

AMENDED IN ASSEMBLY APRIL 1, 2019

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1568**

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**Introduced by Assembly Member McCarty**  
(Coauthor: Senator Wiener)

February 22, 2019

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An act to ~~add~~ *amend* Section ~~65400.5~~ to 65585 of the Government Code, and to amend Section 2034 of, and to add Section 2036.5 to, the Streets and Highways Code, relating to state government finance.

LEGISLATIVE COUNSEL'S DIGEST

AB 1568, as amended, McCarty. ~~General plans: housing element: production report:—~~*Housing law compliance:* withholding of transportation funds.

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 a planning agency, after a legislative body has adopted all or part of a general plan, to provide an annual report to the legislative body, the Office of Planning and Research, and the Department of Housing and Community Development on the status of the general plan and progress in meeting the community's share of regional housing needs. Existing law requires a planning agency to include in its annual report specified information, known as a production report, regarding units of net new housing, including rental housing and for-sale housing that have been issued a completed entitlement, building permit, or certificate of occupancy. Existing law, the Housing Element Law, prescribes requirements for the preparation of the housing element, including a requirement that a planning agency submit a draft of the~~

*element or draft amendment to the element to the Department of Housing and Community Development prior to the adoption of the element or amendment to the element. Existing law requires the department to review the draft and report its written findings, as specified. Existing law also requires the department, in its written findings, to determine whether the draft substantially complies with the Housing Element Law.*

*Existing law also requires the department to review any action or failure to act by the city or county that it determines is inconsistent with an adopted housing element or a specified provision of the Housing Element Law and to issue written findings, as specified, whether the action or failure to act substantially complies with the Housing Element Law. If the department finds that the action or failure to act by the city or county does not substantially comply with the Housing Element Law, and if it has issued findings as described above that an amendment to the housing element substantially complies with the Housing Element Law, existing law authorizes the department, after allowing no more than 30 days for a local agency response, to revoke its findings until it determines that the city or county has come into compliance with the Housing Element Law. Existing law also requires the department to notify the city or county and authorizes the department to notify the Office of the Attorney General that the city or county is in violation of state law if the department makes certain findings of noncompliance or a violation of specified provisions related to housing.*

*This bill would require the department, on or before June 30, 2022, and on or before June 30 every year thereafter and until June 30, 2051, to review each production report submitted by a city or county in accordance with the provisions described above to determine if that city or county has met the applicable minimum housing production goal for that reporting period. The bill would provide that, if the department determines that a city or county has met its applicable minimum housing production goal for that reporting period, the department shall, no later than June 30 of that year, submit a certification of that result to the Controller. department to also notify the Controller that the city or county is in violation of state law if the department makes certain findings of noncompliance or a violation, as described above. The bill would authorize the city or county to submit evidence that the city or county is no longer in violation of state law to the department and to request the department to issue a finding that the city or county is no longer in violation of state law. If the department finds that the city or*

*county is no longer in violation of state law, the bill would require the department to notify the city or county and the Controller.*

Existing law creates the Road Maintenance and Rehabilitation Program and, after certain allocations for the program are made, requires the remaining funds available for the program to be allocated 50% for maintenance of the state highway system or to the state highway operation and protection program and 50% for apportionment to cities and counties by the Controller pursuant to a specified formula. Before receiving an apportionment of funds under the program from the Controller in a fiscal year, existing law requires an eligible city or county to submit to the California Transportation Commission a list of projects proposed to be funded with these funds. Existing law requires the commission to report to the Controller the cities and counties that have submitted a list of projects and requires the Controller, upon receipt of the report, to apportion funds to eligible cities and counties included in the report, as specified. Existing law requires cities and counties to maintain their existing commitment of local funds for street, road, and highway purposes in order to remain eligible for an allocation or apportionment of these funds.

This bill would, commencing with the 2022–23 fiscal year and through and including the 2051–52 fiscal year, also ~~require~~ *prohibit* cities and counties ~~to be certified in the prior fiscal year~~ *from being found* by the Department of Housing and Community ~~Development~~, *Development to be not in violation of state law*, as described above, in order to remain eligible for an apportionment of these funds. For each city and county that is ~~not in compliance with this requirement~~, *found by the department to be in violation of state law*, the bill would require the Controller to withhold the apportionment of funds that would otherwise be apportioned and distributed to the city or county for the fiscal year and deposit those funds in a separate escrow account for each city or county that is ~~not in compliance~~. *found by the department to be in violation of state law*. The bill would require the Controller to distribute the funds in the escrow account to the applicable city or county after the city or county is ~~certified to~~ *found by the department to no longer be in compliance violation of state law* and meets other specified requirements. The bill would make other technical and conforming changes.

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 65400.5 is added to the Government~~  
2     ~~Code, to read:~~  
3     ~~65400.5. (a) For purposes of this section:~~  
4     ~~(1) “Department” means the Department of Housing and~~  
5     ~~Community Development.~~  
6     ~~(2) “Production report” means the information reported by a~~  
7     ~~city or county pursuant to subparagraph (H) of paragraph (2) of~~  
8     ~~subdivision (a) of Section 65400 as a part of the annual report~~  
9     ~~described in Section 65400.~~  
10    ~~(b) The department shall, on or before June 30, 2022, and on~~  
11    ~~or before June 30 every year thereafter and through and including~~  
12    ~~June 30, 2051, review each production report submitted by a city~~  
13    ~~or county to determine if the city or county has met the applicable~~  
14    ~~minimum housing production goal for that reporting period. The~~  
15    ~~minimum housing production goal shall be calculated using the~~  
16    ~~following schedule:~~  
17    ~~(1) For a production report that covers a reporting period for~~  
18    ~~each calendar year commencing January 1, 2022, to January 1,~~  
19    ~~2027, inclusive, the minimum housing production goal means that~~  
20    ~~the production report reflects that the number of units of housing~~  
21    ~~available in that city or county is at least 20 percent of the city or~~  
22    ~~county’s share of regional housing needs for each income category.~~  
23    ~~(2) For a production report that covers a reporting period for~~  
24    ~~each calendar year commencing January 1, 2028, to January 1,~~  
25    ~~2032, inclusive, the minimum housing production goal means that~~  
26    ~~the production report reflects that the number of units of housing~~  
27    ~~available in that city or county is at least 40 percent of the city or~~  
28    ~~county’s share of regional housing needs for each income category.~~  
29    ~~(3) For a production report that covers a reporting period for~~  
30    ~~each calendar year commencing January 1, 2033, to January 1,~~  
31    ~~2038, inclusive, the minimum housing production goal means that~~  
32    ~~the production report reflects that the number of units of housing~~  
33    ~~available in that city or county is at least 60 percent of the city or~~  
34    ~~county’s share of regional housing needs for each income category.~~  
35    ~~(4) For a production report that covers a reporting period for~~  
36    ~~each calendar year commencing January 1, 2039, to January 1,~~  
37    ~~2044, inclusive, the minimum housing production goal means that~~  
38    ~~the production report reflects that the number of units of housing~~

1 available in that city or county is at least 80 percent of the city or  
2 county's share of regional housing needs for each income category.

3 ~~(5) For a production report that covers a reporting period for~~  
4 ~~each calendar year commencing January 1, 2045, and January 1,~~  
5 ~~2050, the minimum housing production goal means that the~~  
6 ~~production report reflects that the number of units of housing~~  
7 ~~available in that city or county is 100 percent of the city or county's~~  
8 ~~share of regional housing needs for each income category.~~

9 ~~(e) Any calculation made by the department pursuant to~~  
10 ~~subdivision (b) that results in a fractional unit shall be rounded~~  
11 ~~down.~~

12 ~~(d) If the department determines that a city or county has met~~  
13 ~~its applicable minimum housing production goal for that reporting~~  
14 ~~period as described in subdivision (b), the department shall no~~  
15 ~~later than June 30 of that year submit a certification of that result~~  
16 ~~to the Controller. A certification is valid for the next fiscal year.~~

17 *SECTION 1. Section 65585 of the Government Code is*  
18 *amended to read:*

19 65585. (a) In the preparation of its housing element, each city  
20 and county shall consider the guidelines adopted by the department  
21 pursuant to Section 50459 of the Health and Safety Code. Those  
22 guidelines shall be advisory to each city or county in the  
23 preparation of its housing element.

24 (b) (1) At least 90 days ~~prior to~~ *before* adoption of its housing  
25 element, or at least 60 days ~~prior to~~ *before* the adoption of an  
26 amendment to this element, the planning agency shall submit a  
27 draft element or draft amendment to the department.

28 (2) The planning agency staff shall collect and compile the  
29 public comments regarding the housing element received by the  
30 city, county, or city and county, and provide these comments to  
31 each member of the legislative body before it adopts the housing  
32 element.

33 (3) The department shall review the draft and report its written  
34 findings to the planning agency within 90 days of its receipt of the  
35 draft in the case of an adoption or within 60 days of its receipt in  
36 the case of a draft amendment.

37 (c) In the preparation of its findings, the department may consult  
38 with any public agency, group, or person. The department shall  
39 receive and consider any written comments from any public

1 agency, group, or person regarding the draft or adopted element  
2 or amendment under review.

3 (d) In its written findings, the department shall determine  
4 whether the draft element or draft amendment substantially  
5 complies with this article.

6 (e) Prior to the adoption of its draft element or draft amendment,  
7 the legislative body shall consider the findings made by the  
8 department. If the department's findings are not available within  
9 the time limits set by this section, the legislative body may act  
10 without them.

11 (f) If the department finds that the draft element or draft  
12 amendment does not substantially comply with this article, the  
13 legislative body shall take one of the following actions:

14 (1) Change the draft element or draft amendment to substantially  
15 comply with this article.

16 (2) Adopt the draft element or draft amendment without changes.  
17 The legislative body shall include in its resolution of adoption  
18 written findings which explain the reasons the legislative body  
19 believes that the draft element or draft amendment substantially  
20 complies with this article despite the findings of the department.

21 (g) Promptly following the adoption of its element or  
22 amendment, the planning agency shall submit a copy to the  
23 department.

24 (h) The department shall, within 90 days, review adopted  
25 housing elements or amendments and report its findings to the  
26 planning agency.

27 (i) (1) (A) The department shall review any action or failure  
28 to act by the city, county, or city and county that it determines is  
29 inconsistent with an adopted housing element or Section 65583,  
30 including any failure to implement any program actions included  
31 in the housing element pursuant to Section 65583. The department  
32 shall issue written findings to the city, county, or city and county  
33 as to whether the action or failure to act substantially complies  
34 with this article, and provide a reasonable time no longer than 30  
35 days for the city, county, or city and county to respond to the  
36 findings before taking any other action authorized by this section,  
37 including the action authorized by subparagraph (B).

38 (B) If the department finds that the action or failure to act by  
39 the city, county, or city and county does not substantially comply  
40 with this article, and if it has issued findings pursuant to this section

1 that an amendment to the housing element substantially complies  
2 with this article, the department may revoke its findings until it  
3 determines that the city, county, or city and county has come into  
4 compliance with this article.

5 (2) The department may consult with any local government,  
6 public agency, group, or person, and shall receive and consider  
7 any written comments from any public agency, group, or person,  
8 regarding the action or failure to act by the city, county, or city  
9 and county described in paragraph (1), in determining whether the  
10 housing element substantially complies with this article.

11 (j) The department shall notify the city, county, or city and  
12 county *and the Controller* and may notify the Office of the  
13 Attorney General that the city, county, or city and county is in  
14 violation of state law if the department finds that the housing  
15 element or an amendment to this element, or any action or failure  
16 to act described in subdivision (i), does not substantially comply  
17 with this article or that any local government has taken an action  
18 in violation of the following:

19 (1) Housing Accountability Act (Section 65589.5 of the  
20 Government Code).

21 (2) Section 65863 of the Government Code.

22 (3) Chapter 4.3 (commencing with Section 65915) of Division  
23 1 of Title 7 of the Government Code.

24 (4) Section 65008 of the Government Code.

25 (k) (1) *A city or county that the department has found to be in*  
26 *violation of state law pursuant to subdivision (j) may, in a form*  
27 *and manner prescribed by the department, submit evidence that*  
28 *the city or county is no longer in violation of state law to the*  
29 *department and may request the department to issue a written*  
30 *finding that the city or county is no longer in violation of state law.*

31 (2) *If the department finds that the city or county is no longer*  
32 *in violation of state law, the department shall notify the city or*  
33 *county and the Controller.*

34 SEC. 2. Section 2034 of the Streets and Highways Code is  
35 amended to read:

36 2034. (a) (1) Before receiving an apportionment of funds  
37 under the program pursuant to paragraph (2) of subdivision (h) of  
38 Section 2032 from the Controller in a fiscal year, a city or county  
39 shall submit to the commission a list of projects proposed to be  
40 funded with these funds. All projects proposed to receive funding

1 shall be adopted by resolution by the applicable city council or  
2 county board of supervisors at a regular public meeting. The list  
3 of projects proposed to be funded with these funds shall include  
4 a description and the location of each proposed project, a proposed  
5 schedule for the project’s completion, and the estimated useful life  
6 of the improvement. The project list shall not limit the flexibility  
7 of a city or county to fund projects in accordance with local needs  
8 and priorities so long as the projects are consistent with subdivision  
9 (b) of Section 2030.

10 (2) The commission shall submit an initial report to the  
11 Controller that indicates the cities and counties that have submitted  
12 a list of projects that meet the requirements of paragraph (1) and  
13 that are therefore eligible to receive an apportionment of funds  
14 under the program for the applicable fiscal year pursuant to  
15 paragraph (3). If the commission receives a list of projects from a  
16 city or county after it submits its initial report to the Controller,  
17 the commission shall submit a subsequent report to the Controller  
18 that indicates the cities and counties that submitted a list of projects  
19 that meet the requirements of paragraph (1) after the commission  
20 submitted its initial report.

21 (3) The Controller, upon receipt of the initial report, shall  
22 apportion funds to eligible cities and counties included in the initial  
23 report.

24 (4) (A) For any city or county that is not included in the initial  
25 report submitted to the Controller pursuant to paragraph (2), the  
26 Controller shall retain the monthly share of funds that would  
27 otherwise be apportioned and distributed to the city or county  
28 pursuant to paragraph (3).

29 (B) If the Controller receives a subsequent report from the  
30 commission within 90 days of receiving the initial report from the  
31 commission that a city or county has become eligible to receive  
32 an apportionment, the Controller shall apportion the applicable  
33 portion of funds retained pursuant to subparagraph (A) to the city  
34 or county included in the subsequent report.

35 (C) The Controller shall reapportion to all eligible cities and  
36 counties included in the initial report or a subsequent report from  
37 the commission pursuant to the formula in clauses (i) and (ii) of  
38 subparagraph (C) of paragraph (3) of subdivision (a) of Section  
39 2103 any funds that were retained pursuant to subparagraph (A)



1 but that were not apportioned and distributed pursuant to  
2 subparagraph (B).

3 (b) For each fiscal year, each city or county receiving an  
4 apportionment of funds shall, upon expending program funds,  
5 submit documentation to the commission that details the  
6 expenditures of all funds under the program, including a description  
7 and location of each completed project, the amount of funds  
8 expended on the project, the completion date, if applicable, and  
9 the estimated useful life of the improvement.

10 (c) Before receiving an apportionment of funds under the  
11 program pursuant to paragraph (2) of subdivision (h) of Section  
12 2032, an eligible city or county may expend other funds on eligible  
13 projects and may reimburse the source of those other funds when  
14 it receives its apportionment from the Controller over one or more  
15 years.

16 SEC. 3. Section 2036.5 is added to the Streets and Highways  
17 Code, to read:

18 2036.5. (a) Commencing with the 2022–23 fiscal year, and  
19 until the 2051–52 fiscal year, in addition to the requirement  
20 specified in Section 2036, in order to remain eligible in any fiscal  
21 year for an apportionment of funds pursuant to paragraph (2) of  
22 subdivision (h) of Section 2032 a city or county ~~shall, in the prior~~  
23 ~~fiscal year, be certified~~ *shall not be found* by the Department of  
24 Housing and Community Development *to be in violation of state*  
25 *law pursuant to Section 65400.5 65585 of the Government Code.*  
26 *Code during the prior fiscal year.*

27 (b) For each city or county that is ~~not in compliance with~~ *found*  
28 *by the Department of Housing and Community Development to be*  
29 *in violation of state law as described in* subdivision (a), the  
30 Controller shall withhold the apportionment of funds that would  
31 otherwise be apportioned and distributed to that city or county for  
32 the fiscal year and shall deposit those funds in a separate escrow  
33 account for each city or county that is ~~not in compliance with~~ *found*  
34 *by the Department of Housing and Community Development to be*  
35 *in violation of state law as described in* subdivision (a).

36 (c) The Controller shall distribute the funds held in an escrow  
37 account created pursuant to subdivision (b) to the applicable city  
38 or county after both of the following occur:

39 (1) The city or county is ~~certified~~ *found* by the Department of  
40 Housing and Community Development ~~pursuant to Section 65400.5~~

1 ~~of the Government Code in the prior fiscal year.~~ *to no longer be*  
2 *in violation of state law as described in subdivision (k) of Section*  
3 *65585 of the Government Code.*

4 (2) The city or county submits a list of projects proposed to be  
5 funded with the funds in the escrow account that meet the  
6 requirements of subdivision (a) of Section 2034 to the commission  
7 and the commission submits a report to the Controller indicating  
8 that the list of projects meets those requirements.

9 (d) If a city or county whose funds have been withheld complies  
10 with paragraph (1) of subdivision (c) but does not comply with  
11 paragraph (2) of subdivision (c), the Controller shall reapportion  
12 the funds that have been withheld to eligible cities and counties  
13 pursuant to the formula in clauses (i) and (ii) of subparagraph (C)  
14 of paragraph (3) of subdivision (a) of Section 2103.

15 (e) A city or county that receives an apportionment of funds  
16 pursuant to this section shall comply with subdivision (b) of Section  
17 2034 with respect to the expenditure of those funds.