

- d) Allows the local agency to dispose of the property on the private market if agreement is not reached with a housing sponsor.
- e) Requires that, if a property sold as surplus is not sold to a housing sponsor, but housing is developed on it later, 15% of the units must be sold or rented at an affordable cost to lower income households.
- f) Imposes specified penalties for violations of the SLA.

This bill:

- 1) Revises provisions of the SLA relating to the actions a local government must take to dispose of land:
 - a) Allows local agencies to declare the land “exempt surplus land” without holding a public meeting if the declaration and findings are published and available for public comment, including notification to housing sponsors and other potential buyers that receive notices of availability for surplus land, at least 30 days before the declaration takes effect.
 - b) Provides an alternative administrative process for land that is exempt surplus land because it is one of the following:
 - i) Transferred for the purpose of constructing affordable housing;
 - ii) Below specified sizes;
 - iii) A former street, right of way, or easement and is being conveyed to an owner of an adjacent property;
 - iv) Property that was granted by the state in trust to a local agency;
 - v) Land that is subject to specified procedures for disposing of educational properties; and
 - vi) Land that is owned by a California public-use airport on which residential use is prohibited pursuant to Federal Aviation Administration (FAA).
- 2) Modifies the SLA’s definition of exempt surplus land in the following ways:
 - a) Current law exempts land from the SLA that is subject to legal restrictions that would prevent the property from being used for housing. This bill requires those legal restrictions to be documented in writing by the relevant agencies before land can be declared exempt surplus land.
 - b) Adds to the definition of exempt surplus land that is owned by a California public-use airport on which residential use is prohibited pursuant to FAA.
 - c) No longer requires 100% affordable projects (at least 75% affordable to lower-income households), subject to affordability covenants, to be competitively bid to qualify as exempt surplus land, if the maximum

- affordable sales price or rent does not exceed 20% below median market rents or sales prices in the neighborhood.
- d) Removes from the definition of exempt surplus land competitively bid, mixed-use developments that include at least 300 units, with at least 25% of units affordable to lower income households, and include affordability covenants, if they are 10 acres or more.
 - e) Adds to the definition of exempt surplus land developments 10 acres or more across one or more parcels that do not have to be adjacent, and that is competitively solicited or bid, if:
 - i) Entities that receive notices of availability under the SLA are invited to participate;
 - ii) The development includes (1) 300 units, or (2) a number of units equal to 10 times the number acres, or 10,000 units, whichever is less;
 - iii) At least 25% of units are restricted to lower-income households with affordability covenants;
 - iv) At least 25% of units are made available for lease before, or at the same time, as every 25% of nonresidential development is made available for lease or sale and permitted for use;
 - v) An indemnification clause is included that provides that if a violation occurs after disposition, the person or entity that acquired the property shall be liable for the penalties (subject to the SLA's penalty provisions, in addition to any court penalties); and
 - vi) A covenant or restriction is recorded at the time of sale.
- 3) Requires local governments to use a form prescribed by HCD. Also requires HCD to link to all notices of availability and list all entities that have notified the department of their interest in surplus land for the purpose of developing low- and moderate-income housing.
- 4) Increases the penalties for a violation of the SLA. Imposes the same 30% and 50% penalties as current statute, but on a base of the greater of the final sale price or the fair market value of the land at time of disposition, as determined by an independent appraisal. Provides that the SLA penalties do not apply to violations that do not impact the availability and priority of land for affordable housing, such as clerical errors.

COMMENTS:

- 1) *Author's statement.* "California is facing a housing crisis and unused public land has the potential to promote affordable housing development throughout the state. These properties are key to building housing that is connected to

transit, schools, and jobs. In fact, most affordable housing in California is built on what used to be public land. AB 480 clarifies and strengthens provisions in the Surplus Land Act that will promote the use of public land for affordable housing.”

- 2) *California’s housing crisis.* California’s housing crisis is a half century in the making. Decades of underproduction underscored by exclusionary policies have left housing supply far behind need and costs soaring. During the 1990’s, California averaged only 110,000 new housing units per year. During the early 2000’s, production increased significantly, reaching a peak of 212,000 units in 2004 before plummeting to historic lows during the recession. Unfortunately, the downward trend continues; the fact is that California has under-produced housing every single year since 1989.

According to the 2022 Statewide Housing Plan, published by HCD, California must plan for more than 2.5 million homes over the next eight-year cycle, and no less than one million of those homes must meet the needs of lower-income households.¹

- 3) *Public lands for affordable housing development.* One of the limiting factors in building new affordable homes is land—the high cost and acquisition of land suitable for housing. Public agencies own a significant amount of lands located in or near urban areas, some of which exceed those agencies’ foreseeable needs, which could be used for housing.

The SLA provides affordable housing developers notification when local agencies make land available for reasons other than the agency’s use, and requires local agencies to negotiate in good faith with them for these parcels. The goal is to help valuable public land develop into affordable housing, but this could be at the expense of a local agencies’ economic development opportunities.

- 4) *Local surplus lands.* Public agencies are major landlords in some communities, owning significant pieces of real estate. When properties become surplus to their needs, public officials want to sell the land to recoup their investments. SLA spells out the steps local agencies must follow when they want to dispose of land. It requires local governments to give a “first right of refusal” to other governments and nonprofit housing developers, and to negotiate in good faith with them to try to come to agreement.

¹ 2022 Statewide Housing Plan: [A Home for Every Californian \(arccgis.com\)](https://www.arccgis.com)

Before local officials can dispose of property, they must declare in a public meeting that the land is no longer needed for the agency's use and declare the land either "surplus land" or "exempt surplus land." Agency use includes land that is being used, or is planned to be used pursuant to a written plan the local agency's governing board adopts, or is disposed of to support agency work or operations, including, but is not limited to, utility sites, watershed property, land being used for conservation purposes, land for demonstration, exhibition, or education purposes related to greenhouse gas emissions, and buffer sites near sensitive governmental uses.

Agency use cannot include commercial or industrial uses or activities.

However, if the local agency is a district, "agency use" can include commercial or industrial uses as specified if the agency's governing body takes action in a public meeting that the use of the site will directly further the express purpose of agency work or operations, or be expressly authorized by a statute provided that the district complies with specified affordable housing requirements.

- 5) *Exempt surplus lands.* The SLA designates certain types of land as "exempt surplus land," which does not have to meet the requirements of the SLA. All other surplus land must follow the procedures laid out in the SLA before a local agency can sell it. Exempt surplus land includes, but is not limited to, public land transfers for less than fair market value to provide affordable housing, land that a local agency is exchanging for another property necessary for the agency's use, and land that is a former street, right-of-way, or easement, and the local agency conveys to an owner of an adjacent property.
- 6) *First right of refusal.* Before agencies can enter into negotiations to sell surplus land, they must send a written notice of availability to various public agencies and nonprofit groups, referred to as "housing sponsors," notifying them that land is available for lower income housing, parks, open space, school facilities or infill opportunity zones or transit village plans. Housing sponsors can notify HCD that they are interested in acquiring surplus land to develop affordable housing. HCD maintains a list of notices of availability on its website.

If another agency or housing sponsor wants to buy or lease the surplus land for one of these purposes, it must tell the disposing agency within 60 days, and if multiple entities want to purchase the land, the housing sponsor that proposes to provide the greatest level of affordable housing gets priority. The agency and the housing sponsor then have an additional 90 days to negotiate a mutually satisfactory price and terms in good faith. If they cannot agree, the agency that owns the surplus land can sell the land on the private market. The SLA says that nothing in its provisions prevents a local agency from disposing of the land at or below fair market value, where not in conflict with other law.

- 7) *Enhancing responsibility and transparency: AB 1486 (Ting)*. In 2019, the Legislature substantially revised the SLA through the passage of AB 1486 to increase the emphasis on affordable housing and address concerns that some local agencies were bypassing the SLA's requirements. Among other changes, AB 1486 broadened the definition of surplus land and required land to be designated as surplus prior to the local agency selling the land, which ensures that local agencies must comply with the SLA. AB 1486 prohibited local agencies from counting the sale of land for economic development purposes as being "for the agency's use." This means that local agencies must open their properties up to affordable housing developers first, even if they have different purposes in mind for the property. Additionally, AB 1486 instituted a requirement that if a property sold as surplus is not sold to a housing sponsor, but housing is developed on it later, 15% of the units must be sold or rented at an affordable cost to lower-income households.

Finally, AB 1486 imposed penalties on local agencies that dispose of surplus land in violation of the SLA totaling 30% of the sales price of land disposed of in violation of the SLA for a first violation, and 50% of the price of the land for subsequent violations. These penalty revenues must be deposited in a local housing trust fund. AB 1486 established an enforcement process to ensure adequate noticing requirements, timely written findings to local agencies, the opportunity to respond to and correct findings, proper notification to local government and the Attorney General of violations, and that no local agency be held liable for SLA penalties if no violation was received.

AB 1486 also provided that certain projects could use the previous version of the SLA before AB 1486 amended it, if the local agency, as of September 30, 2019, entered into an exclusive negotiating, or legally binding, agreement to dispose of property, provided the local agency completed the disposition by December 31, 2022.

- 8) *HCD's SLA guidelines*. AB 1486's amendments to the SLA gave HCD the authority to adopt guidelines to implement the penalty provisions of the SLA. In April 2021, HCD issued guidance which, among other things, provided that disposal included both sales and leases of land, and required local agencies to notify HCD not only prior to agreeing to terms on surplus land, but also 30 days prior to disposing of exempt surplus land.

To date, HCD has tracked 525 exempt surplus land dispositions and 237 standard surplus land dispositions, resulting in 5,393 units, of which 4,065 are affordable units. Additionally, HCD has tracked 273 land dispositions; there are currently 21 projects in the pipeline generating a total of 2,994 housing

units of which 1,832 are affordable. These are units that would have been unlikely to be developed in this capacity without the SLA, and the 1,832 affordable units will serve an estimated 36,000 lower-income households over the lifespan of their affordability covenants.

- 9) *SLA Penalties.* Local agencies that dispose of surplus land in violation of the SLA are subject to penalties indexed to the final sales price of the land. This could result in the fines being de minimis in instances when a local agency sells the surplus land for below market value.

This bill addresses that scenario by amending the penalty provisions of the SLA to factor in the appraised value of the disposed land. Specifically, it requires an independently appraised fair market value of the surplus land at the time of the disposition, and bases the penalties on that appraised value if it is greater than the sales price.

- 10) *Competing Measures.* Several authors introduced measures that seek to amend the SLA this year. *The author and sponsors of this bill may wish to coordinate their efforts with other measures amending the SLA to avoid conflict and duplication.*
- 11) *Opposition.* Opponents of the bill include specific cities, counties, and special districts, as well as the organizations that collectively represent them. These groups argue that...“the ambiguities created by AB 480, taken together with burdensome and unnecessary new procedural requirements, as well as potentially increased penalties, will increase SLA compliance costs on local agencies.”
- 12) *Double-referral.* This bill was first referred to the Senate Governance and Finance Committee, where it passed on a 6-1 vote on June 28.

RELATED LEGISLATION:

SB 747 (Caballero, 2023) — amends the SLA to increase the ability for local agencies to dispose of the land for economic development opportunities. *This bill is currently in the Assembly Housing and Community Development Committee.*

AB 1734 (Jones-Sawyer, 2023) — exempts certain housing and homelessness projects from the SLA in local agencies that have declared a local homelessness emergency and meet other requirements. *This bill is being heard at this same committee hearing.*

AB 2357 (Ting, 2022) — substantially similar to AB 480 and would have made various changes to the SLA regarding the disposal process, HCD’s authority, and penalties for violations. *This bill died in the Senate Governance and Finance Committee.*

AB 1486 (Ting, Chapter 664, Statutes of 2019) — expanded the scope of local agencies subject to the SLA, revised the definitions of “surplus land” and “exempt surplus land,” revised the noticing requirements relative to local agencies, housing sponsors and HCD, and added penalties for local agencies that sell land in violation of the SLA.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

POSITIONS: (Communicated to the committee before noon on Wednesday, July 5, 2023.)

SUPPORT:

East Bay Housing Organization (Co-Sponsor)
Nonprofit Housing Association of Northern California (Co-Sponsor)
Public Interest Law Project (Co-Sponsor)
San Diego Housing Federation (Co-Sponsor)
Association of California Airports
California Airports Council
California Housing Partnership
Eah Housing
Eden Housing
Housing Leadership Council of San Mateo County
Midpen Housing Corporation
Monument Impact
Public Advocates
Resources for Community Development

OPPOSITION:

Association of California Healthcare Districts (ACHD)
California Association for Local Economic Development (CALED)
California Association of Sanitation Agencies
California Municipal Utilities Association (CMUA)
California Special Districts Association
City Manager John Jansons, City of Kerman
City of Chino
City of Corona

City of Elk Grove
City of Indian Wells
City of Inglewood
City of Rancho Cordova
City of San Marcos
City of Santa Rosa

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