

Date of Hearing: April 24, 2019

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 1783 (Robert Rivas) – As Amended April 4, 2019

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

SUMMARY: Establishes a streamlined, ministerial process for agricultural employee housing development projects that meet specified requirements. 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) Allows a development proponent to submit an application for a development that is subject to a streamlined, ministerial approval process, as provided in 3), below, and is not subject to a conditional use permit if all of the following requirements are met:
 - a) The development is located on land zoned for agricultural uses;
 - b) The development is not located on a site that is a coastal zone, wetlands, within a high or very high fire hazard severity zone, a hazardous waste site, within a delineated earthquake fault zone, within a flood plain, within a floodway, lands identified for conversation in an adopted natural community conservation plan, or, lands under a conservation easement, as specified;
 - c) The development is an agricultural employee housing development that specifies both of the following:
 - i) The agricultural employee housing does not contain dormitory style housing; and,
 - ii) Except as otherwise provided below, the agricultural employee housing will be maintained and operated by a qualified affordable housing organization that has been certified pursuant to Section 17030.10 and that has been issued a permit pursuant to Section 17030. Requires the development proponent to submit proof of issuance of the qualified affordable housing organization’s permit; and,
 - (1) Provides, in the case of agricultural employee housing that is maintained and operated by a local public housing agency or a multicounty, state, or multistate agency that has been certified as a qualified affordable housing organization as required, that agency may either directly maintain and operate the agricultural employee housing or contract with another qualified affordable housing organization that has been certified pursuant to Section 17030.10 and that has been issued a permit pursuant to Section 17030 to maintain and operate the agricultural employee housing;
 - d) The qualified affordable housing organization and the landowner shall obligate themselves and any successor in interest to maintain the affordability of the proposed agricultural employee housing for not less than 55 years. Defines affordability to mean

that agricultural housing is made available at an affordable housing cost to lower-income households, as defined;

- e) The agricultural employee housing is not ineligible for state funding, as provided.
- 3) Requires, if a local government determines that a development does not meet any of the requirements in 2), above, the local government to provide the development proponent written documentation of which requirement or requirements the development does not satisfy and an explanation for the reason or reasons the development does not satisfy the requirement or requirements, as follows:
 - a) Within 60 days of submission of the development to the local government if the development contains 150 or fewer housing units; or,
 - b) Within 90 days of submission of the development to the local government if the development contains more than 150 housing units.
 - 4) Provides that if the local government fails to provide the required documentation in 3), above, that the development shall be deemed to satisfy the requirements of 2), above.
 - 5) Allows for the local government's planning commission or an equivalent board or commission responsible for review and approval of development projects, or the city council or board of supervisors, as appropriate, to conduct a design review or public oversight of the development. Requires the design review or public oversight to be completed as follows and shall not in any way inhibit, chill, or preclude the ministerial approval process, as applicable:
 - a) Within 90 days of submission of the development to the local government if the development contains 150 or fewer housing units; or,
 - b) Within 180 days of submission of the development to the local government if the development contains more than 150 housing units.
 - 6) Applies the streamlining provisions contained above in 2) through 5), inclusive, to charter cities.
 - 7) Defines the following terms:
 - a) "Employer" to mean a person who has petitioned, or will petition, to import an H-2A worker pursuant to Section 1188 of Title 8 of the United States Code to work on the employer's agricultural land;
 - b) "H-2A worker" means a non-immigrant alien as described in Section 1101 (a)(15)(H)(ii)(a) of Title 8 of the United States Code employed to work for an employer.
 - c) "State funding" 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, but does not include any allocation to federal or state low-income housing tax credits, as specified.

- 8) Prohibits state funding from being provided for the purposes of planning, developing, or operating any housing used to comply with the requirements under Section 1188(c)(4) of Title 8 of the United States Code to furnish housing to H-2A workers.
- 9) Requires any employer or other recipient of state funding who utilizes state funding for the purposes specified in 8), above, to 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. Specifies that this shall not apply to any contract or enforceable agreement pursuant to which the state or a state agency provides state funding that was entered into prior to January 1, 2020.
- 10) Applies these requirements on state funding above in 8), and 9), to the Community Services Block Grants, Building Homes and Jobs Trust Fund, Joe Serna, Jr. Farmworker Housing Grant Program, and other programs for migratory workers.
- 11) Provides that a tenant residing in agricultural employee housing has all rights applicable to a person residing in employee housing, including 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; any protections for tenants or lessees under the Civil Code or the Labor Code; and, any protection or right under the Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations Act of 1975.
- 12) Requires the Department of Housing and Community Development (HCD) to be the enforcement agency for agricultural employee housing. Requires HCD to establish an application and review process for certifying that a person is an affordable housing organization qualified to operate agricultural employee housing, as specified. Requires HCD to establish and maintain a roster of all affordable housing organizations.
- 13) Adds streamlining of agricultural employee housing development approvals to existing law specifying the reforms and incentives the Legislature has adopted to facilitate and expedite the construction of affordable housing.

EXISTING LAW:

- 1) Establishes, pursuant to SB 35 (Wiener), Chapter 366, Statutes of 2017, a streamlined, ministerial approval process for infill developments in localities that have failed to meet their regional housing needs assessment (RHNA) numbers.
- 2) Defines “agricultural employee” as one engaged in agriculture. The term “agriculture” includes farming in all its branches.
- 3) Establishes the Employee Housing Act 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;
- 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;
 - 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); and,
 - d) Establishes HCD as the enforcement agency over employee housing, including overseeing its operations.
- 4) 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;
 - b) The Building Homes and Jobs Trust Fund;
 - c) The Joe Serna, Jr. Farmworker Grant Housing Program; and,
 - d) Special Housing Program for Migratory Workers.

FISCAL EFFECT: This bill is keyed fiscal and contains a state-mandated local program.

COMMENTS:

- 1) **The H-2A Visa Program.** The H-2A Visa program is a federal program that 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.

- 2) **Bill Summary.** AB 1783 is modelled after the process to expedite and increase the certainty of housing approval created in SB 35 (Wiener), Chapter 366, Statutes of 2017, but for farmworker housing instead of infill housing. The bill establishes a streamlined, ministerial process for approval of qualifying agricultural employee housing projects. To qualify, projects must meet be on land zoned for agricultural uses and cannot be located in environmentally unsafe or sensitive areas, including a coastal zone, wetlands, a high or very high fire hazard 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 agricultural employee housing cannot be dormitory style housing, and must be 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. Additionally, the housing must be affordable and for agricultural employees for at least 55 years, the housing must be eligible for state funding. Cities and counties must determine whether requirements are met within 60 to 90 days, depending on the size of the project, and if so, the project is approved ministerially, within 90 to 180 days of submission, depending on project size. A city or county could impose design review, but under specified circumstances.

This bill additionally prohibits state funding from being provided for the purposes of planning, developing, or operating any housing used to comply with the requirements under federal law to furnish housing to H-2A workers, and requires any recipient of state funding who does so to reimburse the state or state agency. The bill applies these state funding requirements to Community Services Block Grants, Building Homes and Jobs Trust Fund,

Joe Serna, Jr. Farmworker Housing Grant Program, and other programs for migratory workers.

This bill is sponsored by United Farm Workers (UFW).

- 3) **Author's Statement.** According to the author, "The state's housing shortage isn't just an urban problem – it affects rural areas, particularly those that depend on agriculture. Many farms have surplus land that could be used to build safe and secure housing for farmworkers, but in order to do that the land first needs to be rezoned. Unfortunately, this rezoning is often blocked by communities that don't want housing for farmworkers which leads to farmworker housing stopgaps that are often substandard and unsafe.

"Without adequate permanent housing, farmworkers and their families are left with no choice but to sleep in their vehicles, illegally converted garages, and sometimes even the outdoors, living conditions that all can agree are not suitable under any circumstances.

"California's failure to provide decent and permanent affordable housing hurts our ability to attract workers to California's farms, and the federal H-2A push makes a bad situation even worse. AB 1783 creates a streamlined process in which farm owners and operators can dedicate agricultural land to a quality employee housing, and it phases out state support of the federal H-2A program."

- 4) **Technical Amendment.** Section 10 of the bill contains the ministerial streamlining language. In order to avoid confusion about what requirements an applicant for a development needs to meet, the Committee may wish to consider the following technical amendment to strike "any of," in the below language:

(b) (1) If a local government determines that a development submitted pursuant to this section does not meet ~~any of~~ the requirements specified in subdivision (a), the local government shall provide the development proponent

- 5) **Arguments in Support.** Supporters argue that the severe shortage of quality and affordable housing for farmworker families in rural agricultural areas cripples the ability to attract workers to California's farms. Supporters note that farms may have surplus land that could be used to build safe and secure housing for farmworkers, but this type of development can be stifled by nimbyism and zoning laws, and that this bill creates a new tool to develop quality and dignified housing that encourages family unity and provides housing and worker protections to safeguard against employer abuses.
- 6) **Arguments in Opposition.** Opponents have concerns with provisions in the bill that would require the operation of housing to be turned over to a qualified affordable housing organization, fearing that very few farmers would be willing to do this and would remain responsible for the housing and any liability claims associated. Opponents are also concerned with language in the bill that would prohibit state funding for planning, development, and operation of housing that would be utilized for H-2A employees and that this provision in the bill ignores the reality that farmers here and elsewhere are turning to the H-2A program in desperation.
- 7) **Double-Referral.** This bill was heard in the Housing and Community Development Committee on March 27, 2019, and passed with a 7-0 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

UFW [SPONSOR]
California YIMBY
California Coalition for Rural Housing
Center for Farmworker Families
Cindy Chavez, Supervisor, Santa Clara County
Cities of Hollister, Morgan Hill, San Juan Bautista, and Soledad
Community Housing Improvement Systems and Planning Association, Inc.
Council of San Benito County Governments
County of Santa Cruz
Dolores Huerta Foundation
Food Empowerment Project
Jim Gillio, Supervisor, San Benito County
Joe Gunter, Mayor, City of Salinas
Kathleen Rose, Superintendent/President, Gavilan College
Pueblo Unido
Santa Clara Valley Open Space Authority
Santa Cruz County Community Coalition to Overcome Racism
Santa Cruz Indivisible

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 Farm Bureau Federation (unless amended)
California Pear Growers
California Strawberry Commission
Family Winemakers of California
Western Growers Association

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