department, as
37 the case may be, shall delegate allocation responsibility to
38 counties or joint powers authorities as defined, where
39 such responsibility is requested within 90 days following
40 the department's allocation of the regional share of the

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1 statewide housing needs to the council of governments
 2 pursuant to subdivision (a), by a county and all cities
 3 therein, or by a joint powers authority. The council of
 4 governments or the department, whichever delegated
 5 the allocation responsibility, shall have authority to
 6 determine whether the allocation is consistent with
 7 subdivisions (a) and (b).

8 (f) The council of governments shall make its
 9 allocations of the regional housing need consistent with
 10 the criteria of this subdivision at least one year prior to
 11 the next statutorily scheduled housing element revision.

12 (g) Within 30 days following receipt of the adopted
 13 regional housing needs allocation plan, the department
 14 shall determine whether the plan is consistent with the
 15 statewide housing need and the goals of the Statewide
 16 Housing Plan. The council of governments shall revise
 17 the plan if necessary to obtain consistency.

18 (h) A city or county may transfer up to 50 percent of
 19 its allocation of new construction need and need for
 20 housing for lower income households to one or more
 21 adjacent jurisdictions within the boundaries of the
 22 council of governments in accordance with the
 23 considerations set forth in subdivisions (a) and (b),
 24 providing that the receiving jurisdiction and the council
 25 of governments, or the department where there is no
 26 council of government, approve the transfer.

27 (i) Determinations made by the department, a council
 28 of governments, or a city or county pursuant to this
 29 section are exempt from the provisions of the California
 30 Environmental Quality Act, Division 13 (commencing
 31 with Section 21000) of the Public Resources Code.

32 SEC. 7. Section 65584.5 is added to the Government
 33 Code, to read:

34 65584.5. (a) A city or county may transfer a
 35 percentage of its share of the regional housing needs to
 36 another city or county, if all of the following
 37 requirements are met:

38 (1) Both the receiving city or county and the
 39 transferring city or county comply with all of the
 40 conditions specified in subdivision (b).

1 (2) The council of governments or the department
 2 reviews the findings made pursuant to paragraph (2) of
 3 subdivision (c).

4 (3) The transfer does not occur more than once in a
 5 five-year housing element interval pursuant to
 6 subdivision (a) of Section 65585.

7 (4) The procedures specified in subdivision (c) are
 8 met.

9 (b) (1) Except as provided in paragraph (5) of
 10 subdivision (c) of Section 65584, a city or county
 11 transferring a share of its regional housing needs shall
 12 first have met, in the current or previous housing
 13 element cycle, at least 25 percent of its existing share of
 14 the region's affordable housing needs, as defined in
 15 Section 65584, in the very low and lower income category
 16 of income groups defined in Section 50052.5 of the Health
 17 and Safety Code if it proposes to transfer not more than
 18 15 percent of its share of the region's affordable housing
 19 needs, or at least 30 percent of its existing share of the
 20 region's affordable housing needs for those income
 21 groups if it proposes to transfer not more than 20 percent
 22 of its share of the region's affordable housing needs, or at
 23 least 35 percent of its existing share of the region's
 24 affordable housing needs for those income groups if it
 25 proposes to transfer not more than 25 percent of its share
 26 of the region's affordable housing needs. In no event,
 27 however, shall the city or county transfer more than 500
 28 dwelling units in a housing element cycle.

29 (2) A city or county shall transfer its regional housing
 30 needs in the same proportion by income group as the
 31 jurisdiction has met its regional housing needs.

32 (3) The transfer shall be only between jurisdictions
 33 that are contiguously situated or between a receiving city
 34 or county that is within 10 miles of the territory of the
 35 community of the donor city or county. If both the donor
 36 community and receiving community are counties, the
 37 donor county shall be adjacent to, in the same council of
 38 governments region as, and in the same housing market
 39 as, the receiving county. The sites on which any
 40 transferred housing units will be constructed shall be in

1 the receiving city or county, and within the same housing
2 market area as the jurisdiction of the donor city or
3 county.

4 (4) The transferring and receiving city or county shall
5 have adopted, and shall be implementing, a housing
6 element in substantial compliance with Section 65583.

7 (5) The transferring city or county and the receiving
8 city or county shall have completed, and provided to the
9 department, the annual report required by subdivision
10 (b) of Section 65400.

11 (c) (1) The donor city or county and the receiving
12 city or county shall, at least 45 days prior to the transfer,
13 hold a public hearing, after providing notice pursuant to
14 Section 6062, to solicit public comments on the draft
15 contract, including its terms, conditions, and
16 determinations.

17 (2) The transferring and the receiving city or county
18 shall do all of the following:

19 (A) Adopt a finding, based on substantial evidence on
20 the record, that the transfer of the regional housing need
21 pursuant to the terms of the agreement will not cause or
22 exacerbate racial, ethnic, or economic segregation and
23 will not create a detrimental financial impact upon the
24 receiving city or county.

25 (B) Adopt a finding, based on substantial evidence on
26 the record, that the transfer of the regional housing need
27 will result in the construction of a greater number of
28 similar type dwelling units than if the transfer does not
29 occur.

30 (3) (A) The transferring city or county and the
31 receiving city or county shall enter into an agreement to
32 transfer units eligible under subdivision (b). A copy of
33 this agreement shall be sent to the council of
34 governments and the department to be kept on file for
35 public examination.

36 (B) The agreement shall include a plan and schedule
37 for timely construction of dwelling units, including, in
38 addition to site identification, identification of and
39 timeframes for applying for sufficient subsidy or
40 mortgage financing if the units need a subsidy or

1 mortgage financing, and a finding that sufficient services
2 and public facilities will be provided.

3 (4) At least 60 days prior to the transfer, the receiving
4 city or county planning agency and the transferring city
5 or county planning agency shall submit to the
6 department a draft amendment to reflect the identified
7 transferred units. A transferring agency may reduce its
8 housing needs only to the extent that it had not
9 previously reduced its housing needs pursuant to
10 paragraph (2) of subdivision (b) of Section 65583. A
11 county planning agency that has its share of the regional
12 housing need reduced pursuant to paragraph (5) of
13 subdivision (c) of Section 65584 shall comply with this
14 section. A receiving city or county shall, in addition to any
15 other provisions of the article, identify in its housing
16 element sufficient sites to meet its initial low- and
17 moderate-income housing needs and sufficient sites to
18 meet all transferred housing needs.

19 (5) The department shall review the draft
20 amendment and report its written findings to the
21 planning agency within 45 days of its receipt.

22 (6) The department's review shall follow the same
23 procedure, requirements, and responsibilities of Sections
24 65583, 65585, 65587, and 65589.3, except in the case of a
25 challenge brought to any amendment pursuant to this
26 section, where the court may use its independent
27 judgment to review the validity of the amendment, and
28 as to the terms, conditions, and determinations of the
29 transfer agreement. The court shall consider any written
30 findings submitted by the department.

31 (d) No transfer made pursuant to this section shall
32 affect the plans for a development that have been
33 submitted to a city or county for approval 45 days prior
34 to the adoption of the amendment to the housing
35 element.

36 (e) No transfer made pursuant to this section shall be
37 counted toward any ordinance or policy of a locality that
38 specifically limits the number of units that may be
39 constructed.

40 (f) The Attorney General or any other interested

1 person shall have authority to enforce the terms of the
2 agreement and the provisions of this section.

3 (g) For a period of five years after the transfer occurs,
4 the report required by subdivision (b) of Section 65400
5 shall include information on the status of transferred
6 units, implementation of the terms and conditions of the
7 transfer contract, and information on any dwelling units
8 actually constructed, including the number, type,
9 location, and affordability requirements in place for these
10 units.

11 (h) (1) At least 60 days prior to the proposed transfer,
12 the donor city or county shall submit the proposed
13 agreement to the council of governments, or to the
14 department if there is no council of governments that
15 serves the city or county, for review. The governing
16 board of the council or the director shall determine
17 whether there is substantial evidence to support the
18 terms, conditions, and determinations of the agreement
19 and whether the agreement complies with the
20 substantive and procedural requirements of this section.
21 If the council or the director finds that there is substantial
22 evidence to support the terms, conditions, and
23 determinations of the agreement, and that the
24 agreement complies with the substantive and procedural
25 requirements of this section, the participating
26 jurisdictions may proceed with the agreement. If the
27 governing board or the director finds that there is not
28 substantial evidence to support the terms, conditions, and
29 findings of the agreement, or that the agreement does
30 not comply with the substantive and procedural
31 requirements of this section, the board or the director
32 may make recommendations for revising or terminating
33 the agreement. The participating jurisdictions shall then
34 include those revisions, if any, or terminate the
35 agreement.

36 (2) The council or the director may convene a
37 committee to advise the council or the director in
38 conducting this review. The donor city or county and the
39 receiving community shall pay the council's or the
40 department's costs associated with the committee.

1 Neither the donor city or county, nor the receiving city
2 or county, may expend moneys in its Low and Moderate
3 Income Housing Fund of its redevelopment agency for
4 costs associated with the committee.

5 (3) Membership of the committee appointed pursuant
6 to paragraph (2) shall include all of the following:

7 (A) One representative appointed by the director.

8 (B) One representative appointed by the donor
9 agency.

10 (C) One representative appointed by the receiving
11 community.

12 (D) Two low and moderate income housing
13 advocates, appointed by the director, who represent
14 those persons in that region.

15 (i) (1) The receiving city or county shall construct
16 the housing units within three years of the date that the
17 transfer contract is entered into pursuant to this section.
18 This requirement shall be met by documenting that a
19 building permit has been issued and all fees have been
20 paid.

21 (2) Any portion of a regional share allocation that is
22 transferred to another jurisdiction, and that is not
23 constructed within the three-year deadline set forth in
24 paragraph (1), shall be reallocated by the council of
25 governments to the transferring city or county, and the
26 transferring city or county shall modify its zoning
27 ordinance, if necessary, and amend its housing element to
28 reflect the reallocated units.

29 (3) If, at the end of the five-year housing element
30 planning period, any portion of a regional share allocation
31 that is transferred to another jurisdiction is not yet
32 constructed, the council of governments shall add the
33 unbuilt units to the normal regional fair share allocation
34 and reallocate that amount to either of the following:

35 (A) The receiving city, if the three-year deadline for
36 construction has not yet occurred; or

37 (B) The transferring city, if the three-year deadline
38 for construction has occurred.

39 (4) If the transferred units are not constructed within
40 three years, the nonperforming jurisdictions

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1 participating in the transfer of regional share allocations
2 shall be precluded from transferring their regional
3 shares, pursuant to this section, for the planning period of
4 the next periodic update of the housing element.

5 (j) On or after January 1, 2000, no transferring city or
6 county shall enter into an agreement pursuant to this
7 section unless a later enacted statute, which is enacted
8 before January 1, 2000, deletes or extends that date.

9 (k) If Article XXXIV of the California Constitution is
10 applicable, the receiving city or county shall certify that
11 it has sufficient authority under Article XXXIV of the
12 California Constitution to allow development of units
13 transferred pursuant to this section.

14 (l) The receiving city or county shall not, within three
15 years of the date of the transfer agreement entered into
16 pursuant to this section, or until transferred units are
17 constructed, whichever is longer, enter into a contract to
18 transfer units outside the territorial jurisdiction of the
19 agency pursuant to this section.

20 (m) Communities that have transferred a portion of
21 their share of the regional housing need to another city
22 or county pursuant to this section shall comply with all
23 other provisions of law for purposes of meeting the
24 remaining regional housing need not transferred,
25 including compliance with the provisions of Section
26 65589.5.

27 (n) As used in this section, "housing market area"
28 means the area determined by a council of governments
29 or the department pursuant to Section 65584, and based
30 upon market demand for housing, employment
31 opportunities, the availability of suitable sites and public
32 facilities, and commuting patterns.

33 SEC. 8. Section 65585 of the Government Code is
34 amended to read:

35 65585. (a) Each local government or joint powers
36 authority as established in Section 65583 shall prepare and
37 adopt the first two revisions of their housing elements no
38 later than the dates specified in the following schedule
39 with subsequent revision every five years in accordance
40 with the allocations provided pursuant to Section 65584.

1 (1) Local governments within the regional
2 jurisdiction of the Southern California Association of
3 Governments: July 1, 1996, for the first revision and July
4 1, 2001, for the second revision.

5 (2) Local governments within the regional
6 jurisdiction of the Association of Bay Area Governments:
7 July 1, 1997, for the first revision, and July 1, 2002, for the
8 second revision.

9 (3) Local governments within the regional
10 jurisdiction of the San Diego Association of Governments,
11 the Council of Fresno County Governments, the Kern
12 County Council of Governments, the Sacramento
13 Council of Governments, and the Association of
14 Monterey Bay Area Governments: July 1, 1998, for the
15 first revision, and July 1, 2003, for the second revision.

16 (4) All other local governments: July 1, 1999, for the
17 first revision, and July 1, 2004, for the second revision.

18 (b) A local government may submit a self-certification
19 of compliance to the department with its adopted
20 housing element, ~~including the performance report~~
21 ~~pursuant to subdivision (a) of Section 65583,~~ at least 90
22 days prior to the due date for adoption if the jurisdiction
23 ~~has~~ after holding a public hearing makes a finding that
24 during the prior planning period it has both:

25 (1) Issued building permits which equal or exceed the
26 regional performance rate for new construction need as
27 defined in Section 65584, unless the jurisdiction is located
28 within an area referenced in paragraph (4) of subdivision
29 (a); then the average performance rate for new
30 construction shall equal or exceed the average
31 performance rate for new construction for all local
32 governments in paragraph (4) of subdivision (a).

33 (2) Has provided housing for at least 75 percent of its
34 need for housing for lower income households as defined
35 in ~~Section 65584~~ or has provided housing affordable to
36 subdivision (b) of Section 65584 and of which 50 percent
37 of the units are affordable to very low income households
38 equivalent to at least 10 percent of its new construction
39 need as defined in Section 65584.

40 ~~(3) Nothing in this subdivision is intended to expand a~~

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1 jurisdiction's ability to impose development
2 requirements in order to meet the requirements of this
3 subdivision.

4 (c) A local government, in lieu of meeting the
5 requirements of paragraph (1) of subdivision (b), may
6 demonstrate that the market demand for new residential
7 construction has been accommodated by demonstrating
8 that for each year's prior planning period, the jurisdiction
9 had more than sufficient zoning capacity to
10 accommodate the jurisdiction's new construction need
11 allocation for the planning period pursuant to paragraph
12 (1) of subdivision (b) of Section 65584, less the number
13 of building permits issued for residential development
14 during the prior years of the planning period. The
15 self-certification shall also contain a finding of whether
16 local government action or policies prevent or unduly
17 constrain the development of the identified sites. The
18 self-certification shall also demonstrate that the
19 jurisdiction has approved at least 90 percent of the
20 applications for ministerial and discretionary
21 entitlements consistent with the land use element.

22 (d) A local government, in lieu of meeting the
23 requirements of paragraph (2) of subdivision (b), may
24 demonstrate that it has provided housing affordable to
25 very low income households equivalent to at least 10
26 percent of the units for which building permits were
27 issued in the previous planning period, and has
28 effectively used and made a maximum effort to obtain
29 resources as defined in subdivision (d) of Section 65583 to
30 provide affordable housing units for very low income
31 households.

32 (e) Nothing in this subdivision is intended to enlarge
33 or diminish a jurisdiction's ability to impose development
34 requirements in order to meet the requirements of this
35 subdivision. A jurisdiction that submits a self-certification
36 pursuant to subdivision (b) shall also certify that its
37 performance during the previous planning period is
38 substantially proportionate to the specific and special
39 housing needs of the jurisdiction identified pursuant to
40 subdivision (b) of Section 65583, and that rental units

1 provided meet the requirements of Section 65915 for
2 very low income households.

3 (f) Unless the department makes written findings
4 within 90 days of receipt that the jurisdiction has not met
5 the performance standards in subdivision (b), the
6 self-certification shall be deemed approved. The
7 department's review of the self-certification shall be
8 limited to a determination of whether the
9 self-certification is complete and accurate.

10 ~~(e)~~

11 (g) A local government that does not, or is ineligible
12 to, self-certify compliance, shall submit a draft housing
13 element at least 90 days prior to the due date for
14 adoption. The department shall, within 45 days of receipt,
15 review draft housing elements and either certify
16 compliance or provide written findings regarding the
17 revisions needed to bring the element into compliance.

18 ~~(d)~~

19 (h) Upon adoption of its housing element, a local
20 government shall submit its housing element to the
21 department. The department shall, within 90 days of
22 receipt of the adopted housing element certify
23 compliance, conditionally certify compliance or find the
24 element out of compliance.

25 ~~(e)~~

26 (i) If the department conditionally certifies a housing
27 element in compliance, the local government shall
28 include in its annual report pursuant to Sections 65400
29 and 65040.5, its progress in addressing the conditions of
30 compliance. Within 45 days of receipt of the annual
31 performance report, the department shall certify
32 compliance, conditionally certify compliance or find the
33 element out of compliance. If no annual performance
34 report is received within 30 days of the statutory due
35 date, the department may find the housing element out
36 of compliance.

37 (j) Any county with a total population of less than
38 40,000 is not required to submit either a draft or adopted
39 element for review by the department unless an
40 interested party which has participated in the public

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1 adoption of the element files a request for review to the
 2 county and the department within 60 days of adoption of
 3 the element, provided the county has given prior notice
 4 to participants in the adoption process of the right to
 5 make such a request. If such a request is filed, the county
 6 shall submit its housing element to the department and
 7 the department shall, within 90 days of receipt of the
 8 adopted housing element, certify compliance, or find the
 9 element out of compliance. This subdivision shall not
 10 apply to any county which has self-certified compliance
 11 pursuant to subdivision (b) or obtained review of its
 12 housing element pursuant to subdivision (h).

13 SEC. 9. Section 65586.5 is added to the Government
 14 Code, to read:

15 65586.5. (a) The department shall adopt regulations
 16 and provide all necessary forms to facilitate preparation,
 17 adoption, and implementation of the housing element.
 18 The regulations shall provide the maximum flexibility in
 19 the choice of local programs and regulations necessary to
 20 carry out the requirements of this chapter and shall not
 21 require adoption of any specific program or regulation to
 22 comply with this article.

23 (b) To assist local governments in preparing the
 24 analysis of existing and future housing needs pursuant to
 25 subdivision (b) of Section 65583, for each new planning
 26 cycle, the department shall provide, at least one year
 27 prior to each new planning period, jurisdictions with a
 28 housing needs profile form which shall include base
 29 housing needs information including census data. The
 30 department shall also provide a list of available state and
 31 federal housing assistance, development, and
 32 rehabilitation resources.

33 (c) Where a jurisdiction does not, is ineligible to,
 34 self-certify compliance, the department shall provide
 35 additional and targeted technical assistance to facilitate
 36 achievement of performance objectives in the current
 37 planning period. In determining the type and extent of
 38 technical assistance to be provided, the department shall
 39 consider the analysis prepared by the jurisdiction
 40 pursuant to subdivision (a) of Section 65583 describing

1 implementation constraints and technical assistance
 2 needs. Such technical assistance will include, where
 3 appropriate and desired by the local government,
 4 assistance in identifying and applying for appropriate
 5 housing finance programs. The department shall develop
 6 an expertise in the full range of housing resources,
 7 including relevant federal, state, and private sector
 8 programs available to public agencies and nonprofit
 9 housing developers. Advice shall include information on
 10 how to combine traditional and nontraditional funding
 11 sources in order to meet the jurisdictions performance
 12 standards.

13 SEC. 10. Section 65587 of the Government Code is
 14 amended to read:

15 65587. (a) Each local government shall bring its
 16 housing element, as required by subdivision (c) of
 17 Section 65302, into conformity with the requirements of
 18 this article by deadlines set by Section 65585. As provided
 19 in subdivision (b) of Section 65361, the Director of
 20 Planning and Research may grant an extension of time,
 21 not to exceed one year, from these requirements. Where
 22 forces beyond the control of a local government prevent
 23 completion of the housing element in accordance with
 24 the deadlines set by Section 65585, the department, in
 25 conjunction with the Governor's Office of Planning and
 26 Research, may grant an extension of up to one year.

27 (b) A local government shall not be eligible to
 28 self-certify compliance or submit a draft self-certification
 29 of compliance pursuant to subdivisions (b) and (c) of
 30 Section 65585, if it misses the statutory deadline for
 31 submitting the housing element pursuant to subdivision
 32 (a) of Section 65585, by more than six months, unless it
 33 has requested and received a housing element extension
 34 pursuant to subdivision (a), and if it does not provide the
 35 department with the annual reports pursuant to
 36 subdivision (b) of Section 65400.

37 (c) In any action filed on or after the effective date of
 38 this statute, to challenge the validity of a housing
 39 element, there shall be a rebuttable presumption of the
 40 validity of the housing element if, pursuant to

1 subdivisions (b), (c), and (d) of Section 65585, the
 2 jurisdiction has self-certified or the department has found
 3 that the housing element substantially complies with the
 4 requirements of this article. Where the local government
 5 has not met its performance standards and cannot
 6 self-certify compliance pursuant to subdivision (c) of
 7 Section 65585, and the department has found, pursuant to
 8 subdivision (c) or (e) of Section 65585, that the housing
 9 element does not substantially comply with the
 10 requirements of this article, there shall be a rebuttable
 11 presumption of the invalidity of the housing element.

12 (d) Any action brought by any interested party to
 13 review the conformity with the provision of this article of
 14 any housing element or self-certification made pursuant
 15 to subdivision (b) of Section 65585 shall be brought
 16 pursuant to Section 1085 of the Code of Civil Procedure;
 17 the court's review of compliance with the provision of
 18 this article shall extend to whether the housing element
 19 complies with the requirements of this article in
 20 consideration of any findings made by the department
 21 pursuant to subdivision (d) or (e) of Section 65585.

22 (e) When any proposed housing development project
 23 complies with the applicable general plan land use
 24 designation in effect at the time that the housing
 25 development project's application is determined to be
 26 complete, but the local agency proposes to disapprove
 27 the project or to approve it upon the condition that the
 28 project be developed at a lower density, the local agency
 29 shall base its decision regarding the proposed housing
 30 development project upon written findings supported by
 31 substantial evidence on the record that both of the
 32 following conditions exist:

33 (1) The housing development project as proposed
 34 would have a specific, adverse impact upon the public
 35 health or safety, and there is no feasible method to
 36 satisfactorily mitigate or avoid the specific adverse
 37 impact unless the project is disapproved or approved
 38 upon the condition that the project be developed at a
 39 lower density. As used in this subdivision, a "specific,
 40 adverse impact" means a significant, unavoidable impact,

1 as provided in written standards, policies, or conditions.
 2 (2) There is no feasible method to satisfactorily
 3 mitigate or avoid the adverse impact identified pursuant
 4 to paragraph (1), other than the approval of the project
 5 upon the condition that it be developed at a lower
 6 density.

7 (f) A local agency shall not disapprove a housing
 8 development project where at least 20 percent of the
 9 units are intended to serve and be affordable to very low
 10 or low-income households ~~or where 100 percent of the~~
 11 ~~units are intended to serve and be affordable to~~
 12 ~~moderate/income households~~, or condition approval in a
 13 manner which would render such projects infeasible for
 14 development unless:

15 (1) The agency has adopted a housing element
 16 according to the schedule in Section 65585 and has either
 17 self-certified compliance pursuant to Section 65586 or the
 18 department has found that the element substantially
 19 complies with this article.

20 (2) The agency makes, based on substantial evidence,
 21 the findings required pursuant to paragraph (1) of
 22 subdivision (e) and one of the following findings:

23 (A) The denial of the project or imposition of
 24 conditions is required in order to comply with specific
 25 state or federal law, and there is no feasible method to
 26 comply without rendering the development
 27 unaffordable to very low and low-income households.

28 (B) Approval of the development project would
 29 increase the concentration of lower income households in
 30 a neighborhood that already has a disproportionately
 31 high number of lower income households and the
 32 development could feasible be approved at a different
 33 site, including those sites identified pursuant to
 34 subdivision (c) of Section 65583, without rendering the
 35 development unaffordable to very low and low-income
 36 households.

37 (C) The development project is proposed on land
 38 zoned for agricultural or resource preservation which is
 39 surrounded on at least two sides by land being actively
 40 used for agricultural or resources preservation purposes,

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1 or which does not have, or is not capable of securing,
2 adequate water or waste water facilities to serve the
3 project.

4 (g) If in any action brought to enforce the provisions
5 of this section, a court finds that the local agency denied
6 a project or conditioned its approval in a manner
7 rendering it infeasible for development for lower income
8 housing without making the appropriate findings, or that
9 the findings were inadequate or lacking substantial
10 evidence, the court shall order the local agency to
11 approve, within 90 days, all applications which have been
12 submitted for the proposed development, as described at
13 the time the application was deemed complete.

14 (h) In any action to approve a residential rezoning,
15 the local agency shall make written findings supported by
16 substantial evidence on the record, that both of the
17 following exist:

18 (1) The change in zoning is consistent with meeting
19 the local government's regional housing needs pursuant
20 to Section 65584.

21 (2) The change in zoning will not result in a net
22 reduction in residential development potential during
23 the planning period pursuant to Section 65586.

24 (i) Nothing in this section shall be construed to relieve
25 the local agency from complying with the Congestion
26 Management Program required by Chapter 2.6
27 (commencing with Section 65088) of Division 1 of Title
28 7 or the California Coastal Act, Division 20 (commencing
29 with Section 30000) of the Public Resources Code.
30 Neither shall anything in this section be construed to
31 relieve the local agency from making one or more of the
32 findings required pursuant to Section 21081 of the Public
33 Resources Code or otherwise complying with the
34 Environmental Quality Act, Division 13 (commencing
35 with Section 21000) of the Public Resources Code.

36 (j) The following definitions apply for the purposes of
37 this section:

38 (1) "Feasible" means capable of being accomplished
39 in a successful manner within a reasonable period of time
40 taking into account economic, environmental, social, and

1 technological factors.

2 (2) "Affordable to very low and low-income
3 households" means at least 20 percent of the total units
4 shall be sold or rented to lower income households, as
5 defined in Section 50079.5 of the Health and Safety Code.
6 ~~"Affordable to moderate-income households" means~~
7 ~~that 100 percent of the units shall be sold or rented to~~
8 ~~moderate-income households as defined in Section 50093~~
9 ~~of the Health and Safety Code.~~ Housing units targeted for
10 lower income households shall be made available at a
11 monthly housing cost that does not exceed 30 percent of
12 60 percent of area median income with adjustments for
13 household size made in accordance with adjustment
14 factors on which the lower income eligibility limits are
15 based. Housing units targeted for persons and families of
16 moderate income shall be made available at a monthly
17 housing cost that does not exceed 30 percent of 100
18 percent of the area median income with adjustments for
19 household size made in accordance with the adjustment
20 factors on which the moderate-income eligibility limits
21 are based.

22 (3) "Area median income" shall mean the area
23 median income as periodically established by the
24 Department of Housing and Community Development
25 pursuant to Section 50093 of the Health and Safety Code.
26 The developer shall provide sufficient legal
27 commitments to ensure continued availability of units for
28 the lower income households in accordance with the
29 provisions of this subdivision for 30 years.

30 (4) "Neighborhood" means a planning area
31 commonly identified as such in a community's planning
32 documents, and identified as a neighborhood by the
33 individuals residing and working within the
34 neighborhood. Documentation demonstrating that the
35 area meets the definition of neighborhood may include a
36 map prepared for planning purposes which lists the name,
37 and boundaries of the neighborhood.

38 (k) If any city, county, or city and county denies
39 approval or imposes restrictions, including a reduction of
40 allowable densities or the percentage of a lot which may

1 be occupied by a building or structure under the
 2 applicable planning and zoning in force at the time the
 3 application is deemed complete pursuant to Section
 4 65943, which have a substantial adverse effect on the
 5 viability or affordability of a housing development
 6 affordable to low- and moderate-income households, and
 7 the denial of the development, or the imposition of
 8 restrictions on the development is the subject of a court
 9 action which challenges the denial, then the burden of
 10 proof shall be on the local legislative body to show that its
 11 decision is consistent with the findings as described in
 12 subdivisions (e) and (f).

13 (l) In any action taken to challenge the validity of a
 14 decision by a local government to disapprove a project or
 15 approve a project upon the condition that it be
 16 developed at a lower density pursuant to subdivisions (e)
 17 and (f) of this section, the local government shall bear the
 18 burden of proof that its decision has conformed with all
 19 of the condition specified in subdivisions (e) and (f).

20 SEC. 11. Section 65588 of the Government Code is
 21 repealed.

22 SEC. 12. Section 65589.3 of the Government Code is
 23 repealed.

24 SEC. 13. Section 65589.5 of the Government Code is
 25 repealed.

26 SEC. 14. Section 65589.6 of the Government Code is
 27 repealed.

28 SEC. 15. Notwithstanding Section 17610 of the
 29 Government Code, if the Commission on State Mandates
 30 determines that this act contains costs mandated by the
 31 state, reimbursement to local agencies and school
 32 districts for those costs shall be made pursuant to Part 7
 33 (commencing with Section 17500) of Division 4 of Title
 34 2 of the Government Code. If the statewide cost of the
 35 claim for reimbursement does not exceed one million
 36 dollars (\$1,000,000), reimbursement shall be made from
 37 the State Mandates Claims Fund. Notwithstanding
 38 Section 17580 of the Government Code, unless otherwise
 39 specified in this act, the provisions of this act shall become
 40 operative on the same date that the act takes effect

1 pursuant to the California Constitution.

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