

Date of Hearing: April 24, 2019

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

AB 1486 (Ting) – As Amended April 11, 2019

**SUBJECT:** Local agencies: surplus land

**SUMMARY:** Expands surplus property requirements for both the state and local agencies. Specifically, **this bill**:

1) Expands the provisions of the Surplus Lands Act for local agencies, as follows:

- a) Expands the definition of “local agency” in the Surplus Land Act to additionally include sewer, water, and utility districts, local and regional park districts, joint powers authority, successor agency to a former redevelopment agency (RDA), housing authority, or other political subdivision of this state and instrumentality thereof that is empowered to acquire and hold real property. Declares, for purposes of this definition, that the term “district” as defined, is declaratory of, and not a change in, existing law;
- b) Revises the definition of “surplus land” to mean land owned by any local agency that is not necessary for the agency’s governmental operations. Defines “governmental operations” to mean land that is being used for the express purpose of agency work or operations, including utility sites, watershed property, land being used for conservation purposes, and buffer sites near sensitive governmental uses, including, but not limited to, waste water treatment plants.
- c) Requires that land shall be presumed to be “surplus land” when a local agency initiates an action to dispose of it. Declares that “surplus land” includes land held in the Community Redevelopment Property Trust Fund, as specified, and land that has been designated in the long-range property management plan, as specified, either for sale or for retention for future development and that was not subject to an exclusive negotiating agreement or legally binding agreement to dispose of the land, as specified.
- d) Expands the definition of “exempt surplus land” to include:
  - i) Surplus land held by the local agency for the express purpose of exchange for another property necessary for its governmental operations;
  - ii) Surplus land held by the local agency for the express purpose of transfer to another local agency for its governmental operations;
  - iii) Surplus land that is put out to open, competitive bid by a local agency, provided all entities, as specified, will be invited to participate in the bid process, for either of the following purposes:
    - (1) A housing development, which may have ancillary commercial ground floor uses, that restricts 100% of the residential units to persons and families of low or moderate income, with at least 75% of the residential units restricted to lower income households, as defined, with an affordable sales price or an affordable

rent, as defined, for a minimum of 55 years, and in no event shall the maximum affordable sales price or rent level be higher than 20% below the median market rents or sales prices for the neighborhood in which the site is located; or,

- (2) A mixed-use development that is more than one acre in area, that includes not less than 300 housing units, and that restricts at least 25% of the residential units to lower income households, as defined, with an affordable sales price or an affordable rent, as defined, for a minimum of 55 years;
  - iv) Surplus land that is subject to legal restrictions that would make housing prohibited or incompatible on the site due to state or federal statutes, voter-approved measures, or other legal restrictions that are not imposed by the local agency. States that existing zoning alone is not a legal restriction that would make housing prohibited or incompatible;
  - e) Requires a written notice of availability to be sent to housing sponsors that have notified the applicable regional council of governments (COG), or in the case of a local agency without a COG, the Department of Housing and Community Development (HCD), of their interest in surplus land. Expands the notice to also include electronic mail (email), if possible;
  - f) Specifies that any surplus land disposed of by a public agency shall be permitted for residential use, notwithstanding local zoning designations, if 100% of the units, except for units occupied by onsite management staff, are sold or rented at an affordable housing costs, as defined, or an affordable rent, as defined, to lower income households. Provides that this provision shall not apply to exempt surplus land;
  - g) Specifies that negotiations between a disposing agency and an entity desiring to purchase or lease land, as specified, shall be limited to sales price and lease terms, including the amount and timing of any payments;
  - h) Requires, in the event that the disposing agency receives notices of interest from multiple entities that proposed the same number of housing units, that first priority shall be given to the entity that proposes the deepest average level of affordability for the affordable units. Allows a local agency to negotiate concurrently with all entities that provide notice of interest to purchase or lease land for the purpose of developing affordable housing;
  - i) Provides that the failure by a local agency to comply with the provisions of the Surplus Land Act shall invalidate the transfer or conveyance of real property to a purchase or encumbrancer for value, unless the local agency makes an alternative site available, as specified, that can accommodate an equal or greater number of housing units as the original site; and,
  - j) Clarifies that the existing 15% minimum affordability requirement applies whenever surplus land is used for housing;
- 2) Modifies an existing requirement in law that requires each local agency to make an inventory of all lands held, owned, or controlled by it or any of its departments to determine what land is in excess of its foreseeable needs for its governmental operations, and requires this information to be reported to HCD no later than April 1 of each year, beginning 2021.

- 3) Requires HCD to create and maintain a searchable and downloadable public inventory of all publicly owned or controlled lands and their present uses in the state on its internet website, which shall be updated on an annual basis. Requires the inventory to be available no later than September 30, 2021.
- 4) Requires a city or county, by April 1 of each year, in the Annual Progress Report submitted to HCD and the Governor's Office of Planning and Research (OPR), to additionally include a listing of sites owned or leased by the city or county that have been sold, leased or otherwise disposed of in the prior year, and a listing of sites with leases that expired in the prior year. Specifies that the list shall include the entity to whom each site was transferred and the intended use for the site.
- 5) Expands, in a city or county's identification of sites required pursuant to Housing Element law, the requirements for cities and counties to additionally include information about certain sites owned by a local agency (as defined by the Surplus Land Act), thereby requiring cities and counties to account for sites owned by a special district or school district, including the following:
  - a) Residentially zoned zones that are capable of being developed at a higher density owned or leased by any local agency; and,
  - b) Sites zoned for nonresidential use that can be redeveloped for residential use, and for which the housing element includes a program to rezone the site, as necessary, to permit residential use, includes sites owned or leased by a local agency.
- 6) Requires, in a city or county's identification of sites, if a piece of property is owned by the city or county preparing the housing element, the description of nonvacant sites to also include whether there are any plans to dispose of the property during the planning period, and how the agency will comply with the Surplus Land Act.
- 7) Adds the Surplus Land Act to provisions that allow HCD to notify the city or county and notify the Office of the Attorney General that that city or county is in violation of state law.
- 8) Modifies requirements for state surplus property, as follows:
  - a) Clarifies the existing requirement that each state agency shall make a review of all proprietary state lands, as specified that that agency has jurisdiction to determine what, if any, land is in excess its foreseeable needs for governmental operations. Defines "governmental operations" to mean land that is being used for the express purpose of agency work or operations, including utility sites, watershed property, land being used for conservation purposes, and buffer sites near sensitive governmental uses, including, but not limited to, waste water treatment plants;
  - b) Requires DGS, when authority is granted for the sale or other disposition of lands declared excess, and DGS has determined that the use of land is not needed by any other state agency, to sell the land or otherwise dispose of it, as specified, and modifies this process;

- c) Requires, for land that DGS has determined is not needed by any other state agency, DGS to request authorization to dispose of no less than 10% of the land on an annual basis pursuant to 8)b), above;
  - d) Requires that surplus land that DGS has disposed of to be permitted by right, regardless of local zoning designations, for a residential use if 100% of the residential units, except for the units occupied by onsite management staff, are sold or rented at an affordable housing cost, or affordable rent, as defined, to lower income households, as defined. Excludes land that is defined as exempt or that is ineligible for any public financing for affordable housing; and,
  - e) Requires DGS to make every effort to conclude the pending disposition of surplus land pursuant to 8)c), above, that has received authorization to dispose of within 24 months of the date the sale, exchange, or transfer of land was approved by DGS.
- 9) Provides that reimbursement to local agencies and school districts shall be made, if the Commission on State Mandates determines that this act contains costs mandated by the state.

**EXISTING LAW:**

- 1) 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, including air rights, 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. Allows any citizen, limited dividend corporation, housing corporation or nonprofit corporation, upon request, to be provided with a list of said parcels without charge.
- 2) Defines "surplus land" as land owned by any local agency that is determined to be no longer necessary for the agency's use, except property being held by the agency for the purpose of exchange or property meeting other exemptions.
- 3) Requires that a local agency must provide a written offer to sell or lease surplus land for the purpose of developing low- or moderate-income housing to "housing sponsors" upon written request, as well as any local public entity within the jurisdiction where the surplus land is located.
- 4) Provides that a local agency wishing to dispose of surplus land must also provide a written offer to additional entities, depending on the type of proposed usage, for park and recreational purposes, school facilities construction or use by a school district for open space purposes, enterprise purposes, and infill opportunity zones or transit village plans.
- 5) Allows a county to establish a central inventory of surplus property.

**FISCAL EFFECT:** Unknown.

**COMMENTS:**

*Purpose of this bill:* According to the author, "California is facing an affordable housing crisis and unused public land has the potential to promote affordable housing development throughout

the state. AB 1486 clarifies and strengthens provisions in the Surplus Lands Act that will promote the use of public land for affordable housing projects.”

*Surplus Lands Act:* If land is no longer needed or is not being held for exchange, a local agency must follow certain procedures prior to disposal of this "surplus" land. The intent behind the disposal procedures is to promote the use of surplus land towards affordable housing, parks and recreation purposes, open-space purposes, and transit-oriented development. The disposal procedures provide a Right of First Refusal to entities agreeing to use the land for, amongst other things, affordable housing.

Prior to disposing of surplus land, local agencies must make a written offer to sell or lease surplus land for the purpose of developing low- or moderate-income housing to "housing sponsors" upon written request, as well as any local public entity within the jurisdiction where the surplus land is located. A local agency wishing to dispose of surplus land must also provide a written offer to additional entities, depending on the type of proposed development, for park and recreational purposes, school facilities construction or use by a school district for open space purposes, enterprise purposes, and infill opportunity zones, or transit village plans.

If one of these entities is interested in buying or leasing the land, it must notify the local agency within 60 days of receipt of the offer. If a notified entity is interested but cannot agree with the agency upon the price or terms, the local agency must enter into good faith negotiations with the entity for at least 60 days. If 60 days have passed without an agreement, then the local agency may sell or lease the land without further regard to the Right of First Refusal requirements under the disposal procedures.

If the land is going to be used for residential development and a local agency receives multiple offers from notified entities, the local agency is required to give first priority to the entity that agrees to use the site for affordable housing for low- or moderate-income individuals and families. In the event that a local agency enters into a contract to sell or lease the land to a notified entity for park or recreation purposes, open-space purposes, school purposes, or for low- and moderate- income housing purposes, that contract may provide for a payment period of up to 20 years. While nothing in the disposal procedure limits the power of a local agency to sell or lease surplus land at fair market value or at less than fair market value, it also provides that nothing in the procedure shall be interpreted to empower any local agency to sell or lease surplus land at less than fair market value.

*Governor's Executive Order: Surplus Land:* Earlier this year, the Governor issued Executive Order N-06-19 directing DGS to create a digitized inventory of all state land in excess of state agencies foreseeable needs no later than April 30, 2019. DGS, Department of Housing and Community Development (HCD), and the California Housing Finance Agency (CalHFA) are directed to develop two new screening tools for prioritizing affordable housing development on excess state lands – where housing is most likely to be economically feasible and where underproduction is impacting housing affordably. This screening tool will be used to map areas in the state on excess surplus sites where housing development is feasible and will help address underproduction. State agencies are encouraged to exchange excess state land with local governments for affordable housing and preservation. DGS and HCD will issue requests to develop parcels that are suitable for affordable housing.

This bill makes various changes to the local and surplus lands act, including the following:

- a) Specifies that the definition of “surplus” land is land not needed for the agency’s own *governmental operations*, and then defines this term;
- b) Allows any surplus land disposed of by a public agency to be permitted for residential use, regardless of local zoning designations, if 100% of the units are sold or rented at an affordable housing cost or affordable rent.
- c) Lists out numerous exemptions on what is considered “exempt surplus land;”
- d) Modifies procedures for notification of surplus lands, and how the local agency can negotiate with the interested party or parties on that land; and,
- e) Allows any surplus land disposed of by a public agency to be permitted for residential use, regardless of local zoning designations, if 100% of the units are sold or rented at an affordable housing cost or affordable rent.

*Required local inventory of surplus land:* The bill also requires all local agencies, as the bill defines, to make an inventory of all lands held, owned, or controlled by it, in excess of its foreseeable needs for its governmental operations, and report this information to HCD each year. The bill also places additional requirements on cities and counties in the provisions of law that require a city or county to develop an inventory of land suitable for residential development to account for these surplus lands, and allows HCD to notify the Attorney General if a city or county is in violation of provisions of the Surplus Lands Act.

*Oppose unless amended:* Several organizations representing counties, special districts, water districts have expressed concerns and requested amendments to address the following issues:

- The definition of “governmental operations” does not take into consideration instances where a public agency owns land for a public purpose but does not use the land in its daily operations. These groups request that the bill be amended to define “surplus property” as land used for achieving the agency’s public purpose rather than governmental operations, and that the bill establish a public process for agencies to declare land in their possession that is surplus.
- AB 1486 requires a local agency to notice the availability of a property before participating in any formal or informal negotiations to dispose of the land. Informal negotiations allow an agency to determine the viability of the land for the agency’s public purpose, available alternatives, and potential market value. These groups request an amendment to limit notice to negotiations when a decision has been made to dispose of a surplus property.
- AB 1486 invalidates the transfer of surplus land if a public agency does not comply with the requirements of the SLA. This provision could make surplus land less marketable and penalize purchasers.

*Technical amendment:*

*On page 25, amend lines 3 through 8 as follows:*

(b) The Department of Housing and Community Development shall create and maintain a searchable and downloadable public inventory of all ~~publicly owned or controlled~~ surplus lands and their present uses in the state on its internet website, which shall be updated on an annual basis. The inventory shall be available no later than September 30, 2021.

*Related legislation:*

AB 1255 (R. Rivas) (2019) requires cities and counties to include an inventory of surplus sites that are infill, “high-density” sites in the housing element, and requires Department of General Services (DGS) to create a searchable database of surplus sites. This bill passed out of this committee 8-0.

*Previous legislation:*

AB 2135 (Ting), Chapter 644, Statutes of 2014, amended the procedure for the disposal of surplus land by local agencies and expanded the provisions relating to the prioritization of affordable housing development if the surplus land will be used for residential development.

AB 2065 (Ting, 2018), would have amended the Surplus Lands Act expand the types of local agencies required to comply with the Act, require a “written notice of availability” of property to specified entities prior to disposal of property, require that notice to be sent to housing sponsors that have notified both HCD and the COG of their interest in surplus land, placed parameters on the negotiations to dispose of the property, and would have provided that the existing 15% affordability requirements applies whenever surplus public land is used for housing. AB 2065 was held in the Appropriations Committee. Most of the changes contained in 2065 are in also in AB 1486.

*Double referred:* This bill is double referred. It was heard in the Assembly Committee on Local Government and passed out on a vote of 6-2 on April 10, 2019.

**REGISTERED SUPPORT / OPPOSITION:****Support**

Bay Area Housing Advocacy Coalition  
 California Apartment Association  
 Greenbelt Alliance  
 Habitat for Humanity California  
 Hamilton Families  
 Oakland Tenant Union  
 Southern California Association of NonProfit Housing  
 Tenderloin Neighborhood Development Corporation  
 Transform

**Opposition**

None on file

*Oppose Unless Amended*

Association of California Healthcare Districts  
 Association of California Water Agencies  
 California Association of Sanitation Agencies

California Land Title Association  
California Municipal Utilities association  
California Special Districts Association  
California State Association of Counties  
Desert Recreation Districts  
Irvine Ranch Water District  
Mesa Water District  
Orange County Water District  
Rural County Representatives of California  
Santa Margarita Water District  
Stege Sanitary District  
Urban Counties of California

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