
SENATE COMMITTEE ON HOUSING
Senator Scott Wiener, Chair
2023 - 2024 Regular

Bill No: SB 240 **Hearing Date:** 4/18/2023
Author: Ochoa Bogh
Version: 3/16/2023
Urgency: No **Fiscal:** Yes
Consultant: Mehgie Tabar

SUBJECT: Surplus state real property: affordable and transition housing

DIGEST: This bill adds transitional housing projects intended for formerly incarcerated individuals as a priority in the disposal of state surplus land and provides that these projects are a use by-right.

ANALYSIS:

Existing law:

- 1) Authorizes the California Department of General Services (DGS), subject to legislative approval, to sell, lease, exchange, or transfer various specified properties for current market value, or upon such other terms and conditions that DGS determines are in the best interest of the state.
- 2) Establishes criteria for state agencies to use in determining and reporting excess lands. A state agency must report land as excess that is:
 - a) Not currently utilized, or is underutilized, for any existing or ongoing programs;
 - b) Land for which the agency cannot identify a specific utilization relative to future needs; and,
 - c) Land not identified by the state agency within its master plan for facility development.
- 3) Requires DGS to dispose of surplus state real property in a specified manner, and prescribes the priority of disposition of the property before DGS may offer it for sale to private entities or individuals.
- 4) Authorizes DGS to sell surplus real property to a local agency or to a nonprofit affordable housing sponsor for affordable housing projects at a sales price less

than fair market value if DGS determines that such a discount will enable housing for persons and families of low or moderate income.

- 5) Current law requires a local agency or nonprofit affordable housing sponsor to satisfy certain requirements to be considered as a potential priority buyer of the surplus state real property, including that the local agency or nonprofit affordable housing sponsor demonstrate, to the satisfaction of the department, that the surplus state real property, or portion of that surplus state real property, is to be used by the local agency or nonprofit affordable housing sponsor for open space, public parks, affordable housing projects, or development of local government-owned facilities.

This bill:

- 1) Adds authorization for a local agency or nonprofit affordable housing sponsor to be considered as a potential priority buyer of surplus state real property upon demonstration that the property is to be used by the agency or sponsor for transitional housing for formerly incarcerated individuals, as specified.
- 2) Provides that development of surplus state real property by a local agency or nonprofit affordable housing sponsor for an affordable housing purposes project or transitional housing for formerly incarcerated individuals is a use by right.

COMMENTS:

- 1) *Author's statement.* "The lack of new housing development has continued to increase the cost of housing in California to the point the vast majority of housing units are unaffordable. According to the Department of Finance, the median price of a single-family home peaked in May 2022 at \$898,980. To afford this, a family would need a combined income of \$180,000, more than twice California's median household income and almost five times the California Poverty Measure (CPM) line of \$36,900. The Legislature must look for every available opportunity to incentivize stakeholders to build affordable housing. The Legislature has already found that the 'provision of decent housing for all Californians is a state goal of the highest priority' and that the 'disposal of surplus state real property is a direct and substantial public purpose of statewide concern.' SB 240 will address these concerns by ensuring the timely development of affordable housing is further prioritized in statute."
- 2) *Excess and Surplus State Land.* The State of California owns over 3,100 properties and over 44,000 parcels totaling nearly seven million acres in size.

Most of these are actively in use by the state's departments and agencies, or are non-developable land.

Each year, state agencies review their lands, identify real properties which are excess to their needs, and report them to DGS. Until recently, DGS' prioritization for this disposal was to transfer to other state agencies, sell to local governments, sell to affordable housing developers, or sell on the open market, in that order. During the period between 2010 and 2020, DGS disposed of 64 properties, of which seven were utilized for affordable housing.

In January 2019, Governor Newsom issued Executive Order (EO) N-06-19, which ordered DGS and HCD to identify and inventory excess state-owned property for affordable housing projects. In doing so, this EO reoriented DGS' priorities to focus on facilitating the conversion of excess property to affordable housing. Within the required three months, DGS reviewed over 44,000 parcels, and identified 92 properties potentially suitable for housing. Since the beginning of implementation in 2019, DGS has awarded 16 of these state properties, totally 24 projects, for affordable housing development, each of which is proceeding through the planning, development, or construction phase. These properties will provide approximately 5,000 units of affordable housing through a low-cost (\$1/year), long-term (99+ years) ground lease with the state. In 2023, DGS will select and award at least 5 more sites for the development of affordable housing.

If excess state lands are not viable for affordable housing development, DGS will then offer the properties to other state agencies in order to maximize state use of existing facilities. If no state agencies express interest, DGS asks to include the properties in the annual surplus property bill and requests legislative authorization to sell or dispose of those properties. The Legislature must declare the property to be surplus and must authorize the Director of DGS to sell, exchange, lease, or transfer the surplus property according to specified procedures set forth in law.

Generally, current law requires surplus property to be transferred or sold at market value, or upon such other terms and conditions that DGS determines are in the best interest of the state. Current law gives right of first refusal on any surplus property to a local agency and then to a nonprofit affordable housing sponsor, prior to being offered for sale to private entities or individuals in the open market. In addition, DGS is authorized to sell surplus property to a local agency or to a nonprofit affordable housing sponsor at a sales price less than fair market value if DGS determines that such a discount will enable housing for individuals or families of low or moderate income.

This bill would add “transitional housing for formerly incarcerated individuals” to the type of activities that would qualify for discounted surplus property.

- 3) *California’s Housing Market and Affordability.* California has an existing housing deficit of over a million units of housing. To address this gap, HCD estimates that California must plan for the development of more than 2.5 million homes over the next eight years, and no less than one million of those homes must meet the needs of lower-income households (more than 640,000 very low-income and 385,000 low-income units are needed).

The lack of housing in California has created a systemic and persistent housing crisis, where homeownership is out of reach to all but the most affluent, lower income households struggle to pay the rent, and homelessness is rampant.

As a result of the severe housing shortage, millions of Californians, who are disproportionately lower-income and people of color, must make hard decisions about paying for housing at the expense of food, health care, child care, and transportation—one in three households in the state don’t earn enough money to meet their basic needs.¹

A lack of affordable housing is the biggest contributor to homelessness.² As housing costs continue to rise, rent becomes less affordable for lower-income households, who are forced to live beyond their means (paying more than 30% of income on housing costs) or are pushed out of their homes, leading to rapid increases in homelessness.³ Variation in rates of homelessness cannot be explained by variation in rates of individual factors such as poverty or mental illness, however, cities with higher rents and lower rental vacancy rates (*i.e.*, tighter housing markets) are directly linked to higher per capita rates of homelessness.⁴

- 4) *Clarifying an outdated reference.* “Transitional housing” is not used in housing policy today and, in fact, no longer funded at the federal or state level. **The author has agreed to remove the word “transitional” so any reference to the eligible housing type says “housing for formerly incarcerated individuals”.**

¹ National Low Income Housing Coalition’s 2022 Out of Reach Report. Accessible here: <https://nlihc.org/oor/state/ca>

² Thomas H. Byrne, Benjamin F. Henwood, and Anthony W. Orlando, “A Rising Tide Drowns Unstable Boats: How Inequality Creates Homelessness,” *The ANNALS of the American Academy of Political and Social Science* 693, no. 1 (2021): 28-45. Accessible here: <https://doi.org/10.1177/0002716220981864/>

³ Chris Glynn, Thomas H. Byrne, and Dennis P. Culhane. “Inflection points in community-level homeless rates.” *The Annals of Applied Statistics*, 15(2) 1037-1053 June 2021. Accessible here: <https://doi.org/10.1214/20-AOAS1414>

⁴ Sightline Institute (2022). *Homelessness is a Housing Problem.* <https://www.sightline.org/2022/03/16/homelessness-is-a-housing-problem/>

- 5) *Approving Housing Developments.* Before new housing can be built, housing developers must obtain one or more permits from local planning departments and must also obtain approval from local planning commissions, city councils, or county board of supervisors. Some housing projects can be permitted by city or county planning staff ministerially or without further approval from elected officials. Projects reviewed ministerially require only an administrative review designed to ensure they are consistent with existing general plan and zoning rules, as well as meet standards for building quality, health, and safety. Most large housing projects are not allowed ministerial review. Instead, these projects are vetted through both public hearings and administrative review. Most housing projects that require discretionary review and approval are subject to review under the California Environmental Quality Act (CEQA), while projects permitted ministerially generally are not.

In addition to bypassing the CEQA process and the potential for litigation, housing streamlining provides more certainty as to what is required for permitting approval, and generally also requires approval within specified timelines. This certainty and shortened approval timelines are particularly beneficial to affordable housing developers seeking funding from multiple federal, state, and local public funding sources. Additionally, this certainty provides more opportunities for multifamily developers to build in jurisdictions that are not housing friendly. Some local governments have intentionally made entitlement and permitting onerous to such a degree developers—and in particular affordable housing developers—have avoided working in those jurisdictions altogether. Longer, uncertain permitting situations are risky for developers, and could kill projects all together. Streamlining unlocks more land opportunities, particularly in higher-resource, unfriendly housing cities.

This bill would allow surplus state land developed by a local agency or nonprofit affordable housing sponsor for an affordable housing purposes project or housing for formerly incarcerated individuals a use by-right, making the development ministerial in nature.

- 6) *Opposition.* Opponents argue that, “SB 240 does not comport with appropriate government scrutiny and could potentially cause unintended consequences – further isolating formerly incarcerated individuals.” *The author has agreed to work with the opposition on their concerns in the next committee.*
- 7) *Double-referral.* This bill was first referred to the Committee on Governmental Organization, where it passed on a 14-0 vote on April 11, 2023.

RELATED LEGISLATION:

AB 2233 (Quirk-Silva, Chapter 438, Statutes of 2022) — required DGS to develop a plan (i.e., establish an ongoing system for identifying and disposing of state land) to facilitate development of affordable housing on state-owned excess land, codifying a portion of Executive Order N-06-19.

AB 2592 (McCarty, Chapter 439, Statutes of 2022) — required DGS to prepare and report to the Legislature a streamlined plan to transition underutilized multistory state buildings into housing for the purpose of expanding affordable housing development and adaptive reuse opportunities.

SB 6 (Beall, Chapter 667, Statutes of 2019) — required DGS to create a public, searchable database of sites in local government’s housing element inventory of land suitable for residential development and state surplus properties.

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

POSITIONS: (Communicated to the committee before noon on Wednesday, April 12, 2023.)

SUPPORT:

California Apartment Association

OPPOSITION:

Affordable Housing Management Association - Pacific Southwest
Apartment Association of Orange County
East Bay Rental Housing Association

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