



California Special Districts Association
Districts Stronger Together



June 6, 2023

The Honorable Cecilia Aguiar-Curry
California State Assembly Committee on Local Government
1020 N St., Room 157
Sacramento, CA 95814

RE: Senate Bill 229 (Umberg) – Oppose Unless Amended [As Amended February 23, 2023]

Dear Assembly Member Aguiar-Curry:

The statewide associations and individual local agencies listed above must respectfully oppose Senate Bill 229, unless it is amended to address our concerns discussed below.

SB 229 will amend the Surplus Land Act (SLA) to provide that if a local agency is disposing of a parcel by sale or lease, and received a notice of violation from the Department of Housing and Community Development (HCD), pursuant to Government Code Section 54230.5, that it is in violation of the SLA with regard to the parcel, the local agency shall hold an open and public session to review and consider the substance of the notice of violation. In addition to any other applicable notice requirements, the local agency shall provide notice disclosed on the local agency's internet website, in a conspicuous public place at the offices of the local agency, and to HCD no later than 14 days before the public session at which the notice of violation will be considered. The local agency's governing body shall not take final action to ratify or approve the proposed disposal until a public session is held.

The concerns underlying our position are as follows:

1. SB 229 is a companion bill to SB 34 (Umberg), which is also pending before this committee. SB 34 would similarly require procedures for the County of Orange and cities in the County of Orange to address notices of violation from HCD, albeit different procedures. However, SB 34 would seek to impose its requirements when a notice of violation is received from HCD by a local agency in connection with a "planned sale or lease of **surplus land**." In contrast, SB 229 would impose its requirements if a notice of violation is received from HCD when a local agency "is disposing of **a parcel** by sale or lease." This is a critical and problematic distinction because SB 229 may be improperly implied to broaden HCD's authority to issue notices of violation to **any** parcel of land. Without appropriately limiting the bill's application to notices of violation in connection with sales of **surplus land**, SB 229 may significantly disrupt local agencies' planning for uses of land, including for exempt surplus land explicitly not subject to the SLA. (See Government Code Section 54222.3 "This article shall not apply to the disposal of exempt surplus land as defined in Section 54221 by an agency of the state or any local agency.")

To correct this problem, SB 229 should be amended to make clear that it applies only to sales of surplus land, as follows:

Government Code section 54230.7(a): “If a local agency is disposing of a ~~parcel~~ **surplus land** by sale ~~or lease~~ and has received a notification from the Department of Housing and Community Development....”

Government Code section 54230.7(b): “The local agency’s governing body shall not take final action to ratify or approve the proposed ~~disposal~~ **sale of surplus land** until a public session is held as required by this section.”

2. As written, the bill may create a concerning precedent for all local agencies statewide. Because SB 229 includes a reference to notices of violation from HCD in connection with a “sale **or lease**” by a local agency, the bill may establish a statutory precedent that leases are subject to the SLA. Notwithstanding guidelines developed by HCD defining “disposition of surplus land,” at this time the term “dispose” is undefined in the SLA, and prior legislative efforts to define “dispose” to include leases were unsuccessful. Removing and excluding the bill’s reference to leases would in no way compromise or otherwise impact the ability of this legislation to address a planned sale of surplus land. However, including any reference to leases in the bill would be inconsistent with the clear, established legislative intent for the meaning of disposal of surplus land that is subject to the requirements of the SLA as currently written. We therefore oppose SB 229 unless it is amended to remove its reference to leases and HCD notices of violations in connection with planned leases.

Local agencies routinely enter leases for a variety of purposes that support their work or operations and that do not relate to the purposes of the SLA. Examples include a cell tower lease, a lease to a nonprofit for office space because that nonprofit is partnering with a local government to further a governmental purpose, and a short-term lease of park space.

The clear, established intent of the Legislature is not to apply the requirements of the SLA for surplus land to leases. In 2019, as introduced, AB 1486 (Ting) proposed to define “dispose of” as the “sale, **lease**, transfer, or other conveyance of any interest in real property owned by a local agency” (emphasis added). A broad local agency coalition opposed this proposed expansion of the meaning of “dispose of,” and consequently leases were amended out of the bill before it became law.

3. Our organizations also seek amendments to the procedural requirements of SB 229, to provide reasonable flexibility to local agencies. While our organizations recognize the transparency concerns addressed by this bill, those concerns can be addressed while providing additional local agency flexibility. For example:
 - a. A public **meeting**, instead of a public session, to consider a notice of violation, provides transparency while providing flexibility to local agencies in their selection of a format consistent with the Brown Act.
 - b. Local agencies should be provided with an offramp from the requirement to hold a meeting if they elect not to proceed with a proposed disposal after receiving a notice of violation from HCD.
 - c. Not all local agencies maintain websites, and additional notice flexibility is needed.

The bill’s prescriptive requirements for holding a public session, and absence of an offramp when that public session is no longer required due to changed circumstances, will unnecessarily increase SLA compliance costs for local agencies.

For the above reasons, we must respectfully oppose Senate Bill 229, unless it is amended to address our concerns.

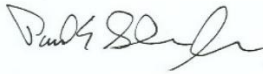
Sincerely,



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CC: The Honorable Thomas Umberg
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Hank Brady, Consultant, Assembly Committee on Local Government
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