

AMENDED IN SENATE APRIL 19, 2021

SENATE BILL

No. 649

Introduced by Senator Cortese

February 19, 2021

An act to add Chapter 12.76 (commencing with Section 7061) to Division 7 of Title 1 of the Government Code, relating to affordable housing.

LEGISLATIVE COUNSEL'S DIGEST

SB 649, as amended, Cortese. Local governments: affordable housing: local tenant preference.

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. Existing law provides for various incentives intended to facilitate and expedite the construction of affordable housing.

This bill would establish a state policy supporting local tenant preferences for lower income households, as defined, that are subject to displacement risk, and, further, ~~permits~~ *permit* local governments and developers in receipt of local or state funds, federal or state tax credits, or an allocation of tax-exempt private activity bonds designated for affordable rental housing to restrict occupancy by creating a local housing preference for lower income households subject to displacement risk. ~~The bill~~ *bill, subject to certain requirements and limitations*, would authorize a local government to allow a local tenant preference in an affordable housing rental development to reduce displacement of lower income households with displacement risk beyond local government boundaries by adopting a program that allows preferences in affordable

rental housing acquired, constructed, preserved or funded with state or local funds or tax programs.

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

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

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) The changes made by this act are necessary in order to
- 4 provide affordable housing opportunities to lower income
- 5 individuals residing in neighborhoods and communities
- 6 experiencing significant displacement pressures and gentrification
- 7 due to rapid growth and densification.
- 8 (b) California law recognizes that the availability of housing is
- 9 of vital statewide importance, and the early attainment of decent
- 10 housing and a suitable living environment for every Californian
- 11 is a priority of the highest order. The early attainment of this goal
- 12 requires the cooperative participation of government and the private
- 13 sector in an effort to expand housing opportunities and
- 14 accommodate the housing needs of Californians of all economic
- 15 levels.
- 16 (c) Local and state governments have a responsibility to use the
- 17 powers vested in them to facilitate the improvement and
- 18 development of housing to make adequate provision for the housing
- 19 needs of all economic segments of the community.
- 20 (d) California law recognizes that each locality is best capable
- 21 of determining what efforts are required by it to contribute to the
- 22 attainment of the state housing goal, provided such a determination
- 23 is compatible with the state’s housing goals and regional housing
- 24 needs.
- 25 (e) Almost all affordable housing developments require tax
- 26 credit allocations for financial viability, and many also seek
- 27 tax-exempt private activity bond financing. Under income tax
- 28 regulations, to qualify as an exempt facility, a facility must serve
- 29 or be available on a regular basis for general public use. Section
- 30 ~~42(g)(2)~~ 42(g)(9) of the Internal Revenue Code (26 U.S.C. U.S.C.
- 31 ~~Sec. 42(g)(2))~~ 42(g)(9)) provides that a project does not fail to
- 32 meet the general public use requirement solely because of
- 33 occupancy restrictions or preferences that favor tenants with special

1 needs, or who are members of a specified group under a federal
2 program or state program or policy that supports housing for such
3 a specified group.

4 (f) Municipalities, especially those in urban areas, are
5 significantly challenged to meet the demand for affordable housing
6 for its lower income residents. Market forces continue to increase
7 the cost of living through rising rents and increased home prices,
8 while incomes for lower income residents continue to lag behind.
9 This effect is magnified in areas of significant income inequality.
10 While municipalities attempt to tackle these issues by targeted
11 investment and zoning, these efforts can unintentionally lead to
12 further housing displacement. Indeed, some of the main drivers
13 for residential displacement are proximity to rail stations, proximity
14 to job centers, historic housing stock, and location in a strong real
15 estate market.

16 (g) Communities and their residents benefit from affordable,
17 stable housing when they can maintain access and proximity to
18 local institutions, services, schools, community business, centers,
19 and health care providers, and familial and social networks.
20 Students' educational attainment is higher when they move less
21 and have more stability, the mental and physical health of the
22 community is improved with stably housed residents' lowered
23 stress levels and ability to afford medical visits, and the
24 community's fiscal health is improved as residents' discretionary
25 spending increases on nonhousing costs such as food, medications,
26 and clothes.

27 (h) Studies have shown that negative effects for displaced lower
28 income adults and children include their removal from their family,
29 friends and community support networks, increased financial strain,
30 decreased economic opportunities, increased and more costly
31 commutes, unstable housing situations, worsened safety and
32 environmental concerns, significant trauma, worsened educational
33 outcomes, and for some, homelessness.

34 (i) Local tenant preferences to lower income households for
35 new and existing affordable housing can help stabilize housing for
36 those who are at greatest risk of displacement from their
37 communities due to community growth and densification that has
38 resulted in increased housing costs and housing cost burdens for
39 existing residents.

1 (j) This act, and its implementation, is intended to be consistent
 2 with the California Fair Employment and Housing Act (Part 2.8
 3 (commencing with Section 12900) of Division 3 of Title 2 of the
 4 Government Code) and the Unruh Civil Rights Act (Section 51 of
 5 the Civil Code), and any implementing regulations thereunder.

6 SEC. 2. Chapter 12.76 (commencing with Section 7061) is
 7 added to Division 7 of Title 1 of the Government Code, to read:

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9 CHAPTER 12.76. LOCAL TENANT PREFERENCES TO PREVENT
 10 DISPLACEMENT ACT

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12 7061. This chapter shall be known and may be cited as the
 13 Local Tenant Preferences to Prevent Displacement Act.

14 7061.1. For purposes of this chapter:

15 (a) “Affordable rental housing” means a rental housing
 16 development, as defined in subdivision (d) of Section 50675.2 of
 17 the Health and Safety Code, with a majority of its rents restricted
 18 to levels that are affordable to persons and families of low or
 19 moderate income, as defined in Section 50093 of the Health and
 20 Safety Code, but neither definition is restrictive to projects with
 21 only five or more units.

22 (b) “Lower income households” means the same as defined in
 23 Section 50079.5 of the Health and Safety Code.

24 (c) (1) “Displacement risk” means certain conditions, when
 25 present, having the cumulative effect of causing displacement of
 26 lower income households, including, but not limited to, higher
 27 percentages of lower income rent-burdened residents, planned or
 28 occurring real estate development, rising rent levels, vacancy rates
 29 under 5 percent in lower cost apartments, increased evictions, or
 30 other local factors leading to displacement as determined by a
 31 municipality.

32 (2) “Displacement risk” includes displacement due to conditions
 33 described in paragraph (1) or other precipitating events, which
 34 may include, but are not limited to, closures of mobilehome parks,
 35 evictions pursuant to Chapter 12.75 (commencing with Section
 36 7060), cessation of rental subsidies, fire or other physical disaster,
 37 or other events as determined by a municipality.

38 (d) “Local tenant preference” means an affordable housing
 39 preference provided to lower income households subject to

1 displacement risk for a percentage of deed-restricted affordable
2 rental units in a residential property.

3 7061.2. (a) The purpose of this chapter is to facilitate the
4 acquisition, construction, rehabilitation, and preservation of
5 affordable rental housing for lower income households to allow
6 them to access and maintain housing stability in their communities.

7 (b) A program authorized and implemented pursuant to this
8 chapter shall be restricted to lower income households subject to
9 displacement risk.

10 (c) This chapter creates a state policy supporting local tenant
11 preferences for lower income households, as described in Section
12 ~~42(g)(2)~~ 42(g)(9) of the Internal Revenue Code (~~26 U.S.C.~~ U.S.C.
13 ~~Sec. 42(g)(2)~~), 42(g)(9)), that are subject to displacement risk, and,
14 further, permits local governments and developers in receipt of
15 local or state funds, federal or state tax credits, or an allocation of
16 tax-exempt private activity bonds designated for affordable rental
17 housing to restrict occupancy by creating a local housing preference
18 for lower income households subject to displacement risk.

19 7061.3. (a) A local government may allow a local tenant
20 preference in an affordable housing rental development to reduce
21 displacement of lower income households with displacement risk
22 beyond local government boundaries by adopting a program that
23 allows preferences in affordable rental housing acquired,
24 constructed, preserved, or funded with state or local funds or tax
25 programs.

26 (b) *A local government that elects to adopt a local tenant*
27 *preference pursuant to this section shall enact an ordinance that*
28 *includes all of the following:*

29 (1) *A clearly defined population eligible for the tenant*
30 *preference.*

31 (2) *Detailed findings that support a valid, nondiscriminatory*
32 *government interest for the local tenant preference.*

33 (3) *A declaration that the ordinance has undergone fair housing*
34 *review and comports with existing fair housing law.*

35 (4) *A detailed summary of the strategies and policies enacted*
36 *by the local government to address housing supply and equitable*
37 *housing access, particularly for lower income households.*

38 (c) *A local tenant preference adopted pursuant to this section*
39 *shall be administered in a manner consistent with the duty to*
40 *affirmatively further fair housing pursuant to Chapter 15*

1 *(commencing with Section 8899.50) of Division 1 of Title 2, the*
2 *Fair Employment and Housing Act (Part 2.8 (commencing with*
3 *Section 12900) of Division 3 of Title 2), the Unruh Civil Rights*
4 *Act (Section 51 of the Civil Code), and any implementing*
5 *regulations thereunder.*

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