

AMENDED IN SENATE JULY 13, 2017

AMENDED IN SENATE JUNE 19, 2017

AMENDED IN ASSEMBLY MAY 2, 2017

AMENDED IN ASSEMBLY MARCH 28, 2017

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 73

**Introduced by Assembly Members Chiu, Caballero, Bonta, and
Kalra**
**(Coauthors: Assembly Members Mullin, Santiago, Ting, Berman,
and Gloria)**

December 16, 2016

An act to amend Section 65582.1 of, and to add Chapter 11 (commencing with Section 66200) to Division 1 of Title 7 of, the Government Code, and to add Chapter 4.3 (commencing with Section 21155.10) to Division 13 of the Public Resources Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 73, as amended, Chiu. Planning and zoning: housing sustainability districts.

(1) The Planning and Zoning Law requires a city or county to adopt a general plan for land use development within its boundaries that includes, among other things, a housing element. Existing law provides for various reforms and incentives intended to facilitate and expedite the construction of affordable housing.

This bill would authorize a city, county, or city and county, including a charter city, charter county, or charter city and county, to establish

by ordinance a housing sustainability district that meets specified requirements, including authorizing residential use within the district through the ministerial issuance of a permit. The bill would authorize the city, county, or city and county to apply to the Department of Housing and Community Development for approval for a zoning incentive payment and require the city, county, or city and county to provide specified information about the proposed housing sustainability district ordinance. The bill would require the department to approve a zoning incentive payment if the ordinance meets the above-described requirements and the city's housing element is in compliance with specified law. The bill would also require the department, each October 1 following the approval of the housing sustainability district, to issue a certificate of compliance if the city, county, or city and county meets specified criteria pertaining to the continued compliance with these provisions or to deny certification, as provided. The bill would provide that a city, county, or city and county with a housing sustainability district would be entitled to a zoning incentive payment, subject to appropriation of funds for that purpose, and require that $\frac{1}{2}$ the amount be provided upon zone approval by the department and $\frac{1}{2}$ the amount upon verification by the department of the issuance of permits for the projected units of residential construction within the zone, provided that the city, county, or city and county has received a certificate of compliance for the applicable year. The bill, if the city, county, or city and county reduces the density of sites within the district from specified levels, would require the city, county, or city and county to return the full amount of zoning incentive payments it has received to the department. *The bill would also authorize a developer to develop a project in a housing sustainability district in accordance with the already existing land use approval procedures that would otherwise apply to the parcel in the absence of the establishment of the housing sustainability district pursuant to its provisions, as provided.*

The bill would authorize a city, county, or city and county to incorporate provisions in its housing sustainability district ordinance prescribing the contents of an application for a permit for residential development, to adopt design review standards, and to charge a project application fee to defray the costs of preparation, adoption, and administration of the housing sustainability district plan, as provided. *The bill would require that a housing sustainability district ordinance be effective for no more than 10 years, but would authorize the city, county, or city and county to renew the ordinance for not more than 10*

years. The bill would also require that prevailing wages be paid, and a skilled workforce employed, in connection with all projects within the housing sustainability district, as provided. The bill would establish procedures for review of an application by an approving authority, including requiring the approving authority to conduct a public hearing on an application and issue a written decision within 120 days of receipt of the application. The bill, if a proposed development within a housing sustainability district includes any parcels being used for affordable housing, would require that the approving authority condition approval of the application on the applicant's agreement to replace those affordable housing units. The bill would also prescribe procedures for review of a decision of the approving authority to deny or approve with conditions an application for a permit in the superior court.

The bill would *authorize the department to adopt, amend, and repeal standards, forms, or definitions to implement its provisions and exempt those standards, forms, or definitions from specified provisions of the Administrative Procedure Act governing rulemaking. The bill would require the department to publish a report containing specified information about the housing sustainability district program on its Internet Web site no later than November 1, 2018, and each November 1 thereafter.*

(2) The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment.

This bill would require a lead agency, when designating housing sustainability districts, to prepare an EIR for the designation, as specified. The bill would exempt from CEQA housing projects undertaken in the housing sustainability districts that meet specified requirements.

(3) *This bill would declare that its provisions are not severable. The bill would also make findings that it addresses a matter of statewide concern.*

(4) *This bill would incorporate additional changes to Section 65582.1 of the Government Code proposed by SB 35 to be operative only if this bill and SB 35 are enacted and this bill is enacted last.*

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

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

1 SECTION 1. Section 65582.1 of the Government Code is
2 amended to read:
3 65582.1. The Legislature finds and declares that it has provided
4 reforms and incentives to facilitate and expedite the construction
5 of affordable housing. Those reforms and incentives can be found
6 in the following provisions:
7 (a) Housing element law (Article 10.6 (commencing with
8 Section 65580) of Chapter 3).
9 (b) Extension of statute of limitations in actions challenging the
10 housing element and brought in support of affordable housing
11 (subdivision (d) of Section 65009).
12 (c) Restrictions on disapproval of housing developments
13 (Section 65589.5).
14 (d) Priority for affordable housing in the allocation of water and
15 sewer hookups (Section 65589.7).
16 (e) Least cost zoning law (Section 65913.1).
17 (f) Density bonus law (Section 65915).
18 (g) Accessory dwelling units (Sections 65852.150 and 65852.2).
19 (h) By-right housing, in which certain multifamily housing are
20 designated a permitted use (Section 65589.4).
21 (i) No-net-loss-in zoning density law limiting downzonings and
22 density reductions (Section 65863).
23 (j) Requiring persons who sue to halt affordable housing to pay
24 attorney fees (Section 65914) or post a bond (Section 529.2 of the
25 Code of Civil Procedure).
26 (k) Reduced time for action on affordable housing applications
27 under the approval of development permits process (Article 5
28 (commencing with Section 65950) of Chapter 4.5).
29 (l) Limiting moratoriums on multifamily housing (Section
30 65858).
31 (m) Prohibiting discrimination against affordable housing
32 (Section 65008).

1 (n) California Fair Employment and Housing Act (Part 2.8
2 (commencing with Section 12900) of Division 3).

3 (o) Community redevelopment law (Part 1 (commencing with
4 Section 33000) of Division 24 of the Health and Safety Code, and
5 in particular Sections 33334.2 and 33413).

6 (p) Housing sustainability districts (Chapter 11 (commencing
7 with Section 66200)).

8 *SEC. 1.5. Section 65582.1 of the Government Code is amended*
9 *to read:*

10 65582.1. The Legislature finds and declares that it has provided
11 reforms and incentives to facilitate and expedite the construction
12 of affordable housing. Those reforms and incentives can be found
13 in the following provisions:

14 (a) Housing element law (Article 10.6 (commencing with
15 Section 65580) of Chapter 3).

16 (b) Extension of statute of limitations in actions challenging the
17 housing element and brought in support of affordable housing
18 (subdivision (d) of Section 65009).

19 (c) Restrictions on disapproval of housing developments
20 (Section 65589.5).

21 (d) Priority for affordable housing in the allocation of water and
22 sewer hookups (Section 65589.7).

23 (e) Least cost zoning law (Section 65913.1).

24 (f) Density bonus law (Section 65915).

25 (g) Accessory dwelling units (Sections 65852.150 and 65852.2).

26 (h) By-right housing, in which certain multifamily housing are
27 designated a permitted use (Section 65589.4).

28 (i) No-net-loss-in zoning density law limiting downzonings and
29 density reductions (Section 65863).

30 (j) Requiring persons who sue to halt affordable housing to pay
31 attorney fees (Section 65914) or post a bond (Section 529.2 of the
32 Code of Civil Procedure).

33 (k) Reduced time for action on affordable housing applications
34 under the approval of development permits process (Article 5
35 (commencing with Section 65950) of Chapter 4.5).

36 (l) Limiting moratoriums on multifamily housing (Section
37 65858).

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39 (Section 65008).

1 (n) California Fair Employment and Housing Act (Part 2.8
2 (commencing with Section 12900) of Division 3).

3 (o) Community redevelopment law (Part 1 (commencing with
4 Section 33000) of Division 24 of the Health and Safety Code, and
5 in particular Sections 33334.2 and 33413).

6 (p) *Streamlining housing approvals during a housing shortage*
7 (*Section 65913.4*).

8 (q) *Housing sustainability districts (Chapter 11 (commencing*
9 *with Section 66200))*.

10 SEC. 2. Chapter 11 (commencing with Section 66200) is added
11 to Division 1 of Title 7 of the Government Code, to read:

12

13 CHAPTER 11. HOUSING SUSTAINABILITY DISTRICTS

14

15 66200. For the purposes of this chapter, the following
16 definitions shall apply:

17 (a) “Approving authority” means an agency of a city, county,
18 or city and county that is established in the city’s, county’s, or city
19 and county’s housing sustainability district ordinance and
20 designated to review permit applications for development within
21 the housing sustainability district in accordance with Section
22 66205.

23 (b) “City, county, or city and county” includes a charter city,
24 charter county, or charter city and county.

25 (c) “Department” means the Department of Housing and
26 Community Development.

27 (d) “Developable~~area~~” *land*” means the area within a housing
28 sustainability district that can be feasibly developed into residential
29 or mixed-use development, including land area occupied by or
30 associated with underutilized residential, commercial, or industrial
31 buildings or uses that have the potential to be converted for
32 residential or mixed use, in accordance with the rules and
33 regulations of the department, except for the following:

34 (1) Land that is already substantially developed, including
35 existing parks and open space.

36 (2) Areas exceeding one-half acre that are unsuitable for
37 development due to topographical features or environmental
38 preservation.

39 (e) “Eligible location” means ~~any~~ *either* of the following:

40 (1) An area located within one-half mile of public transit.

1 ~~(2) An area of concentrated development.~~

2 ~~(3)~~

3 (2) An area that, by virtue of existing infrastructure,
4 transportation access, existing underutilized facilities, or location,
5 is highly suitable for a residential or mixed-use housing
6 sustainability district.

7 (f) “Mixed use” means that up to 50 percent of the square
8 footage of a proposed development is designated for nonresidential
9 use.

10 (g) “Project” means a proposed residential or mixed use
11 development within a housing sustainability district.

12 (h) “Housing sustainability district” means an area within a city,
13 county, or city and county designated pursuant to this chapter that
14 is superimposed over an area within the jurisdiction of the city,
15 county, or city and county in which a developer may elect to
16 develop a project in accordance with either the housing
17 sustainability district ordinance or the city’s, county’s, or city and
18 county’s otherwise applicable general plan and zoning ordinances.

19 (i) “Housing sustainability district ordinance” means the
20 ordinance adopted by a city, county, or city and county pursuant
21 to Section 66201 establishing a housing sustainability district.

22 66201. (a) A city, county, or city and county, upon receipt of
23 preliminary approval by the department pursuant to Section 66202,
24 may establish by ordinance a housing sustainability district in
25 accordance with this chapter. The city, county, or city and county
26 shall adopt the ordinance in accordance with the requirements of
27 Chapter 4 (commencing with Section 65800).

28 (b) An area proposed to be designated a housing sustainability
29 district pursuant to this chapter shall satisfy all of the following
30 requirements:

31 (1) The area is an eligible location, including any adjacent area
32 served by existing infrastructure and utilities.

33 (2) The area is zoned to permit residential use through the
34 ministerial issuance of a permit. Other uses may be permitted by
35 conditional use or other discretionary permit, provided that the use
36 is consistent with residential use.

37 (3) Density ranges for multifamily housing for which the
38 minimum densities shall not be less than those deemed appropriate
39 to accommodate housing for lower income households as set forth
40 in subparagraph (B) of paragraph (3) of subdivision (c) of Section

1 65583.2, and a density range for single-family attached or detached
2 housing for which the minimum densities shall not be less than 10
3 units to the acre. A density range shall provide the minimum
4 dwelling units per acre and the maximum dwelling units per acre.

5 (4) The development of housing is permitted, consistent with
6 neighborhood building and use patterns and any applicable building
7 codes.

8 (5) Limitations or moratoriums on residential use do not apply
9 to any of the area, other than any limitation or moratorium imposed
10 by court order.

11 (6) The area is not subject to any general age or other occupancy
12 restrictions, except that the city, county, or city and county may
13 allow for the development of specific projects exclusively for the
14 elderly or the disabled or for assisted living.

15 (7) Housing units comply with all applicable federal, state, and
16 local fair housing laws.

17 (8) The area of the proposed housing sustainability district does
18 not exceed 15 percent of the total land area under the jurisdiction
19 of the city, county, or city and county unless the department
20 approves a larger area in furtherance of the purposes of this chapter.

21 (9) The total area of all housing sustainability districts within
22 the city, county, or city and county does not exceed 30 percent of
23 the total land area under the jurisdiction of the city, county, or city
24 and county.

25 (10) The housing sustainability district ordinance provides for
26 the manner of review by an approving authority, as designated by
27 the ordinance, pursuant to Section 66205 and in accordance with
28 the rules and regulations adopted by the department.

29 (11) Development projects in the area comply with the
30 requirements of Section 66208, regarding the replacement of
31 affordable housing units affected by the development.

32 (c) The city, county, or city and county may apply uniform
33 development policies or standards that will apply to all projects
34 within the housing sustainability district, including parking
35 ordinances, public access ordinances, grading ordinances, hillside
36 development ordinances, flood plain ordinances, habitat or
37 conservation ordinances, view protection ordinances, and
38 requirements for reducing greenhouse gas emissions.

39 (d) The city, county, or city and county may provide for
40 mixed-use development within the housing sustainability district.

1 (e) An amendment or repeal of a housing sustainability district
2 ordinance shall not become effective unless the department
3 provides written approval to the city, county, or city and county.
4 The city, county, or city and county may request approval of a
5 proposed amendment or repeal by submitting a written request to
6 the department. The department shall evaluate the proposed
7 amendment or repeal for the effect of that amendment or repeal
8 on the city's, county's, or city and county's housing element. If
9 the department does not respond to a written request for amendment
10 or repeal of an ordinance within 60 days of receipt of that request,
11 the request shall be deemed approved.

12 (f) The housing sustainability district ordinance shall do all of
13 the following:

14 (1) Provide for an approving authority to review permit
15 applications for development within the housing sustainability
16 district in accordance with Section 66205.

17 (2) (A) Subject to subparagraph (B), require that at least 20
18 percent of the residential units constructed within the housing
19 sustainability district be affordable to very low, low-, and
20 moderate-income households and subject to a recorded affordability
21 restriction for at least 55 years. A development that is affordable
22 to persons and families whose income exceeds the income limit
23 for persons and families of moderate income shall include no less
24 than 10 percent of the units for lower income households at
25 affordable housing cost, as defined by Section 50052.5 of the
26 Health and Safety Code, unless the city, county, or city and county
27 has adopted a local ordinance that requires that a greater percentage
28 of the units be for lower income households, in which case that
29 ordinance shall apply.

30 (B) For a city, county, or city and county that includes its entire
31 regional housing needs allocation pursuant to Section 65584 within
32 the housing sustainability district, the percentages of the total units
33 constructed or substantially rehabilitated within the housing
34 sustainability district shall match the percentages in each income
35 category of the city's, county's, or city and county's regional
36 housing need allocation.

37 (C) Nothing in this section shall be construed to expand or
38 contract the authority of a local government to adopt an ordinance,
39 charter amendment, general plan amendment, specific plan,
40 resolution, or other land use policy or regulation requiring that any

1 housing development contain a fixed percentage of affordable
 2 housing units.

3 (3) Specify that a project is not deemed to be for residential use
 4 if it is infeasible for actual use as a single or multifamily residence.

5 (4) Require that an applicant for a permit for a project within
 6 the housing sustainability district do the following, as applicable:

7 (A) Certify to the approving authority that either of the following
 8 is true, as applicable:

9 (i) That the entirety of the project is a public work for purposes
 10 of Chapter 1 (commencing with Section 1720) of Part 7 of Division
 11 2 of the Labor Code.

12 (ii) If the project is not in its entirety a public work, that all
 13 construction workers employed in the execution of the project will
 14 be paid at least the general prevailing rate of per diem wages for
 15 the type of work and geographic area, as determined by the Director
 16 of Industrial Relations pursuant to Sections 1773 and 1773.9 of
 17 the Labor Code. *Code, except that apprentices registered in*
 18 *programs approved by the Chief of the Division of Apprenticeship*
 19 *Standards may be paid at least the applicable apprentice prevailing*
 20 *rate.* If the approving authority approves the application, then for
 21 those portions of the project that are not a public work all of the
 22 following shall apply:

23 (I) The applicant shall include the prevailing wage requirement
 24 in all contracts for the performance of the work.

25 (II) ~~Contractors~~ *All contractors* and subcontractors shall pay to
 26 all construction workers employed in the execution of the work at
 27 least the general prevailing rate of per diem ~~wages.~~ *wages, except*
 28 *that apprentices registered in programs approved by the Chief of*
 29 *the Division of Apprenticeship Standards may be paid at least the*
 30 *applicable apprentice prevailing rate.*

31 (III) *Except as provided in subclause (V), all contractors and*
 32 *subcontractors shall maintain and verify payroll records pursuant*
 33 *to Section 1776 of the Labor Code and make those records*
 34 *available for inspection and copying as provided in therein.*

35 ~~(H)~~

36 (IV) Except as provided in subclause ~~(IV)~~, (V), the obligation
 37 of the contractors and subcontractors to pay prevailing wages may
 38 be enforced by the Labor Commissioner through the issuance of
 39 a civil wage and penalty assessment pursuant to Section 1741 of
 40 the Labor Code, which may be reviewed pursuant to Section 1742

1 of the Labor Code, within 18 months after the completion of the
 2 project, ~~or~~ by an underpaid worker through an administrative
 3 complaint or civil ~~action~~, *action, or by a joint labor-management*
 4 *committee through a civil action under Section 1771.2 of the Labor*
 5 *Code. If a civil wage and penalty assessment is issued, the*
 6 *contractor, subcontractor, and surety on a bond or bonds issued to*
 7 *secure the payment of wages covered by the assessment shall be*
 8 *liable for liquidated damages pursuant to Section 1742.1 of the*
 9 *Labor Code.*

10 ~~(IV) Subclause (III)~~

11 (V) *Subclauses (III) and (IV) shall not apply if all contractors*
 12 *and subcontractors performing work on the project are subject to*
 13 *a project labor agreement that requires the payment of prevailing*
 14 *wages to all construction workers employed in the execution of*
 15 *the project and provides for enforcement of that obligation through*
 16 *an arbitration procedure. For purposes of this subclause, “project*
 17 *labor agreement” has the same meaning as set forth in paragraph*
 18 *(1) of subdivision (b) of Section 2500 of the Public Contract Code.*

19 ~~(V)~~

20 (VI) *Notwithstanding subdivision (c) of Section 1773.1 of the*
 21 *Labor Code, the requirement that employer payments not reduce*
 22 *the obligation to pay the hourly straight time or overtime wages*
 23 *found to be prevailing shall not apply if otherwise provided in a*
 24 *bona fide collective bargaining agreement covering the worker.*
 25 ~~The requirements of paragraph (2) of subdivision (c) of Section~~
 26 ~~1773.1 of the Labor Code do~~ *requirement to pay at least the*
 27 *general prevailing rate of per diem wages does not preclude use*
 28 *of an alternative workweek schedule adopted pursuant to Section*
 29 *511 or 514 of the Labor Code.*

30 (B) (i) ~~For projects with a cost exceeding _____ dollars (\$_____),~~
 31 ~~for which any of the following conditions apply,~~ *certify to the*
 32 *approving authority that a skilled and trained workforce will be*
 33 *used to complete the project. For project if the approving authority*
 34 *approves the project application:*

35 (I) *On and after January 1, 2018, until December 31, 2021, the*
 36 *project consists of 75 or more units that are not 100 percent*
 37 *subsidized affordable housing and will be located within a*
 38 *jurisdiction located in a coastal or bay county with a population*
 39 *of 225,000 or more.*

1 (II) On and after January 1, 2022, until December 31, 2025,
 2 the project consists of 50 or more units that are not 100 percent
 3 subsidized affordable housing and will be located within a
 4 jurisdiction located in a coastal or bay county with a population
 5 of 225,000 or more.

6 (III) On and after January 1, 2018, until December 31, 2019,
 7 the project consists of 75 or more units that are not 100 percent
 8 subsidized affordable housing and will be located within a
 9 jurisdiction with a population of fewer than 550,000 and that is
 10 not located in a coastal or bay county.

11 (IV) On and after January 1, 2020, until December 31, 2021,
 12 the project consists of more than 50 units and will be located within
 13 a jurisdiction with a population of fewer than 550,000 and that is
 14 not located in a coastal or bay county.

15 (V) On and after January 1, 2022, until December 31, 2025,
 16 the project consists of more than 25 units and will be located within
 17 a jurisdiction with a population of fewer than 550,000 and that is
 18 not located in a coastal bay county.

19 (ii) For purposes of this ~~subparagraph~~, section, “skilled and
 20 trained workforce” has the same meaning as provided in
 21 ~~subdivision (d) of Section 2601 of the Public Contract Code. If~~
 22 ~~the approving authority approves the application, the Chapter 2.9~~
 23 ~~(commencing with Section 2600) of Part 1 of Division 2 of the~~
 24 ~~Public Contract Code.~~

25 (iii) If the applicant has certified that a skilled and trained
 26 workforce will be used to complete the development and the
 27 application is approved, the following shall apply:

28 (i)

29 (I) The applicant shall require in all contracts for the
 30 performance of work that every contractor and subcontractor at
 31 every tier will individually use a skilled and trained workforce to
 32 complete the project.

33 (ii)

34 (II) Every contractor and subcontractor shall use a skilled and
 35 trained workforce to complete the project.

36 (iii)

37 (III) Except as provided in ~~clause (iv)~~, *subclause (IV)*, the
 38 applicant shall provide to the approving authority, on a monthly
 39 basis while the project or contract is being performed, a report
 40 demonstrating compliance with ~~this subparagraph~~. *Chapter 2.9*

1 (*commencing with Section 2600*) of Part 1 of Division 2 of the
2 *Public Contract Code*. A monthly report provided to the approving
3 authority pursuant to this ~~clause~~ *subclause* shall be a public record
4 under the California Public Records Act (Chapter 3.5 (*commencing*
5 *with Section 6250*) of Division 7 of Title 1) and shall be open to
6 public inspection. An applicant that fails to provide a monthly
7 report demonstrating compliance with ~~this subparagraph~~ *Chapter*
8 *2.9 (commencing with Section 2600) of Part 1 of Division 2 of the*
9 *Public Contract Code* shall be subject to a civil penalty of ten
10 thousand dollars (\$10,000) per month for each month for which
11 the report has not been provided. Any contractor or subcontractor
12 that fails to use a skilled and trained workforce shall be subject to
13 a civil penalty of two hundred dollars (\$200) per day for each
14 worker employed in contravention of the skilled and trained
15 workforce requirement. Penalties may be assessed by the Labor
16 Commissioner within 18 months of completion of the project using
17 the same procedures for issuance of civil wage and penalty
18 assessments pursuant to Section 1741 of the Labor Code, and may
19 be reviewed pursuant to the same procedures in Section 1742 of
20 the Labor Code. Penalties shall be paid to the State Public Works
21 Enforcement Fund.

22 ~~(iv) Clause (iii)~~

23 *(IV) Subclause (III)* shall not apply if all contractors and
24 subcontractors performing work on the project are subject to a
25 project labor agreement that requires compliance with the skilled
26 and trained workforce requirement and provides for enforcement
27 of that obligation through an arbitration procedure. For purposes
28 of this subparagraph, “project labor agreement” has the same
29 meaning as set forth in paragraph (1) of subdivision (b) of Section
30 2500 of the Public Contract Code.

31 *(C) Notwithstanding subparagraphs (A) and (B), a project within*
32 *a housing sustainability district that is subject to approval by the*
33 *approving authority is exempt from any requirement to pay*
34 *prevailing wages or use a skilled and trained workforce if it meets*
35 *both of the following:*

36 *(i) The project includes 10 or fewer units.*

37 *(ii) The project is not a public work for purposes of Chapter 1*
38 *(commencing with Section 1720) of Part 7 of Division 2 of the*
39 *Labor Code.*

1 (5) Provide that a project is not eligible for approval from the
 2 approving authority if it involved or involves the subdivision that
 3 is, or, notwithstanding this chapter, would otherwise be, subject
 4 to the Subdivision Map Act (Division 2 (commencing with Section
 5 66410)) or any other applicable law authorizing the subdivision
 6 of land, unless either of the following apply:

7 (A) The project has received or will receive financing or funding
 8 by means of a low-income housing tax credit and is subject to the
 9 requirement that prevailing wages be paid pursuant to
 10 subparagraph (A) of paragraph (4).

11 (B) The project is subject to the requirement that prevailing
 12 wages be paid, and a skilled and trained workforce used, pursuant
 13 to paragraph (4).

14 ~~(5)~~

15 (6) Provide for relocation assistance for persons and families
 16 displaced from their residences due to development within the
 17 housing sustainability district.

18 (g) A housing sustainability district ordinance adopted pursuant
 19 to this section shall remain in effect for no more than 10 years,
 20 except that the city, county, or city and county may renew the
 21 housing sustainability district ordinance, for an additional period
 22 not exceeding 10 years, before the date upon which it would
 23 otherwise be repealed pursuant to this subdivision.

24 ~~(g)~~

25 (h) This section shall not be construed to affect the authority of
 26 a city, county, or city and county to amend its zoning regulations
 27 pursuant to Chapter 4 (commencing with Section 65800), except
 28 to the extent that an amendment affects a housing sustainability
 29 district.

30 ~~(h)~~

31 (i) The city, county, or city and county shall comply with
 32 Chapter 4.3 (commencing with Section 21155.10) of Division 13
 33 of the Public Resources Code.

34 66202. (a) (1) A city, county, or city and county that has
 35 proposed an ordinance establishing a housing sustainability district
 36 in accordance with this chapter may apply to the department for
 37 preliminary approval of a housing sustainability district. The
 38 department shall make a preliminary determination as to the
 39 eligibility of the proposed housing sustainability district for
 40 approval.

1 (2) The department shall approve an application for preliminary
2 approval for a zoning incentive payment if it determines both that
3 the proposed housing sustainability district ordinance meets the
4 requirements of this chapter and the city's, county's, or city and
5 county's housing element is in compliance with Article 10.6
6 (commencing with Section 65580) of Chapter 3. If the department
7 denies the application, it shall inform the applicant city, county,
8 or city and county of the deficiencies in its application. A city,
9 county, or city and county may reapply upon correcting those
10 deficiencies identified in the department's denial.

11 (3) The department shall transmit its determination to the
12 applicant city, county, or city and ~~county and to the department.~~
13 *county.*

14 (b) A city, county, or city and county that has proposed an
15 ordinance establishing a housing sustainability district shall submit
16 all of the following information with its application:

17 (1) A description of the boundaries of the proposed housing
18 sustainability district.

19 (2) A description of the developable land within the proposed
20 housing sustainability district.

21 (3) A description of other residential development opportunities
22 within the city, county, or city and county, including infill
23 development and reuse of existing buildings within already
24 developed areas.

25 (4) A copy of the city's, county's, or city and county's housing
26 element, adopted in accordance with Article 10.6 (commencing
27 with Section 65580) of Chapter 3.

28 (5) A copy of the housing sustainability district ordinance
29 adopted pursuant to Section 66201.

30 (6) A copy of the environmental impact report prepared pursuant
31 to Section 21155.10 of the Public Resources Code.

32 (7) A copy of the city's, county's, or city and county's design
33 review standards, if any, developed pursuant to Section 66207.

34 (8) Any other materials that establish the city's, county's, or
35 city and county's compliance with the requirements of Section
36 66201.

37 (c) Following preliminary approval of an application pursuant
38 to subdivision (a) and upon receipt of acknowledgment that the
39 housing sustainability district ordinance has taken effect, the

1 department shall confirm approval within 45 days of receipt of the
 2 application.

3 66203. (a) On or before October 1 of each year following the
 4 approval of a city’s, county’s, or city and county’s housing
 5 sustainability district by the department under Section 66202, the
 6 department shall issue a certificate of compliance if it finds that
 7 the city, county, or city and county has satisfied all of the following
 8 requirements:

9 (1) The city, county, or city and county has in effect a housing
 10 sustainability district ordinance adopted pursuant to Section 66201.

11 (2) The housing sustainability district complies with the
 12 minimum requirements of subdivision (b) of Section 66201.

13 (3) The city, county, or city and county has only denied a permit
 14 for a residential development consistent with its housing
 15 sustainability district ordinance, the provisions of its housing
 16 element, or the requirements of this chapter.

17 ~~(4) The city, county, or city and county has not adopted a design
 18 review standard pursuant to Section 66207 that adds unreasonable
 19 costs to a residential or mixed-use development, or impairs the
 20 economic feasibility of a proposed development, within the housing
 21 sustainability district.~~

22 *(4) The design review standards, if any, adopted by the city,
 23 county, or city and county comply with the requirements of Section
 24 66207.*

25 (b) If the department finds that a city, county, or city and county
 26 does not satisfy all of the requirements of subdivision (a), the
 27 department may deny certification of the housing sustainability
 28 district. A denial pursuant to this subdivision shall not affect the
 29 validity of the housing sustainability district ordinance or the
 30 application of the ordinance to a development or proposed
 31 development within the housing sustainability district.

32 (c) The department may require a city, county, or city and county
 33 to provide any information it deems necessary to review that city’s,
 34 county’s, or city and county’s housing sustainability district as
 35 required by this section.

36 66204. (a) *(1)* A city, county, or city and county with a
 37 housing sustainability district approved by the department under
 38 Section 66202 shall be entitled to a zoning incentive payment,
 39 upon appropriation of funds by the Legislature for that ~~purpose,~~
 40 ~~in the following amounts:~~ *purpose.*

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| Projected Construction of New Residential Units | Amount of Payment |
|---|-------------------|
| 20 or fewer | \$___ |
| 21 to 100 | \$___ |
| 101 to 200 | \$___ |
| 201 to 500 | \$___ |
| 501 or more | \$___ |

The

(2) *The* amount of payment provided to a city, county, or city and county pursuant to this section shall be based on the number of new residential units constructed within the housing sustainability district. Replacement units constructed in accordance with Section 66208 *and any units constructed by a developer who elects to not be subject to the housing sustainability district ordinance pursuant to subdivision (f) of Section 66205* shall not be considered new residential units for purposes of this section.

(b) The department shall issue the first half of the zoning incentive payment to the city, county, or city and county upon preliminary approval of the housing sustainability district ordinance and issuance of the environmental impact report pursuant to Section 21155.10 of the Public Resources Code. The department shall issue the second half of the zoning incentive payment within 10 days of submission of proof of issuance of building permits by the city, county, or city and county for the projected units of residential construction within the zone, provided that the city, county, or city and county has received a certificate of compliance for the applicable year pursuant to Section 66203.

66205. (a) (1) A city, county, or city and county may incorporate provisions in its housing sustainability district ordinance prescribing the contents of an application for a permit for residential development.

(2) The city, county, or city and county may charge an application fee to persons seeking government approval of a project within the housing sustainability district. A fee charged pursuant to this paragraph shall be established to defray the costs of preparation, adoption, and administration of the housing sustainability district plan, including costs incurred related to the

1 implementation of Chapter 4.3 (commencing with Section
2 21155.10) of Division 13 of the Public Resources Code. As nearly
3 as can be estimated, the fee charged shall be a prorated amount in
4 accordance with the applicant's relative benefit derived from the
5 housing sustainability district plan.

6 (3) The housing sustainability district ordinance may provide
7 for referral of an application for a permit to any officers, agencies,
8 boards, or bureaus of the city, county, or city and county for review
9 and comment. A reviewing officer, agency, board, or bureau shall
10 provide any comments on an application within 60 days of receipt.

11 (b) The applicable provisions of the city's, county's, or city and
12 county's general plan and housing sustainability district ordinance
13 in effect at the time an application is submitted to the approving
14 authority shall govern the application for the purposes of the
15 following:

16 (1) The processing and review of the application.

17 (2) The pendency of any appeal of a decision of the approving
18 authority.

19 (3) If the application is approved, for ~~five~~ *three* years following
20 approval of the application.

21 ~~(4) If the application is denied, to any further application for
22 the same proposed development filed within two years following
23 the date of the denial, unless the applicant elects to proceed under
24 the city's, county's, or city and county's general plan and housing
25 sustainability district ordinance in effect at the time when he or
26 she submits that further application.~~

27 (c) (1) The applicant shall file an application for a permit with
28 ~~the clerk~~ *official designated for this purpose in the housing*
29 *sustainability district ordinance* of the city, county, or city and
30 county and with the approving authority.

31 (2) The authority shall conduct a public hearing in accordance
32 with the Ralph M. Brown Act (Chapter 9 (commencing with
33 Section 54950) of Part 1 of Division 2 of Title 5) and issue a
34 written decision on the application within 120 days of receipt of
35 the application, unless extended by agreement between the
36 approving authority and the applicant. The approving authority
37 shall file a copy of its written decision with the official designated
38 for this purpose in the housing sustainability district ordinance of
39 the city, county, or city and county.

1 (3) If the approving authority fails to act within 120 days, or
2 within the period agreed upon by the approving authority and the
3 applicant, as applicable, the application shall be deemed approved.
4 In the event an application is deemed approved pursuant to this
5 paragraph, the applicant shall provide notice to any interested
6 parties and notify the official designated for this purpose in the
7 housing sustainability district ordinance of the city, county, or city
8 and county within 14 days of the application being deemed
9 approved. The notice provided to interested parties shall specify
10 that any appeals must be filed within 20 days following the ~~clerk's~~
11 *official's* receipt of the notice.

12 (4) The approving authority shall issue to the applicant a copy
13 of its written decision, including the name and address of the owner
14 of the property proposed to be developed, an identification of the
15 property proposed to be developed, the development plans, and
16 certification that a copy of the decision has been filed with the
17 official designated for this purpose in the housing sustainability
18 district ordinance of the city, county, or city and county.

19 (d) (1) In reviewing an application for a permit pursuant to this
20 section, the approving authority shall consider the requirements
21 of the housing sustainability district ordinance and of this chapter,
22 including the requirement that the applicant replace affordable
23 housing units affected by the proposed development pursuant to
24 Section 66208.

25 (2) The approving authority may deny an application only for
26 the following reasons:

27 (A) The proposed development project does not fully comply
28 with the housing sustainability district ordinance.

29 (B) The applicant has not submitted all of the required
30 information or paid an application fee required by the housing
31 sustainability district ordinance and necessary for an adequate and
32 timely design review or assessment of potential impacts on nearby
33 property.

34 (C) The approving authority determines, based upon substantial
35 evidence in light of the whole record of the public hearing on the
36 project, that a physical condition on the site of development that
37 was not known and could not have been discovered with reasonable
38 investigation at the time the application was submitted would have
39 a specific adverse impact upon the public health or safety and that
40 there is no feasible method to satisfactorily mitigate or avoid the

1 specific adverse impact. As used in this subparagraph, “specific
2 adverse impact” means a significant, quantifiable, direct, and
3 unavoidable impact based on identified objective written public
4 health or safety standards, policies, or conditions, as in existence
5 at the time the application is deemed complete. Nothing in this
6 subparagraph is intended to affect thresholds of significance or
7 standards of review for any impact reviewed pursuant to the
8 California Environmental Quality Act (Division 13 (commencing
9 with Section 21000) of the Public Resources Code).

10 (e) The official designated for this purpose in the housing
11 sustainability district ordinance of the city, county, or city and
12 county shall certify the following, as applicable, on a copy of the
13 written decision of the approving authority:

14 (1) No appeal has been filed, or has been dismissed or denied,
15 within 20 days of the issuance of the decision of the approving
16 authority.

17 (2) The application is deemed approved by reason of the failure
18 of the approving authority to issue a decision within 120 days of
19 submission of the application.

20 *(f) A developer may choose to develop a project in a housing*
21 *sustainability district in accordance with the already existing land*
22 *use approval procedures that would otherwise apply to the parcel*
23 *in the absence of the establishment of the housing sustainability*
24 *district pursuant to this chapter, and in so doing shall not receive*
25 *any of the incentives and benefits or be required to comply with*
26 *any of the provisions specified in the housing sustainability district*
27 *ordinance or this chapter.*

28 66206. (a) If the approving authority denies an application for
29 a permit submitted in accordance with Section 66205 or has
30 approved it with conditions rendering the project infeasible for
31 residential use, the applicant may appeal that decision by filing a
32 complaint in the superior court.

33 (b) An appeal pursuant to this section shall be filed within 20
34 days after the approving authority has filed its decision to deny or
35 conditionally approve the application with the official designated
36 for this purpose in the housing sustainability district ordinance of
37 the city, county, or city and county. The applicant shall provide
38 notice of the appeal and a copy of the complaint to that official.
39 The applicant shall, within 14 days of filing the complaint, serve
40 written notice and provide a copy of the complaint to all defendants

1 by certified mail. The court shall dismiss the complaint if the
2 applicant does not, within 21 days of filing the complaint, file an
3 affidavit with the clerk of the court certifying that the notices
4 required by this subdivision have been provided.

5 (c) The complaint shall allege the specific reasons why the
6 approving authority’s decision does not satisfy the requirements
7 of the housing sustainability district ordinance, the provisions of
8 this chapter, or other applicable law. The complaint shall name
9 the approving authority as a defendant.

10 (d) The approving authority shall have the burden of proving
11 that its decision satisfies the requirements of the housing
12 sustainability district ordinance, the provisions of this chapter, or
13 other applicable law based on substantial evidence in light of the
14 whole record.

15 66207. (a) A city, county, or city and county may, in
16 accordance with the regulations adopted by the department, adopt
17 design review standards applicable to development projects within
18 the housing sustainability district to ensure that the physical
19 character of development within the district is complementary to
20 adjacent buildings and structures and is consistent with the city’s,
21 county’s, or city and county’s general plan, including the housing
22 element. ~~However, a design review standard shall not add~~
23 ~~unreasonable costs to a residential or mixed-use development, or~~
24 ~~unreasonably impair the economic feasibility of a proposed~~
25 ~~development, within the housing sustainability district. For~~
26 ~~purposes of this section, “design review standard” means the~~
27 ~~reasonable application of qualitative design requirements that are~~
28 ~~clear and concise and consistently applied to all types of~~
29 ~~development applications, with specific terms defined or generally~~
30 ~~accepted word definitions. Design review of a development within~~
31 a housing sustainability district shall not constitute a “project” for
32 purposes of the California Environmental Quality Act (Division
33 13 (commencing with Section 21000) of the Public Resources
34 Code).

35 (b) Design review standards adopted pursuant to this section
36 shall be adopted at the same time as the housing sustainability
37 district ordinance and submitted to the department with the city’s,
38 county’s, or city and county’s application pursuant to Section
39 66202. Any subsequent additional design review standards or
40 amendment of existing design review standards shall be subject

1 to written approval by the department in the same manner as
2 specified in subdivision (e) of Section 66201, relating to the
3 amendment or repeal of a housing sustainability district ordinance.
4 66208. (a) If a proposed development within a housing
5 sustainability district includes any parcels being used for affordable
6 housing at the time the application is submitted to the approving
7 authority, the approving authority shall condition its approval of
8 the application on the applicant's agreement to replace those
9 affordable housing units.

10 (b) For the purposes of this section, the following definitions
11 shall apply:

12 (1) "Affordable housing" shall mean a parcel of property that
13 meets any of the following criteria:

14 (A) The parcel includes rental dwelling units that are or, if the
15 dwelling units have been vacated or demolished in the five-year
16 period preceding the application, have been subject to a recorded
17 covenant, ordinance, or law that restricts rents to levels affordable
18 to persons and families of lower or very low income.

19 (B) The parcel is subject to rent or price control through a public
20 entity's valid exercise of its police power.

21 (C) The parcel includes a housing development that is currently
22 occupied by low- or very low income households.

23 (2) "Replace" shall mean either of the following, as applicable:

24 (A) If any affordable housing units described in subdivision (a)
25 are occupied on the date of application, the proposed housing
26 development shall provide at least the same number of units of
27 equivalent size to be made available at affordable rent or affordable
28 housing cost to, and occupied by, persons and families in the same
29 or lower income category as those households in occupancy. If
30 the income category of the household in occupancy is not known,
31 it shall be rebuttably presumed that lower income renter households
32 occupied these units in the same proportion of lower income renter
33 households to all renter households within the jurisdiction, as
34 determined by the most recently available data from the United
35 States Department of Housing and Urban Development's
36 Comprehensive Housing Affordability Strategy database. For
37 unoccupied affordable housing units described in subdivision (a)
38 in a development with occupied units, the proposed housing
39 development shall provide units of equivalent size to be made
40 available at affordable rent or affordable housing cost to, and

1 occupied by, persons and families in the same or lower income
2 category as the last household in occupancy. If the income category
3 of the last household in occupancy is not known, it shall be
4 rebuttably presumed that lower income renter households occupied
5 these units in the same proportion of lower income renter
6 households to all renter households within the jurisdiction, as
7 determined by the most recently available data from the United
8 States Department of Housing and Urban Development's
9 Comprehensive Housing Affordability Strategy database. All
10 replacement calculations resulting in fractional units shall be
11 rounded up to the next whole number. The replacement units shall
12 be subject to a recorded affordability restriction for at least 55
13 years.

14 (B) If all affordable housing units described in subdivision (a)
15 have been vacated or demolished within the five-year period
16 preceding the application, the proposed housing development shall
17 provide at least the same number of units of equivalent size, as
18 existed at the high point of those units in the five-year period
19 preceding the application to be made available at affordable rent
20 or affordable housing cost to, and occupied by, persons and families
21 in the same or lower income category as those persons and families
22 in occupancy at that time, if known. If the incomes of the persons
23 and families in occupancy at the high point is not known, it shall
24 be rebuttably presumed that low-income and very low income
25 renter households occupied these units in the same proportion of
26 low-income and very low income renter households to all renter
27 households within the jurisdiction, as determined by the most
28 recently available data from the United States Department of
29 Housing and Urban Development's Comprehensive Housing
30 Affordability Strategy database. All replacement calculations
31 resulting in fractional units shall be rounded up to the next whole
32 number. The replacement units shall be subject to a recorded
33 affordability restriction for at least 55 years.

34 (C) Notwithstanding subparagraph (B), for any dwelling unit
35 described in subparagraph (A) that is or was, within the five-year
36 period preceding the application, subject to a form of rent or price
37 control through a local government's valid exercise of its police
38 power and that is or was occupied by persons or families above
39 lower income, the city, county, or city and county may do either
40 of the following:

1 (i) Require that the replacement units be made available at
2 affordable rent or affordable housing cost to, and occupied by,
3 low-income persons or families. If the replacement units will be
4 rental dwelling units, these units shall be subject to a recorded
5 affordability restriction for at least 55 years. If the proposed
6 development is for-sale units, the units replaced shall be subject
7 to paragraph (2).

8 (ii) Require that the units be replaced in compliance with the
9 jurisdiction's rent or price control ordinance, provided that each
10 unit described in subparagraph (A) is replaced. Unless otherwise
11 required by the jurisdiction's rent or price control ordinance, these
12 units shall not be subject to a recorded affordability restriction.

13 (D) For purposes of this paragraph, "equivalent size" means
14 that the replacement units contain at least the same total number
15 of bedrooms as the units being replaced.

16 66209. (a) The department shall be responsible for the
17 administration of this chapter with respect to the approval of a
18 housing sustainability district pursuant to Section 66202 and the
19 award of the first half of the incentive payment pursuant to Section
20 66204. The department shall be responsible for the administration
21 of this chapter in all other respects, including the continued
22 compliance of a housing sustainability district with this chapter
23 and the award of the second half of the incentive payment pursuant
24 to Section 66204. *chapter. The department may review, adopt,*
25 *amend, and repeal standards, forms, or definitions to implement*
26 *this chapter. Any standards, forms, or definitions adopted to*
27 *implement this chapter shall not be subject to Chapter 3.5*
28 *(commencing with Section 11340) of Part 1 of Division 3 of Title*
29 *2.*

30 (b) (1) The department shall conduct, or cause to be conducted,
31 an annual review of the housing sustainability district program.
32 The department may require participating cities and counties to
33 provide data on housing sustainability districts within their
34 jurisdiction as necessary to conduct this review and prepare the
35 report required by this subdivision.

36 (2) The department shall publish a report on its Internet Web
37 site no later than November 1, 2018, and each November 1
38 thereafter. The report shall include all of the following:

39 (A) The status of the program through the fiscal year prior to
40 the publication of the report.

1 (B) An identification and description of cities and counties
2 seeking preliminary determination from the department.

3 (C) An identification of approved housing sustainability districts
4 and the incentive payments awarded for each pursuant to Section
5 66204.

6 (D) A summary of the land area within both proposed and
7 approved housing sustainability districts and the purposes for which
8 it is zoned.

9 (E) The number of projects under review by an approving
10 authority, proposed residential units, building permits issued, and
11 completed housing units as of the date of the report's publication.

12 (F) An estimate, for the current and immediately succeeding
13 fiscal year, of the number and size of proposed new districts,
14 potential number of residential units allowed in new districts, and
15 anticipated construction activity.

16 66210. If a city, county, or city and county reduces the density
17 of sites within the district from the levels required pursuant to
18 paragraph (3) of subdivision (b) of Section 66201, the city, county,
19 or city and county shall return the full amount of zoning incentive
20 payments it has received under this chapter to the department.
21 Amounts repaid pursuant to this section shall be used for further
22 incentive payments.

23 SEC. 3. Chapter 4.3 (commencing with Section 21155.10) is
24 added to Division 13 of the Public Resources Code, to read:

25

26 CHAPTER 4.3. HOUSING SUSTAINABILITY DISTRICTS

27

28 21155.10. A lead agency shall prepare an environmental impact
29 report when designating a housing sustainability district pursuant
30 to Section 66201 of the Government Code to identify and mitigate,
31 to the extent feasible, environmental impacts resulting from the
32 designation. The environmental impact report shall identify
33 mitigation measures that may be undertaken by housing projects
34 in the housing sustainability district to mitigate the environmental
35 impacts identified by the environmental impact report.

36 21155.11. This division does not apply to a housing project
37 undertaken in a housing sustainability district designated by a local
38 government if all of the following are met:

39 (a) The lead agency has certified an environmental impact report
40 for the housing sustainability district, and the Department of

1 Housing and Community Development has approved the housing
2 sustainability district pursuant to Section 66202 of the Government
3 Code, within 10 years of the lead agency’s review of the housing
4 project.

5 (b) The housing project meets the conditions specified in the
6 designation for the housing sustainability district.

7 (c) The housing project is required to implement appropriate
8 mitigation measures identified in the environmental impact report
9 prepared pursuant to Section 21155.10 to mitigate environmental
10 impacts identified by that environmental impact report.

11 *SEC. 4. Each provision of this act is a material and integral*
12 *part of this act, and the provisions of this act are not severable. If*
13 *any provision of this act or its application is held invalid, this*
14 *entire act shall be null and void.*

15 *SEC. 5. The Legislature finds and declares that ensuring that*
16 *all Californians have access to sustainable housing is not a*
17 *municipal affair and is instead a matter of statewide concern.*
18 *Therefore, this act shall apply equally to all cities and counties in*
19 *this state, including charter cities and charter counties.*

20 *SEC. 6. Section 1.5 of this bill incorporates amendments to*
21 *Section 65582.1 of the Government Code proposed by both this*
22 *bill and Senate Bill 35. That section shall only become operative*
23 *if (1) both bills are enacted and become effective on or before*
24 *January 1, 2018, (2) each bill amends Section 65582.1 of the*
25 *Government Code, and (3) this bill is enacted after Senate Bill 35,*
26 *in which case Section 1 of this bill shall not become operative.*