AB 980 (Salina) Housing Element: Self Certification

REGIONAL COUNCIL ATTACHMENT #4.4.2
Thursday, June 5, 2003

REPORT

DATE: May 1, 2003

TO: The Community Economic and Human Development Committee (CEHD)

FROM: Alfredo B. Gonzalez, Senior Government Affairs Officer ABG
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SUBJECT: **Assembly Bill 980 (Salinas) Housing Element: Self Certification**

EXECUTIVE DIRECTOR'S APPROVAL

RECOMMENDED POSITION: SUPPORT

SUMMARY:
Government Affairs staff brought Assembly Bill 980 authored by Assemblymember Simon Salinas (D- Salinas), to the Community Economic Human Development Committee (CEHD) for action in May 2003. At that time, the Committee supported staff's recommendation and requested the bill go forward to the Regional Council for official position in June. AB 980 permits local municipalities to self certify the revision of their general plan housing element.

BACKGROUND:
AB 980 attempts to facilitate and enhance local and regional collaboration on housing production by allowing local governments, to participate in an alternative production-based certification of its housing element.

The self-certification process however will be conditioned upon several factors including a requirement that each self-certifying municipality produce or cause to be produced 15 percent of the jurisdiction's share of the regional housing need for very low, low, and moderate-income households. These units could be created through a variety of means including but not limited to new construction, acquisition, rehabilitation and single-room occupancies. In addition to production as outlined above, self-certifying jurisdictions will also be required to identify probable future projects that will produce housing units. If enacted, this bill would sunset on January 1, 2016.

SUPPORT:
League of California Cities (Sponsor)
California Association of Councils of Governments (CALCOG)
California State Association of Counties (CSAC)
American Planning Association (APA) California Chapter
Cities of: San Jose, Cupertino, Redwood City (Partial List)

OPPOSE:
California Rural Legal Assistance Foundation (CRLA)

BILL STATUS:
AB 980 passed unanimously out of the Assembly Local Government Committee and is slated to go before the Assembly Housing and Community Development Committee. A second hearing date has not yet been set.

FISCAL IMPACT:
All work related to adopting the recommended staff action is contained within the adopted FY 03/04 budget and adopted 2003 SCAG Legislative Program and does not require the allocation of any additional financial resources.

abg/docs# 85628

AMENDED IN ASSEMBLY MARCH 28, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL No. 980

Introduced by Assembly Member Salinas

February 20, 2003

An act to add Section 65585.3 to, *and to repeal and add Section 65585.2 of,* the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 980, as amended, Salinas. Housing element: self-certification.

Existing law authorizes cities and counties within the jurisdiction of the San Diego Association of Governments to self-certify the revision of its general plan housing ~~element.~~

~~This bill would authorize cities within the County of Santa Clara to similarly self-certify the revision of their general plan housing elements, pursuant to prescribed procedures~~ *element, and makes the self-certified cities and counties eligible for specified state housing funds in the same manner as other jurisdictions.*

This bill, until January 1, 2016, would provide procedures whereby a city or county may elect to participate in alternative production-based certification of its housing element and would make those cities and counties eligible for specified state housing funds in the same manner as other jurisdictions.

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. Section 65585.3 is added to the Government~~
2 *SECTION 1. The Legislature finds and declares the*
3 *following:*
4 *(a) Action to foster, facilitate, and enhance local and regional*
5 *collaboration on housing production will produce unique*
6 *solutions that, when gathered together throughout the state, will*
7 *serve to promote and provide for additional housing opportunities.*
8 *(b) A pilot program establishing an alternative means to*
9 *determine that a housing element substantially complies with the*
10 *requirements of Article 10.6 (commencing with Section 65580) of*
11 *Chapter 3 of Division 1 of Title 7 of the Government Code will test*
12 *whether establishing an affordable housing production*
13 *requirement at the local government level will move toward*
14 *attainment of the state housing goal.*
15 *SEC. 2. Section 65585.2 of the Government Code is repealed.*
16 ~~65585.2. Notwithstanding any other provision of law, any city~~
17 ~~or county that has a housing element that has been self-certified~~
18 ~~pursuant to the requirements of Section 65585.1 shall be~~
19 ~~considered to be fully eligible to participate in any program created~~
20 ~~by, or receiving funds through, the Housing and Emergency~~
21 ~~Shelter Trust Fund Act of 2002 in an identical manner and to the~~
22 ~~same degree, as those local jurisdictions deemed in substantial~~
23 ~~compliance with the requirements of this article by the Department~~
24 ~~of Housing and Community Development pursuant to Section~~
25 ~~65585.~~
26 *SEC. 3. Section 65585.2 is added to the Government Code, to*
27 *read:*
28 *65585.2. (a) A city or county may elect to participate in*
29 *alternative production-based certification of the housing element*
30 *required pursuant to this article. A city or county that so elects*
31 *shall notify the appropriate council of governments within 30 days*
32 *of receiving its allocation of the regional housing need pursuant*
33 *to Section 65584.*
34 *(b) A city or county that elects to participate in alternative*
35 *production-based certification of the housing element required*
36 *pursuant to this article shall submit a certification of compliance*
37 *to the department with its adopted housing element or amendment.*
38 *In order to participate in alternative production-based*

certification, the legislative body, after holding a public hearing, shall, by resolution, make findings, based on substantial evidence, that it has met the following criteria:

(1) The jurisdiction's housing element substantially complies with the requirements of Section 65583, including addressing the needs of all income levels.

(2) The jurisdiction's housing element identifies adequate sites for its share of the regional housing need as determined pursuant to Section 65584.

(3) The jurisdiction's housing element requires the jurisdiction to produce or cause to be produced 15 percent of the jurisdiction's share of the regional housing need for very low, low-, and moderate-income households, as determined pursuant to Section 65583, within the jurisdiction during the planning period, that is affordable to low- and very low income households. The units produced may be created through (A) new construction, (B) acquisition, (C) rehabilitation, (D) rental or ownership assistance, (E) preservation of the availability of lower income households of affordable housing units in developments which are assisted, subsidized, or restricted by a public entity and which are threatened with imminent conversion to the market rate housing, (F) single room occupancies, (G) assisted living units for very low and low-income seniors, (H) purchase of affordability covenants, or (I) any other means of creating a residential unit affordable to low- and very low income households.

(4) The jurisdiction has identified probable future projects that will produce or cause the production of the housing required by paragraph (3). For purposes of this section, "probable future projects" shall have the same definition as found in subparagraph (B) of paragraph (1) of subdivision (b) of Section 15130 of Title 14 of the California Code of Regulations.

(5) For subsequent housing element revisions, the jurisdiction has provided the number of housing units required by paragraph (3), within the previous planning period.

(c) One year following the adoption of the resolution pursuant to subdivision (b), and annually thereafter, the jurisdiction shall hold a public hearing to review the production or plans for production of the housing required to be produced pursuant to paragraph (3) of subdivision (b) and to identify any probable future projects that were not identified previously.

(d) When a city or county participates in the alternative production-based certification process in compliance with this section, all of the following shall apply:

(1) Section 65585 does not apply to the city or county.

(2) In any challenge of a local jurisdiction's alternative production-base certification, the court's review shall be limited to determining whether the alternative certification is accurate and complete as to the criteria for alternative certification. Where there has not been a successful challenge of the alternative certification, there shall be a rebuttable presumption of the validity of the housing element or amendment.

(e) This section shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date. However, a jurisdiction that elected to participate in alternative certification by 2014 may complete its planning period under this section beyond the repeal date.

SEC. 4. Section 65585.3 is added to the Government Code, to read:

65585.3. Notwithstanding any other provision of law, any city or county that has a housing element that has been certified pursuant to the requirements of Section 65585.1 or 65585.2 shall be considered to be fully eligible to participate in any program created by, or receiving funds from, the state in the identical manner and to the same degree as those local jurisdictions deemed in substantial compliance with the requirements of this article by the department pursuant to Section 65585.

~~Code, to read:~~

~~65585.3. (a) Any city in the County of Santa Clara, if it approves a resolution agreeing to participate in the self-certification process, and in consultation with the county, its housing element advisory committee, and the department, shall work with a qualified consultant to determine the maximum number of housing units that can be constructed, acquired, rehabilitated, and preserved as defined in paragraph (11) of subdivision (e) of Section 33334.2 of the Health and Safety Code, and the maximum number of units or households that can be provided with rental or ownership assistance, by the city during the fourth housing element cycle pursuant to Section 65588 to meet the existing and future housing needs for low- and very-low~~

~~income households as defined in Sections 50079.5, 50093, and 50105 of the Health and Safety Code, and extremely low income households. The methodology for determining the maximum number of housing units that can be provided shall include a recognition of financial resources and regulatory measures that local jurisdictions can use to provide additional affordable lower income housing. This process is intended to identify the available resources that can be used to determine the maximum number of housing units each jurisdiction can provide. The process acknowledges that the need to produce housing for low-, very low, and extremely low income households may exceed available resources. The department and the city, with input from its housing element advisory committee, and the consultant, shall agree upon definitions for extremely low income households and their affordable housing costs, the methodology for the determination of the maximum number of housing units and the number the city can produce at least one year before the due date of the fourth housing element revision, pursuant Section 65588. If the city fails to approve a resolution agreeing to participate in this program, or the city and the department fail to agree upon the methodology by which the maximum number of housing units is determined, the city may not self-certify pursuant to this section.~~

~~(1) The "housing element advisory committee" should include representatives of the local jurisdictions, nonprofit affordable housing development corporations and affordable housing advocates, and representatives of the for-profit building, real estate and banking industries.~~

~~(2) The determination of the "maximum number of housing units" that the city can provide assumes that the needs for low-, very low, and extremely low income households, including those with special housing needs, will be met in approximate proportion to their representation in the region's population.~~

~~(3) A "qualified consultant" for the purposes of this section means an expert in the identification of financial resources and regulatory measures for the provision of affordable housing for lower income households.~~

~~(b) A city within the County of Santa Clara that elects not to self-certify, or is ineligible to do so, shall submit its housing element or amendment to the department pursuant to Section 65585.~~

~~(c) A city that elects to self-certify shall submit a self-certification of compliance to the department with its adopted housing element or amendment. In order to be eligible to self-certify, the legislative body, after holding a public hearing, shall make findings, based on substantial evidence, that it has met the following criteria for self-certification:~~

~~(1) The city's adopted housing element or amendment substantially complies this article, including addressing the needs of all income levels.~~

~~(2) For the fourth housing element revision, pursuant to Section 65588, the city met its fair share of the regional housing needs for the third housing element revision cycle, as determined by the department. In determining whether a city has met its fair share, the city may count each additional lower income household provided with affordable housing costs. Affordable housing costs are defined in Section 6918 for renters, and in Section 6925 for purchasers, of Title 25 of the California Code of Regulations, and in Sections 50052.5 and 50053 of the Health and Safety Code, or by the applicable funding source or program.~~

~~(3) For subsequent housing element revisions, pursuant to Section 65588, the city has provided the maximum number of housing units as determined pursuant to subdivision (a), within the previous planning period.~~

~~(A) The additional units provided at affordable housing costs as defined in paragraph (2) in satisfaction of a city's maximum number of housing units shall be provided by one or more of the following means:~~

~~(i) New construction.~~

~~(ii) Acquisition.~~

~~(iii) Rehabilitation.~~

~~(iv) Rental or ownership assistance.~~

~~(v) Preservation of the availability to lower income households of affordable housing units in developments that are assisted, subsidized, or restricted by a public entity and are threatened with imminent conversion to market rate housing.~~

~~(B) The additional affordable units shall be provided in approximate proportion to the needs defined in paragraph (2) of subdivision (a).~~

~~(4) The city provides a statement regarding how its adopted housing element or amendment addresses the dispersion of lower~~

~~income housing within its jurisdiction, documenting that additional affordable housing opportunities will not be developed only in areas where concentrations of lower income households already exist, taking into account the availability of necessary public facilities and infrastructure.~~

~~(5) No local government actions or policies prevent the development of the identified sites pursuant to Section 65583, or accommodation of the city's share of the total regional housing need, pursuant to Section 65584.~~

~~(d) When a city duly adopts a self-certification of compliance with its adopted housing element or amendment pursuant to subdivision (c), all of the following shall apply:~~

~~(1) Section 65585 shall not apply to the city.~~

~~(2) In any challenge of a city's self-certification, the court's review shall be limited to determining whether the self-certification is accurate and complete as to the criteria for self-certification. Where there has not been a successful challenge of the self-certification, there shall be a rebuttable presumption of the validity of the housing element or amendment.~~

~~(e) Notwithstanding any other provision of law, any city that has a housing element that has been self-certified pursuant to this section shall be considered to be fully eligible to participate in any program created by, or receiving funds through, the Housing and Emergency Shelter Trust Fund Act of 2002 in an identical manner and to the same degree, as those local jurisdictions deemed in substantial compliance with the requirements of this article by the Department of Housing and Community Development pursuant to Section 65585.~~

~~SEC. 2. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 Article IV of the California Constitution because of the unique housing needs in the County of Santa Clara.~~

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