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**SENATE COMMITTEE ON HOUSING**  
**Senator Nancy Skinner, Chair**  
**2023 - 2024 Regular**

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**Bill No:** AB 3035 **Hearing Date:** 6/4/2024  
**Author:** Pellerin  
**Version:** 3/21/2024  
**Urgency:** No **Fiscal:** Yes  
**Consultant:** Max Ladow

**SUBJECT:** Agricultural employee housing: streamlined, ministerial approval: Counties of Santa Clara and Santa Cruz

**DIGEST:** This bill expands the existing streamlined, ministerial approval process for farmworker housing.

**ANALYSIS:**

*Existing law:*

- 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 established by AB 1783 (R. Rivas, Chapter 866, Statutes of 2019) 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, lands under conservation easement, and lands with specified groundwater levels; and
  - c) The development does not contain dormitory-style housing; and
  - d) The development consists of no more than 36 units or spaces designed for use by a single family or household.
- 3) Provides that a local government may subject an eligible agricultural employee housing development to specified written, objective development standards, as specified.

- 4) Requires the Department of Housing and Community Development (HCD) to establish an application and review process for qualifications for agricultural employee housing, as specified.
- 5) Requires HCD to establish and maintain a roster of all affordable housing organizations certified under 4) above.
- 6) Requires any landowner who fails to select an alternative certified person to operate and maintain the agricultural employee housing to be subject to an administrative penalty issued by HCD.
- 7) Requires that, if a certified person's permit expires or the certified person is otherwise unable or unwilling to continue to operate and maintain an agricultural employee housing approved ministerially by the provisions in this bill, the landowner who obtained that approval within 90 days shall select an alternative certified person to operate and maintain the agricultural employee housing.
- 8) Provides that a tenant residing in agricultural employee housing has all the rights applicable to a person residing in employee housing, as specified.
- 9) Establishes that the funding predevelopment of, developing, or operating of any housing for farmworkers holding federal H-2A visas shall be ineligible for state funding, including 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.
- 10) Provides that any employer or other recipient of state funding who utilizes the funds for housing for H-2A farmworkers shall reimburse the state or state agency that provided the funding.

**This bill:**

- 1) Allows, for the Counties of Santa Clara and Santa Cruz, the streamlined, ministerial approval process for farmworker housing established by AB 1783 (R. Rivas) to apply to agricultural housing developments that are 150 units or less, instead of 36 units or fewer, and within 15 miles of an area designated as farmland or grazing by the Department of Conservation.
- 2) Clarifies existing law provisions that H-2A farmworkers are not eligible to be housed in developments constructed using AB 1783.

**COMMENTS:**

- 1) *Author's statement.* "While Santa Cruz and Santa Clara Counties have a rich agricultural legacies, both counties currently face serious shortfalls of seasonal and long-term housing units designated for agricultural workers. This extreme housing insecurity will often leave agricultural workers with no choice but to live in substandard living conditions, including temporary shelters, motels, garages, and vehicles. To address the farmworker housing shortage, California enacted AB 1783 (Rivas, 2019), the Farm Worker Housing Act of 2019, which created ministerial standards for qualifying agricultural employee housing with up to 36 units that are operated by affordable housing organizations or public housing agencies. Currently these streamlining provisions are generally restricted to areas zoned for agriculture, which often lack access to cost-effective, safe, and reliable drinking water and wastewater services, as well as other municipal services and amenities including nearby access to commercial enterprises and civic institutions. To better facilitate the development of affordable housing for agricultural workers, AB 3035 establishes a pilot project in Santa Cruz and Santa Clara counties that allows streamlined development of agricultural worker housing in areas within 15 miles of an area designated as farmland, and that allows eligible housing projects to build more units per development."
- 2) *The H-2A Visa Program:* California has seen an influx in agricultural workers due to the increased use of a federal temporary worker program known as H-2A. Section 218 of the Immigration and Nationality Act authorizes the lawful admission into the United States of temporary, nonimmigrant workers (H-2A workers) to perform agricultural labor or services of a temporary or seasonal nature. H-2A workers and domestic workers in corresponding employment must be paid special pay rates based on locality, provided housing at no charge to the employee and transportation from that housing to the job site, and must be guaranteed an offer of employment for a total number of hours equal to at least 75% of the work period specified in the contract.

According to the U.S. Department of Agriculture, the U.S. Department of Labor (DOL) certified 317,000 jobs to be filled by H-2A workers in fiscal year 2021, up 495% from 64,000 in 2006. The H-2A program has grown fastest in two states, one of which is California. In California, the number of jobs certified rose by 11,000 in from 2021 to 2022. This surge of H-2A workers has created a shortage of affordable housing in cities like Salinas, Watsonville, and elsewhere. Workers must live in crowded motels, mobile home parks, apartment buildings, and single family homes, which displaces other low-wage

workers who live year-round in these regions. Demographically, H-2A workers tend to be younger, single men and by the nature of their work visa, require temporary housing. On the other hand, in Salinas, for example, data shows that among non-H-2A workers, 75% are married living with children that require permanent housing.

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. Farmworker Rights advocates point to the fact that the H-2A visa ties the worker to the employer. They cite this 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.

- 3) *AB 1783*. *AB 1783* (R. Rivas) 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 be on land zoned for agricultural uses and cannot be located in environmentally unsafe or sensitive areas. 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.

Additionally, the housing must be affordable and for agricultural employees for at least 55 years, and the housing must be eligible for state funding. Cities and counties must determine whether requirements are met within a specified time, depending on the size of the project, and if so, the project is approved ministerially, within the specified time of submission, depending on project size. A city or county could impose design review, but only under specified circumstances. *AB 1783* did 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. *AB 1783* required that housing projects for H-2A workers that receive funding from the state after January 1, 2020 must reimburse that money to the state.

4) *Modifications to AB 1783.* AB 1783 only applies to developments of 36 units or fewer. AB 1783 also requires that developers use state funding in conjunction with the streamlining, ministerial approval process allowed under the bill. State funding programs, like the Joe Serna Farmworker Housing Program, tend to fund larger projects, with more units. As a result, it has been difficult for developers to utilize the benefits of this bill with that funding program. This bill would allow developments up to 150 units, in Santa Clara and Santa Cruz counties, to use the streamlined ministerial approval process established under AB 1783.

AB 1783 also limits the application of the by-right to land zoned for primarily agricultural uses. According to the author, these areas lack access to drinking water and wastewater services, as well as other municipal services and amenities, including nearby access to commercial enterprises and civic institutions. This bill would allow AB 1783 streamlining to be used on sites within 15 miles of an area designated as farmland or grazing by the Department of Conservation.

5) *Double referral.* This bill was also referred to Local Government Committee.

**RELATED LEGISLATION:**

**AB 1783 (R. Rivas, Chapter 866, Statutes of 2019)** — established a streamlined, ministerial process for the development of agricultural housing.

**FISCAL EFFECT:** Appropriation: No    Fiscal Com.: Yes    Local: Yes

**POSITIONS:** (Communicated to the committee before noon on Wednesday, May 29, 2024.)

**SUPPORT:**

- County of Santa Clara (Sponsor)
- Councilmember Omar Torres, City of San Jose
- Councilmember Peter Ortiz, City of San Jose
- Councilmember Zach Hilton, City of Gilroy
- Supervisor Sylvia Arenas, County of Santa Clara
- California League of United Latin American Citizens
- California Primary Care Association Advocates
- City of Morgan Hill
- Community Agency for Resources, Advocacy and Services
- Farmworker Caravan

Latina Coalition of Silicon Valley  
The Salvador E. Alvarez Institute for Non-violence  
University of California Cooperative Extension

**OPPOSITION:**

None received.

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