

AMENDED IN ASSEMBLY JUNE 13, 2024

AMENDED IN SENATE APRIL 25, 2024

AMENDED IN SENATE MARCH 19, 2024

SENATE BILL

No. 1037

Introduced by Senator Wiener

February 6, 2024

An act to add Section 65009.1 to the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

SB 1037, as amended, Wiener. Planning and zoning: housing element: enforcement.

Existing law, 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. The Planning and Zoning Law requires the Department of Housing and Community Development (HCD) to determine whether the housing element is in substantial compliance with specified provisions of that law. The Planning and Zoning Law requires HCD to notify a city, county, or city and county, and authorizes HCD to notify the office of the Attorney General, that the city, county, or city and county is in violation of state law if the local government has taken action in violation of specified provisions of law. The Planning and Zoning Law also requires, among other things, that an application for a housing development be subject to a specified streamlined, ministerial approval process if the development satisfies certain objective planning standards.

This bill, in any action brought by the Attorney General, on behalf of HCD or in an independent capacity, to enforce the adoption of

housing element revisions, as specified, or to enforce any state law that requires a city, county, or local agency to ministerially approve any ~~land use decision planning~~ or permitting application ~~for~~ related to a housing development project, as specified, would subject the city, county, or local agency to specified remedies, including a civil penalty of, at minimum, \$10,000 per month, and not exceeding \$50,000 per month, for each violation, as specified. The bill would require that the penalties set forth in its provisions only apply when ~~the local land use decisions or actions~~ *agency's acts or omissions, as described*, are arbitrary, capricious, or entirely lacking in evidentiary support, contrary to established public policy, unlawful, or procedurally unfair. The bill would require these civil penalties, as specified, to be deposited into the Building Homes and Jobs Trust Fund for the sole purpose of supporting the development of affordable housing located in the affected jurisdiction, except as provided, and would require that expenditure of any penalty moneys deposited into the fund under these provisions be subject to appropriation by the Legislature. In the event a city, county, or local agency fails to pay civil penalties imposed by the court, the bill would authorize the court to require the Controller to intercept any available state and local funds and direct those funds to the Building Homes and Jobs Trust Fund to correct the jurisdiction's failure to pay, as specified.

The bill would make a related statement of legislative findings and declarations.

The bill would include findings that changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

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. The Legislature finds and declares all of the
- 2 following:
- 3 (a) California has a statewide housing shortage crisis.
- 4 (b) California's housing crisis stifles economic growth,
- 5 contributes to the homelessness epidemic, consumes an
- 6 ever-growing share of the paychecks of working families, and
- 7 holds millions of households back from realizing the California
- 8 dream of achieving housing security or home ownership.

1 Conversely, new construction of residences, particularly
2 multifamily homes, induces a chain of moves, ultimately adding
3 more housing units affordable to middle- and low-income
4 households.

5 (c) Restrictive zoning, land use planning, and burdensome
6 residential permitting practices and policies, at the local level in
7 particular, are a major cause of the shortfall between California's
8 housing needs and the available supply of housing. For example,
9 despite the obligations of local governments under the Housing
10 Element Law to update their general plans, including required
11 rezoning for additional sites to address projected housing needs,
12 numerous cities and counties continue to delay and, at times even
13 refuse, to undertake required actions to encourage, promote, and
14 facilitate the development of housing to accommodate the
15 established regional housing need. The absence of updated housing
16 elements that are substantially compliant with state law causes
17 unnecessary uncertainty and delay in approving housing
18 development applications. This cumulative delay causes many
19 local governments to continue to fall behind in meeting their share
20 of regional housing need.

21 (d) These restrictive practices and policies continue to persist
22 despite other statewide reforms to expedite, streamline, and
23 ministerially approve the planning and construction of housing of
24 all types, including housing affordable to persons and families of
25 lower income. While not exhaustive, these reforms can be found
26 in the following provisions:

27 (1) Accessory dwelling units, as described in ~~Sections 65852.150~~
28 ~~and 65852.2~~ *Chapter 13 (commencing with Section 66310) of*
29 *Division 1 of Title 7 of the Government Code.*

30 (2) By-right housing, in which certain multifamily housing is
31 designated a permitted use, as described in Section 65589.4 of the
32 Government Code.

33 (3) Reduced time for action on affordable housing applications
34 under the approval of the development permits process, as
35 described in Article 5 (commencing with Section 65950) of Chapter
36 4.5 of Division 1 of Title 7 of the Government Code.

37 (4) Streamlining housing approvals during a housing shortage,
38 as described in Section 65913.4 of the Government Code.

1 (5) Streamlining agricultural employee housing development
2 approvals, as described in Section 17021.8 of the Health and Safety
3 Code.

4 (6) The Housing Crisis Act of 2019, as described in Chapter
5 654 of the Statutes of 2019 (Senate Bill 330).

6 (7) Allowing four units to be built on single-family parcels
7 statewide, as described in Chapter 162 of the Statutes of 2021
8 (Senate Bill 9).

9 (8) The Middle Class Housing Act of 2022, as described in
10 Section 65852.24 of the Government Code.

11 (9) The Affordable Housing and High Road Jobs Act of 2022,
12 as described in Chapter 4.1 (commencing with Section 65912.100)
13 of Division 1 of Title 7 of the Government Code.

14 (10) Housing element law requirements and required rezoning
15 to address unmet housing needs, as described in Chapter 974 of
16 the Statutes of 2018 (Senate Bill 828) and Chapter 358 of the
17 Statutes of 2021 (Assembly Bill 1398).

18 SEC. 2. Section 65009.1 is added to the Government Code, to
19 read:

20 65009.1. (a) In any action brought by the Attorney General,
21 on behalf of the Department of Housing and Community
22 Development or in an independent capacity, to enforce the adoption
23 of housing element revisions pursuant to the schedule set forth in
24 subdivision (e) of Section 65588, or to enforce any state law that
25 requires a city, county, or local agency to ministerially approve,
26 without discretionary review, any ~~land use decision~~ *planning* or
27 permitting application ~~for~~ *related to* a housing development project,
28 the city, county, or local agency shall be subject to the following
29 remedies:

30 (1) A civil penalty of, at minimum, ten thousand dollars
31 (\$10,000) per month, and not exceeding fifty thousand dollars
32 (\$50,000) per month, for each violation, accrued from the date of
33 the violation until the date the violation is cured.

34 (2) (A) All costs of investigating and prosecuting this action,
35 including expert fees, reasonable attorney’s fees, and costs,
36 whenever the Attorney General prevails in a civil action to enforce
37 any state laws under this section.

38 (B) Awards imposed pursuant to this paragraph shall be paid
39 to the Public Rights Law Enforcement Special Fund established
40 by Section 12530.

1 (3) (A) Other relief as the court deems appropriate, including
2 equitable and injunctive relief, provisional or otherwise.

3 (B) Any injunction, provisional or otherwise, ordered by the
4 court pursuant to this paragraph shall be deemed to be prohibitory,
5 and not affirmative.

6 (b) The penalties set forth in this section shall only apply when
7 ~~the local land use decisions or actions~~ *agency's acts or omissions*
8 *described in subdivision (a)* are arbitrary, capricious, entirely
9 lacking in evidentiary support, contrary to established public policy,
10 unlawful, or procedurally unfair. The purpose of this section is to
11 ensure adequate remedies are available to ensure that state laws
12 mandating streamlined, ministerial approvals related to housing
13 development projects, and the timely adoption of housing element
14 revisions, are promptly and faithfully followed.

15 (c) (1) Any civil penalty levied pursuant to this section shall
16 be deposited into the Building Homes and Jobs Trust Fund for the
17 sole purpose of supporting the development of affordable housing
18 located in the affected jurisdiction. Expenditure of any penalty
19 moneys deposited into the Building Homes and Jobs Trust Fund
20 pursuant to this subdivision shall be subject to appropriation by
21 the Legislature.

22 (2) Any penalty imposed pursuant to this section shall not be
23 paid out of funds already dedicated to affordable housing,
24 including, but not limited to, very low, low-, and moderate-income
25 households.

26 (3) To the extent permitted under the California Constitution,
27 in the event a city, county, or local agency fails to pay civil
28 penalties imposed by the court, the court may require the Controller
29 to intercept any available state and local funds and direct those
30 funds to the Building Homes and Jobs Trust Fund to correct the
31 jurisdiction's failure to pay.

32 (4) Notwithstanding paragraph (1), if the penalty moneys have
33 not been expended five years after deposit, the penalty moneys
34 may be used, upon appropriation, to finance newly constructed
35 affordable housing units in the state without any geographic
36 restrictions.

37 (d) The liability, penalties, and remedies imposed by this section
38 are in addition to any other liability, penalties, and remedies
39 imposed by any other law.

1 (e) *The remedies available to the Attorney General pursuant to*
2 *this section do not limit or affect the remedies available to any*
3 *other party seeking to enforce the laws enumerated in subdivision*
4 *(j) of Section 65585, including, but not limited to, the remedies in*
5 *Article 14 (commencing with Section 65750) of Chapter 3, and*
6 *attorneys' fees pursuant to Section 1021.5 of the Code of Civil*
7 *Procedure.*

8 SEC. 3. The Legislature finds and declares that the lack of
9 housing is a matter of statewide concern and is not a municipal
10 affair as that term is used in Section 5 of Article XI of the
11 California Constitution. Therefore, the Legislature clarifies that
12 Section 2 of this act adding Section 65009.1 to the Government
13 Code applies to all cities, including charter cities.

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