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**SB-1123 Planning and zoning: subdivisions: ministerial review.** (2023-2024)

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**Senate Bill No. 1123**

**CHAPTER 294**

An act to amend Sections 65852.28 and 66499.41 of the Government Code, relating to land use.

[ Approved by Governor September 19, 2024. Filed with Secretary of State September 19, 2024. ]

**LEGISLATIVE COUNSEL'S DIGEST**

SB 1123, Caballero. Planning and zoning: subdivisions: ministerial review.

Existing law, known as the Starter Home Revitalization Act of 2021, among other things, requires a local agency to ministerially consider, without discretionary review or a hearing, a parcel map or a tentative and final map for a housing development project that meets certain requirements, including that the housing development project on the lot proposed to be subdivided will contain 10 or fewer residential units, is zoned for multifamily residential development, is no larger than 5 acres, as specified, and the newly created parcels are no smaller than 600 square feet, except as provided. Existing law prohibits a local agency from imposing on the housing development an objective zoning standard, objective subdivision standard, or objective design standard that, among other things, physically precludes the development of a project built to specified densities.

This bill would prohibit, if a local agency chooses to permit accessory dwelling units or junior accessory dwelling units, those units from counting as residential units for purposes of the above-described requirement that a housing development project on the lot proposed to be subdivided will contain 10 or fewer residential units. The bill would revise the requirement that the lot be zoned for multifamily residential development and would instead require that the lot either be zoned for multifamily residential dwelling use or vacant, as defined, and zoned for single-family residential development. The bill would require that a vacant lot zoned for single-family residential development is no larger than 1<sup>1</sup>/<sub>2</sub> acres, as specified, and that if the parcels are zoned for single-family residential use, the newly created parcels are no smaller than 1,200 square feet. The bill would, notwithstanding the prohibition related to physical preclusion of a development described above, authorize a local agency to impose a specified height limit on a lot that is vacant and zoned for single-family residential development.

The bill would include in the above-described certain requirements that the proposed subdivision will not result in any existing dwelling unit being alienable separate from the title to any other existing dwelling unit on the lot.

Existing law also includes among these certain requirements that the housing units on the lot proposed to be subdivided meet one of specified conditions, including being constructed on fee simple ownership lots or owned by a community land trust, as defined.

This bill would expand the above-described specified conditions to include being part of a tenancy in common, as specified. The bill would revise the above-described conditions to instead include being constructed on land owned by a community trust. By expanding the duties for a local agency to ministerially consider a housing development project, this bill would impose a state-mandated local program.

Existing law, if a parcel is not identified in the jurisdiction's housing element for the current planning period that is in substantial compliance, as specified, requires a proposed development to result in at least as many units as the maximum allowable residential density.

This bill would instead require the proposed development to result in at least 66% of the maximum allowable residential density as specified by local zoning or 66% of the applicable residential density, as specified, whichever is greater.

Existing law provides that a housing development project on a proposed site to be subdivided under these provisions is not required to comply with certain requirements, including a minimum requirement on the size, width, depth, or dimensions of an individual parcel created by the development beyond the minimum parcel size of 600 square feet, except as provided.

This bill would provide that an above-described housing development is also not required to comply with a minimum requirement on the frontage of an individual parcel created by the development.

This bill would require that its provisions become operative on July 1, 2025.

This bill would make related findings and declarations.

The bill would include findings that changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

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.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

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## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

### **SECTION 1.** The Legislature finds and declares all of the following:

(a) California has a statewide housing crisis, represented by a shortage of nearly 3,500,000 homes.

(b) California's housing crisis stifles economic growth, contributes to the homelessness epidemic, consumes an ever-growing share of the paychecks of working families, and holds millions of households back from realizing the California dream of home ownership.

(c) Restrictive zoning, land use, and burdensome permitting policies at the local and state level are a major cause of the shortfall between California's housing needs and the available supply of housing.

(d) Home ownership is still the primary way in which most Americans build wealth and assets. California has the third highest median home price in the country and the high cost of housing has pushed what was once a modest goal further and further out of reach for most people of color.

(e) Home ownership rates in California are among the lowest nationwide, and in recent years those numbers have continued downward. Between 2020 and 2022, inclusive, California home ownership declined by 3.19 percent.

(f) While the home ownership gap is an issue throughout the country, the rate of African American and Latinx home ownership is significantly worse in California. At a national level, African Americans and Latinx have a home ownership rate of 42 percent and 47 percent, respectively, while here in California, that rate drops down to 35 percent and 42 percent, respectively.

(g) The Legislative Analyst's Office has identified a lack of housing supply as one of the culprits for the severe home ownership gap. The office's 2016 housing affordability report found that "the state's housing shortage also makes many Californians, not only low-income residents, more likely to commute longer distances, live in overcrowded housing, and delay or forgo home ownership."

(h) According to the Urban Institute, multifamily construction built for sale accounted for only 5.4 percent of all multifamily starts and only 2.7 percent of all single-family and multifamily home construction for the first three quarters of 2021.

(i) Houses cost more in California due to increased costs, heavy regulatory hurdles, and mandatory features and fees that add tens of thousands of dollars to the cost of each unit.

(j) Access to sustainable home ownership can be expanded with fiscal assistance, housing counseling, sound lending, flexible underwriting that ensures the ability to pay, and backing by Federal Housing Administration (FHA) mortgage insurance.

(k) As production has slowed and changed, for-sale inventory has tightened, particularly for entry-level homes.

(l) Higher home prices have translated to less diversity in who is able to purchase a home.

(m) Home ownership is a powerful tool to close the racial and ethnic wealth gap across the State of California and nationwide.

(n) The production of new market-rate housing frees up existing, more affordable housing elsewhere in the region for sale or rent to lower and middle-income households.

**SEC. 2.** Section 65852.28 of the Government Code is amended to read:

**65852.28.** (a) A development proponent may submit an application for a housing development project on a lot that is subdivided pursuant to Section 66499.41 and that meets the requirements of this section.

(b) (1) For any housing development on a lot that is subdivided pursuant to Section 66499.41, a local agency may impose objective zoning standards, objective subdivision standards, or objective design standards that are related to the housing development or to the design or improvement of a parcel, and do not conflict with this section or Section 66499.41.

(2) Notwithstanding paragraph (1), a local agency shall not impose on a housing development on a lot that is subdivided pursuant to Section 66499.41 an objective zoning standard, objective subdivision standard, or objective design standard that does or is any of the following:

(A) (i) Physically precludes the development of a project built to densities as specified in subparagraph (B) of paragraph (3) of subdivision (c) of Section 65583.2. This paragraph does not preclude a local agency from adopting an ordinance that allows developments at a density greater than the maximum density specified in subparagraph (B) of paragraph (3) of subdivision (c) of Section 65583.2.

(ii) Notwithstanding clause (i), for a development located on a lot that meets the definition of clause (ii) of subparagraph (A) of paragraph (2) of subdivision (a) of Section 66499.41, a local agency may impose a height limit of no less than the height allowed pursuant to the existing zoning designation applicable to the lot.

(B) Imposes any requirement that applies to a project solely or partially on the basis that the subdivision or housing development receives approval pursuant to this section.

(C) Requires a setback between the units, except as required in the California Building Code (Title 24 of the California Code of Regulations).

(D) Requires that parking be enclosed or covered.

(E) Imposes side and rear setbacks from the original lot line inconsistent with subparagraph (B) of paragraph (2) of subdivision (b) of Section 65852.21.

(F) Imposes parking requirements inconsistent with paragraph (1) of subdivision (c) of Section 65852.21.

(G) (i) For a housing development project consisting of three to seven units, inclusive, impose a floor area ratio standard that is less than 1.0.

(ii) For a housing development project consisting of 8 to 10 units, inclusive, impose a floor area ratio standard that is less than 1.25.

(c) (1) A local agency shall ministerially consider, without discretionary review or a hearing, an application submitted to a local agency pursuant to this section.

(2) A local agency shall approve or deny an application for a housing development project submitted to a local agency pursuant to this section within 60 days from the date the local agency receives a completed application. If the local agency does not approve or deny a completed application within 60 days, the application shall be deemed approved. If the local agency denies the application, the local agency shall, within 60 days from the date the local agency receives the completed application, return in writing a full set of comments to the applicant with a list of items that are defective or deficient and a description of how the applicant can remedy the application.

(d) A local agency may disapprove a housing development project that meets the requirements of this section if it makes a written finding, based upon a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.

(e) A local agency may adopt an ordinance to implement the provisions of this section. An ordinance adopted to implement this section shall not be considered a project under Division 13 (commencing with Section 21000) of the Public Resources Code.

(f) This section shall become operative on July 1, 2024.

(g) The amendments made to this section by the act adding this subdivision shall become operative on July 1, 2025.

**SEC. 3.** Section 66499.41 of the Government Code is amended to read:

**66499.41.** (a) A local agency shall ministerially consider, without discretionary review or a hearing, a parcel map or a tentative and final map for a housing development project that meets all of the following requirements:

(1) The proposed subdivision will result in 10 or fewer parcels and the housing development project on the lot proposed to be subdivided will contain 10 or fewer residential units, except as provided in subdivision (g).

(2) The lot proposed to be subdivided meets all of the following sets of requirements:

(A) The lot is one of the following:

(i) Zoned to allow multifamily residential dwelling use.

(ii) Vacant and zoned for single-family residential development. For purposes of this paragraph, "vacant" means having no permanent structure, unless the permanent structure is abandoned and uninhabitable. All of the following types of housing shall not be defined as "vacant":

(I) Housing that is subject to a recorded covenant, ordinance, or law that restricts rent or sales price to levels affordable to persons and families of low, very low, or extremely low income.

(II) Housing that is subject to any form of rent or sales price control through a local public entity's valid exercise of its police power.

(III) Housing occupied by tenants within the five years preceding the date of the application, including housing that has been demolished or that tenants have vacated prior to the submission of the application for a development permit.

(B) (i) A lot zoned to allow multifamily residential dwelling use is no larger than five acres and is substantially surrounded by qualified urban uses.

(ii) A vacant lot zoned for single-family residential development is no larger than one and one-half acres and is substantially surrounded by qualified urban uses.

(iii) For purposes of this subparagraph, the following definitions apply:

(I) "Qualified urban use" has the same meaning as defined in Section 21072 of the Public Resources Code.

(II) "Substantially surrounded" has the same meaning as defined in paragraph (2) of subdivision (a) of Section 21159.25 of the Public Resources Code.

(C) The lot is a legal parcel located within one of the following:

(i) An incorporated city, the boundaries of which include some portion of an urbanized area.

(ii) An urbanized area or urban cluster in a county with a population greater than 600,000 based on the most recent United States Census Bureau data.

(iii) For purposes of this subparagraph, the following definitions apply:

(I) "Urbanized area" means an urbanized area designated by the United States Census Bureau, as published in the Federal Register, Volume 77, Number 59, on March 27, 2012.

(II) "Urban cluster" means an urbanized area designated by the United States Census Bureau, as published in the Federal Register, Volume 77, Number 59, on March 27, 2012.

(D) The lot was not established pursuant to this section or Section 66411.7.

(3) (A) Except as specified in subparagraphs (B) and (C), the newly created parcels are no smaller than 600 square feet.

(B) If the parcels are zoned for single-family residential use, the newly created parcels are no smaller than 1,200 square feet.

(C) A local agency may, by ordinance, adopt a smaller minimum parcel size subject to ministerial approval under this subdivision.

(4) The housing units on the lot proposed to be subdivided are one of the following:

(A) Constructed on fee simple ownership lots.

(B) Part of a common interest development.

(C) Part of a housing cooperative, as defined in Section 817 of the Civil Code.

(D) Constructed on land owned by a community land trust. For the purpose of this subparagraph, "community land trust" means a nonprofit corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code that satisfies all of the following:

(i) Has as its primary purposes the creation and maintenance of permanently affordable single-family or multifamily residences.

(ii) All dwellings and units located on the land owned by the nonprofit corporation are sold to qualified owners to be occupied as the qualified owner's primary residence or rented to persons and families of low or moderate income. For the purpose of this subparagraph, "qualified owner" means a person or family of low or moderate income, including a person or family of low or moderate income who owns a dwelling or unit collectively as a member occupant or resident shareholder of a limited-equity housing cooperative.

(iii) The land owned by the nonprofit corporation, on which a dwelling or unit sold to a qualified owner is situated, is leased by the nonprofit corporation to the qualified owner for the convenient occupation and use of that dwelling or unit for a renewable term of 99 years.

(E) Part of a tenancy in common, as described in Section 685 of the Civil Code.

(5) The proposed development will, pursuant to the requirements of this division, meet one of the following, as applicable:

(A) If the parcel is identified in the jurisdiction's housing element for the current planning period that is in substantial compliance with Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1, the development will result in at least as many units as projected for that parcel in the housing element. If the parcel is identified to accommodate any portion of the jurisdiction's share of the regional housing need for low- or very low income households, the development will result in at least as many low- or very low income units as projected in the housing element. These units shall be subject to a recorded affordability restriction of at least 45 years.

(B) (i) If the parcel is not identified in the jurisdiction's housing element for the current planning period that is in substantial compliance with Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1, the development will result in at least 66 percent of the maximum allowable residential density as specified by local zoning or 66 percent of the applicable residential density specified in subparagraph (B) of paragraph (3) of subdivision (c) of Section 65583.2, whichever is greater.

(ii) Where local zoning does not specify a maximum allowable residential density, the development will result in at least 66 percent of the applicable residential density as specified in subparagraph (B) of paragraph (3) of subdivision (c) of Section 65583.2.

(6) The average total area of floorspace for the proposed housing units on the lot proposed to be subdivided does not exceed 1,750 net habitable square feet. For purposes of this paragraph, "net habitable square feet" means the finished and heated floor area fully enclosed by the inside surface of walls, windows, doors, and partitions, and having a headroom of at least six and one-half feet, including working, living, eating, cooking, sleeping, stair, hall, service, and storage areas, but excluding garages, carports, parking spaces, cellars, half-stories, and unfinished attics and basements.

(7) The housing development project on the lot proposed to be subdivided complies with any local inclusionary housing ordinances adopted by the local agency.

(8) The development of a housing development project on the lot proposed to be subdivided does not require the demolition or alteration of any of the following types of housing:

(A) Housing that is subject to a recorded covenant, ordinance, or law that restricts rent to levels affordable to persons and families of low, very low, or extremely low income.

(B) Housing that is subject to any form of rent or price control through a local public entity's valid exercise of its police power.

(C) Housing occupied by tenants within the five years preceding the date of the application, including housing that has been demolished or that tenants have vacated prior to the submission of the application for a development permit.

(D) A parcel on which an owner of residential real property has exercised the owner's rights under Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application.

(9) The lot proposed to be subdivided is not located on a site that is any of the following:

(A) Either prime farmland or farmland of statewide importance, as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction.

(B) Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).

(C) Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code.

(D) A hazardous waste site that is listed pursuant to Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to former Section 25356 of the Health and Safety Code, unless either of the following applies:

(i) The site is an underground storage tank site that received a uniform closure letter issued pursuant to subdivision (g) of Section 25296.10 of the Health and Safety Code based on closure criteria established by the State Water Resources Control Board for residential use or residential mixed uses. This section does not alter or change the conditions to remove a site from the list of hazardous waste sites listed pursuant to Section 65962.5.

(ii) The State Department of Public Health, State Water Resources Control Board, Department of Toxic Substances Control, or a local agency making a determination pursuant to subdivision (c) of Section 25296.10 of the Health and Safety Code, has otherwise determined that the site is suitable for residential use or residential mixed uses.

(E) Within a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2.

(F) Within a special flood hazard area subject to inundation by the 1-percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this paragraph and is otherwise eligible for streamlined approval under this section, a local government shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by that local government that is applicable to that site. A development may be located on a site described in this subparagraph if either of the following is met:

(i) The site has been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency and issued to the local jurisdiction.

(ii) The site meets Federal Emergency Management Agency requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program pursuant to Part 59 (commencing with Section 59.1) and Part 60 (commencing with Section 60.1) of Subchapter B of Chapter I of Title 44 of the Code of Federal Regulations.

(G) Within a regulatory floodway as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency, unless the development has received a no-rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise

eligible for streamlined approval under this section, a local government shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by that local government that is applicable to that site.

(H) Land identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code), habitat conservation plan pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), or another adopted natural resource protection plan.

(I) Habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code).

(J) Land under conservation easement.

(10) The proposed subdivision conforms to all applicable objective requirements of the Subdivision Map Act (Division 2 (commencing with Section 66410)), except as otherwise expressly provided in this section.

(11) The proposed subdivision complies with all applicable standards established pursuant to Section 65852.28.

(12) Any parcels proposed to be created pursuant to this section will be served by a public water system and a municipal sewer system.

(13) The proposed subdivision will not result in any existing dwelling unit being alienable separate from the title to any other existing dwelling unit on the lot.

(b) A housing development project on a proposed site to be subdivided pursuant to this section is not required to comply with either of the following requirements:

(1) A minimum requirement on the size, width, depth, frontage, or dimensions of an individual parcel created by the development beyond the minimum parcel size specified in, or established pursuant to, paragraph (3) of subdivision (a).

(2) (A) The formation of a homeowners' association, except as required by the Davis-Stirling Common Interest Development Act (Part 5 (commencing with Section 4000) of Division 4 of the Civil Code).

(B) Subparagraph (A) shall not be construed to prohibit a local agency from requiring a mechanism for the maintenance of common space within the subdivision, including, but not limited to, a road maintenance agreement.

(c) A local agency shall approve or deny an application for a parcel map or a tentative map for a housing development project submitted to a local agency pursuant to this section within 60 days from the date the local agency receives a completed application. If the local agency does not approve or deny a completed application within 60 days, the application shall be deemed approved. If the local agency denies the application, the local agency shall, within 60 days from the date the local agency receives the completed application, return in writing a full set of comments to the applicant with a list of items that are defective or deficient and a description of how the applicant can remedy the application.

(d) Any housing development project constructed on the lot proposed to be subdivided pursuant to this section shall comply with all applicable objective zoning standards, objective subdivision standards, and objective design standards as established by the local agency that are not inconsistent with this section and paragraph (2) of subdivision (a) of Section 65852.28.

(e) A local agency may condition the approval and recordation of a subdivision map upon the completion of a residential structure in compliance with all applicable provisions of the California Building Standards Code that contains at least one dwelling unit on each resulting parcel that does not already contain an existing legally permitted residential structure or is reserved for internal circulation, open space, or common area.

(f) A local agency may deny the issuance of a parcel map, a tentative map, or a final map if it makes a written finding, based upon a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.

(g) Notwithstanding Article 2 (commencing with Section 66314) or Article 3 (commencing with Section 66333) of Chapter 13 of Division 1, a local agency is not required to permit an accessory dwelling unit or a junior accessory dwelling unit on parcels created through the exercise of the authority contained within this section. If a local agency chooses to permit accessory dwelling

units or junior accessory dwelling units, the units shall not count as residential units for the purposes of paragraph (1) of subdivision (a).

(h) (1) Notwithstanding Section 66411.7, a local agency is not required to permit an urban lot split on a parcel created through the exercise of the authority contained within this section.

(2) Notwithstanding Sections 65852.21 and 66411.7, those sections shall not apply to a site that meet both of the following requirements:

(A) The site is located within a single-family residential horsekeeping zone designated in a master plan, adopted before January 1, 1994, that regulates land zoned single-family horsekeeping, commercial, commercial-recreational, and existing industrial within the plan area.

(B) The applicable local government has an adopted housing element that is compliant with applicable law.

(i) A local agency may adopt an ordinance to implement the provisions of this section. An ordinance adopted to implement this section shall not be considered a project under Division 13 (commencing with Section 21000) of the Public Resources Code.

(j) Paragraph (2) of subdivision (h) shall become operative on January 1, 2024. Subdivisions (a) to (g), inclusive, paragraph (1) of subdivision (h), and subdivision (i) shall become operative on July 1, 2024.

(k) The amendments made to this section by the act adding this subdivision shall become operative on July 1, 2025.

**SEC. 4.** The Legislature finds and declares that the state faces a severe housing shortage, largely due to the lack of available housing affordable to lower and moderate-income families. By expanding opportunities for ownership of more affordable housing types on smaller, less expensive parcels, this act ensures access to affordable housing and addresses a matter of statewide concern, rather than a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, Sections 2 and 3 of this act amending Sections 65852.28 and 66499.41 of the Government Code apply to all cities, including charter cities.

**SEC. 5.** If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.