

AMENDED IN ASSEMBLY MARCH 25, 2021

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

**ASSEMBLY BILL**

**No. 989**

---

---

**Introduced by Assembly Member Gabriel**

*(Principal coauthor: Senator Gonzalez)*

*(Coauthors: Assembly Members Berman, Fong, Mayes, McCarty,  
Quirk-Silva, Robert Rivas, and Wicks)*

*(Coauthor: Senator Kamlager)*

February 18, 2021

---

---

~~An act to amend Section 34000 of the Government Code, relating to local government.~~ *An act to add Section 65585.4 to the Government Code, relating to planning and land use.*

LEGISLATIVE COUNSEL'S DIGEST

AB 989, as amended, Gabriel. ~~Cities.~~ *Housing: local development decisions: appeals.*

*Existing law requires a city or county to prepare and adopt a general plan for its jurisdiction that contains certain mandatory elements, including a housing element. Existing law prescribes requirements for the housing element, including adequate sites for various types of housing based on the existing and projected need of all economic segments of the community. Existing law requires a city or county to consider guidelines adopted by the Department of Housing and Community Development in preparing its housing element and prescribes a process for submitting the element for review by the department. Existing law authorizes the department to take certain actions if it determines that the housing element does not comply with prescribed requirements.*

*This bill would establish a Housing Accountability Committee within the Department of Housing and Community Development, and would prescribe its membership. The bill would set forth the committee's powers and duties, including the review of appeals regarding multifamily housing projects that cities and counties have denied or subjected to unreasonable conditions that make the project financially infeasible.*

*This bill would require that the committee be supported by the department and hear appeals at least quarterly or more often as the committee deems necessary. The bill would prescribe the qualifications of proposed housing developments that would be eligible for appeals and timelines within which applicants, the committee, and local agencies would be required to act. The bill would require, among other things, the local agency to transmit a copy of its decision and reasoning to the committee, as specified, and would require all governing members of the local agency to certify in writing, under penalty of perjury, that their decision was not made for any unlawful or improper purpose. By requiring members of the local agency to make certifications under penalty of perjury, this bill would impose a state-mandated local program.*

*This bill would require the committee to vacate a local decision if it finds that the local agency disapproved the housing development in violation of specified provisions, and would require the committee to direct the local agency to issue any necessary approval or permit for the development and, if applicable, to modify or remove any condition or requirement to make the development no longer infeasible.*

*This bill would require a local agency to carry out a committee order within 30 days of entry, and if the local agency fails to do so, the bill would authorize an applicant to enforce the committee orders in court. The bill would entitle the applicant to attorney's fees and costs, and would additionally authorize the court to impose specified fines on the city or county. The bill would authorize the department to charge applicants a fee for an appeal, as specified, and if the committee orders approval of the proposed development or modifies or removes any conditions or requirements imposed upon the applicant, the bill would require a city or county to reimburse the applicant for the fee. By increasing the duties of local officials, this bill would impose a state-mandated local program.*

*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.*

*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 specified reasons.*

~~Existing law sets forth various provisions relating to the governance of cities and defines the term “legislative body” for these purposes.~~

~~This bill would make a nonsubstantive change to that definition.~~

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. The Legislature hereby finds and declares the*  
2 *following:*

3     *(a) California is experiencing a housing crisis, with housing*  
4 *demand far outstripping supply. California recently ranked 49th*  
5 *out of the 50 states in housing units per capita.*

6     *(b) Studies have shown that the housing crisis is driving high*  
7 *costs of living and further threatening sustainable economic growth*  
8 *in the state.*

9     *(c) Research has also shown that cost-burdened households*  
10 *have had to cut back on critical basic needs like food, and can be*  
11 *forced to take on additional debt in order to afford rent. Extremely*  
12 *low income households in California have to pay at least one-half*  
13 *of their income toward housing, putting them at risk of housing*  
14 *instability and homelessness.*

15     *(d) According to the California Housing Partnership, California*  
16 *needs an estimated 2,600,000 additional homes over the next 10*  
17 *years, including 1,200,000 homes affordable to lower income*  
18 *households.*

19     *(e) State law requires local governments to exercise their zoning*  
20 *power to meet the housing needs of residents at all income levels*  
21 *and to remove arbitrary constraints that prevent the development*  
22 *of sufficient affordable housing.*

23     *(f) Even when proposed housing projects conform to local*  
24 *zoning requirements, local officials may improperly deny projects*  
25 *or subject them to unreasonable conditions that make them*  
26 *financially infeasible.*

1 (g) *It is often prohibitively expensive, time-consuming, and*  
 2 *impractical to bring litigation challenging improper and unlawful*  
 3 *decisions preventing the construction of affordable housing. For*  
 4 *this reason, State Legislatures in Connecticut, Illinois,*  
 5 *Massachusetts, and Rhode Island have created alternative means*  
 6 *to challenge efforts to prevent the construction of affordable*  
 7 *housing.*

8 (h) *It is the intent of the Legislature to ensure that local*  
 9 *governments do not actively defy or circumvent state law and*  
 10 *improperly or unlawfully prevent the development of badly needed*  
 11 *affordable housing.*

12 SEC. 2. *Section 65585.4 is added to the Government Code, to*  
 13 *read:*

14 65585.4. (a) *There shall be within the department a Housing*  
 15 *Accountability Committee consisting of five members to review*  
 16 *multifamily housing projects that have been denied or subjected*  
 17 *to unreasonable conditions that make the project financially*  
 18 *infeasible.*

19 (1) *The director of the department and the Director of the*  
 20 *Governor’s Office of Planning and Research shall be ex officio*  
 21 *members, provided that they may designate an employee of their*  
 22 *respective department or office to serve on the committee in their*  
 23 *place.*

24 (2) *The remaining three members shall be appointed by the*  
 25 *Governor with the advice and consent of the Senate. One member*  
 26 *shall be a member of a city council or board of supervisors and*  
 27 *one other member shall have extensive experience in the*  
 28 *development of affordable housing. The appointed members shall*  
 29 *serve for terms of two years each, at the pleasure of the Governor.*  
 30 *The director of the department shall designate the chairperson.*

31 (3) *Members of the committee shall not receive compensation*  
 32 *for their services, but shall be reimbursed by the department for*  
 33 *all reasonable expenses actually or necessarily incurred in the*  
 34 *performance of their official duties. The department shall provide*  
 35 *the space and clerical and other assistance that the committee may*  
 36 *require.*

37 (4) *The committee shall hear appeals pursuant to this section*  
 38 *at least quarterly or more often as it deems necessary. The*  
 39 *committee shall conduct the hearings in accordance with guidelines*  
 40 *established by the department. The adoption, amendment, or repeal*

1 of a guideline authorized by this section is hereby exempted from  
2 the rulemaking provisions of the Administrative Procedure Act  
3 (Chapter 3.5 (commencing with Section 11340) of Part 1 of  
4 Division 3 of Title 2).

5 (b) An applicant who proposes to construct a housing  
6 development that meets the criteria of subdivision (c) and whose  
7 application is either denied, or approved with conditions that in  
8 the person's judgment render the provision of housing  
9 economically infeasible, may appeal the decision of the city, county,  
10 or city and county to the committee.

11 (c) An applicant may file an appeal with the committee if both  
12 of the following criteria are met:

13 (1) The proposed housing development will meet or exceed any  
14 of the following affordability requirements:

15 (A) Ten percent of the total of the housing development is  
16 available at affordable housing cost to extremely low income  
17 households whose household income is less than or equal to 30  
18 percent of the area median income.

19 (B) Twenty percent of the total housing of the development is  
20 available at affordable housing cost to very low income and  
21 low-income households, as defined in Section 50105 of the Health  
22 and Safety Code.

23 (C) One hundred percent of the total housing of the development  
24 is available at affordable housing cost to moderate-income  
25 households, as defined in Section 50093 of the Health and Safety  
26 Code.

27 (2) Either of the following criteria is met:

28 (A) The city, county, or city and county has adopted a housing  
29 element that the department has determined pursuant to Section  
30 65585 to be in substantial compliance with the requirements of  
31 this article, and the proposed housing development, exclusive of  
32 any density bonus granted pursuant to Section 65915, is consistent  
33 with both the density allowed by the jurisdiction's zoning ordinance  
34 and the general plan land use designation as specified in any  
35 element of the general plan as of the date the application was  
36 deemed complete, except that consistency shall not be required  
37 with the zoning ordinance or the general plan land use designation  
38 if the jurisdiction has not amended the ordinance or the designation  
39 to conform to the adopted housing element.

1 (B) The city, county, or city and county has not adopted a  
2 housing element that the department has determined pursuant to  
3 Section 65585 to be in substantial compliance with the  
4 requirements of this article, and the proposed housing development  
5 is located on a site that is designated for residential or commercial  
6 uses in any element of the general plan as of the date the  
7 application was deemed complete.

8 (d) (1) An applicant may file an appeal with the committee  
9 within 45 days after the date of the decision by the local agency  
10 to deny the application or approve the application with conditions  
11 that render the provision of housing economically infeasible. The  
12 committee shall notify the local agency of the filing of an appeal  
13 within 10 days, and the local agency shall, within 10 days of the  
14 receipt of that notice, transmit a copy of its decision and the  
15 reasons therefor to the committee. All governing members of the  
16 local agency shall certify in writing, under penalty of perjury, that  
17 their decision was not made for any unlawful or improper purpose.  
18 If the local agency does not meet the deadline, the committee shall  
19 vacate the decision of the local agency and direct the local agency  
20 to issue any necessary approval or permit for the development to  
21 the applicant within 30 days of the committee's decision. In this  
22 instance, the case shall be considered closed. If the local agency  
23 responds within the deadline, the appeal shall be heard within 30  
24 days after receipt of the request for an appeal by the applicant.

25 (2) The appeal hearing may be conducted by the committee, a  
26 subcommittee of two or more members of the committee, or a  
27 hearing officer appointed by the chairperson of the committee. A  
28 record of the proceedings shall be kept. The hearing shall be  
29 limited to the issue of whether the local agency, in violation of  
30 Section 65589.5, disapproved a housing development project or  
31 conditioned its approval in a manner rendering it infeasible for  
32 the development of housing for very low, low-, or moderate-income  
33 households, including farmworker housing, without making the  
34 findings required by that section or without making findings  
35 supported by a preponderance of the evidence.

36 (3) At its next meeting following the hearing, the committee  
37 shall render a written decision, based upon a majority vote, stating  
38 its findings of fact, its conclusions, and the support for them. If the  
39 committee finds that the local agency disapproved the housing  
40 development in violation of Section 65589.5, it shall vacate the

1 *decision and shall direct the local agency to issue any necessary*  
2 *approval or permit for the development to the applicant within 30*  
3 *days of the committee’s decision. If the committee finds that the*  
4 *local agency conditioned its approval in a manner rendering the*  
5 *development infeasible for the development of housing for very*  
6 *low, low-, or moderate-income households in violation of Section*  
7 *65589.5, it shall order the local agency to modify or remove any*  
8 *such condition or requirement so as to make the development no*  
9 *longer infeasible and to issue any necessary permit or approval.*

10 *(e) In any appeal before the committee, the applicant shall have*  
11 *the initial burden of proof to show that it has met the requirements*  
12 *of subdivision (c). In a case of approval with conditions or*  
13 *requirements imposed, the applicant shall also have the burden*  
14 *of proof to show that the conditions and requirements render the*  
15 *provision of housing economically infeasible. If the applicant meets*  
16 *the initial burden of proof, then the local agency shall have the*  
17 *burden of proof to show that its action was consistent with Section*  
18 *65589.5.*

19 *(f) The city or county shall carry out the order of the committee*  
20 *within 30 days of its entry, and upon failure to do so, the order of*  
21 *the committee shall for all purposes be deemed to be the action of*  
22 *the local agency, unless the applicant consents to a different*  
23 *decision or order by the local agency. The applicant may enforce*  
24 *the orders of the committee in court. The applicant shall be entitled*  
25 *to attorney’s fees and costs if the applicant prevails in an*  
26 *enforcement action, and the court may impose fines on the city or*  
27 *county consistent with subdivision (k) and (l) of Section 65589.5.*

28 *(g) The department may charge a fee to the applicant that shall*  
29 *not exceed the reasonable cost to the committee of providing the*  
30 *hearing. If the committee orders approval of the proposed*  
31 *development or modifies or removes any conditions or*  
32 *requirements imposed upon the applicant, the city or county shall*  
33 *reimburse the applicant for the fee paid pursuant to this*  
34 *subdivision.*

35 *(h) For the purposes of this section the following terms have*  
36 *the following meanings:*

37 *(1) “Area median income” means area median income as*  
38 *periodically established by the department pursuant to Section*  
39 *50093 of the Health and Safety Code.*

40 *(2) “Committee” means the Housing Accountability Committee.*

1 (3) “Housing development” means a development project  
2 consisting of 10 or more residential dwelling units or an emergency  
3 shelter facility.

4 (i) The remedies provided in this section are in addition to any  
5 other remedy provided by law.

6 (j) The Legislature finds and declares that this section addresses  
7 a matter of statewide concern rather than a municipal affair as  
8 that term is used in Section 5 of Article XI of the California  
9 Constitution. Therefore, this section applies to all cities, including  
10 charter cities.

11 SEC. 3. No reimbursement is required by this act pursuant to  
12 Section 6 of Article XIII B of the California Constitution because  
13 a local agency or school district has the authority to levy service  
14 charges, fees, or assessments sufficient to pay for the program or  
15 level of service mandated by this act or because costs that may be  
16 incurred by a local agency or school district will be incurred  
17 because this act creates a new crime or infraction, eliminates a  
18 crime or infraction, or changes the penalty for a crime or  
19 infraction, within the meaning of Section 17556 of the Government  
20 Code, or changes the definition of a crime within the meaning of  
21 Section 6 of Article XIII B of the California Constitution.

22 SECTION 1. ~~Section 34000 of the Government Code is~~  
23 ~~amended to read:~~

24 ~~34000. As used in this title, “legislative body” means the board~~  
25 ~~of trustees, city council, or other governing body of a city.~~

O