

Date of Hearing: April 3, 2019

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

AB 1783 (Robert Rivas) – As Amended March 28, 2019

SUBJECT: H-2A worker housing: state funding: streamlined approval process for agricultural employee housing development

SUMMARY: Revises the entitlement process and eligibility for state programs that provide funding for farmworker housing. Specifically, **this bill:**

- 1) Defines “agricultural employee housing” to mean housing occupied by an employee of an agricultural employer or by a farm labor contractor.
- 2) Creates a streamlined, ministerial approval process for agricultural employee housing if all of the following criteria are met:
 - a) The land is zoned for agricultural uses;
 - b) The land is not located in environmentally unsafe or sensitive areas, including a coastal zone, wetlands, a high or very fire severity zone, a hazardous waste site, an earthquake fault zone, a flood plain or floodway, lands identified for conservation in an adopted natural community conservation plan, and lands under conservation easement;
 - c) The housing is not dormitory style housing;
 - d) The housing is maintained and operated by a qualified affordable housing organization, certified by the Department of Housing and Community Development (HCD). Such organizations include non-profits and public agencies with prior experience and current capacity to maintain and operate the housing. Except for local public housing agencies with elected legislative bodies, to be qualified the applicant cannot have a member among its officers or directorate with a financial interest in an agricultural employer or a farm labor contractor;
 - e) The housing must be affordable and for agricultural employees for at least 55 years;
and
 - f) The housing is eligible for state funding.
- 3) Applies the following requirements to the approval process for the agricultural employee housing utilizing this streamlined process:
 - a) If a local government determines that the project does not meet all of the requirements for the streamlined, ministerial process, then it must provide this determination in writing to the project proponent of which requirement(s) were not satisfied with an explanation. This documentation must be provided within 60 days for projects with 150 or fewer housing units, and 90 days for projects with more than 150 units.

- b) The local government may conduct design review or public oversight of the project. This process shall require objective design standards. This process must be completed within 90 days for projects with 150 or fewer housing units, and 180 days for projects with more than 150 units.
- 4) Specifies that approved agricultural employee housing utilizing this streamlined, ministerial process shall not be subject to density limits otherwise applied to employee housing.
 - 5) Establishes the following enforcement protocol for agricultural employee housing:
 - a) Landowners that utilize the streamlined, ministerial entitlement process but fail to meet the ongoing requirements may be subject to administrative penalties;
 - b) Landowners are required to find a qualified affordable housing organization within 90 days if the existing organization's permit expires or they are unwilling or unable to continue maintaining and operating the agricultural employee housing; and
 - c) HCD is the enforcement agency.
 - 6) Establishes that the planning, developing, or operating of any housing for farmworkers holding H-2A visas shall be ineligible for state funding, subject to the following:
 - a) For purposes of this section, "state funding" is defined to mean any provision of moneys or other financial assistance provided by the state or a state agency, including, but not limited to, grants, loans, and write-downs of land costs. This includes funding from Community Service Block Grants, Building Homes and Jobs Trust Fund, Joe Serna, Jr. Farmworker Housing Grant Program, and other programs for migratory workers, but does not include any allocation of federal or state low-income housing tax credits; and
 - b) Any employer or other recipient of state funding who utilizes state funding for these purposes shall reimburse the state or state agency that provided the funding in an amount equal to the amount of that state funding expended for those purposes. This reimbursement requirement does not apply to contracts or other enforceable agreements pursuant to which the state or a state agency provides state funding that were entered into prior to January 1, 2020, except for funds distributed through the state's Community Service Block Grants and from the state's Building Homes and Jobs Trust Fund.
 - 7) Provides the following rights to tenants in agricultural employee housing:
 - a) The right to file a verified complaint with the Department of Fair Employment and Housing alleging a violation of housing discrimination, or to assert any other right, under the California Fair Employment and Housing Act;
 - b) Any protections for tenants or lessees under the Civil Code or the Labor Code; and
 - c) Any protection or right under the Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations Act of 1975.

- 8) Declares that it is the policy of the state that each county and city shall permit and encourage the development and use of sufficient numbers and types of agricultural employee housing as are commensurate with local need. Finds and declares that this section 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, the section permitting streamlined, ministerial approval of agricultural employee housing applies to all cities, including charter cities.

EXISTING LAW:

- 1) Defines “agricultural employee” as one engaged in agriculture. The term “agriculture” includes farming in all its branches (Labor Code Section 1140.4).
- 2) Establishes the Employee Housing Act (Health and Safety Code Sections 17000 through 17062.5), which does the following:
 - a) Defines “employee housing,” as any portion of any housing accommodation or property upon which housing accommodations are located, if all of the following factors exist:
 - i. The housing accommodations or property are located in any rural area;
 - ii. The housing accommodations or property are not maintained in connection with any work or workplace;
 - iii. The housing accommodations or property are provided by someone other than an agricultural employer; and
 - iv. The housing accommodations or property are used by five or more agricultural employees of any agricultural employer or employers for temporary or permanent residency, as specified (Health and Safety Code Section 17008);
 - b) Permits an owner of employee housing, consisting of no more than 36 beds in a group quarters or 12 units or spaces designed for single family or household, to be deemed an agricultural land use and does not require a conditional use permit, zoning ordinance, or other zoning ordinance. Agricultural employees may occupy the employee housing if they do not work on the property where the employee housing is located (Health and Safety Code Section 17021.6);
 - c) Establishes that local use zone requirements are specifically and entirely reserved to the local jurisdictions, and requires employee housing to comply with the California Environmental Quality Act (CEQA) (Health and Safety Code Section 17021); and
 - d) Established HCD as the enforcement agency over employee housing, including overseeing its operations (Health and Safety Code Sections 17050 through 17056).
- 3) Establishes multiple programs able to fund farmworker housing and enumerates eligible activities for which financial assistance may be obtained and administrative procedures, including:

- a) the California Community Services Block Grant Program (Government Code Sections 12725 through 12790);
- b) Treasury the Building Homes and Jobs Trust Fund (Health and Safety Code Section 50470);
- c) The Joe Serna, Jr. Farmworker Grant Housing Program (Health and Safety Code Section 50517.10); and
- d) Special Housing Program for Migratory Workers (Health and Safety Code Sections 50710 through 50717).

FISCAL EFFECT: Unknown

COMMENTS:

Purpose of the Bill: According to the author, “California’s Housing Crisis is felt deeply among farmworkers, who overwhelmingly live in overcrowded housing conditions and pay rents that far exceed 30 percent of their income. AB 1783 creates a streamlined process in which farm owners and operators can dedicate agricultural land to quality employee housing, and it phases out state support of the federal H-2A program. These types of programs - such as the Bracero programs which aimed to secure a temporary agricultural workforce - have historically limited farmworker rights and been criticized for abuse.”

Background: California is the largest producer of agricultural goods in the country and one of the largest agricultural producing regions in the world. The state has between an estimated 400,000 and 800,000 farmworkers. According to HCD’s “California’s Housing Future: Challenges and Opportunities” document (February 2018), farmworkers face a number of economic challenges compared to California’s population as a whole. On average, farmworker incomes are less than half of the area median household income. As a result, farmworkers also bear a heavy housing cost burden based upon median rents. This report cites a number of trends that affect the demand for farmworker housing. This includes a decrease in the number of single farmworkers (from 59% in 1990 to 25% in 2012) and fewer farmworkers migrating from farm to farm on an annual basis (from 43% in 1990 to 16% in 2012). The report concludes that these shifting demographics have implications for the types of housing needed for farmworkers, including greater need for affordable housing, greater need for permanent housing, and greater need for family-friendly housing.

Streamlining the Approval Process: AB 1783 emulates the process to expedite and increase the certainty of housing approval created in SB 35 (Wiener, 2017), but for farmworkers instead of infill housing. The bill establishes a streamlined, ministerial process for approval of qualifying housing projects. To qualify, projects must meet a range of requirements, including that:

- The land is zoned for agricultural uses;
- The land is not located in environmentally unsafe or sensitive areas, including a coastal zone, wetlands, a high or very fire severity zone, a hazardous waste site, an earthquake fault zone, a flood plain or floodway, lands identified for conservation in an adopted natural community conservation plan, and lands under conservation easement;
- The housing is not dormitory style housing;

- The housing is maintained and operated by a qualified affordable housing organization, as certified by HCD. Such organizations include non-profits and public agencies with prior experience and current capacity to capably maintain and operate the housing. Except for local public housing agencies with elected legislative bodies, to be qualified the applicant does not have a member among its officers or directorate with a financial interest in an agricultural employer or a farm labor contractor;
- The housing must be affordable and for agricultural employees for at least 55 years; and
- The housing is eligible for state funding.

Local jurisdictions must determine the whether projects are qualified under this process within 60 to 90 days, depending on the size of the project. Qualified projects must be approved ministerially, using only objective standards, within 90 to 180 days of submission (depending on the project size).

The bill specifies that approved agricultural employee housing utilizing this streamlined, ministerial process shall not be subject to density limits otherwise applied to employee housing, but does not specify what density limits apply. The bill also establishes the enforcement protocol for agricultural employee housing, including that:

- Landowners that utilize the streamlined, ministerial entitlement process but fail to meet the ongoing requirements may be subject to administrative penalties;
- Landowners are required to find a replacement qualified affordable housing organization within 90 days if the existing one's permit expires or they are unwilling or unable to continue maintaining and operating the agricultural employee housing; and
- HCD is the enforcement agency.

The bill states that qualifying projects must be affordable, but does not state the terms of affordability. This could lead to challenges in implementation of the bill. As such, the Committee may wish to consider inclusion of terms of affordability. The terms included could specify the eligible households as low-income households, as defined as those making up to 80 percent of the area median income. The terms could also specify the affordable housing cost, which is typically 30 percent of the median income for the income bracket of the household.

The H-2A Visa Program: The H-2A Visa program is a federal program allows U.S. employers or U.S. agents who meet specific regulatory requirements to bring foreign nationals to the United States to fill temporary agricultural jobs. Petitioners requesting to utilize this program must demonstrate that there are not enough U.S. workers who are able, willing, qualified, and available to do the temporary work. They must also show that employing H-2A workers will not adversely affect the wages and working conditions of similarly employed U.S. workers. Importantly for this bill, employers must provide clean and safe housing to H-2A workers *at no charge to the employee*. Employees are responsible for their food costs, but employers must provide a place for workers to prepare their meals. An employer must arrange for a worker's transportation from the originating country to the place of employment or reimburse the worker for transportation costs.

Since its introduction in 1986, the H-2A program has grown steadily in size. Per the U.S. Department of Labor, in 2000 there were approximately 30,000 visa-holders, in 2010 there were approximately 55,000, and in 2016 there were over 134,000 (including 11,000 in California). This represents about 4-7% of farmworkers nationwide, and 2-3% in California. According to

the Economic Policy Institute, this increase is because “(m)ost crop workers are unauthorized, and farmers are turning to H-2A guestworkers as unauthorized migration from Mexico to the United States slows, to replace current workers who leave agriculture to find non-farm jobs.”

The H-2A program is not uncontroversial. Farmers convey that the additional costs for housing and transportation without reduction in wages are limiting factors on their use of the program. However, they cite its practical necessity in the face of a diminishing labor supply and the inability of Congress to pass immigration reform that meets the well-documented needs of the nation’s food producers. Opponents point to the fact that H-2A visa ties the worker to the employer. They cite power imbalance as enabling substantial abuses, including lack of access to legal resources, wage theft, poor housing, denial of medical benefits for on-the-job injuries, and withholding of documents.

As stated above, current federal law requires employers utilizing the H-2A program to provide clean and safe housing to H-2A workers. This housing must be provided at no charge to the employee. This bill does not preclude utilization of the H-2A program or the development of housing for H-2A visa-holders. However, it does make such housing ineligible for state funding for its planning, development, or operation of such housing. At this time, data is not available on how much state money has been spent, if any, on funding housing for H-2A workers.

The bill requires that housing projects for H-2A workers that receive funding from the state after January 1, 2020 must reimburse that money to the state. For most of the funding programs cited in the bill, this reimbursement is not necessary if there was a contract or other enforceable agreement entered into by the applicant and the state prior to that date. However, the bill does not include this waiver for two of the programs, the Community Service Block Grants and the Building Homes and Jobs Trust Fund. The Committee may wish to consider amendments that honor existing contracts and agreements by extending the reimbursement waiver to the Community Service Block Grants and the Building Homes and Jobs Trust Fund.

Arguments in Support: According to supporters, “the state’s housing shortage isn’t just an urban problem – it affects rural areas, particularly those that depend on agriculture. This bill would solve the problem of community opposition, which can be a proxy for expressions of racism, by providing a streamlined process by which land could be used to house farmworkers. It provides affordable housing developers with the ability to build subsidized farmworker housing on land that otherwise would be unproductive. The bill does not allow participants of the H-2A federal visa program to benefit from the bill. It makes sense to remove state subsidy for participating in the program, redirecting it to other rural uses that will likely yield much more beneficial outcomes.”

Arguments in Opposition: According to the Western Growers Association, “AB 1783 would not help mitigate the farmworker housing crisis and in fact would make it worse. The bill creates a new ministerial permitting process for farmworker housing located on agricultural land. However, the ministerial permit would not be available unless the farmer turns operation of their housing over to a third party (qualified affordable housing organization). Few farmers would be willing to do this as they would remain responsible for the housing and any liability claims associated with its operation. We are also very concerned about language in the bill that would prohibit state funding for the planning, development, and operation of housing that would be utilized for H-2A employees.”

Committee Amendments: To address the issues raised above, the Committee may wish to consider the following amendments:

- Extend the reimbursement waiver to the Community Service Block Grants and the Building Homes and Jobs Trust Fund for funds received after January 1, 2020 but were contractually agreed to before that date.
- Include terms of affordability for qualified housing as being eligible households to low-income households, as defined in Health and Safety Code Section 50079.5 as those making up to 80 percent of the area median income, and as specifying the affordable housing cost per Health and Safety Code Section 50052.5, which is typically 30 percent of the median income for the income bracket of the household.

Related Legislation:

SB 35 (Wiener), Chapter 366, Statutes of 2017: This bill requires in jurisdictions that have not met their Regional Housing Needs Assessment to allow for a ministerial, streamlined process for infill housing approvals.

SB 829 (Wiener and Vidak), 2018: This bill would have expanded the Employee Housing Act, which permits ministerial, by-right approvals to agricultural employee housing that is owned and maintained by a qualified housing organization. Would have extended tenant protections to agricultural employee housing. This bill passed out of Senate Transportation and Housing Committee but was later amended to deal with issues related to cannabis.

SB 530 (Vidak), 2017: This bill would have required agricultural worker housing to be deemed an agricultural land use for purposes of the general plan and prohibited a locality from requiring a conditional use permit or other discretionary permit, except that the locality may apply height and setback requirements. This bill was never heard in committee.

Double referred: This bill was also referred to the Assembly Committee on Local Government where it will be heard should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

United Farm Workers (sponsor)
California YIMBY
Center for Farmworker Families
City of Morgan Hill
City of Salinas
City of Soledad
Community Housing Improvement Systems and Planning Association

Opposition

American Pistachio Growers
California Association of Nurseries and Garden Centers
California Association of Winegrape Growers

California Cherry Growers and Industry Association
California Cut Flower Commission
California Pear Growers
California Strawberry Commission
Family Winemakers of California
Western Growers Association

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