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AMENDED IN ASSEMBLY JULY 3, 2017
AMENDED IN SENATE MAY 23, 2017
AMENDED IN SENATE MAY 9, 2017
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AMENDED IN SENATE MARCH 14, 2017

SENATE BILL

No. 167

Introduced by Senator Skinner
(Principal coauthor: Assembly Member Bocanegra)
(Coauthors: Senators Wiener and Beall)

January 23, 2017

An act to amend Section 65589.5 of the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

SB 167, as amended, Skinner. Housing Accountability Act.

(1) The Housing Accountability Act, among other things, prohibits a local agency from disapproving, or conditioning approval in a manner than renders infeasible, a housing development project for very low, low-, or moderate-income households or an emergency shelter unless the local agency makes specified written findings based upon substantial evidence in the record.

This bill would require the findings of the local agency to instead be based on a preponderance of the evidence in the record.

(2) The act authorizes a local agency to disapprove or condition approval of a housing development or emergency shelter, as described above, if, among other reasons, the housing development project or emergency shelter is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete, and the jurisdiction has adopted a revised housing element in accordance with specified law.

This bill would specify that a change to the zoning ordinance or general plan land use designation subsequent to the date the application was deemed complete does not constitute a valid basis to disapprove or condition approval of the housing development project or emergency shelter.

(3) The act defines various terms for purposes of its provisions, including the term "housing development project," which is defined as a project consisting either of residential units only, mixed-use developments consisting of residential and nonresidential units, or transitional housing or supportive housing. For a mixed-use development for these purposes, the act requires that nonresidential uses be limited to neighborhood commercial uses, as defined, and to the first floor of buildings that are 2 or more stories.

This bill would instead require, with respect to mixed-use developments, that $\frac{2}{3}$ of the square footage be designated for residential use.

(4) If a local agency proposes to disapprove a housing development project that complies with applicable, objective general plan and zoning standards and criteria, or to approve it on the condition that it be developed at a lower density, the act requires that the local agency base its decision upon written findings supported by substantial evidence on the record that specified conditions exist.

This bill would specify that a housing development project or emergency shelter is deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision for purposes of the above-described provisions if there is substantial evidence that would allow a reasonable person to conclude that the housing development project or emergency shelter is consistent, compliant, or in conformity. The bill, if the local agency considers the housing development project to be inconsistent, not in compliance, or not in conformity, would require the local agency to provide the applicant with written documentation

identifying the provision or provisions, and an explanation of the reason or reasons it considers the housing development to be inconsistent, not in compliance, or not in conformity within specified time periods. If the local agency fails to provide this documentation, the bill would provide that the housing development project would be deemed consistent, compliant, and in conformity with the applicable plan, program, policy, ordinance, standard, requirement, or other similar provision. By requiring local agencies to provide documentation related to disapprovals of housing development projects, this bill would impose a state-mandated local program.

(3)

(5) The act authorizes the project applicant, a person who would be eligible to apply for residency in the development or emergency shelter, or a housing organization, as defined, to bring an action to enforce its provisions.

This bill would entitle a housing organization to reasonable attorney's fees and costs if it is the prevailing party in an action to enforce the act.

(4)

(6) If a court finds that the local agency disapproved, or conditioned approval in a manner that renders infeasible the project or emergency shelter *or housing for very low, low-, or moderate-income households* without making the required findings or without making sufficient findings, the act requires the court to issue an order or judgment compelling compliance with its provisions within 60 days, including an order that the local agency take action on the development project or emergency shelter. ~~shelter and awarding attorney's fees and costs.~~

This bill would ~~instead~~ *additionally* require the court to issue an order or judgment as described above, including an order that the local agency approve the housing development project or emergency shelter, if a ~~court~~ *compelling compliance with the act, as described above, if it* finds that either the local agency, in violation of a specified provision of the act, disapproved or conditioned approval of a housing development project in a manner rendering it infeasible for the development of an emergency shelter or certain housing without making the required findings or without making findings supported by a preponderance of the evidence, or, the local agency, in violation of another specified provision of the act, disapproved a housing development project complying with specified standards and criteria or imposed a condition that the project be developed at a lower density, without making the required findings or without making findings supported by a

preponderance of the evidence. The bill would ~~require~~ *authorize* the court to issue an order or judgment directing the local agency to approve the housing development *project* or emergency shelter if the court finds that the local agency acted in bad faith when it disapproved or conditionally approved the housing development *project* or emergency ~~shelter~~. *shelter in violation of the act.*

(5)

(7) The act authorizes the court to impose fines if it finds that a local agency acted in bad faith when it disapproved or conditionally approved the housing development or emergency shelter and failed to carry out the court's order or judgment *compelling compliance* within 60 days of the court's judgment. The act requires that the fines be deposited into a housing trust fund and committed for the sole purpose of financing newly constructed housing units affordable to extremely low, very low, or low-income households.

~~This bill~~ *bill, upon a determination that the local agency has failed to comply with the order or judgment compelling compliance with these provisions within 60 days, would instead require the court to impose fines, in a specified amount, on a local agency that has violated the act if as described above, in every instance in which the court determines that its order or judgment has not been carried out within 60 days. The bill would require the local agency to deposit any fines levied into a housing trust fund. the local agency disapproved, or conditioned approval in a manner that renders infeasible, the housing development project or emergency shelter without making the required findings or without making sufficient findings. The bill would require that the fine be in a minimum amount of \$10,000 per housing unit in the housing development project on the date the application was deemed complete. In determining the amount of fine to impose, the bill would require the court to consider the local agency's progress in attaining its target allocation of the regional housing need, need and any prior violations of the act, the budget of the local jurisdiction, whether the jurisdiction has complied with a specified analysis requirement, which this bill would impose, and the ratio of median home price to median household income in the jurisdiction, as provided. act. The bill would authorize the local agency to instead deposit the fine into a specified state fund, and would also provide that any funds in a local housing trust fund not expended after 5 years would revert to the state and be deposited in that fund, to be used upon appropriation by the Legislature for financing newly constructed housing units affordable to extremely low, very low,*

or low-income households. If the local agency has acted in bad faith and failed to carry out the court’s order, as described above, the bill would require the court to multiply the fine by a factor of 5.

This bill would *also* require that a petition to enforce the act be filed and served no later than 90 days from the later of (a) the effective date of a decision of the local agency imposing conditions on, disapproving, or taking any other final action on a housing development project or (b) the expiration of certain time periods specified in the Permit Streamlining Act.

(8) *In order to obtain appellate review of a trial court’s order, the act requires a party to file a petition within 20 days after service upon it of a written notice of the entry of the order, or within such further time not exceeding an additional 20 days as the trial court may for good cause allow.*

This bill would allow a party to instead appeal a trial court’s order or judgment to the court of appeal pursuant to specified law.

~~(6)~~

(9) This bill would make various technical and conforming changes to the Housing Accountability Act.

(10) *This bill would incorporate additional changes to Section 65589.5 of the Government Code proposed by AB 1515 to be operative only if this bill and AB 1515 are enacted and this bill is enacted last.*

(11) *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.*

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Section 65589.5 of the Government Code is
2 amended to read:

3 65589.5. (a) The Legislature finds and declares all of the
4 following:

5 (1) The lack of housing, including emergency shelters, is a
6 critical problem that threatens the economic, environmental, and
7 social quality of life in California.

1 (2) California housing has become the most expensive in the
2 nation. The excessive cost of the state's housing supply is partially
3 caused by activities and policies of many local governments that
4 limit the approval of housing, increase the cost of land for housing,
5 and require that high fees and exactions be paid by producers of
6 housing.

7 (3) Among the consequences of those actions are discrimination
8 against low-income and minority households, lack of housing to
9 support employment growth, imbalance in jobs and housing,
10 reduced mobility, urban sprawl, excessive commuting, and air
11 quality deterioration.

12 (4) Many local governments do not give adequate attention to
13 the economic, environmental, and social costs of decisions that
14 result in disapproval of housing development projects, reduction
15 in density of housing projects, and excessive standards for housing
16 development projects.

17 (b) It is the policy of the state that a local government not reject
18 or make infeasible housing development projects, including
19 emergency shelters, that contribute to meeting the need determined
20 pursuant to this article without a thorough analysis of the economic,
21 social, and environmental effects of the action and without
22 complying with subdivision (d).

23 (c) The Legislature also recognizes that premature and
24 unnecessary development of agricultural lands for urban uses
25 continues to have adverse effects on the availability of those lands
26 for food and fiber production and on the economy of the state.
27 Furthermore, it is the policy of the state that development should
28 be guided away from prime agricultural lands; therefore, in
29 implementing this section, local jurisdictions should encourage,
30 to the maximum extent practicable, in filling existing urban areas.

31 (d) A local agency shall not disapprove a housing development
32 project, including farmworker housing as defined in subdivision
33 (h) of Section 50199.7 of the Health and Safety Code, for very
34 low, low-, or moderate-income households, or an emergency
35 shelter, or condition approval in a manner that renders the housing
36 development project infeasible for development for the use of very
37 low, low-, or moderate-income households, or an emergency
38 shelter, including through the use of design review standards,
39 unless it makes written findings, based upon a preponderance of
40 the evidence in the record, as to one of the following:

1 (1) The jurisdiction has adopted a housing element pursuant to
2 this article that has been revised in accordance with Section 65588,
3 is in substantial compliance with this article, and the jurisdiction
4 has met or exceeded its share of the regional housing need
5 allocation pursuant to Section 65584 for the planning period for
6 the income category proposed for the housing development project,
7 provided that any disapproval or conditional approval shall not be
8 based on any of the reasons prohibited by Section 65008. If the
9 housing development project includes a mix of income categories,
10 and the jurisdiction has not met or exceeded its share of the regional
11 housing need for one or more of those categories, then this
12 paragraph shall not be used to disapprove or conditionally approve
13 the housing development project. The share of the regional housing
14 need met by the jurisdiction shall be calculated consistently with
15 the forms and definitions that may be adopted by the Department
16 of Housing and Community Development pursuant to Section
17 65400. In the case of an emergency shelter, the jurisdiction shall
18 have met or exceeded the need for emergency shelter, as identified
19 pursuant to paragraph (7) of subdivision (a) of Section 65583. Any
20 disapproval or conditional approval pursuant to this paragraph
21 shall be in accordance with applicable law, rule, or standards.

22 (2) The housing development project or emergency shelter as
23 proposed would have a specific, adverse impact upon the public
24 health or safety, and there is no feasible method to satisfactorily
25 mitigate or avoid the specific adverse impact without rendering
26 the development unaffordable to low- and moderate-income
27 households or rendering the development of the emergency shelter
28 financially infeasible. As used in this paragraph, a “specific,
29 adverse impact” means a significant, quantifiable, direct, and
30 unavoidable impact, based on objective, identified written public
31 health or safety standards, policies, or conditions as they existed
32 on the date the application was deemed complete. Inconsistency
33 with the zoning ordinance or general plan land use designation
34 shall not constitute a specific, adverse impact upon the public
35 health or safety.

36 (3) The denial of the housing development project or imposition
37 of conditions is required in order to comply with specific state or
38 federal law, and there is no feasible method to comply without
39 rendering the development unaffordable to low- and

1 moderate-income households or rendering the development of the
2 emergency shelter financially infeasible.

3 (4) The housing development project or emergency shelter is
4 proposed on land zoned for agriculture or resource preservation
5 that is surrounded on at least two sides by land being used for
6 agricultural or resource preservation purposes, or which does not
7 have adequate water or wastewater facilities to serve the project.

8 (5) The housing development project or emergency shelter is
9 inconsistent with both the jurisdiction's zoning ordinance and
10 general plan land use designation as specified in any element of
11 the general plan as it existed on the date the application was
12 deemed complete, and the jurisdiction has adopted a revised
13 housing element in accordance with Section 65588 that is in
14 substantial compliance with this article. For purposes of this
15 section, a change to the zoning ordinance or general plan land use
16 designation subsequent to the date the application was deemed
17 complete shall not constitute a valid basis to disapprove or
18 condition approval of the housing development project or
19 emergency shelter.

20 (A) This paragraph cannot be utilized to disapprove or
21 conditionally approve a housing development project if the housing
22 development project is proposed on a site that is identified as
23 suitable or available for very low, low-, or moderate-income
24 households in the jurisdiction's housing element, and consistent
25 with the density specified in the housing element, even though it
26 is inconsistent with both the jurisdiction's zoning ordinance and
27 general plan land use designation.

28 (B) If the local agency has failed to identify in the inventory of
29 land in its housing element sites that can be developed for housing
30 within the planning period and are sufficient to provide for the
31 jurisdiction's share of the regional housing need for all income
32 levels pursuant to Section 65584, then this paragraph shall not be
33 utilized to disapprove or conditionally approve a housing
34 development project proposed for a site designated in any element
35 of the general plan for residential uses or designated in any element
36 of the general plan for commercial uses if residential uses are
37 permitted or conditionally permitted within commercial
38 designations. In any action in court, the burden of proof shall be
39 on the local agency to show that its housing element does identify
40 adequate sites with appropriate zoning and development standards

1 and with services and facilities to accommodate the local agency’s
2 share of the regional housing need for the very low, low-, and
3 moderate-income categories.

4 (C) If the local agency has failed to identify a zone or zones
5 where emergency shelters are allowed as a permitted use without
6 a conditional use or other discretionary permit, has failed to
7 demonstrate that the identified zone or zones include sufficient
8 capacity to accommodate the need for emergency shelter identified
9 in paragraph (7) of subdivision (a) of Section 65583, or has failed
10 to demonstrate that the identified zone or zones can accommodate
11 at least one emergency shelter, as required by paragraph (4) of
12 subdivision (a) of Section 65583, then this paragraph shall not be
13 utilized to disapprove or conditionally approve an emergency
14 shelter proposed for a site designated in any element of the general
15 plan for industrial, commercial, or multifamily residential uses. In
16 any action in court, the burden of proof shall be on the local agency
17 to show that its housing element does satisfy the requirements of
18 paragraph (4) of subdivision (a) of Section 65583.

19 (e) Nothing in this section shall be construed to relieve the local
20 agency from complying with the congestion management program
21 required by Chapter 2.6 (commencing with Section 65088) of
22 Division 1 of Title 7 or the California Coastal Act of 1976
23 (Division 20 (commencing with Section 30000) of the Public
24 Resources Code). Neither shall anything in this section be
25 construed to relieve the local agency from making one or more of
26 the findings required pursuant to Section 21081 of the Public
27 Resources Code or otherwise complying with the California
28 Environmental Quality Act (Division 13 (commencing with Section
29 21000) of the Public Resources Code).

30 (f) (1) Nothing in this section shall be construed to prohibit a
31 local agency from requiring the housing development project to
32 comply with objective, quantifiable, written development standards,
33 conditions, and policies appropriate to, and consistent with, meeting
34 the jurisdiction’s share of the regional housing need pursuant to
35 Section 65584. However, the development standards, conditions,
36 and policies shall be applied to facilitate and accommodate
37 development at the density permitted on the site and proposed by
38 the development.

39 (2) Nothing in this section shall be construed to prohibit a local
40 agency from requiring an emergency shelter project to comply

1 with objective, quantifiable, written development standards,
2 conditions, and policies that are consistent with paragraph (4) of
3 subdivision (a) of Section 65583 and appropriate to, and consistent
4 with, meeting the jurisdiction’s need for emergency shelter, as
5 identified pursuant to paragraph (7) of subdivision (a) of Section
6 65583. However, the development standards, conditions, and
7 policies shall be applied by the local agency to facilitate and
8 accommodate the development of the emergency shelter project.

9 (3) This section does not prohibit a local agency from imposing
10 fees and other exactions otherwise authorized by law that are
11 essential to provide necessary public services and facilities to the
12 housing development project or emergency shelter.

13 (g) This section shall be applicable to charter cities because the
14 Legislature finds that the lack of housing, including emergency
15 shelter, is a critical statewide problem.

16 (h) The following definitions apply for the purposes of this
17 section:

18 (1) “Feasible” means capable of being accomplished in a
19 successful manner within a reasonable period of time, taking into
20 account economic, environmental, social, and technological factors.

21 (2) “Housing development project” means a use consisting of
22 any of the following:

23 (A) Residential units only.

24 (B) Mixed-use developments consisting of residential and
25 nonresidential uses ~~in which nonresidential uses are limited to~~
26 ~~neighborhood commercial uses and to the first floor of buildings~~
27 ~~that are two or more stories. As used in this paragraph,~~
28 ~~“neighborhood commercial” means small-scale general or specialty~~
29 ~~stores that furnish goods and services primarily to residents of the~~
30 ~~neighborhood. with at least two-thirds of the square footage~~
31 ~~designated for residential use.~~

32 (C) Transitional housing or supportive housing.

33 (3) “Housing for very low, low-, or moderate-income
34 households” means that either (A) at least 20 percent of the total
35 units shall be sold or rented to lower income households, as defined
36 in Section 50079.5 of the Health and Safety Code, or (B) 100
37 percent of the units shall be sold or rented to persons and families
38 of moderate income as defined in Section 50093 of the Health and
39 Safety Code, or persons and families of middle income, as defined
40 in Section 65008 of this code. Housing units targeted for lower

1 income households shall be made available at a monthly housing
2 cost that does not exceed 30 percent of 60 percent of area median
3 income with adjustments for household size made in accordance
4 with the adjustment factors on which the lower income eligibility
5 limits are based. Housing units targeted for persons and families
6 of moderate income shall be made available at a monthly housing
7 cost that does not exceed 30 percent of 100 percent of area median
8 income with adjustments for household size made in accordance
9 with the adjustment factors on which the moderate-income
10 eligibility limits are based.

11 (4) “Area median income” means area median income as
12 periodically established by the Department of Housing and
13 Community Development pursuant to Section 50093 of the Health
14 and Safety Code. The developer shall provide sufficient legal
15 commitments to ensure continued availability of units for very low
16 or low-income households in accordance with the provisions of
17 this subdivision for 30 years.

18 (5) “Disapprove the housing development project” includes any
19 instance in which a local agency does either of the following:

20 (A) Votes on a proposed housing development project
21 application and the application is ~~disapproved~~. *disapproved,*
22 *including any required land use approvals or entitlements*
23 *necessary for the issuance of a building permit.*

24 (B) Fails to comply with the time periods specified in
25 subdivision (a) of Section 65950. An extension of time pursuant
26 to Article 5 (commencing with Section 65950) shall be deemed to
27 be an extension of time pursuant to this paragraph.

28 (i) If any city, county, or city and county denies approval or
29 imposes conditions, including design changes, ~~or lower-density~~
30 *density*, or a reduction of the percentage of a lot that may be
31 occupied by a building or structure under the applicable planning
32 and zoning in force at the time the application is deemed complete
33 pursuant to Section 65943, that ~~has~~ *have* a substantial adverse
34 effect on the viability or affordability of a housing development
35 for very low, low-, or moderate-income households, and the denial
36 of the development or the imposition of conditions on the
37 development is the subject of a court action which challenges the
38 denial or the imposition of ~~conditions~~ *conditions*, then the burden
39 of proof shall be on the local legislative body to show that its
40 decision is consistent with the findings as described in subdivision

1 (d) and that the findings are supported by a preponderance of the
2 evidence in the record. *For purposes of this section, “lower*
3 *density” includes any conditions that have the same effect or*
4 *impact on the ability of the project to provide housing.*

5 (j) (1) When a proposed housing development project complies
6 with applicable, objective ~~general plan and zoning plan~~, zoning,
7 and subdivision standards and criteria, including design review
8 standards, in effect at the time that the housing development
9 project’s application is determined to be complete, but the local
10 agency proposes to disapprove the project or to impose a condition
11 that the project be developed at a lower density, the local agency
12 shall base its decision regarding the proposed housing development
13 project upon written findings supported by a preponderance of the
14 evidence on the record that both of the following conditions exist:

15 (1)

16 (A) The housing development project would have a specific,
17 adverse impact upon the public health or safety unless the project
18 is disapproved or approved upon the condition that the project be
19 developed at a lower density. As used in this paragraph, a “specific,
20 adverse impact” means a significant, quantifiable, direct, and
21 unavoidable impact, based on objective, identified written public
22 health or safety standards, policies, or conditions as they existed
23 on the date the application was deemed complete.

24 (2)

25 (B) There is no feasible method to satisfactorily mitigate or
26 avoid the adverse impact identified pursuant to paragraph (1), other
27 than the disapproval of the housing development project or the
28 approval of the project upon the condition that it be developed at
29 a lower density.

30 (2) (A) *If the local agency considers a proposed housing*
31 *development project to be inconsistent, not in compliance, or not*
32 *in conformity with an applicable plan, program, policy, ordinance,*
33 *standard, requirement, or other similar provision as specified in*
34 *this subdivision, it shall provide the applicant with written*
35 *documentation identifying the provision or provisions, and an*
36 *explanation of the reason or reasons it considers the housing*
37 *development to be inconsistent, not in compliance, or not in*
38 *conformity as follows:*

1 (i) Within 30 days of the date that the application for the housing
2 development project is determined to be complete, if the housing
3 development project contains 150 or fewer housing units.

4 (ii) Within 60 days of the date that the application for the
5 housing development project is determined to be complete, if the
6 housing development project contains more than 150 units.

7 (B) If the local agency fails to provide the required
8 documentation pursuant to subparagraph (A), the housing
9 development project shall be deemed consistent, compliant, and
10 in conformity with the applicable plan, program, policy, ordinance,
11 standard, requirement, or other similar provision.

12 (3) For purposes of this section, the receipt of a density bonus
13 pursuant to Section 65915 shall not constitute a valid basis on
14 which to find a proposed housing development project is
15 inconsistent, not in compliance, or not in conformity, with an
16 applicable plan, program, policy, ordinance, standard,
17 requirement, or other similar provision specified in this
18 subdivision.

19 (4) For purposes of this section, “lower density” includes any
20 conditions that have the same effect or impact on the ability of the
21 project to provide housing.

22 (k) (1) (A) The applicant, a person who would be eligible to
23 apply for residency in the development or emergency shelter, or
24 a housing organization may bring an action to enforce this section.
25 If, in any action brought to enforce this section, a court finds that
26 either (i) the local agency, in violation of subdivision (d),
27 disapproved a housing development project or conditioned its
28 approval in a manner rendering it infeasible for the development
29 of an emergency shelter, or housing for very low, low-, or
30 moderate-income households, including farmworker housing,
31 without making the findings required by this section or without
32 making findings supported by a preponderance of the evidence,
33 or (ii) the local agency, in violation of subdivision (j), disapproved
34 a housing development project complying with applicable,
35 objective general plan and zoning standards and criteria, or imposed
36 a condition that the project be developed at a lower density, without
37 making the findings required by this section or without making
38 findings supported by a preponderance of the evidence, the court
39 shall issue an order or judgment compelling compliance with this
40 section within 60 days, including, but not limited to, an order that

1 the local agency ~~approve~~ *take action on* the housing development
 2 project or emergency shelter. The court ~~shall~~ *may* issue an order
 3 or judgment directing the local agency to approve the housing
 4 development project or emergency shelter if the court finds that
 5 the local agency acted in bad faith when it disapproved or
 6 conditionally approved the housing development or emergency
 7 shelter in violation of this section. The court shall retain jurisdiction
 8 to ensure that its order or judgment is carried out and shall award
 9 reasonable attorney’s fees and costs of suit to the plaintiff or
 10 petitioner, except under extraordinary circumstances in which the
 11 court finds that awarding fees would not further the purposes of
 12 this section. *For purposes of this section, “lower density” includes*
 13 *conditions that have the same effect or impact on the ability of the*
 14 *project to provide housing.*

15 (B) ~~If the court determines that its~~ *(i) Upon a determination*
 16 *that the local agency has failed to comply with the order or*
 17 *judgment has not been carried out within 60 days, compelling*
 18 *compliance with this section within 60 days issued pursuant to*
 19 *subparagraph (A), the court shall impose fines on a local agency*
 20 *that has violated this section and require the local agency to deposit*
 21 *any fine levied pursuant to this subdivision into a local housing*
 22 *trust fund. The local agency may elect to instead deposit the fine*
 23 *into the Building Homes and Jobs Fund, if Senate Bill 2 of the*
 24 *2017–18 Regular Session is enacted, or otherwise in the Housing*
 25 *Rehabilitation Loan Fund. The fine shall be in a minimum amount*
 26 *of ten thousand dollars (\$10,000) per housing unit in the housing*
 27 *development project on the date the application was deemed*
 28 *complete pursuant to Section 65943. In determining the amount*
 29 *of fine to impose, the court shall consider the local agency’s*
 30 *progress in attaining its target allocation of the regional housing*
 31 *need pursuant to Section ~~65584, 65584~~ and any prior violations*
 32 *of this section, the budget of the local jurisdiction, whether the*
 33 *jurisdiction complied fully with subdivision (o), and the ratio of*
 34 *median home price to median household income within the*
 35 *jurisdiction, with the aim of imposing a fine that has a deterrent*
 36 *effect without unreasonably impacting the local government’s*
 37 *ability to provide basic services to its residents. section. Fines shall*
 38 *not be paid out of funds already dedicated to affordable housing,*
 39 *including, but not limited to, Low and Moderate Income Housing*
 40 *Asset Funds, funds dedicated to housing for very low, low-, and*

1 moderate-income households, and federal HOME Investment
2 Partnerships Program and Community Development Block Grant
3 Program funds. The local agency shall commit *and expend* the
4 money in the *local* housing trust fund within five years for the sole
5 purpose of financing newly constructed housing units affordable
6 to extremely low, very low, or low-income households. *After five*
7 *years, if the funds have not been expended, the money shall revert*
8 *to the state and be deposited in the Building Homes and Jobs Fund,*
9 *if Senate Bill 2 of the 2017–18 Regular Session is enacted, or*
10 *otherwise in the Housing Rehabilitation Loan Fund, for the sole*
11 *purpose of financing newly constructed housing units affordable*
12 *to extremely low, very low, or low-income households.*

13 (ii) *If any money derived from a fine imposed pursuant to this*
14 *subparagraph is deposited in the Housing Rehabilitation Loan*
15 *Fund, then, notwithstanding Section 50661 of the Health and Safety*
16 *Code, that money shall be available only upon appropriation by*
17 *the Legislature.*

18 (C) ~~The~~ *If the court determines that its order or judgment has*
19 *not been carried out within 60 days, the court may issue further*
20 orders as provided by law to ensure that the purposes and policies
21 of this section are fulfilled, including, but not limited to, an order
22 to vacate the decision of the local agency and to approve the
23 housing development project, in which case the application for the
24 housing development project, as proposed by the applicant at the
25 time the local agency took the initial action determined to be in
26 violation of this section, along with any standard conditions
27 determined by the court to be generally imposed by the local
28 agency on similar projects, shall be deemed to be approved unless
29 the applicant consents to a different decision or action by the local
30 agency.

31 (2) For purposes of this subdivision, “housing organization”
32 means a trade or industry group whose local members are primarily
33 engaged in the construction or management of housing units or a
34 nonprofit organization whose mission includes providing or
35 advocating for increased access to housing for low-income
36 households and have filed written or oral comments with the local
37 agency prior to action on the housing development project. A
38 housing organization may only file an action pursuant to this
39 section to challenge the disapproval of a housing development by
40 a local agency. A housing organization shall be entitled to

1 reasonable attorney’s fees and costs if it is the prevailing party in
2 an action to enforce this section.

3 (l) If the court finds that the local agency (1) acted in bad faith
4 when it disapproved or conditionally approved the housing
5 development or emergency shelter in violation of this section and
6 (2) failed to carry out the court’s order or judgment within 60 days
7 as described in subdivision (k), the court, in addition to any other
8 remedies provided by this section, shall multiply the fine
9 determined pursuant to subparagraph (B) of paragraph (1) of
10 subdivision (k) by a factor of ~~5~~. ~~The increased fine shall be paid,~~
11 ~~and the proceeds shall be committed, in the same manner as the~~
12 ~~base fine.~~ *five*. For purposes of this section, “bad faith” includes,
13 but is not limited to, an action that is frivolous or otherwise entirely
14 without merit.

15 (m) Any action brought to enforce the provisions of this section
16 shall be brought pursuant to Section 1094.5 of the Code of Civil
17 Procedure, and the local agency shall prepare and certify the record
18 of proceedings in accordance with subdivision (c) of Section 1094.6
19 of the Code of Civil Procedure no later than 30 days after the
20 petition is served, provided that the cost of preparation of the record
21 shall be borne by the local agency, unless the petitioner elects to
22 prepare the record as provided in subdivision (n) of this section.
23 A petition to enforce the provisions of this section shall be filed
24 and served no later than 90 days from the later of (1) the effective
25 date of a decision of the local agency imposing conditions on,
26 disapproving, or any other final action on a housing development
27 project or (2) the expiration of the time periods specified in
28 subparagraph (B) of paragraph (5) of subdivision (h). Upon entry
29 of the trial court’s order, a party ~~shall,~~ *may*, in order to obtain
30 appellate review of the order, file a petition within 20 days after
31 service upon it of a written notice of the entry of the order, or
32 within such further time not exceeding an additional 20 days as
33 the trial court may for good cause allow, or may appeal the
34 judgment or order of the trial court under Section 904.1 of the
35 Code of Civil Procedure. If the local agency appeals the judgment
36 of the trial court, the local agency shall post a bond, in an amount
37 to be determined by the court, to the benefit of the plaintiff if the
38 plaintiff is the project applicant.

39 (n) In any action, the record of the proceedings before the local
40 agency shall be filed as expeditiously as possible and,

1 notwithstanding Section 1094.6 of the Code of Civil Procedure or
2 subdivision (m) of this section, all or part of the record may be
3 prepared (1) by the petitioner with the petition or petitioner’s points
4 and authorities, (2) by the respondent with respondent’s points and
5 authorities, (3) after payment of costs by the petitioner, or (4) as
6 otherwise directed by the court. If the expense of preparing the
7 record has been borne by the petitioner and the petitioner is the
8 prevailing party, the expense shall be taxable as costs.

9 ~~(o) If a local agency proposes to deny or reduce the density of
10 a housing development project or emergency shelter or impose
11 restrictions or conditions, including design review standards, that
12 render the housing development project infeasible for very low,
13 low-, or moderate-income housing or for an emergency shelter,
14 the local agency shall publish an analysis of the requirements of
15 this section as part of its review of the application for the housing
16 development project. The analysis shall include a finding whether
17 this section does or does not apply to the project, and, if applicable,
18 the local agency shall make the findings that apply to the project
19 pursuant to subdivision (j) and, if it is a housing development
20 project for very low, low-, or moderate-income households,
21 subdivision (d).~~

22 ~~(p)~~

23 (o) This section shall be known, and may be cited, as the
24 Housing Accountability Act.

25 *SEC. 1.5. Section 65589.5 of the Government Code is amended*
26 *to read:*

27 65589.5. (a) (1) The Legislature finds and declares all of the
28 following:

29 ~~(1)~~

30 (A) The lack of housing, including emergency shelters, is a
31 critical problem that threatens the economic, environmental, and
32 social quality of life in California.

33 ~~(2)~~

34 (B) California housing has become the most expensive in the
35 nation. The excessive cost of the state’s housing supply is partially
36 caused by activities and policies of many local governments that
37 limit the approval of housing, increase the cost of land for housing,
38 and require that high fees and exactions be paid by producers of
39 housing.

40 ~~(3)~~

1 (C) Among the consequences of those actions are discrimination
2 against low-income and minority households, lack of housing to
3 support employment growth, imbalance in jobs and housing,
4 reduced mobility, urban sprawl, excessive commuting, and air
5 quality deterioration.

6 ~~(4)~~

7 (D) Many local governments do not give adequate attention to
8 the economic, environmental, and social costs of decisions that
9 result in disapproval of housing *development* projects, reduction
10 in density of housing projects, and excessive standards for housing
11 *development* projects.

12 (2) *In enacting the amendments made to this section by the act*
13 *adding this paragraph, the Legislature further finds and declares*
14 *the following:*

15 (A) *California has a housing supply and affordability crisis of*
16 *historic proportions. The consequences of failing to effectively and*
17 *aggressively confront this crisis are hurting millions of*
18 *Californians, robbing future generations of the chance to call*
19 *California home, stifling economic opportunities for workers and*
20 *businesses, worsening poverty and homelessness, and undermining*
21 *the state's environmental and climate objectives.*

22 (B) *While the causes of this crisis are multiple and complex,*
23 *the absence of meaningful and effective policy reforms to*
24 *significantly enhance the approval and supply of housing*
25 *affordable to Californians of all income levels is a key factor.*

26 (C) *The crisis has grown so acute in California that supply,*
27 *demand, and affordability fundamentals are characterized in the*
28 *negative: underserved demands, constrained supply, and protracted*
29 *unaffordability.*

30 (D) *According to reports and data, California has accumulated*
31 *an unmet housing backlog of nearly 2,000,000 units and must*
32 *provide for at least 180,000 new units annually to keep pace with*
33 *growth through 2025.*

34 (E) *California's overall homeownership rate is at its lowest*
35 *level since the 1940s. The state ranks 49th out of the 50 states in*
36 *homeownership rates as well as in the supply of housing per capita.*
37 *Only half of California's households are able to afford the cost of*
38 *housing in their local regions.*

39 (F) *Lack of supply and rising costs are compounding inequality*
40 *and limiting advancement opportunities for many Californians.*

1 (G) *The majority of California renters, more than 3,000,000*
2 *households, pay more than 30 percent of their income toward rent*
3 *and nearly one-third, more than 1,500,000 households, pay more*
4 *than 50 percent of their income toward rent.*

5 (H) *When Californians have access to safe and affordable*
6 *housing, they have more money for food and health care; they are*
7 *less likely to become homeless and in need of*
8 *government-subsidized services; their children do better in school;*
9 *and businesses have an easier time recruiting and retaining*
10 *employees.*

11 (I) *An additional consequence of the state's cumulative housing*
12 *shortage is a significant increase in greenhouse gas emissions*
13 *caused by the displacement and redirection of populations to states*
14 *with greater housing opportunities, particularly working- and*
15 *middle-class households. California's cumulative housing shortfall*
16 *therefore has not only national but international environmental*
17 *consequences.*

18 (J) *California's housing picture has reached a crisis of historic*
19 *proportions despite the fact that, for decades, the Legislature has*
20 *enacted numerous statutes intended to significantly increase the*
21 *approval, development, and affordability of housing for all income*
22 *levels, including this section.*

23 (K) *The Legislature's intent in enacting this section in 1982*
24 *and in expanding its provisions since then was to significantly*
25 *increase the approval and construction of new housing for all*
26 *economic segments of California's communities by meaningfully*
27 *and effectively curbing the capability of local governments to deny,*
28 *reduce the density for, or render infeasible housing development*
29 *projects and emergency shelters. That intent has not been fulfilled.*

30 (L) *It is the policy of the state that this section should be*
31 *interpreted and implemented in a manner to afford the fullest*
32 *possible weight to the interest of, and the approval and provision*
33 *of, housing.*

34 (b) *It is the policy of the state that a local government not reject*
35 *or make infeasible housing ~~developments~~, development projects,*
36 *including emergency shelters, that contribute to meeting the need*
37 *determined pursuant to this article without a thorough analysis of*
38 *the economic, social, and environmental effects of the action and*
39 *without complying with subdivision (d).*

1 (c) The Legislature also recognizes that premature and
2 unnecessary development of agricultural lands for urban uses
3 continues to have adverse effects on the availability of those lands
4 for food and fiber production and on the economy of the state.
5 Furthermore, it is the policy of the state that development should
6 be guided away from prime agricultural lands; therefore, in
7 implementing this section, local jurisdictions should encourage,
8 to the maximum extent practicable, in filling existing urban areas.

9 (d) A local agency shall not disapprove a housing development
10 project, including farmworker housing as defined in subdivision
11 (h) of Section 50199.7 of the Health and Safety Code, for very
12 low, low-, or moderate-income households, or an emergency
13 shelter, or condition approval in a manner that renders the *housing*
14 *development* project infeasible for development for the use of very
15 low, low-, or moderate-income households, or an emergency
16 shelter, including through the use of design review standards,
17 unless it makes written findings, based upon ~~substantial a~~
18 *preponderance of the* evidence in the record, as to one of the
19 following:

20 (1) The jurisdiction has adopted a housing element pursuant to
21 this article that has been revised in accordance with Section 65588,
22 is in substantial compliance with this article, and the jurisdiction
23 has met or exceeded its share of the regional housing need
24 allocation pursuant to Section 65584 for the planning period for
25 the income category proposed for the housing development project,
26 provided that any disapproval or conditional approval shall not be
27 based on any of the reasons prohibited by Section 65008. If the
28 housing development project includes a mix of income categories,
29 and the jurisdiction has not met or exceeded its share of the regional
30 housing need for one or more of those categories, then this
31 paragraph shall not be used to disapprove or conditionally approve
32 the *housing development* project. The share of the regional housing
33 need met by the jurisdiction shall be calculated consistently with
34 the forms and definitions that may be adopted by the Department
35 of Housing and Community Development pursuant to Section
36 65400. In the case of an emergency shelter, the jurisdiction shall
37 have met or exceeded the need for emergency shelter, as identified
38 pursuant to paragraph (7) of subdivision (a) of Section 65583. Any
39 disapproval or conditional approval pursuant to this paragraph
40 shall be in accordance with applicable law, rule, or standards.

1 (2) The *housing* development project or emergency shelter as
2 proposed would have a specific, adverse impact upon the public
3 health or safety, and there is no feasible method to satisfactorily
4 mitigate or avoid the specific adverse impact without rendering
5 the development unaffordable to low- and moderate-income
6 households or rendering the development of the emergency shelter
7 financially infeasible. As used in this paragraph, a “specific,
8 adverse impact” means a significant, quantifiable, direct, and
9 unavoidable impact, based on objective, identified written public
10 health or safety standards, policies, or conditions as they existed
11 on the date the application was deemed complete. Inconsistency
12 with the zoning ordinance or general plan land use designation
13 shall not constitute a specific, adverse impact upon the public
14 health or safety.

15 (3) The denial of the *housing development* project or imposition
16 of conditions is required in order to comply with specific state or
17 federal law, and there is no feasible method to comply without
18 rendering the development unaffordable to low- and
19 moderate-income households or rendering the development of the
20 emergency shelter financially infeasible.

21 (4) The *housing* development project or emergency shelter is
22 proposed on land zoned for agriculture or resource preservation
23 that is surrounded on at least two sides by land being used for
24 agricultural or resource preservation purposes, or which does not
25 have adequate water or wastewater facilities to serve the project.

26 (5) The *housing* development project or emergency shelter is
27 inconsistent with both the jurisdiction’s zoning ordinance and
28 general plan land use designation as specified in any element of
29 the general plan as it existed on the date the application was
30 deemed complete, and the jurisdiction has adopted a revised
31 housing element in accordance with Section 65588 that is in
32 substantial compliance with this article. *For purposes of this*
33 *section, a change to the zoning ordinance or general plan land*
34 *use designation subsequent to the date the application was deemed*
35 *complete shall not constitute a valid basis to disapprove or*
36 *condition approval of the housing development project or*
37 *emergency shelter.*

38 (A) This paragraph cannot be utilized to disapprove or
39 conditionally approve a housing development project if the *housing*
40 development project is proposed on a site that is identified as

1 suitable or available for very low, low-, or moderate-income
2 households in the jurisdiction's housing element, and consistent
3 with the density specified in the housing element, even though it
4 is inconsistent with both the jurisdiction's zoning ordinance and
5 general plan land use designation.

6 (B) If the local agency has failed to identify in the inventory of
7 land in its housing element sites that can be developed for housing
8 within the planning period and are sufficient to provide for the
9 jurisdiction's share of the regional housing need for all income
10 levels pursuant to Section 65584, then this paragraph shall not be
11 utilized to disapprove or conditionally approve a housing
12 development project proposed for a site designated in any element
13 of the general plan for residential uses or designated in any element
14 of the general plan for commercial uses if residential uses are
15 permitted or conditionally permitted within commercial
16 designations. In any action in court, the burden of proof shall be
17 on the local agency to show that its housing element does identify
18 adequate sites with appropriate zoning and development standards
19 and with services and facilities to accommodate the local agency's
20 share of the regional housing need for the ~~very low and low-income~~
21 *low, low-, and moderate-income* categories.

22 (C) If the local agency has failed to identify a zone or zones
23 where emergency shelters are allowed as a permitted use without
24 a conditional use or other discretionary permit, has failed to
25 demonstrate that the identified zone or zones include sufficient
26 capacity to accommodate the need for emergency shelter identified
27 in paragraph (7) of subdivision (a) of Section 65583, or has failed
28 to demonstrate that the identified zone or zones can accommodate
29 at least one emergency shelter, as required by paragraph (4) of
30 subdivision (a) of Section 65583, then this paragraph shall not be
31 utilized to disapprove or conditionally approve an emergency
32 shelter proposed for a site designated in any element of the general
33 plan for industrial, commercial, or multifamily residential uses. In
34 any action in court, the burden of proof shall be on the local agency
35 to show that its housing element does satisfy the requirements of
36 paragraph (4) of subdivision (a) of Section 65583.

37 (e) Nothing in this section shall be construed to relieve the local
38 agency from complying with the congestion management program
39 required by Chapter 2.6 (commencing with Section 65088) of
40 Division 1 of Title 7 or the California Coastal Act of 1976

1 (Division 20 (commencing with Section 30000) of the Public
2 Resources Code). Neither shall anything in this section be
3 construed to relieve the local agency from making one or more of
4 the findings required pursuant to Section 21081 of the Public
5 Resources Code or otherwise complying with the California
6 Environmental Quality Act (Division 13 (commencing with Section
7 21000) of the Public Resources Code).

8 (f) (1) Nothing in this section shall be construed to prohibit a
9 local agency from requiring the *housing* development project to
10 comply with objective, quantifiable, written development standards,
11 conditions, and policies appropriate to, and consistent with, meeting
12 the jurisdiction's share of the regional housing need pursuant to
13 Section 65584. However, the development standards, conditions,
14 and policies shall be applied to facilitate and accommodate
15 development at the density permitted on the site and proposed by
16 the development.

17 (2) Nothing in this section shall be construed to prohibit a local
18 agency from requiring an emergency shelter project to comply
19 with objective, quantifiable, written development standards,
20 conditions, and policies that are consistent with paragraph (4) of
21 subdivision (a) of Section 65583 and appropriate to, and consistent
22 with, meeting the jurisdiction's need for emergency shelter, as
23 identified pursuant to paragraph (7) of subdivision (a) of Section
24 65583. However, the development standards, conditions, and
25 policies shall be applied by the local agency to facilitate and
26 accommodate the development of the emergency shelter project.

27 (3) This section does not prohibit a local agency from imposing
28 fees and other exactions otherwise authorized by law that are
29 essential to provide necessary public services and facilities to the
30 *housing* development project or emergency shelter.

31 (4) *For purposes of this section, a housing development project*
32 *or emergency shelter shall be deemed consistent, compliant, and*
33 *in conformity with an applicable plan, program, policy, ordinance,*
34 *standard, requirement, or other similar provision if there is*
35 *substantial evidence that would allow a reasonable person to*
36 *conclude that the housing development project or emergency*
37 *shelter is consistent, compliant, or in conformity.*

38 (g) This section shall be applicable to charter cities because the
39 Legislature finds that the lack of housing, including emergency
40 shelter, is a critical statewide problem.

1 (h) The following definitions apply for the purposes of this
2 section:

3 (1) “Feasible” means capable of being accomplished in a
4 successful manner within a reasonable period of time, taking into
5 account economic, environmental, social, and technological factors.

6 (2) “Housing development project” means a use consisting of
7 any of the following:

8 (A) Residential units only.

9 (B) Mixed-use developments consisting of residential and
10 nonresidential uses ~~in which nonresidential uses are limited to~~
11 ~~neighborhood commercial uses and to the first floor of buildings~~
12 ~~that are two or more stories. As used in this paragraph,~~
13 ~~“neighborhood commercial” means small-scale general or specialty~~
14 ~~stores that furnish goods and services primarily to residents of the~~
15 ~~neighborhood. with at least two-thirds of the square footage~~
16 ~~designated for residential use.~~

17 (C) Transitional housing or supportive housing.

18 (3) “Housing for very low, low-, or moderate-income
19 households” means that either (A) at least 20 percent of the total
20 units shall be sold or rented to lower income households, as defined
21 in Section 50079.5 of the Health and Safety Code, or (B) 100
22 percent of the units shall be sold or rented to persons and families
23 of moderate income as defined in Section 50093 of the Health and
24 Safety Code, or persons and families of middle income, as defined
25 in Section 65008 of this code. Housing units targeted for lower
26 income households shall be made available at a monthly housing
27 cost that does not exceed 30 percent of 60 percent of area median
28 income with adjustments for household size made in accordance
29 with the adjustment factors on which the lower income eligibility
30 limits are based. Housing units targeted for persons and families
31 of moderate income shall be made available at a monthly housing
32 cost that does not exceed 30 percent of 100 percent of area median
33 income with adjustments for household size made in accordance
34 with the adjustment factors on which the moderate-income
35 eligibility limits are based.

36 (4) “Area median income” means area median income as
37 periodically established by the Department of Housing and
38 Community Development pursuant to Section 50093 of the Health
39 and Safety Code. The developer shall provide sufficient legal
40 commitments to ensure continued availability of units for very low

1 or low-income households in accordance with the provisions of
2 this subdivision for 30 years.

3 (5) “Disapprove the *housing* development project” includes any
4 instance in which a local agency does either of the following:

5 (A) Votes on a proposed housing development project
6 application and the application is ~~disapproved~~. *disapproved*,
7 *including any required land use approvals or entitlements*
8 *necessary for the issuance of a building permit.*

9 (B) Fails to comply with the time periods specified in
10 subdivision (a) of Section 65950. An extension of time pursuant
11 to Article 5 (commencing with Section 65950) shall be deemed to
12 be an extension of time pursuant to this paragraph.

13 (i) If any city, county, or city and county denies approval or
14 imposes ~~restrictions~~, *conditions*, including design changes, ~~a~~
15 ~~reduction of allowable densities or lower density~~, *or a reduction*
16 *of the percentage of a lot that may be occupied by a building or*
17 *structure under the applicable planning and zoning in force at the*
18 *time the application is deemed complete pursuant to Section 65943,*
19 *that have a substantial adverse effect on the viability or*
20 *affordability of a housing development for very low, low-, or*
21 *moderate-income households, and the denial of the development*
22 *or the imposition of ~~restrictions~~ *conditions* on the development is*
23 *the subject of a court action which challenges the ~~denial~~, *denial**
24 *or the imposition of *conditions*, then the burden of proof shall be*
25 *on the local legislative body to show that its decision is consistent*
26 *with the findings as described in subdivision (d) and that the*
27 *findings are supported by ~~substantial~~ a preponderance of the*
28 *evidence in the record. For purposes of this section, “lower*
29 *density” includes any conditions that have the same effect or*
30 *impact on the ability of the project to provide housing.*

31 (j) (1) When a proposed housing development project complies
32 with applicable, objective general ~~plan and zoning plan~~, *zoning,*
33 *and subdivision* standards and criteria, including design review
34 standards, in effect at the time that the housing development
35 project’s application is determined to be complete, but the local
36 agency proposes to disapprove the project or to ~~approve it upon~~
37 ~~the impose~~ *a condition that the project be developed at a lower*
38 *density, the local agency shall base its decision regarding the*
39 *proposed housing development project upon written findings*

1 supported by ~~substantial~~ *a preponderance of the evidence* on the
2 record that both of the following conditions exist:

3 ~~(1)~~

4 (A) The housing development project would have a specific,
5 adverse impact upon the public health or safety unless the project
6 is disapproved or approved upon the condition that the project be
7 developed at a lower density. As used in this paragraph, a “specific,
8 adverse impact” means a significant, quantifiable, direct, and
9 unavoidable impact, based on objective, identified written public
10 health or safety standards, policies, or conditions as they existed
11 on the date the application was deemed complete.

12 ~~(2)~~

13 (B) There is no feasible method to satisfactorily mitigate or
14 avoid the adverse impact identified pursuant to paragraph (1), other
15 than the disapproval of the housing development project or the
16 approval of the project upon the condition that it be developed at
17 a lower density.

18 (2) (A) *If the local agency considers a proposed housing*
19 *development project to be inconsistent, not in compliance, or not*
20 *in conformity with an applicable plan, program, policy, ordinance,*
21 *standard, requirement, or other similar provision as specified in*
22 *this subdivision, it shall provide the applicant with written*
23 *documentation identifying the provision or provisions, and an*
24 *explanation of the reason or reasons it considers the housing*
25 *development to be inconsistent, not in compliance, or not in*
26 *conformity as follows:*

27 (i) *Within 30 days of the date that the application for the housing*
28 *development project is determined to be complete, if the housing*
29 *development project contains 150 or fewer housing units.*

30 (ii) *Within 60 days of the date that the application for the*
31 *housing development project is determined to be complete, if the*
32 *housing development project contains more than 150 units.*

33 (B) *If the local agency fails to provide the required*
34 *documentation pursuant to subparagraph (A), the housing*
35 *development project shall be deemed consistent, compliant, and*
36 *in conformity with the applicable plan, program, policy, ordinance,*
37 *standard, requirement, or other similar provision.*

38 (3) *For purposes of this section, the receipt of a density bonus*
39 *pursuant to Section 65915 shall not constitute a valid basis on*
40 *which to find a proposed housing development project is*

1 *inconsistent, not in compliance, or not in conformity, with an*
2 *applicable plan, program, policy, ordinance, standard,*
3 *requirement, or other similar provision specified in this*
4 *subdivision.*

5 (4) *For purposes of this section, “lower density” includes any*
6 *conditions that have the same effect or impact on the ability of the*
7 *project to provide housing.*

8 (k) (1) (A) The applicant, a person who would be eligible to
9 apply for residency in the development or emergency shelter, or
10 a housing organization may bring an action to enforce this section.
11 If, in any action brought to enforce this section, a court finds that
12 *either (i) the local agency, in violation of subdivision (d),*
13 *disapproved a housing development project or conditioned its*
14 *approval in a manner rendering it infeasible for the development*
15 *of an emergency shelter, or housing for very low, low-, or*
16 *moderate-income households, including farmworker housing,*
17 *without making the findings required by this section or without*
18 *making—sufficient findings supported by—substantial a*
19 *preponderance of the evidence, or (ii) the local agency, in violation*
20 *of subdivision (j), disapproved a housing development project*
21 *complying with applicable, objective general plan and zoning*
22 *standards and criteria, or imposed a condition that the project be*
23 *developed at a lower density, without making the findings required*
24 *by this section or without making findings supported by a*
25 *preponderance of the evidence, the court shall issue an order or*
26 *judgment compelling compliance with this section within 60 days,*
27 *including, but not limited to, an order that the local agency take*
28 *action on the housing development project or emergency shelter.*
29 *The court may issue an order or judgment directing the local*
30 *agency to approve the housing development project or emergency*
31 *shelter if the court finds that the local agency acted in bad faith*
32 *when it disapproved or conditionally approved the housing*
33 *development or emergency shelter in violation of this section. The*
34 *court shall retain jurisdiction to ensure that its order or judgment*
35 *is carried out and shall award reasonable attorney’s fees and costs*
36 *of suit to the plaintiff or ~~petitioner who proposed the housing~~*
37 *development or emergency shelter, ~~petitioner,~~ except under*
38 *extraordinary circumstances in which the court finds that awarding*
39 *fees would not further the purposes of this section. ~~If the court~~*
40 *determines that its order or judgment has not been carried out*

1 ~~within 60 days, the~~ For purposes of this section, “lower density”
2 includes conditions that have the same effect or impact on the
3 ability of the project to provide housing.

4 (B) (i) Upon a determination that the local agency has failed
5 to comply with the order or judgment compelling compliance with
6 this section within 60 days issued pursuant to subparagraph (A),
7 the court shall impose fines on a local agency that has violated
8 this section and require the local agency to deposit any fine levied
9 pursuant to this subdivision into a local housing trust fund. The
10 local agency may elect to instead deposit the fine into the Building
11 Homes and Jobs Fund, if Senate Bill 2 of the 2017–18 Regular
12 Session is enacted, or otherwise in the Housing Rehabilitation
13 Loan Fund. The fine shall be in a minimum amount of ten thousand
14 dollars (\$10,000) per housing unit in the housing development
15 project on the date the application was deemed complete pursuant
16 to Section 65943. In determining the amount of fine to impose, the
17 court shall consider the local agency’s progress in attaining its
18 target allocation of the regional housing need pursuant to Section
19 65584 and any prior violations of this section. Fines shall not be
20 paid out of funds already dedicated to affordable housing,
21 including, but not limited to, Low and Moderate Income Housing
22 Asset Funds, funds dedicated to housing for very low, low-, and
23 moderate-income households, and federal HOME Investment
24 Partnerships Program and Community Development Block Grant
25 Program funds. The local agency shall commit and expend the
26 money in the local housing trust fund within five years for the sole
27 purpose of financing newly constructed housing units affordable
28 to extremely low, very low, or low-income households. After five
29 years, if the funds have not been expended, the money shall revert
30 to the state and be deposited in the Building Homes and Jobs Fund,
31 if Senate Bill 2 of the 2017–18 Regular Session is enacted, or
32 otherwise in the Housing Rehabilitation Loan Fund, for the sole
33 purpose of financing newly constructed housing units affordable
34 to extremely low, very low, or low-income households.

35 (ii) If any money derived from a fine imposed pursuant to this
36 subparagraph is deposited in the Housing Rehabilitation Loan
37 Fund, then, notwithstanding Section 50661 of the Health and Safety
38 Code, that money shall be available only upon appropriation by
39 the Legislature.

1 (C) *If the court determines that its order or judgment has not*
2 *been carried out within 60 days, the court may issue further orders*
3 *as provided by law to ensure that the purposes and policies of this*
4 *section are fulfilled, including, but not limited to, an order to vacate*
5 *the decision of the local agency, agency and to approve the housing*
6 *development project, in which case the application for the housing*
7 *development project, as constituted proposed by the applicant at*
8 *the time the local agency took the initial action determined to be*
9 *in violation of this section, along with any standard conditions*
10 *determined by the court to be generally imposed by the local*
11 *agency on similar projects, shall be deemed to be approved unless*
12 *the applicant consents to a different decision or action by the local*
13 *agency.*

14 (2) For purposes of this subdivision, “housing organization”
15 means a trade or industry group whose local members are primarily
16 engaged in the construction or management of housing units or a
17 nonprofit organization whose mission includes providing or
18 advocating for increased access to housing for low-income
19 households and have filed written or oral comments with the local
20 agency prior to action on the *housing development* project. A
21 housing organization may only file an action pursuant to this
22 section to challenge the disapproval of a housing development by
23 a local agency. *A housing organization shall be entitled to*
24 *reasonable attorney’s fees and costs if it is the prevailing party in*
25 *an action to enforce this section.*

26 (l) If the court finds that the local agency (1) acted in bad faith
27 when it disapproved or conditionally approved the housing
28 development or emergency shelter in violation of this section and
29 (2) failed to carry out the court’s order or judgment within 60 days
30 as described in subdivision (k), the court, in addition to any other
31 remedies provided by this section, ~~may impose fines upon the local~~
32 ~~agency that the local agency shall be required to deposit into a~~
33 ~~housing trust fund. Fines shall not be paid from funds that are~~
34 ~~already dedicated for affordable housing, including, but not limited~~
35 ~~to, redevelopment or low- and moderate-income housing funds~~
36 ~~and federal HOME and CDBG funds. The local agency shall~~
37 ~~commit the money in the trust fund within five years for the sole~~
38 ~~purpose of financing newly constructed housing units affordable~~
39 ~~to extremely low, very low, or low-income households. shall~~
40 *multiply the fine determined pursuant to subparagraph (B) of*

1 *paragraph (1) of subdivision (k) by a factor of five.* For purposes
2 of this section, “bad faith” ~~shall mean~~ *includes, but is not limited*
3 *to, an action that is frivolous or otherwise entirely without merit.*

4 (m) Any action brought to enforce the provisions of this section
5 shall be brought pursuant to Section 1094.5 of the Code of Civil
6 Procedure, and the local agency shall prepare and certify the record
7 of proceedings in accordance with subdivision (c) of Section 1094.6
8 of the Code of Civil Procedure no later than 30 days after the
9 petition is served, provided that the cost of preparation of the record
10 shall be borne by the local ~~agency.~~ *agency, unless the petitioner*
11 *elects to prepare the record as provided in subdivision (n) of this*
12 *section. A petition to enforce the provisions of this section shall*
13 *be filed and served no later than 90 days from the later of (1) the*
14 *effective date of a decision of the local agency imposing conditions*
15 *on, disapproving, or any other final action on a housing*
16 *development project or (2) the expiration of the time periods*
17 *specified in subparagraph (B) of paragraph (5) of subdivision (h).*
18 Upon entry of the trial court’s order, a party ~~shall,~~ *may,* in order
19 to obtain appellate review of the order, file a petition within 20
20 days after service upon it of a written notice of the entry of the
21 order, or within such further time not exceeding an additional 20
22 days as the trial court may for good cause ~~allow.~~ *allow, or may*
23 *appeal the judgment or order of the trial court under Section 904.1*
24 *of the Code of Civil Procedure.* If the local agency appeals the
25 judgment of the trial court, the local agency shall post a bond, in
26 an amount to be determined by the court, to the benefit of the
27 plaintiff if the plaintiff is the project applicant.

28 (n) In any action, the record of the proceedings before the local
29 agency shall be filed as expeditiously as possible and,
30 notwithstanding Section 1094.6 of the Code of Civil Procedure or
31 subdivision (m) of this section, all or part of the record may be
32 prepared (1) by the petitioner with the petition or petitioner’s points
33 and authorities, (2) by the respondent with respondent’s points and
34 authorities, (3) after payment of costs by the petitioner, or (4) as
35 otherwise directed by the court. If the expense of preparing the
36 record has been borne by the petitioner and the petitioner is the
37 prevailing party, the expense shall be taxable as costs.

38 (o) This section shall be known, and may be cited, as the
39 Housing Accountability Act.

1 *SEC. 2. Section 1.5 of this bill incorporates amendments to*
2 *Section 65589.5 of the Government Code proposed by both this*
3 *bill and Assembly Bill 1515. That section shall only become*
4 *operative if (1) both bills are enacted and become effective on or*
5 *before January 1, 2018, (2) each bill amends Section 65589.5 of*
6 *the Government Code, and (3) this bill is enacted after Assembly*
7 *Bill 1515, in which case Section 1 of this bill shall not become*
8 *operative.*

9 *SEC. 3. No reimbursement is required by this act pursuant to*
10 *Section 6 of Article XIII B of the California Constitution because*
11 *a local agency or school district has the authority to levy service*
12 *charges, fees, or assessments sufficient to pay for the program or*
13 *level of service mandated by this act, within the meaning of Section*
14 *17556 of the Government Code.*

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