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CITY ATTORNEY

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CITY OF SACRAMENTO  
CALIFORNIA

June 8, 1989

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Law and Legislation Committee  
City Council Chambers  
Sacramento, California 95814

Honorable Members in Session:

SUBJECT: AB 1290 (Hauser) Regarding Housing  
Elements; Regional Fair Share Housing

DISCUSSION

Attached is a memorandum from the Director of Planning and Development urging opposition to AB 1290 (Hauser). The opposition is based on the fact that the bill (1) shifts the burden of proof to the local agency to prove its compliance with statutory requirements, and (2) places the responsibility for allocating very low, low, moderate, and above moderate housing away from Councils of Governments (such as SACOG) to HCD.

FINANCIAL DATA

Passage of this bill could result in expenses to the City due to potential litigation. See memorandum from Michael M. Davis, Director of Planning and Development, attached hereto.

POLICY CONSIDERATIONS

None.

MBE/WBE

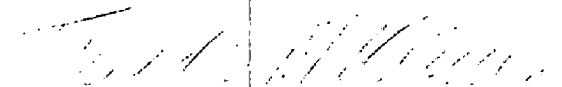
Not applicable.

Law and Legislation Committee  
June 8, 1989  
Page Two

RECOMMENDATION

It is recommended that AB 1290 (Hauser) be opposed.

Respectfully submitted,

  
THEODORE H. KOBAY, JR.  
Assistant City Attorney

June 15, 1989  
All Districts

Contact Person to  
Answer Questions:

MICHAEL M. DAVIS, Director  
Planning and Development  
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CITY ATTORNEY'S OFFICE

DEPARTMENT OF  
PLANNING AND DEVELOPMENT

CITY OF SACRAMENTO  
CALIFORNIA

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PLANNING  
916-449-5604

May 31, 1989

MEMORANDUM

TO: Ted Kobey, Assistant City Attorney

FROM: Michael M. Davis, Director of Planning and Development *mf*

SUBJECT: ASSEMBLY BILL (AB) 1290

In summary, AB 1290 would require a city's regional housing allocation be approved by the California State Housing and Community Development Department (HCD) rather than the regional council of governments as is presently the case. Cities would no longer have the ability to plan for less than their regional housing allocation based on local land use and related general plan policies. Cities will have the burden of proof to defend their housing elements in court.

Although the City of Sacramento has a housing element that has been approved by HCD, this department believes that AB 1290 is being unfair to local and regional housing development issues. This bill would take the responsibility of allocating very low, low, moderate, and above moderate housing away from the Sacramento Regional Council of Governments (SACOG) and put it in the hands of HCD. It would also put the burden of proof on the cities to defend their housing elements in court. Courts will be authorized to invalidate local land use policies and regulations if the cities in question restrict the amount of housing that can be developed.

Cities do not need this burden. SACOG gets its information from the same source as HCD -- the California State Department of Finance. SACOG uses a formula to determine the fair share needs of each community which is similarly used throughout the State. HCD has not questioned the City's fair share need allocation as it was formulated in the past by SACOG.

It appears that sponsors of this legislation intend to use the courts to force local jurisdictions to modify land use policies which would in any way restrict the development of residential units. The City is presently being forced by the federal government to stop the construction of residential housing in flood prone areas until the levee system has been improved to protect the flood prone areas from a two hundred year flood. This legislation, as proposed in AB 1290, would

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Ted Kobey

- 2 -

May 31, 1989

put Sacramento in a "damned if we do and damned if we don't" position and create a situation where potential litigation would sap the City of money, resources and time which could be put to better use somewhere else. This legislation would not benefit Sacramento.

The Department of Planning and Development strongly urges the City to oppose AB 1290.

MMD/DH: jr

Date of Hearing: May 3, 1989

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT  
DAN HAUSER, Chair

AB 1290 (Hauser) - As Amended: April 26, 1989

SUBJECT

Housing elements: regional fair share of housing.

DIGEST

Existing law:

- 1) Requires the Department of Housing and Community Development (HCD), with data provided by the Department of Finance and in consultation with the regional council of governments (COG), to determine the regional share of the statewide low and moderate-income housing need.
- 2) Requires the COG to determine, based upon data supplied by HCD, the existing and projected housing need for the region. HCD has 30 days to respond as to whether the regional housing need is consistent with the statewide housing need.
- 3) Requires the COG to determine each locality's share of the regional need. Local governments have 90 days to request a revision of their share of the regional need. The COG has 60 days to respond to the request. HCD makes this determination in areas not having a COG.
- 4) Requires local governments to include in their housing element the existing and projected need as developed with the COG.
- 5) Requires that:
  - a) The local general plan, and the elements thereof, are integrated and internally consistent.
  - b) All specific plans are consistent with the local general plan.
  - c) All public works projects, tentative and parcel map approvals, and zoning ordinances are consistent with the specific plan.

This bill revises the distribution of regional housing needs and shifts the burden of proof to the locality as to its substantial compliance with statutory requirements.

Specifically, the bill:

- 1) Prohibits a COG or HCD from considering any locally imposed regulation or policy which seeks to restrict the rate at which housing may be produced.
- 2) Specifies that any deviation by a local government in needs or objectives from the regional housing needs be justified by the city or county and approved by HCD.
- 3) Prohibits a COG or HCD from altering the a city or county's share of the regional housing needs by reason of the locally imposed regulations or policies which attempt to restrict the rate at which housing may be produced.
- 4) Declares that the determination of regional housing needs and the production of housing to meet those needs is a matter of statewide concern and that the state hereby occupies the subject matter to the exclusion of local measures on the subject matter.

#### FISCAL EFFECT

If the Commission on State Mandates determines that this bill contains costs mandated by the state, the bill provides that the state will reimburse the jurisdiction.

#### COMMENTS

- 1) In October 1981, California began a comprehensive allocation program distributing the statewide need for low- and moderate-income housing units. The expressed intent of the new Government Code Section 65581 was "to assure that counties and cities will prepare and implement housing elements which, along with the federal and state programs, will move toward attainment of the state housing goal."
- 2) In 1987, the California Attorney General issued an opinion, #87-206, which stated that: "The availability of suitable housing sites must be considered based not only upon the existing zoning ordinances and land use restrictions of the locality, but also based upon the potential for increased residential development under alternative zoning ordinances and land use restrictions...A housing site would be unsuitable based on its physical characteristics, not because of some governmental control of an artificial and external nature."
- 3) Although the housing element is but one of seven required elements in the local general plan, it is the only element whose consistency is not solely based on locally determined conditions. HCD makes the initial allocation based upon statewide affordable housing need and is required to review the element before local adoption.
- 4) According to the Statewide Housing Plan, an average of 230,000 housing units need to be built annually in order to keep pace with the increase in California's population. The California Building Industry Association is projecting new housing starts to be only 210,000 and a majority of these

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units will only be available for moderate- and high-income families.

- 5) According to the Statewide Housing Plan, in contrast to the intentions of growth control proponents, in many cases these measures do not reduce the ill effects of growth. Instead, the net effect of growth controls is to increase the cost of housing while air quality and transportation problems remain unresolved.
- 6) The County Supervisors Association of California state that it opposes this measure because it may advocate costly and timely (sic) litigation without an interested party having to outline specific challenges.
- 7) According to HCD, out of 412 housing elements that HCD had reviewed by August 1988, 192 were out of compliance with state law, 72 were near compliance, and 148 were in compliance.
- 8) According to the author's office, the housing element is a key component in California's plan to provide adequate levels of affordable housing throughout the state. Additionally, it is appropriate for local governments to defend the validity of their adopted housing element since HCD has already reviewed the housing element and sent the locality comments of its compliance with statutory requirements.

SUPPORT

California Building Industry Association  
 California Coalition for Rural Housing  
 California Housing Council (Sponsor)  
 California Rural Legal Assistance Foundation

OPPOSITION

County Supervisors Association of California  
 League of California Cities

AMENDED IN ASSEMBLY APRIL 26, 1989

CALIFORNIA LEGISLATURE—1989-90 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1290**

**Introduced by Assembly Member Hauser**

**March 3, 1989**

An act to amend Sections 65584 and 65587 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 1290, as amended, Hauser. Land use: general plan: housing element.

Existing law relating to land use planning requires a city, county, or city and county to adopt a general plan consisting of various elements, including a housing element. Existing law requires, among other things, that the housing element identify and analyze housing needs including a locality's share of the regional housing need of persons at all income levels within the area significantly affected by a jurisdiction's general plan and specifies how the distribution of regional housing needs shall be determined.

This bill would further prohibit the distribution from taking into consideration locally imposed regulations or policies which seek to restrict the rate at which housing may be produced.

*Existing law requires counties and cities to plan, in the housing element of their general plan, to meet their appropriate share of the regional housing need, as determined pursuant to a specified procedure involving the council of governments for the region, the Department of Housing and Community Development, or the department alone in areas not having a council of governments. Existing law permits a local government to revise the definition of its*



*share of the regional housing need in which case the council of governments or the department is required to accept the revision or indicate why that revision is inconsistent with the regional housing need.*

*The bill would require that, in identifying total housing needs and stating its quantified objectives, any deviation by a local government in needs or objectives from the regional housing needs be justified by the city or county and approved by the Department of Housing and Community Development.*

*Existing law prohibits any ordinance, policy, or standard of a city, county, or city and county which directly limits, by number, the building permits which may be issued for residential construction, or limits for a set period of time the number of buildable lots which may be developed for residential purposes, with a specified exception, from being a justification for a determination or a reduction in a local government's share of the regional housing need.*

*This bill would, instead, prohibit, with the exception referred to above, the department or a regional council of governments, in determining a city or county's share of the regional housing needs, from altering the share of a city or county's share of the regional housing needs by reason of locally imposed regulations or policies which attempt to restrict the rate at which housing may be produced.*

*The bill would declare that the determination of regional housing needs and the production of that housing to meet those needs is a matter of statewide concern. The bill would further declare that for this reason the state hereby occupies the subject matter of regional housing needs to the exclusion of local measures on the subject.*

*Existing law requires, in an action brought to review the conformity of any housing element with statutory requirements concerning the housing element of the general plan, that the court determine whether there is substantial compliance of the housing element with statutory requirements.*

*This bill would require the city, county, or city and county to carry the burden of proof as to the substantial compliance of its housing element with statutory requirements.*

Since ~~both~~ of these requirements would impose new restrictions upon and would create new duties on, cities, counties, and cities and counties this bill would impose a state-mandated local program.

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, including the creation of a State Mandates Claims Fund to pay the costs of mandates which do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to those statutory procedures and, if the statewide cost does not exceed \$1,000,000, shall be made from the State Mandates Claims Fund.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 65584 of the Government Code  
 2 is amended to read:  
 3 65584. (a) For purposes of subdivision (a) of Section  
 4 65583, a locality's share of the regional housing needs  
 5 includes that share of the housing need of persons at all  
 6 income levels within the area significantly affected by a  
 7 jurisdiction's general plan. The distribution of regional  
 8 housing needs shall, based upon available data, take into  
 9 consideration market demand for housing, employment  
 10 opportunities, the availability of suitable sites and public  
 11 facilities, commuting patterns, type and tenure of  
 12 housing need, and the housing needs of farmworkers.  
 13 The distribution shall seek to avoid further impaction of  
 14 localities with relatively high proportions of lower  
 15 income households. The distribution shall not take into  
 16 consideration locally imposed regulations or policies  
 17 which seek to restrict the rate at which housing may be  
 18 produced. Based upon data provided by the Department

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1 of Finance, in consultation with each council of  
2 government, the Department of Housing and  
3 Community Development shall determine the regional  
4 share of the statewide housing need at least two years  
5 prior to the second revision, and all subsequent revisions  
6 as required pursuant to Section 65588. Based upon data  
7 provided by the Department of Housing and Community  
8 Development relative to the statewide need for housing,  
9 each council of governments shall determine the existing  
10 and projected housing need for its region. Within 30 days  
11 following notification of this determination, the  
12 Department of Housing and Community Development  
13 shall ensure that this determination is consistent with the  
14 statewide housing need and may revise the  
15 determination of the council of governments if necessary  
16 to obtain this consistency. Each locality's share shall be  
17 determined by the appropriate council of governments  
18 consistent with the criteria above with the advice of the  
19 department subject to the procedure established  
20 pursuant to subdivision (c) at least one year prior to the  
21 second revision, and at five-year intervals following the  
22 second revision pursuant to Section 65588.

23 (b) For areas with no council of governments, the  
24 Department of Housing and Community Development  
25 shall determine housing market areas and define the  
26 regional housing need for localities within these areas.  
27 Where the department determines that a local  
28 government possesses the capability and resources and  
29 has agreed to accept the responsibility, with respect to its  
30 jurisdiction, for the identification and determination of  
31 housing market areas and regional housing needs, the  
32 department shall delegate this responsibility to the local  
33 governments within these areas.

34 (c) Within 90 days following a determination of a  
35 council of governments pursuant to subdivision (a), or  
36 the department's determination pursuant to subdivision  
37 (b), a local government may revise the determination of  
38 its share of the regional housing need in accordance with  
39 the considerations set forth in subdivision (a). The  
40 revised share shall be based upon available data and

1 accepted planning methodology, and supported by  
 2 adequate documentation. Within 60 days after the time  
 3 period for the local government's revision, the council of  
 4 governments or the department, as the case may be, shall  
 5 accept the revision or shall indicate, based upon available  
 6 data and accepted planning methodology, why the  
 7 revision is inconsistent with the regional housing need. *In*  
 8 *identifying total housing needs pursuant to subdivision*  
 9 *(a) of Section 65583 and stating its quantified objectives*  
 10 *pursuant to subdivision (b) of Section 65583, any*  
 11 *deviation in needs or objectives from the regional*  
 12 *housing needs shall be justified by the city or county and*  
 13 *approved by the Department of Housing and*  
 14 *Community Development. The housing element shall*  
 15 contain an analysis of the factors and circumstances, with  
 16 all supporting data, justifying the revision. All materials  
 17 and data used to justify any revision shall be made  
 18 available upon request by any interested party within  
 19 seven days upon payment of reasonable costs of  
 20 reproduction unless the costs are waived due to economic  
 21 hardship.

22 (d) (1) Except as provided in paragraph (2), any  
 23 ordinance, policy, or standard of a city, county, or city and  
 24 county which directly limits, by number, the building  
 25 permits which may be issued for residential construction,  
 26 or which limits for a set period of time the number of  
 27 buildable lots which may be developed for residential  
 28 purposes, shall not be a justification for a determination  
 29 or a reduction in a local government's share of the  
 30 regional housing need. *in determining a locality's share*  
 31 *of the regional housing needs pursuant to subdivisions (a)*  
 32 *and (b), the council of government or the Department*  
 33 *of Housing and Community Development shall not alter*  
 34 *the share calculated pursuant to those subdivisions by*  
 35 *reason of locally imposed regulations or policies which*  
 36 *attempt to restrict the rate at which housing may be*  
 37 *produced.*

38 (2) Paragraph (1) does not apply to any city, county,  
 39 or city and county which imposes a moratorium on  
 40 residential construction for a set period of time in order

1 to preserve and protect the public health and safety. If a  
2 moratorium is in effect, the city, county, or city and  
3 county shall, prior to a revision pursuant to subdivision  
4 (c), adopt findings which specifically describe the  
5 impacted public facilities and the reasons why  
6 construction of the number of units specified as its share  
7 of the regional housing need would prevent the  
8 mitigation of that impact.

9 *The determination of regional housing needs and the*  
10 *production of that housing to meet those needs is a*  
11 *matter of statewide concern. For this reason the state*  
12 *hereby occupies the subject matter of regional housing*  
13 *needs to the exclusion of local measures on the subject.*

14 (e) Any authority to review and revise a local  
15 government's share of the regional housing need granted  
16 under this section shall not constitute authority to revise,  
17 approve, or disapprove the manner in which the local  
18 government's share of the regional housing need is  
19 implemented through its housing program.

20 (f) A fee may be charged interested parties for any  
21 additional costs caused by the amendments to subdivision  
22 ~~(e) at the 1983/84 Regular Session of the Legislature (c)~~  
23 *by Chapter 1684 of the Statutes of 1984* reducing from 45  
24 to seven days the time within which materials and data  
25 shall be made available to interested parties.

26 (g) Determinations made by the department, a  
27 council of governments, or a local government pursuant  
28 to this section are exempt from the provisions of the  
29 California Environmental Quality Act, which is provided  
30 for in Division 13 (commencing with Section 21000) of  
31 the Public Resources Code.

32 SEC. 2. Section 65587 of the Government Code is  
33 amended to read:

34 65587. (a) Each city, county, or city and county shall  
35 bring its housing element, as required by subdivision (c)  
36 of Section 65302, into conformity with the requirements  
37 of this article on or before October 1, 1981. No extension  
38 of time for such purpose may be granted pursuant to  
39 Section 65361, notwithstanding its provisions to the  
40 contrary.

1 (b) Any action brought by any interested party to  
 2 review the conformity with the provisions of this article  
 3 of any housing element or portion thereof or revision  
 4 thereto shall be brought pursuant to Section 1085 of the  
 5 Code of Civil Procedure; the court's review of  
 6 compliance with the provisions of this article shall extend  
 7 to whether the housing element or portion thereof or  
 8 revision thereto substantially complies with the  
 9 requirements of this article. The burden of proof as to  
 10 substantial compliance of its housing element with this  
 11 article shall be carried by the city, county, or city and  
 12 county.

13 (c) If a court finds that an action of a city, county, or  
 14 city and county, which is required to be consistent with  
 15 its general plan, does not comply with its housing  
 16 element, the city, county, or city and county shall bring  
 17 its action into compliance within 60 days. However, the  
 18 court shall retain jurisdiction throughout the period for  
 19 compliance to enforce its decision. Upon the court's  
 20 determination that the 60-day period for compliance  
 21 would place an undue hardship on the city, county, or city  
 22 and county, the court may extend the time period for  
 23 compliance by an additional 60 days.

24 SEC. 3. Notwithstanding Section 17610 of the  
 25 Government Code, if the Commission on State Mandates  
 26 determines that this act contains costs mandated by the  
 27 state, reimbursement to local agencies and school  
 28 districts for those costs shall be made pursuant to Part 7  
 29 (commencing with Section 17500) of Division 4 of Title  
 30 2 of the Government Code. If the statewide cost of the  
 31 claim for reimbursement does not exceed one million  
 32 dollars (\$1,000,000), reimbursement shall be made from  
 33 the State Mandates Claims Fund. Notwithstanding  
 34 Section 17580 of the Government Code, unless otherwise  
 35 specified in this act, the provisions of this act shall become  
 36 operative on the same date that the act takes effect  
 37 pursuant to the California Constitution.