

AMENDED IN ASSEMBLY MAY 5, 2008  
AMENDED IN ASSEMBLY APRIL 23, 2008  
AMENDED IN ASSEMBLY APRIL 21, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2097**

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**Introduced by Assembly Member Coto**

February 19, 2008

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An act to amend Section 33334.2 of the Health and Safety Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 2097, as amended, Coto. Low and Moderate Income Housing Fund: emergency shelters and supportive services.

The Community Redevelopment Law requires that not less than 20% of the tax-increment revenue allocated to a redevelopment agency be used to increase, improve, and preserve the supply of the community's low- and moderate-income housing within the territorial jurisdiction of the agency, and for this purpose, the funds are held in a separate Low and Moderate Income Housing Fund. The agency is authorized to exercise any or all of its powers for the construction, rehabilitation, or preservation of affordable housing for extremely low, very low, low, and moderate-income persons or families, including certain listed activities.

This bill would authorize ~~the~~ a redevelopment agency, *on or before January 1, 2014*, to ~~provide construction, operation, and maintenance funding from use not more than 5% of the funds in the Low and Moderate Income Housing Fund to emergency shelters and provide~~ supportive services to *certain low-income occupants of new permanent*

housing *who are eligible for assistance based on disability* ~~for those who are homeless or have special needs, or both.~~

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 33334.2 of the Health and Safety Code  
2 is amended to read:

3 33334.2. (a) Not less than 20 percent of all taxes that are  
4 allocated to the agency pursuant to Section 33670 shall be used  
5 by the agency for the purposes of increasing, improving, and  
6 preserving the community’s supply of low- and moderate-income  
7 housing available at affordable housing cost, as defined by Section  
8 50052.5, to persons and families of low or moderate income, as  
9 defined in Section 50093, lower income households, as defined  
10 by Section 50079.5, very low income households, as defined in  
11 Section 50105, and extremely low income households, as defined  
12 by Section 50106, that is occupied by these persons and families,  
13 unless one of the following findings is made annually by resolution:

14 (1) (A) That no need exists in the community to improve,  
15 increase, or preserve the supply of low- and moderate-income  
16 housing, including housing for very low income households in a  
17 manner that would benefit the project area and that this finding is  
18 consistent with the housing element of the community’s general  
19 plan required by Article 10.6 (commencing with Section 65580)  
20 of Chapter 3 of Division 1 of Title 7 of the Government Code,  
21 including its share of the regional housing needs of very low  
22 income households and persons and families of low or moderate  
23 income.

24 (B) This finding shall only be made if the housing element of  
25 the community’s general plan demonstrates that the community  
26 does not have a need to improve, increase, or preserve the supply  
27 of low- and moderate-income housing available at affordable  
28 housing cost to persons and families of low or moderate income  
29 and to very low income households. This finding shall only be  
30 made if it is consistent with the planning agency’s annual report  
31 to the legislative body on implementation of the housing element  
32 required by subdivision (b) of Section 65400 of the Government  
33 Code. No agency of a charter city shall make this finding unless

1 the planning agency submits the report pursuant to subdivision (b)  
2 of Section 65400 of the Government Code. This finding shall not  
3 take effect until the agency has complied with subdivision (b) of  
4 this section.

5 (2) (A) That some stated percentage less than 20 percent of the  
6 taxes that are allocated to the agency pursuant to Section 33670  
7 is sufficient to meet the housing needs of the community, including  
8 its share of the regional housing needs of persons and families of  
9 low- or moderate-income and very low income households, and  
10 that this finding is consistent with the housing element of the  
11 community's general plan required by Article 10.6 (commencing  
12 with Section 65580) of Chapter 3 of Division 1 of Title 7 of the  
13 Government Code.

14 (B) This finding shall only be made if the housing element of  
15 the community's general plan demonstrates that a percentage of  
16 less than 20 percent will be sufficient to meet the community's  
17 need to improve, increase, or preserve the supply of low- and  
18 moderate-income housing available at affordable housing cost to  
19 persons and families of low or moderate income and to very low  
20 income households. This finding shall only be made if it is  
21 consistent with the planning agency's annual report to the  
22 legislative body on implementation of the housing element required  
23 by subdivision (b) of Section 65400 of the Government Code. No  
24 agency of a charter city shall make this finding unless the planning  
25 agency submits the report pursuant to subdivision (b) of Section  
26 65400 of the Government Code. This finding shall not take effect  
27 until the agency has complied with subdivision (b) of this section.

28 (C) For purposes of making the findings specified in this  
29 paragraph and paragraph (1), the housing element of the general  
30 plan of a city, county, or city and county shall be current, and shall  
31 have been determined by the department pursuant to Section 65585  
32 to be in substantial compliance with Article 10.6 (commencing  
33 with Section 65580) of Chapter 3 of Division 1 of Title 7 of the  
34 Government Code.

35 (3) (A) That the community is making a substantial effort to  
36 meet its existing and projected housing needs, including its share  
37 of the regional housing needs, with respect to persons and families  
38 of low and moderate income, particularly very low income  
39 households, as identified in the housing element of the  
40 community's general plan required by Article 10.6 (commencing

1 with Section 65580) of Chapter 3 of Division 1 of Title 7 of the  
2 Government Code, and that this effort, consisting of direct financial  
3 contributions of local funds used to increase and improve the  
4 supply of housing affordable to, and occupied by, persons and  
5 families of low or moderate income and very low income  
6 households is equivalent in impact to the funds otherwise required  
7 to be set aside pursuant to this section. In addition to any other  
8 local funds, these direct financial contributions may include federal  
9 or state grants paid directly to a community and that the community  
10 has the discretion of using for the purposes for which moneys in  
11 the Low and Moderate Income Housing Fund may be used. The  
12 legislative body shall consider the need that can be reasonably  
13 foreseen because of displacement of persons and families of low  
14 or moderate income or very low income households from within,  
15 or adjacent to, the project area, because of increased employment  
16 opportunities, or because of any other direct or indirect result of  
17 implementation of the redevelopment plan. No finding under this  
18 subdivision may be made until the community has provided or  
19 ensured the availability of replacement dwelling units as defined  
20 in Section 33411.2 and until it has complied with Article 9  
21 (commencing with Section 33410).

22 (B) In making the determination that other financial  
23 contributions are equivalent in impact pursuant to this subdivision,  
24 the agency shall include only those financial contributions that are  
25 directly related to programs or activities authorized under  
26 subdivision (e).

27 (C) The authority for making the finding specified in this  
28 paragraph shall expire on June 30, 1993, except that the expiration  
29 shall not be deemed to impair contractual obligations to  
30 bondholders or private entities incurred prior to May 1, 1991, and  
31 made in reliance on the provisions of this paragraph. Agencies that  
32 make this finding after June 30, 1993, shall show evidence that  
33 the agency entered into the specific contractual obligation with  
34 the specific intention of making a finding under this paragraph in  
35 order to provide sufficient revenues to pay off the indebtedness.

36 (b) Within 10 days following the making of a finding under  
37 either paragraph (1) or (2) of subdivision (a), the agency shall send  
38 the Department of Housing and Community Development a copy  
39 of the finding, including the factual information supporting the  
40 finding and other factual information in the housing element that

1 demonstrates that either (1) the community does not need to  
2 increase, improve, or preserve the supply of housing for low- and  
3 moderate-income households, including very low income  
4 households, or (2) a percentage less than 20 percent will be  
5 sufficient to meet the community's need to improve, increase, and  
6 preserve the supply of housing for low- and moderate-income  
7 households, including very low income households. Within 10  
8 days following the making of a finding under paragraph (3) of  
9 subdivision (a), the agency shall send the Department of Housing  
10 and Community Development a copy of the finding, including the  
11 factual information supporting the finding that the community is  
12 making a substantial effort to meet its existing and projected  
13 housing needs. Agencies that make this finding after June 30, 1993,  
14 shall also submit evidence to the department of its contractual  
15 obligations with bondholders or private entities incurred prior to  
16 May 1, 1991, and made in reliance on this finding.

17 (c) In any litigation to challenge or attack a finding made under  
18 paragraph (1), (2), or (3) of subdivision (a), the burden shall be  
19 upon the agency to establish that the finding is supported by  
20 substantial evidence in light of the entire record before the agency.  
21 If an agency is determined by a court to have knowingly  
22 misrepresented any material facts regarding the community's share  
23 of its regional housing need for low- and moderate-income housing,  
24 including very low income households, or the community's  
25 production record in meeting its share of the regional housing need  
26 pursuant to the report required by subdivision (b) of Section 65400  
27 of the Government Code, the agency shall be liable for all court  
28 costs and plaintiff's attorney's fees, and shall be required to allocate  
29 not less than 25 percent of the agency's tax increment revenues to  
30 its Low and Moderate Income Housing Fund in each year  
31 thereafter.

32 (d) Nothing in this section shall be construed as relieving any  
33 other public entity or entity with the power of eminent domain of  
34 any legal obligations for replacement or relocation housing arising  
35 out of its activities.

36 (e) In carrying out the purposes of this section, the agency may  
37 exercise any or all of its powers for the construction, rehabilitation,  
38 or preservation of affordable housing for extremely low, very low,  
39 low- and moderate-income persons or families, including the  
40 following:

- 1 (1) Acquire real property or building sites subject to Section  
2 33334.16.
- 3 (2) (A) Improve real property or building sites with onsite or  
4 offsite improvements, but only if both (i) the improvements are  
5 part of the new construction or rehabilitation of affordable housing  
6 units for low- or moderate-income persons that are directly  
7 benefited by the improvements, and are a reasonable and  
8 fundamental component of the housing units, and (ii) the agency  
9 requires that the units remain available at affordable housing cost  
10 to, and occupied by, persons and families of extremely low, very  
11 low, low, or moderate income for the same time period and in the  
12 same manner as provided in subdivision (c) and paragraph (2) of  
13 subdivision (f) of Section 33334.3.
- 14 (B) If the newly constructed or rehabilitated housing units are  
15 part of a larger project and the agency improves or pays for onsite  
16 or offsite improvements pursuant to the authority in this  
17 subdivision, the agency shall pay only a portion of the total cost  
18 of the onsite or offsite improvement. The maximum percentage  
19 of the total cost of the improvement paid for by the agency shall  
20 be determined by dividing the number of housing units that are  
21 affordable to low- or moderate-income persons by the total number  
22 of housing units, if the project is a housing project, or by dividing  
23 the cost of the affordable housing units by the total cost of the  
24 project, if the project is not a housing project.
- 25 (3) Donate real property to private or public persons or entities.
- 26 (4) Finance insurance premiums pursuant to Section 33136.
- 27 (5) Construct buildings or structures.
- 28 (6) Acquire buildings or structures.
- 29 (7) Rehabilitate buildings or structures.
- 30 (8) Provide subsidies to, or for the benefit of, extremely low  
31 income households, as defined by Section 50106, very low income  
32 households, as defined by Section 50105, lower income  
33 households, as defined by Section 50079.5, or persons and families  
34 of low or moderate income, as defined by Section 50093, to the  
35 extent those households cannot obtain housing at affordable costs  
36 on the open market. Housing units available on the open market  
37 are those units developed without direct government subsidies.
- 38 (9) Develop plans, pay principal and interest on bonds, loans,  
39 advances, or other indebtedness, or pay financing or carrying  
40 charges.

1 (10) Maintain the community’s supply of mobilehomes.

2 (11) Preserve the availability to lower income households of  
3 affordable housing units in housing developments that are assisted  
4 or subsidized by public entities and that are threatened with  
5 imminent conversion to market rates.

6 (12) (A) ~~Notwithstanding~~ *On or before January 1, 2014, and*  
7 *notwithstanding* subdivision (d) of Section 33334.3, an agency  
8 may use not more than 5 percent of the taxes that are required to  
9 be used for increasing, improving, and preserving the community’s  
10 supply of low- and moderate-income housing under this section  
11 for supportive services, as defined in subparagraph (B), subject to  
12 all of the following requirements:

13 (i) The agency or a local jurisdiction including the agency has  
14 adopted a 10-year plan for ending chronic homelessness.

15 (ii) The supportive services are to be used solely for the benefit  
16 of occupants of new permanent units.

17 (iii) The new permanent units are to be occupied by persons or  
18 families with less than extremely low incomes, as defined by  
19 Section 50106.

20 (B) For purposes of this paragraph, “supportive services” means  
21 onsite or offsite services provided to a target population, as defined  
22 in subdivision (d) of Section 53260, that assist the occupant of the  
23 new permanent unit to retain that housing, improve his or her health  
24 status, and maximize his or her ability to live and, when possible,  
25 work in the community. These new permanent units may include  
26 apartments, single-room occupancy residences, or single-family  
27 homes.

28 (f) The agency may use these funds to meet, in whole or in part,  
29 the replacement housing provisions in Section 33413. However,  
30 nothing in this section shall be construed as limiting in any way  
31 the requirements of that section.

32 (g) (1) The agency may use these funds inside or outside the  
33 project area. The agency may only use these funds outside the  
34 project area upon a resolution of the agency and the legislative  
35 body that the use will be of benefit to the project. The  
36 determination by the agency and the legislative body shall be final  
37 and conclusive as to the issue of benefit to the project area. The  
38 Legislature finds and declares that the provision of replacement  
39 housing pursuant to Section 33413 is always of benefit to a project.  
40 Unless the legislative body finds, before the redevelopment plan

1 is adopted, that the provision of low- and moderate-income housing  
2 outside the project area will be of benefit to the project, the project  
3 area shall include property suitable for low- and moderate-income  
4 housing.

5 (2) (A) The Contra Costa County Redevelopment Agency may  
6 use these funds anywhere within the unincorporated territory, or  
7 within the incorporated limits of the City of Walnut Creek on sites  
8 contiguous to the Pleasant Hill BART Station Area Redevelopment  
9 Project area. The agency may only use these funds outside the  
10 project area upon a resolution of the agency and board of  
11 supervisors determining that the use will be of benefit to the project  
12 area. In addition, the agency may use these funds within the  
13 incorporated limits of the City of Walnut Creek only if the agency  
14 and the board of supervisors find all of the following:

15 (i) Both the County of Contra Costa and the City of Walnut  
16 Creek have adopted and are implementing complete and current  
17 housing elements of their general plans that the Department of  
18 Housing and Community Development has determined to be in  
19 compliance with the requirements of Article 10.6 (commencing  
20 with Section 65580) of Chapter 3 of Division 1 of Title 7 of the  
21 Government Code.

22 (ii) The development to be funded shall not result in any  
23 residential displacement from the site where the development is  
24 to be built.

25 (iii) The development to be funded shall not be constructed in  
26 an area that currently has more than 50 percent of its population  
27 comprised of racial minorities or low-income families.

28 (iv) The development to be funded shall allow construction of  
29 affordable housing closer to a rapid transit station than could be  
30 constructed in the unincorporated territory outside the Pleasant  
31 Hill BART Station Area Redevelopment Project.

32 (B) If the agency uses these funds within the incorporated limits  
33 of the City of Walnut Creek, all of the following requirements  
34 shall apply:

35 (i) The funds shall be used only for the acquisition of land for,  
36 and the design and construction of, the development of housing  
37 containing units affordable to, and occupied by, low- and  
38 moderate-income persons.

39 (ii) If less than all the units in the development are affordable  
40 to, and occupied by, low- or moderate-income persons, any agency

1 assistance shall not exceed the amount needed to make the housing  
2 affordable to, and occupied by, low- or moderate-income persons.

3 (iii) The units in the development that are affordable to, and  
4 occupied by, low- or moderate-income persons shall remain  
5 affordable for a period of at least 55 years.

6 (iv) The agency and the City of Walnut Creek shall determine,  
7 if applicable, whether Article XXXIV of the California Constitution  
8 permits the development.

9 (h) The Legislature finds and declares that expenditures or  
10 obligations incurred by the agency pursuant to this section shall  
11 constitute an indebtedness of the project.

12 (i) This section shall only apply to taxes allocated to a  
13 redevelopment agency for which a final redevelopment plan is  
14 adopted on or after January 1, 1977, or for any area that is added  
15 to a project by an amendment to a redevelopment plan, which  
16 amendment is adopted on or after the effective date of this section.  
17 An agency may, by resolution, elect to make all or part of the  
18 requirements of this section applicable to any redevelopment  
19 project for which a redevelopment plan was adopted prior to  
20 January 1, 1977, subject to any indebtedness incurred prior to the  
21 election.

22 (j) (1) (A) An action to compel compliance with the  
23 requirement of Section 33334.3 to deposit not less than 20 percent  
24 of all taxes that are allocated to the agency pursuant to Section  
25 33670 in the Low and Moderate Income Housing Fund shall be  
26 commenced within 10 years of the alleged violation. A cause of  
27 action for a violation accrues on the last day of the fiscal year in  
28 which the funds were required to be deposited in the Low and  
29 Moderate Income Housing Fund.

30 (B) An action to compel compliance with the requirement of  
31 this section or Section 33334.6 that money deposited in the Low  
32 and Moderate Income Housing Fund be used by the agency for  
33 purposes of increasing, improving, and preserving the community's  
34 supply of low- and moderate-income housing available at  
35 affordable housing cost shall be commenced within 10 years of  
36 the alleged violation. A cause of action for a violation accrues on  
37 the date of the actual expenditure of the funds.

38 (C) An agency found to have deposited less into the Low and  
39 Moderate Income Housing Fund than mandated by Section 33334.3  
40 or to have spent money from the Low and Moderate Income

1 Housing Fund for purposes other than increasing, improving, and  
2 preserving the community’s supply of low- and moderate-income  
3 housing, as mandated, by this section or Section 33334.6 shall  
4 repay the funds with interest in one lump sum pursuant to Section  
5 970.4 or 970.5 of the Government Code or may do either of the  
6 following:

7 (i) Petition the court under Section 970.6 for repayment in  
8 installments.

9 (ii) Repay the portion of the judgment due to the Low and  
10 Moderate Income Housing Fund in equal installments over a period  
11 of five years following the judgment.

12 (2) Repayment shall not be made from the funds required to be  
13 set aside or used for low- and moderate-income housing pursuant  
14 to this section.

15 (3) Notwithstanding clauses (i) and (ii) of subparagraph (C) of  
16 paragraph (1), all costs, including reasonable attorney’s fees if  
17 included in the judgment, are due and shall be paid upon entry of  
18 judgment or order.

19 (4) Except as otherwise provided in this subdivision, Chapter  
20 2 (commencing with Section 970) of Part 5 of Division 3.6 of Title  
21 1 of the Government Code for the enforcement of a judgment  
22 against a local public entity applies to a judgment against a local  
23 public entity that violates this section.

24 (5) This subdivision applies to actions filed on and after January  
25 1, 2006.

26 (6) The limitations period specified in subparagraphs (A) and  
27 (B) of paragraph (1) does not apply to a cause of action brought  
28 pursuant to Chapter 9 (commencing with Section 860) of Title 10  
29 of Part 2 of the Code of Civil Procedure.

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32 **CORRECTIONS:**

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