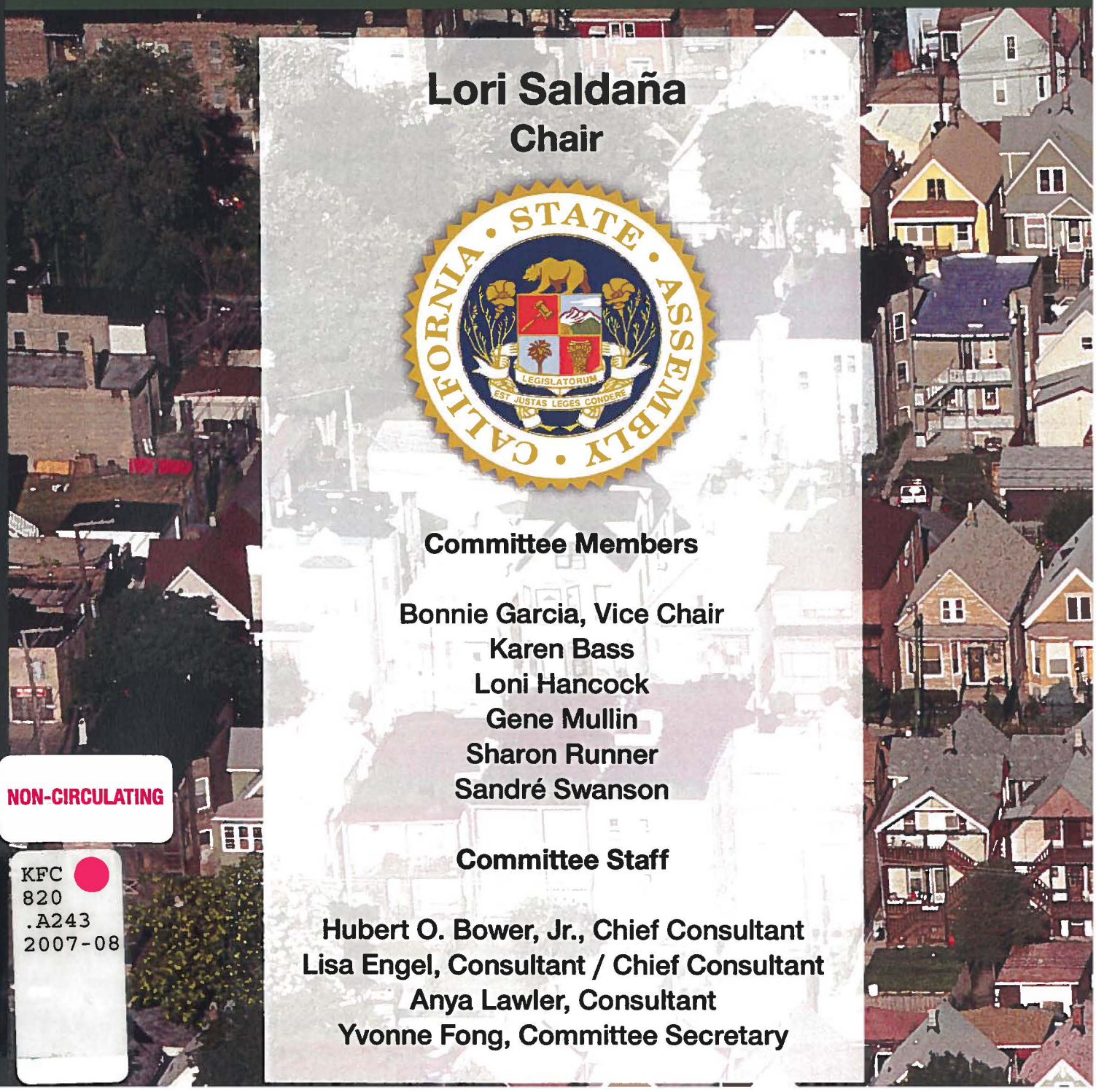
2008

Legislative Bill Summary 2007-08 Regular Session

Assembly Committee on Housing and Community Development

Assembly Committee on
Housing and Community Development

Legislative Bill Summary
2007-08 Regular Session



Lori Saldaña
Chair

Committee Members

Bonnie Garcia, Vice Chair
Karen Bass
Loni Hancock
Gene Mullin
Sharon Runner
Sandré Swanson

Committee Staff

Hubert O. Bower, Jr., Chief Consultant
Lisa Engel, Consultant / Chief Consultant
Anya Lawler, Consultant
Yvonne Fong, Committee Secretary

STATE CAPITOL
P.O. BOX 942849
SACRAMENTO, CA 94249-0103
(916) 319-2085

CHIEF CONSULTANT
HUBERT O. BOWER, JR.

CONSULTANT
LISA ENGEL

COMMITTEE SECRETARY
YVONNE FONG

California State Legislature

Assembly Committee on Housing & Community Development

Lori Saldaña, Chair
ASSEMBLYMEMBER, 76TH DISTRICT

November 2008

To All Interested Parties:

Government Code Section 65580 declares: *The availability of housing is of vital statewide importance, and the early attainment of decent housing and a suitable living environment for every Californian, including farm-workers, is a priority of the highest order.*

According to figures from the California Department of Housing and Community Development (HCD) Statewide Housing Plan, between 1997 and 2020 California will likely add more than 12.5 million new residents and should form approximately five million new households. In that same report HCD states that in order to meet projected demand, homebuilders and developers will have to build an average of 220,000 units per year. In 2007, 112,000 new homes and apartments were built, a reduction of 52,280 units from 2006.

During the 2007-08 Legislative Session, the Assembly Committee on Housing and Community Development heard a wide range of measures affecting housing and land use policy. Beginning in 2006 California's housing bubble burst, leading to a loss of equity for many homeowners and a jump in the number of foreclosures. Between 2006 and 2008 there were approximately 208,765 foreclosures statewide.

This session the Assembly Committee on Housing and Community Development worked on several bills to help local governments and the state address the flood of foreclosures. In addition the Committee worked on implementation language needed for programs created by Proposition 1C (the Emergency Housing and Shelter Act of 2006). The bond created several new programs including the Transit-Oriented Development Housing Program, Infill Infrastructure Grant Program and the Housing-Related Parks Program.

Affordable housing and debates over land use decisions continue to be significant challenges in California. The following is a summary of legislation reviewed by the Assembly Committee on Housing and Community Development during the 2007-08 Legislative Session. This document is intended as a source for preliminary information. For additional detail about this summary or other activities of the committee, please contact the committee staff at (916) 319-2085.

Respectfully,

Lori Saldaña

Lori Saldana, Chair
Assembly Committee on Housing and
Community Development

Building Standards

Developing building standards requires a balancing act between health and safety concerns and the costs of addressing those concerns. Developers insist that it is difficult to build affordable housing when regulations increase their construction costs: consumer groups, fire departments, and disabled advocates argue for safer, more energy-efficient, and more accessible buildings. The public policy struggle is in determining the proper balance between the two aforementioned concerns.

Building standards in California are based upon model codes, such as the Uniform Building Code and the Uniform Mechanical Code. Model codes are published and approved by groups of national and regional experts on structural, mechanical, electrical, plumbing, and fire safety standards.

California building standards are adopted through a process in which state agencies, using the model codes, propose additions or changes to the California Building Standards Code (also known as Title 24 of the California Administrative Code). The California Building Standards Commission then reviews, and adopts or rejects the proposed changes. An updated version of the code is published every three years. Local governments can modify the Code, but those modifications must be equal to or more stringent than the statewide standard.

The Code applies to all buildings and residential occupancies. Some structures, however, such as high-rise commercial buildings and private schools, are not subject to the Code and are governed by the model codes and local ordinances.

Although most building standards are created and adopted in the administrative process, bills are introduced each year that propose new building standards or amendments to existing building standards. These bills are drafted in response to natural disasters, requests by industries or proposals by consumer groups in reaction to perceived dangers relating to existing building standards.

Major legislation

AB 542 (Gaines), Chapter 55, Statutes of 2007:

- Increases the membership of the 20-person State Historical Building Safety Board (Board) to 21 by adding a representative of the Building Owners and Managers Association of California to the Board.

AB 715 (Laird), Chapter 499, Statutes of 2007:

- Phases in requirements that water closets and water-using urinals have lower flush volumes, requiring manufacturers to produce an increasing percentage of high-efficiency models until 2014 when all new water closets and urinals would have to meet the high-efficiency definition.

AB 864 (Davis), Vetoed (2007):

- Would have required a person or entity who acquired a property that was uninhabitable or otherwise found to be in substandard condition to provide the building code enforcement agency with specified information.

- Would have required that a plan for correction be submitted to the enforcement agency within 30 calendar days of the completion of transfer. Would have required delivery by personal service, facsimile, electronic mail, or U.S. mail.

  Governor Schwarzenegger's veto message: While I share the goals of this bill, the solution is targeted at the wrong party in these real estate transactions by placing the burden of compliance on the buyer, not the seller. The bill, in essence, makes the buyer responsible for the sins of the previous owner.

  In addition, the bill creates a compliance mechanism that is virtually unworkable and violates the privacy of perspective buyers. If enacted into law, this bill would most likely stymie the goal of restoring the habitability of these substandard dwellings by suppressing the sale of these properties to new owners who are willing to rehabilitate these buildings. The bill also contains drafting errors that make any attempt at compliance unfeasible.

  I urge the Legislature to consider legislation next year that more judiciously addresses the serious problem of bringing substandard buildings into compliance.

AB 1058 (Laird), Vetoed (2007):

- Would have required the Department of Housing and Community Development (HCD) and ultimately the Building Standards Commission (BSC) to adopt best practices and building standards for green building in new residential construction.

- Would have created the Green Building Standards Law for residential buildings.

- Would have required a state agency to submit to the BSC, on or before July 1, 2009 any green building standards that have previously been reviewed, approved or adopted by the BSC.

- Would have required HCD to develop, on or before July 1, 2009, green building standards, as defined, for residential occupancies and submit them to the BSC for review, adoption, approval and publication.

- Would have required BSC, on or before July 1, 2010, to publish approved green building standards.

- Would have required, on or before January 1, 2013, that California homes constructed under the California green building standards developed pursuant to this bill, be substantially equivalent to or exceed homes built under other recognized green building guidelines.

- Would have authorized the BSC to modify the proposed building standards as long as the modifications do not reduce the environmental benefits or efficiencies or public health protections that would have been achieved by the proposed standards.

Governor Schwarzenegger's veto message: I support the development of green building standards and share the goals of this bill. However, if implemented provisions in this bill would put the health and safety of Californians at risk by being in conflict with current safety standards. The national standards in this bill could require that wood support studs be placed twenty-four inches apart instead of the California seismic safety standard of sixteen inches, thus endangering the safety of the home. Additionally, the guidelines for planting vegetation for shade would violate California fire standards for the most dangerous areas by placing vegetation next to the house, not the 100 foot firebreak required by California law.

Additionally, building standards should not be statutory. The Building Standards Commission was created to ensure an open public adoption process allowing experts to develop standards and periodic updates to the building codes.

Allowing private entities, such as proposed in this bill, to dictate California's building standards usurps the state's authority to develop and adopt those standards and could compromise the health and safety of Californians. I encourage state agencies to review all nationally recognized programs and glean from those programs, standards that promote greener construction, energy and water conservation, and reduce Green House Emissions.

It is imperative to expedite the greening of California's building standards. As such, I am directing the California Building Standards Commission to work with specified state agencies on the adoption of green building standards for residential, commercial, and public building construction for the 2010 code adoption process.

AB 2925 (Davis) failed passage in the Senate Committee on Transportation and Housing:

- Would have required a person with an ownership interest in a property that was uninhabitable or otherwise found to be in substandard condition, after July 1, 2009, to provide the building code enforcement agency (enforcement agency) with specified information.

SB 1508 (Corbett) died in Assembly Committee on Appropriations:

- Would have required the Department of Housing and Community Development (HCD) to prepare guidelines and standards for the seismic strengthening of sill plates and cripple walls for light wood frame residential buildings, required the guidelines and standards to be prepared prior to January 1, 2010 in consultation with the Building Standards Commission, Division of the State Architect, the Contractors' State Licensing Board, the California Council of American Institute of Architects, and a variety of other organizations.

Common Interest Developments

"Subordination of individual property rights to the collective judgment of the owners' association, together with restrictions on the use of real property, comprise the chief attributes of owning property in a common interest development."

California Supreme Court, September 2, 1994
Nahrstedt v. Lakeside Village Condominium Association

A common interest development (CID) combines a separate interest in the ownership of a unit with a combined interest in the ownership of the common area. The owners of the separate interests are members of a homeowners association (HOA) created for the purpose of managing the CID. The members of the HOA elect a board of directors who are responsible for governing the community. Many CIDs employ a community manager who oversees the day-to-day management and operation of the CID at the direction of the board of directors. There are approximately 4 million CID dwellings in the state representing one quarter of the state's housing stock. In the 1990s, 60% of new housing construction was CIDs, 40% of which were new single-family homes in planned developments.

Under California law, the Davis-Stirling Act (Act) governs CIDs including community apartment projects, condominium projects, planned developments, and stock cooperatives. The Act provides for association voting requirements, access to records, levying of assessments, conduct of meetings, and liability of officers and directors. Each CID also has a set of Covenants, Codes and Restrictions (CC&R) which are specific to the community and describe the rights and obligations of the homeowners association and individual owners.

The Department of Real Estate is the governmental entity responsible for approving, with limited exceptions, the public report required before a CID can be established. It is estimated that there are over 41,000 CIDs in the state.

In 1999, the Legislature authorized the California Law Revision Commission (CLRC) to undertake a multi-year investigation of CIDs. CLRC, created in 1953, is responsible for the continuing substantive review of California statutory and decisional law. CLRC is responsible for studying common interest development law to set a clear, consistent, and unified policy with regard to the formation and management of CIDs. Specifically CLRC is working to clarify the law and eliminate unnecessary or obsolete provisions, consolidate existing statutes in one place in the codes, and determine to what extent CIDs should be subject to regulation.

The most important legislative issues surrounding CIDs continue to be:

- Disclosure of information to a prospective buyer of a unit located in a CID, especially about the status of reserve funding, potential for increases in assessments and other financial matters relating to the maintenance of the property.

- Ongoing disclosure to homeowners about increases in assessments that affect homeowners, issues relating to any construction defects, and litigation arising out of defects.

- The rights and privileges of individual homeowners within a CID when they conflict with the association's rules or covenants, conditions, and restrictions (CC&R).
- The challenges volunteer board members face in interpreting and enforcing the complex laws governing CIDs fairly and accurately.

Major legislation

AB 567 (Saldaña), Vetoed (2008):

- Would have established the Office of the Common Interest Development Bureau (Bureau) as a pilot project within the Department of Consumer Affairs (DCA) to provide education, dispute resolution, and collect data about the most common types of disputes that occur in common interest developments (CIDs).

- Would have required the Bureau to offer training materials and courses to CID directors, officers and owners regarding the operation of a CID and the rights and duties of an association owner. Would have provided a fee may be charged for training materials or courses that do not exceed the actual cost.

- Would have required the Bureau to maintain a toll-free number and an Internet Web site.

- Would have required a homeowners association (HOA) to provide its members with annual written notice of the Web site address and toll free number of the Bureau.

- Would have required the Bureau to report annually to the Legislature no later than October 1 of each year on the following:

  a) Number of requests for assistance received;
  b) How a request either was or was not resolved and staff time required to resolve the inquiry; and,
  c) Analysis of the most common and serious types of disputes and any recommendations for statutory reform.

- Would have required the Bureau to submit on or before January 1, 2012, recommendations to the Legislature on the scope of the Bureau specifically on the following issues:

  a) Whether or not the Bureau should have authority to oversee association elections;
  b) Whether or not the provisions requiring a new association director or managing agent certify they have read the governing documents should be revised; and
  c) Whether or not the Bureau should have authority to enforce laws governing CIDs.

- Would have required an HOA to pay the Bureau a biennial fee to the Secretary of State (SOS) every two years in the amount of $10 for each separate interest within the CID.

- Would have provided a sunset provision of January 1, 2014.

Governor Schwarzenegger's veto message: This bill seeks to regulate common interest development associations by establishing a Common Interest Development Bureau within the Department of Consumer Affairs and impose a $10 per unit biennial fee on such associations to fund the bureau's operations.
Creating another layer of government bureaucracy is costly and unnecessary. Numerous bills have been signed into law in the past few years to address the various problems cited by the author. There is little or no evidence that these measures have proven ineffective in addressing the current situation. Today, several other government agencies are handling issues raised with these associations. As such, I can see no reason to create an entirely new state entity at this time.

AB 763 (Saldaña), Chapter 612, Statutes of 2007:

- Creates new tenant notification requirements that must be fulfilled prior to the approval of a final subdivision map for the conversion of residential rental property into condominiums, and makes other related changes to the Subdivision Map Act.

- Requires a subdivider to provide tenants with written notice within five days after receipt of a subdivision public report that they have an exclusive right to contract for the purchase of rental units for at least 90 days after issuance of the subdivision public report.

AB 952 (Mullin) as introduced:

- Would have required a majority of owners representing units required to be offered as low- or moderate-income to vote to approve a special or a regular assessment that is more than 3% greater than the assessment imposed on units the preceding fiscal year.

  As amended August 22, 2008 (Vetoed):

  - Would have required the board of directors of a homeowner association (HOA) in a common interest development (CID) to provide an owner who is delinquent in paying his/her assessments a payment plan if there was an established need for a plan.

  - Would have provided that if an owner of a separate interest in a CID requests a payment plan from the HOA within 60 days of receiving a notice of debt then the HOA must meet with the owner and discuss the reasons why a payment plan was needed.

  - Would have permitted the owner to provided documentation of the need for a payment plan if he/she chooses.

  - Would have provided that if the documentation establishes a need for a payment plan then the board of directors must provide the owner with a payment plan within 45 days.

  - Would have required the payment plan to be reasonably consistent with the owner's ability to make payments.

  - Would have required the payment plan to be in writing and signed by the owner and would have allowed the HOA to restrict the payment plan to no more than three years.

  - Would have required lien enforcement procedures to be suspended for the duration of the payment plan provided that the payments are being made.

  - Would have allowed a HOA to charge reasonable fees for the administration of payment plan.

  Governor Schwarzenegger's veto message: This bill would require the board of directors of a homeowner association (HOA) in a common interest development (CID) to provide a payment plan to an owner who is delinquent in paying his or her assessments, if the homeowner can establish a need for working out a payment plan.

This measure will likely be impractical and burdensome for HOAs to actually implement. HOAs enjoy substantial authority in the governing rules that are granted by a vote of the homeowners and can be altered by such a vote. It is more appropriate for each HOA to recognize the unique needs of their homeowners in resolving these issues than passing a one size fits all statewide solution.

AB 1892 (Smyth), Chapter 40, Statutes of 2008:

- Clarifies that any provision of the governing documents of a common interest development that prohibits or restricts the installation or use of a solar energy system is considered void and unenforceable.

AB 1921 (Saldaña) died in the Senate Committee on Transportation and Housing:

- Would have revised and recasted the Davis-Stirling Common Interest Development Act (Act) which governs common interest developments (CIDs).

- Would have added portions of the Corporations Code where there was significant overlap between the Corporations Code and the Act.

- Would have provided that where there are inconsistencies between the Act and the Corporations Code, the Act prevails.

- Would have made the changes operative on January 1, 2010.

AB 1955 (Plescia), Vetoed (2008):

- Would have prohibited a homeowners association (HOA) in a common interest development (CID) from levying assessments on separate interests based on the taxable value of the separate interest unless the declaration allowed for this practice on or before December 31, 2008.

- Would have added an urgency clause, allowing this bill to take effect immediately upon enactment.

Governor Schwarzenegger's veto message: The historic delay in passing the 2008-2009 State Budget has forced me to prioritize the bills sent to my desk at the end of the year's legislative session. Given the delay, I am only signing bills that are the highest priority for California. This bill does not meet that standard and I cannot sign it at this time.

AB 2180 (Lieu), Chapter 539, Statutes of 2008:

- Requires a homeowners association (HOA) in a common interest development (CID) to respond to a request from a member to install a solar energy system in his/her separate interest within 60 days from the date it is received then the application is deemed approved unless the delay is a result of a reasonable request for additional information.

AB 2259 (Mullin), Vetoed (2008):

- Would have provided that an owner of a separate interest in a common interest development (CID) was not subject to a provision in a governing document or a provision in an amendment to a governing document that prohibits the rental or leasing of their unit, unless that provision was effective prior to the date the owner acquired title.

- Would have applied only to provisions in the governing documents or amendments to the governing documents that become effective on or after January 1, 2009.

- Would have required an owner of a CID, prior to renting or leasing their separate interest, to provide the HOA with verification of the date the owner acquired title to the separate interest and the name and contact information of the prospective tenant or his/her representative.

- Would have provided that the provisions of this bill do not apply to a CID that was limited to industrial or commercial uses by zoning or by a declaration of covenants, conditions, and restrictions that has been recorded in the official records of each county in which the CID is located.

Governor Schwarzenegger's veto message: This bill would allow a homeowner in a common interest development (CID) to retain the right to rent or lease his or her unit, if the right existed at the time of ownership unless the owner relinquishes those rights in writing.

The supporters of this bill stress that the bill will protect the property rights of the owners of property within a CID governed by a home owner association (HOA) by preserving the conditions under which the property was purchased. This view stresses that these conditions are essentially a contract between the buyer and the HOA. However, the converse of this argument is that owners have their property rights limited when they are prevented from renting or leasing their property when they are restricted by this law and the subsequent actions taken by HOAs.

This bill alters the basic tenets under which CIDs and HOAs are formed and operated. While my support of property rights is unwavering, the CID creates a unique community model that is unlike the standard single family home in a traditional neighborhood. Property owners and residents that purchase and live in a CID governed by an HOA have agreed to live under a common set of rules and guidelines governed by a democratic process. It is best, as current law allows, for the owner-members of the HOA to determine what is best for their communities.

AB 2806 (Karnette), Vetoed (2008):

- Would have required common interest development (CID) board members and candidates for the board to disclose whether or not they have completed an educational course on the laws governing CIDs and any other relevant educational qualifications to the board of directors and for the board of directors to provide that information to the membership of the homeowners association (HOA).

- Would have required the board of directors to include the statement a candidate submits to the HOA regarding their educational experience in the ballot materials rather than a summary of the statement.

Governor Schwarzenegger's veto message: This bill would mandate that current homeowner association (HOA) board members and candidates running for a seat on a HOA board to provide information to the board indicating whether he or she has completed an educational course on the law

of common interest developments. The bill would also require the HOA to include this information in the ballot materials for the board member election along with any other relevant education or qualifications the candidate wishes to make known.

While it is important to know a candidate's credentials and qualifications to sit on a HOA board, existing law already allows for such, making this bill unnecessary. The Davis Stirling Act requires that any HOA board candidate be given access to a HOA's media, newsletters or internet web site during an election cycle to provide opinions relevant to the running of the HOA and information about his or her qualifications. This bill creates an unnecessary redundancy.

AB 2846 (Feuer), Chapter 502, Statutes of 2008:

- Provides that if a dispute exists between the owner of a separate interest and the association regarding any charge or sum owed to the association and the amount does not exceed the jurisdictional limits for small claims court, the owner may, in addition to pursuing dispute resolution, pay under protest the disputed amount and all other amounts levied, including any fees and reasonable costs of collection, reasonable attorney's fees, late charges, and interest, if any, and commence an action in small claims court.

- Provides that nothing in the section added by this bill shall impede an association's ability to collect delinquent assessments, as specified.

SB 528 (Aanestad), Chapter 250, Statutes of 2007:

- Prohibits the board of directors of a homeowners association (HOA) in a common interest development from discussing or taking action on an item at a non-emergency meeting of the HOA that was not properly noticed on the agenda.

- Requires notice of a meeting that is sent to members of a HOA to include the agenda.

- Specifies that a resident of an HOA who is not a member of the board may not be prevented from speaking on any issue that is not on the agenda.

Farmworker Housing

Affordable, safe, and sanitary housing is virtually nonexistent for the vast majority of California's farmworkers. When a migrant farmworker arrives in a rural agricultural town, he/she has few options: most of the existing housing is occupied; available units often consist of the most dilapidated units in the community; rents are high; and per-person charges are used to capitalize on "doubling up." If the migrant fails to arrive in town early enough to get a substandard unit, there are four choices available: double up in an occupied unit; pay rent to live in a shed, barn, garage, or backyard; live in a car; or try to obtain housing in a surrounding community and commute to work. Although there are a number of state operated farm labor camps and some employer provided housing, these programs address only a minimal portion of the total housing need.

Several reasons are commonly cited for the lack of farmworker housing. Housing advocates maintain that government has not spent enough money for farmworker housing. The agricultural industry maintains that housing is expensive to provide and investments are rarely recaptured because the housing is only used seasonally. Agricultural interests also contend that governmental regulations and community opposition make farmworker housing difficult to build and maintain. Moreover, the increasing use of farm labor contractors as intermediaries has increased the distance between growers and labor, which blunt workers' attempts to attain better working conditions and benefits directly from growers.

Two state programs address the lack of housing for farmworkers and their families in the state. The Office of Migrant Services (OMS) provides seasonal housing and services to migrant workers and their families and the Joe Serna, Jr. Farmworker Housing Grant Program (JSJFWHG) administers loans and grants to allow others to develop housing for year round residents. The United States Department of Agricultural/Rural Development (formerly the Farmers Home Administration) provides funding to build low- and moderate-income farmworker housing.

The state housing programs are:

1) **Office of Migrant Services (OMS)**: This program, administered by the Department of Housing and Community Development (HCD), operates 25 migrant centers in 15 counties, annually serving an estimated 9,500 migrant farmworkers and their families in 1,865 units.

   Thirty percent of the farmworkers come from California, 35 percent from Mexico, and the rest from Arizona, New Mexico, and Texas. The centers generally operate from April through November. Land is provided by the local jurisdiction. The state owns the buildings and equipment and operates the program, usually by contracting with a local housing authority for day-to-day management. The Fiscal Year 2006-07 Budget funded this program with $6,316,000 for operations and $2,250,000 for reconstruction of two daycare centers through the General Fund, and an additional $778,419 for repairs through the Housing Bond Act of 2002.

2) **Farmworker Housing Grant Program**: This HCD administered program offers up to 50 percent matching grants for the construction and rehabilitation of owner occupied and rental housing for low-income, year-round farmworkers. This program has assisted 9,200 units and an estimated 36,800 total farmworkers and their families since 1977. The Fiscal Year 2002-03 Budget provided $14 million for additional grants. This was the last year a General Fund appropriation was provided for this program. Funding was replaced with Proposition 46 funding in 2003-04. Housing and Emergency Shelter Trust Fund Act of 2002: Proposition 46 provided $200 million for farmworker housing from Fiscal Year 2003-04 through 2006-07. The funds have been fully awarded. Proposition 1C of 2006 provides $135 million. It is anticipated awards will begin in January 2007.

Major legislation

AB 762 (Nava) died in the Senate Inactive File:

- Would have made several changes to the Joe Serna, Jr. Farmworker Housing Grant Program, including changes to the requirements to receive loans, the requirement to receive a grant waiver for matching funds, and the migrant farmworker housing associated with the Emergency Shelter and Housing Trust Fund Act of 2002 (Proposition 46).

- Would have required an applicant, in order to be eligible to receive a loan, to reserve at least 10% of the assisted units for extremely low income agricultural workers, provide supportive services, and be located near or provide transportation to agricultural work areas.

- Would have provided that loan payments are required to at least cover project monitoring costs, which are limited for the first 30 years to 0.42% of the loan amount per year.

- Would have removed the requirement that grants or loans must be under $500,000 in order to request a waiver of the match requirement.

- Would have removed the limitation that only 5% of the moneys appropriated for the program can be used for projects in which the matching requirements are waived.

- Would have required waiver applicants to demonstrate an inability to secure financing from other sources.

- Would have (with respect to the migrant farmworker housing program) removed the language pertaining to Proposition 46. Instead it would have allowed the Department of Housing and Community Development to make available a portion of farmworker housing grant program funds, rather than just specified bond funds, to provide seasonal housing for migrant workers, subject to the same conditions that applied to the Proposition 46 program.

SB 1247 (Lowenthal), Chapter 521, Statutes of 2008:

- Consolidates the current $500,000 farmworker housing tax credit into the state low-income housing tax credit (LIHTC) as a $500,000 farmworker housing set-aside.

Homelessness

Homelessness is a problem in every major city in California, as well as in many rural areas. California's streets, malls, beaches, parks, and riverbanks are rife with people who for one reason or another do not have permanent places to live. The homeless problem stems from many sources including high housing costs, unemployment, alcoholism, drug addiction, reduced services for the mentally ill, reduced federal housing funds, as well as conversions of federally subsidized housing to market rates.

Despite the acknowledgment by many in government, the media, and the private sector of the problems of homelessness, there is neither agreement on how best to attack the problem nor significant public money with which to fight it. In large part, the battle against homelessness is being fought by church groups and other non-profit organizations with volunteers, donations, and a trickle of government funds.

Many cities have enacted stiff anti-camping and panhandling ordinances in response to outraged citizens and business owners who demand a "get-tough" approach to the problem.

Thirty seven percent of the homeless in California have families, 38% have problems with alcohol, 39% suffer from mental illness, and 26% have a drug problem.

The number of homeless people in California is difficult to estimate. Since a person can be homeless for days, weeks, months, or years, the homeless population is in constant fluctuation. However, according to the latest data from Housing California, California is meeting only a fraction of the need for emergency shelters. On any given night, there are approximately 185,000 homeless individuals and 105,000 homeless families. About one in six individuals and one in five families may have a bed.

To address the wide array of needs for the homeless, the state and federal government provide services to the homeless through a complicated array of agencies, departments, and programs which focus on either emergency shelter and services or narrowly-focused programs that address specific subgroups of the homeless population.

In the spring of 2002 the Governor created the Interagency Task Force on Homelessness to study and recommend solutions for integrating services provided by the numerous departments and agencies.

Federal and State Housing Programs

1) **Emergency Housing Assistance Program (EHAP):** Operated by the state Department of Housing and Community Development (HCD), EHAP provides grants to local service providers who offer temporary emergency shelter to the homeless. Grants may be used for the acquisition and renovation or expansion of existing facilities, general maintenance costs, and limited administrative expenses. The Budget Act of 2000 appropriated $35 million to EHAP. Proposition 46 approved by the voters in November 2002 provided $195 million to EHAP. Proposition 1C approved by the voters in November of 2006 provided $50 million to EHAP.

2) **Federal Emergency Shelter Grant Program (FESG):** FESG provides grants to local public agencies and nonprofit organizations in small communities that do not receive emergency shelter funds directly from HCD, to provide shelter and transitional housing for homeless individuals and families. FESG grants are used for facility conversion, rehabilitation, maintenance, operating costs, rent, and supportive services such as transportation, legal aid and counseling for the homeless.

Major legislation

SB 198 (Battin), Chapter 168, Statutes of 2007:

- Expands the definition of a "homeless youth" in order to allow an unemancipated minor who meets specified criteria to stay at emergency, transitional or permanent housing facilities.

- Defines a "homeless youth" as a person who is not older than 24 years of age and meets one of the following conditions: homeless or at risk of homelessness, no longer eligible for foster care or has run away from home.

- Declares it is the intent of the Legislature that housing made available for homeless unemancipated youth is consistent with the regulations regarding the housing, health and safety of homeless youth adopted by the Community Care Licensing Division of the State Department of Social Services.

- Declares this bill an urgency measure to take effect immediately.

Housing Finance

Affordability is the most significant housing problem confronting California's families, followed to a lesser extent by overcrowding and substandard quality. Affordability problems affect both renters and owners. Hit especially hard are and low- and moderate-income families. The state's affordability crisis has dramatic implications for the quality of life for millions of California households and, potentially, for the future performance of California's economy.

California has among the most expensive single-family and multi-family housing markets in the nation, and has extremely low vacancy rates in major urban areas. According to the Department of Finance, we need to build 220,000 housing units per year to keep pace with population growth. In 2005 California new housing production was slightly over 207,000 new units. 2006 is projected 175,000 new units. Over the last five years we have under produced, the result is a dramatic shortage which has caused unprecedented inflation in housing costs.

According to the "California Budget Project, Locked Out of 2008: The Housing Boom and Beyond"

- Renter and owner households across California struggle to meet their housing costs. Many pay significantly more than the recommended 30% of their income toward shelter. Low-income households, in particular, are struggling with housing costs, with many spending more than half of their incomes on housing.
- Rising rents are pricing many Californians out of the markets in which they have always lived. A Californian who earns the state's minimum wage of $8.00 per hour in 2008 would need to work 83 hours per week, year-round, in order to afford the statewide Fair Market Rent (FMR) of $868 per month for a studio unit. The gap between rents and incomes is even wider in some counties. For example a minimum-wage earner would need to work 100 hours per week the equivalent of 2.5 full-time, minimum-wage jobs in order to afford the studio FMR in San Francisco. In less expensive areas of the state, such as Kern and Shasta counties, a minimum wage earner would have to work more than 40 hours per week to afford the FMR for a studio unit.
- California has the second-lowest homeownership rate among US states. Fewer than six out of 10 California households owned their homes in 2006 - 8.9 percent below the nation as a whole. California's homeownership rate historically has lagged behind that of the US Homeownership rates vary significantly across different parts of the state. In Los Angeles and San Francisco fewer than half the households owned their own homes in 2006 while the share of households that owned their homes exceed the US homeownership rate in six counties: Contra Costa, El Dorado, Nevada, Placer, Riverside and Ventura.

Contributing factors to the housing shortage

- Housing production is inadequate.
- The 1986 Federal Tax Reform Act made investment in rental housing less profitable.
- Housing assistance both federal and state fails to meet California's needs.
- The fiscalization of land use discourages local governments from approving new housing developments.

The lack of decent, safe housing has serious repercussions for all Californians. Bay Area companies are unable to recruit new employees because housing simply is not available. Two-income families cannot find housing near their work sites, resulting in long commutes and latchkey children.

Government Housing Finance Programs

1) **Tax-exempt bond financing**: The California Housing Financing Agency (CalHFA) and local housing agencies provide low interest rate mortgage loans through the sale of tax-exempt revenue bonds. These mortgage loans are usually offered to eligible homebuyers through private mortgage brokers. The California Debt Limit Allocation Committee (CDLAC) allocates the tax-exempt bonds to state and local issuers.

2) **The Federal HOME Program**: The HOME Investment Partnership Act was authorized by the Cranston-Gonzalez National Affordable Housing Act (1989). HOME is a federal block grant program which provides funds to state and local governments which, in turn, make money available for the development or rehabilitation of owner-occupied and rental units, and the provision of first-time homebuyer and rent subsidy programs.

   The HOME Program is a unique program among the many programs administered by HCD. Under HOME, applicants may apply for funding for both individual projects and for programs comprising several different types of housing projects.

   Under the funding formula, some communities in California are eligible to receive direct allocations from the federal Department of Housing and Urban Development (HUD) while other communities must compete for the general state allocation. However, a community eligible to receive a direct allocation may transfer that allocation to the state and then compete for a portion of the state allocation. This transfer can be very beneficial to a community that has a solid housing program, but needs more money than it would receive under the direct allocation formula.

3) **Low Income Housing Tax Credits**: The Low Income Housing Tax Credit provides a credit against net tax for personal income, bank and corporation, and insurance gross premiums tax for costs related to qualified low-income housing developments. The credit is 30% of costs for the purchase of, or improvements to, low-income housing. The credit is claimed over a four-year period. The state's low-income housing tax credit parallels a similar credit in federal law.

   Taxpayers -- usually housing developers -- apply to the California Tax Credit Allocation Committee for an allocation of both the state and federal credits. The amount of tax credit allocated to a project is based on the amount needed to insure the financial feasibility of the project and a number of criteria that target projects in areas or types of housing where there is significant need. The amount of state credit available is limited to $70 million adjusted annually for inflation, plus any unallocated and returned balances from prior years. [See SB 73 (Dunn) Chapter 668, Statutes of 2001]

   The low income housing tax credit is unique among state tax provisions. The amount of credit available is capped and project sponsors must apply for an allocation of credits. In most cases, individual taxpayers receive tax credits as members of a limited partnership when the general partner is the project sponsor, and the limited partners receive credits based on their individual financial participation. Investors (i.e., the taxpayer ultimately claiming the credits) typically buy into a project by paying fifty to sixty cents for each dollar of tax credit received.

4) **General Obligation Bond Financing**: Prior to 1980, the federal government took the lead in financing local, affordable housing projects. Since then, however, federal housing funds have declined precipitously.

To make up a small portion of this shortfall, the Legislature enacted, and the voters approved, Propositions 77 and 84 in 1988 and Proposition 107 in 1990. Proposition 77 provided for a $150 million general bond issue: $80 million for seismic safety and $70 million for general rehabilitation loans. Proposition 84 provided for a $300 million bond issue, including $200 million for financing new construction of rental units. Proposition 107 authorized the sale of $150 million of bonds, including $100 million for the Rental Housing Construction Program. All of these funds have been spent.

In 2002 the voters approved Proposition 46, which provided $2.1 billion housing bond for a number of housing programs. It is anticipated that most of those funds will be available and allocated through 2007. In 2006 voters approved Proposition 1C which authorized the issuance of $2.85 billion in general obligation bonds for state housing programs.

In November 2006, California voters approved as part of the Governor's infrastructure bond package, Proposition 1C as passed by the Legislature. Proposition 1C the Housing and Emergency Trust Fund Act of 2006 (Proposition 1C) authorized the issuance of a $2.85 billion general obligation bond for state housing programs.

Proposition 1C provide $1.15 billion in funding for several existing programs operated by the Department of Housing & Community Development (HCD) that were created by Proposition 46:

- $345 million for Multifamily Housing Program (MHP);
- $300 million for the CalHome Program;
- $195 million for the Multifamily Supportive Housing Program (MHP-SH);
- $135 million for the Joe Serna, Jr. Farmworker Housing Grant Program;
- $125 million for the Building Equity and Growth in Neighborhoods (BEGIN); and
- $50 million for the Emergency Housing and Assistance Program Capital Development (EHAP-CD).

In addition to funding existing programs, Proposition 1C provided $350 million for two new programs operated by the HCD:

- $300 million for a new Transit-Oriented Development Implementation Program that provides funding for infrastructure and housing to help cities and counties develop higher-density housing near transit stations

- $50 million for housing for homeless youth, to be administered through multifamily Supportive Housing Program.

Proposition 1C provided $1.15 billion for three new programs that were authorized but not fully specified in the bond:

- $850 million for the Infill Infrastructure Program to assist in the new construction and rehabilitation of infrastructure that supports high-density affordable and mixed-income housing in locations designated for infill.

- $200 million for the Housing Related Parks Program to provide grants for parks to cities and counties with documented housing starts for newly constructed units affordable to very low- or low-income households.

- $100 million for the Affordable Housing Innovation Fund for pilot programs to demonstrate cost-saving approaches to creating or preserving affordable housing to be administered by HCD and subject to eligibility and fund use that were established by SB 586 (Dutton) Chapter 652, Statutes of 2007.

5) **Down Payment Assistance Programs**

- **CalHome Program**. This program, administered by HCD, provides funds for homeownership programs to assist low- and very low-income households become or remain homeowners. Funds are allocated in either grants to programs that assist individuals or loans that assist multiunit homeownership projects. Grant funds may be used for first time homebuyer downpayment assistance, home rehabilitation, homebuyer counseling, home acquisition and rehabilitation, or self-help mortgage assistance programs, or for technical assistance for self-help and shared housing homeownership. Loan funds may be used for purchase of real property, site development, predevelopment, and construction period expenses incurred on homeownership development projects, and permanent financing for mutual housing or cooperative developments.

  In addition, the CalHFA provides a number of downpayment assistance programs designed to help low and moderate income residents become first-time homeowners.

  Proposition 1C provided $300 million for this program.

- **CalHFA Housing Assistance Program (CHAP).** CHAP provides a low interest deferred payment second loan for down payment assistance to first-time homebuyers who are eligible for CalHFA's first mortgage program. The first mortgage and the CHAP second loan go together. CHAP is available on a statewide basis. The maximum CHAP loan amount is 3% of the sales price of the home or the appraised value, whichever is less. The CHAP loan can be combined or layered with certain other CalHFA subordinate financing.

- **Affordable Housing Partnership Program (AHPP).** This program is a joint effort by CalHFA and cities, counties, redevelopment agencies, housing authorities, and nonprofit organizations whereby a subordinate loan is usually provided by the local entity for down payment assistance, and CalHFA provides a lower interest rate on its first mortgage to low-income first-time homebuyers.

- **High Cost Area Home Purchase Assistance Program (HiCAP).** HiCAP provides a low interest deferred payment second loan for down payment assistance to first-time homebuyers who are eligible for, and receive, CalHFA's first mortgage. The current maximum HiCAP loan is $25,000. HiCAP loans are available in Alameda, Contra Costa, San Diego, San Francisco, San Mateo, Santa Clara, Sonoma, and Ventura counties. Counties must meet the following four criteria:

  (1) they are underserved by CalHFA loans;
  (2) they are designated as CalHFA high cost areas;
  (3) there is a high employment demand; and
  (4) there is a disparity between incomes and sales prices of homes.

- **California Homebuyer's Downpayment Assistance Program (CHDAP).** This program, funded by $117.5 from Proposition 46, provides a deferred-payment junior loan for down payment and closing costs of an amount up to the lesser of 3% of the purchase price or appraised value of a home. This loan may be combined with a first mortgage and certain other CalHFA subordinate financing.

- **Extra Credit Teacher Home Purchase Program**. This program is designed to assist high priority schools recruit and retain credentialed teachers, certain administrative staff, and classified employees thus providing pupils with a high quality education. This program received $25 million in Proposition 46 funds. Procedures for this program are provided by the State Treasurer's Office through the California Debt Allocation Committee (CDLAC). A subordinate loan for down payment assistance is provided in an amount not to exceed the greater of 3% of the sales price of the home or $7,500, or $15,000 in CalHFA- designated high cost areas.

- **School Facility Fee Down Payment Assistance Program.** In 1998, SB 50 (Greene) Chapter 407, provided for the creation of the School Facilities Fee Assistance Fund within the State Treasury. Whereby $160 million was to be appropriated from the General Fund to the Department of General Services, which, in turn, contracted with CalHFA for the administration of Homebuyer Down Payment Assistance and the Rental Assistance Programs (School Fee Programs). These programs were specifically created to address the needs of homebuyers and renters that were adversely affected by the impact of school facility fees on the development of affordable housing. The $160 million appropriation contained in this bill was contingent upon the passage of Proposition 1A, the school bond approved by the voters in January 1998.

  The School Facilities Fee Assistance Fund was originally used to fund four separate programs, three homeownership programs and one rental-housing program. In order to qualify for assistance from one of the three homeownership programs, homebuyers were required to meet one of the following criteria:

  (1) live in an economically distressed area;
  (2) purchase a home with a maximum sales price of $130,000; or
  (3) meet the requirements of a first-time low or moderate income homebuyer.

  The fourth program provided assistance for sponsors of rental units for low-income tenants.

  Those programs ended in 2001, and uncommitted funds were returned to the General Fund [AB 445 (Cardenas) Chapter 114].

  Proposition 46 provided new funds ($50 million) to restart two of the School Fee homeownership assistance programs:

  (1) live in an economically distressed area and
  (2) meet the requirements of a first-time low or moderate income homebuyer.

  As of 2008, this program has provided 6,506 grants and has a remaining balance of $22.4 million.

6) **The California Housing Loan Insurance Fund (Fund)** is a public enterprise fund administered by the California Housing Finance Agency (CalHFA). The Fund's mission is to expand homeownership opportunities for eligible California homebuyers by providing innovative mortgage insurance programs.

The Fund is rated A+ by Standard and Poor's and Aa3 by Moody's. The Fund's authorizing statutes and these ratings render CalHFA mortgage insurance a credible provider of credit enhancement for bond and individual loan transactions. To further leverage its insurance capability and manage risk, CalHFA has reinsured most of the Fund's portfolio through a risk share arrangement with a private mortgage insurer currently rated AA by Standard & Poors. The Fund has equity of $47 million as of December 31, 2003.

In addition, Proposition 46 provided the Fund with up to $85 million of capital to expand mortgage insurance to new markets.[1] This helps reach new homebuyers beyond those already being served by CalHFA's Homeownership Loan Program. In addition to CalHFA's programs, mortgage insurance is available on loans purchased by the government sponsored enterprises (GSE's), national mortgage lenders, and private investors that meet CalHFA's mission of providing affordable housing finance programs to underserved and low- to moderate-income homebuyers.

Partnerships with Fannie Mae and Freddie Mac have created products for diverse emerging markets that are supported by community lenders and national associations. The National Association of Hispanic Real Estate Professionals worked with CalHFA and Fannie Mae to design loan programs that take into account the borrowing characteristics of many new homebuyers in California. Freddie Mac works with major mortgage lenders and CalHFA to address down payment and nonstandard borrowing characteristics for borrowers who needed help qualifying for a home loan.

Continuous monitoring of the mortgage market coupled with potential changes to current statute will be required to increase the leverage of the Fund and meet the needs of more Californians.

7) **2007-08 Budget.** AB 1389 (Budget Committee), Chapter 751, Statutes of 2008 requires a one-time shift of 5% (or a minimum of $350 million) of property tax increment revenues from redevelopment agencies (RDAs) to county Educational Revenue Augmentation Funds (ERAFs). The shift of funds to ERAF will reduce the state's General Fund obligation under Proposition 98 by an equal amount, resulting in K-12 education savings. Allows redevelopment agencies to borrow from their Low/Mod Funds, but requires the loan to be repaid within 10 years.

[1] Based on loans insured to borrowers at 120% AMI or less.

Major legislation

AB 842 (Jones), Vetoed (2008):

- Would have required the Department of Housing and Community Development (HCD), when ranking applications for funding under the Infill Incentive Grant (Infill) Program and the Transit Oriented Development Implementation (TOD) Program, to award preference or priority to projects located in areas where the local or regional entity has adopted a general plan, transportation plan, or regional blueprint that would reduce the growth of vehicle miles traveled (VMT) by at least 10%, and the project was consistent with that planning document.

- Would have clarified that the 10% reduction was for growth increment in VMT, rather than an absolute 10% reduction of VMT.

- Would have required that HCD, when ranking applications, to rely upon the expertise of the Department of Transportation (Caltrans).

  Governor Schwarzenegger's veto message: This bill would add ranking provisions to the Infill Incentive Grant program and Transit-Oriented Development programs administered by the Department of Housing and Community Development (HCD). These provisions would give preference if an applicant's general plan, transportation plan, or regional blueprint provides for a 10-percent reduction in the incremental growth in vehicle miles traveled (VMT).

  The fundamental weakness of this bill is the absence of any generally accepted, standardized tools for measuring changes in VMT that accommodate in any meaningful and reliable way the varying social, economic, and geographical conditions in the state. Moreover, even if there were such measures, this bill would provide no means of monitoring whether the projected VMT reductions were achieved or any sanction for failing to achieve the projected reductions. Without these elements, this bill is pointless.

  Additionally, the bill is costly and duplicative. The Infill Incentive Grant program and Transit-Oriented Development programs are programmatically structured to minimize automobile use. The ranking criteria for the programs currently include several measures that incentivize and target reduced automobile usage. This bill would impose substantial costs on HCD and local planning agencies with little, if any, prospect of achieving its goal of reducing automobile use.

AB 884 (Dymally) failed passage in the Assembly Committee on Housing and Community Development:

- Would have amended existing rules dealing with the allocation of tax credits for low-income housing.

- Would have stated that public interest are best served through the allocation of tax credits for low-income housing with special efforts in urban areas and for projects sponsored by community-based nonprofit organizations.

- Would have stated that public interest are best served by the allocation of tax credits under a system that allows fair competition for new tax credit sponsors and developers.

- Would have added two additional voting members to the California Tax Credit Allocation Committee: one appointed by the Senate Committee on Rules and one appointed by the Speaker of the Assembly.

- Would have expanded credit allocation criteria to include infill projects and those that eliminate urban blight.

AB 927 (Saldaña), Chapter 618, Statutes of 2007:

- Requires that funds expended by the Multifamily Housing Program (MHP) for senior rental housing developments be dispersed in the same proportion as the number of eligible seniors bears to the program's overall target population.

- Provides that the Department of Housing and Community Development (HCD) shall be deemed to have met its obligation if the assistance awarded is not less than one percent below the proportional share.

- Provides that HCD does not have to provide loans to projects that fail to meet the minimum threshold requirements.

- Provides that the proportional share requirement applies only to the general portion of MHP.

- Requires HCD to determine the time period over which it will measure compliance with these provisions, but not less than one year or two funding cycles, whichever is longer.

- Allows, at the end of the time period noted above, HCD to award excess funds to units not restricted to senior housing.

- Requires the annual report to the Legislature by HCD to include a breakdown of funding awards to units restricted to senior citizens and units that are not age-restricted.

AB 929 (Runner), Chapter 274, Statutes of 2007:

- Increases the principal amounts of bonds the California Housing Finance Agency (CalHFA) may have outstanding by $2 billion.

AB 1053 (Nunez), Chapter 692, Statutes of 2007:

- Amends SB 86 (Committee on Budget and Fiscal Review), a "trailer bill" to the 2007-08 Budget Act, to allow Business Improvement Districts (BID) to be an "eligible joint applicant" for receipt of funds provided under the $850 million Regional Planning, Housing, and Infill Incentive Account, created by the Housing and Emergency Shelter Trust Fund Act of 2006 (Proposition 1C).

- Provides that a city, county, public housing authority or redevelopment agency with jurisdiction over a qualifying infill area may apply jointly with a BID, that includes a qualifying infill area, for funds under the Regional Planning, Housing, and Infill Incentive Account.

- Requires, prior to receiving funds, but after a grant award, joint applicants to submit to the Department of Housing and Community Development documentation that the actual number of permitted housing units is equal or greater than the number of units in the grant application.

AB 1091 (Bass), Vetoed (2007):

- Would have made changes to the $300 million Transit-Oriented Development Implementation Fund established under the Housing and Emergency Shelter Trust Fund Act of 2006 (Proposition 1C).

- Would have expanded the distance requirement between eligible projects and transit stations for the Transit-Oriented Development Implementation Program from one-quarter mile to one-half mile, and required the distance be readily walkable.

  Governor Schwarzenegger's veto message: This bill would modify the existing Proposition 1C Transit-Oriented Development Implementation Program by changing the maximum distance between a proposed project and a transit station from one-quarter mile to one-half mile.

  The program was created to provide high density affordable housing in close proximity to transit stations to encourage public transit ridership and vehicle emissions reduction. This bill could substantially reduce the effectiveness of this program by allowing for developments one-half mile in distance from a transit station. This half-mile measurement could be taken from the outer edge of the development, and could result in a walking distance substantially greater than one-half mile, which could discourage many residents from utilizing public transit. This bill is inconsistent with the State's goals to reduce vehicle emissions and encourage alternative methods of transportation.

  In addition, I believe this bill is unnecessary since the Department of Housing and Community Development is preparing program guidelines that will be adopted later this year to provide enough flexibility to allow critical projects to be funded, while at the same time preserving the important goals of this program.

AB 1129 (Arambula) as introduced:

- Would have allowed for the creation of the San Joaquin Valley Regional Affordable Housing Trust (Trust) for the purposes of administering federal, state, local and private resources for the development of affordable housing.

  As amended July 1, 2008 (vetoed):

  - Would have reduced the minimum grant amount a newly established housing trust fund that represents a county with a population of less than 425,000 can receive from the Local Housing Trust Fund Matching Grant Program (Program), administered by the Department of Housing & Community Development (HCD), from $1 million to $500,000.

  - Would have required newly established trust funds to provide adequate documentation as determined by HCD that the trust will provide matching funds on approval of its application.

  - Would have provided that in determining whether or not a county has a population of less than 425,000, HCD must use the United States Census for 2000.

Governor Schwarzenegger's veto message: I am supportive of providing additional flexibility for small rural jurisdictions to participate in the Local Housing Trust Fund program by reducing the minimum participation level and allowing flexibility for local governments to provide dedicated fee revenue in lieu of a one-time match. However, the bill is silent on when local governments may expend state funds that are on deposit awaiting local matching funds. Allowing local governments to expend state funds without the accompanying local matching funds undermines the purpose of a matching grant program.

AB 1252 (Caballero) as introduced:

- Would have changed the name of the Urban Park Act of 2006 to the Statewide Park Development and Community Revitalization Act of 2007. A city, regional park district, district, joint powers authority, or county, in addition to specified nonprofit organizations, would have been authorized to apply for local assistance program grants.

- The term "critically underserved community" would have replaced the term "heavily urbanized county" for purposes of the act and defined to include a community with less than three acres of usable parkland per 1,000 residents or is a disadvantaged community, as defined, and could demonstrate to the Department of Parks and Recreation (DPR) that the community has insufficient or no park and recreation facilities.

- Would have revised the criteria for awarding grants, and required DPR, on or before April 1, 2009, to adopt guidelines to amplify or clarify the grant criteria or develop a procedural guide for the administration of the act and the guidance of applicants. DPR would be required to offer technical assistance to all applicants and potential applicants for both grant preparation and project development to encourage full participation in the grant program.

- Would have made clarifying and conforming changes to other provisions of the act.

As amended June 19, 2008:

- Appropriates the following amounts to the Proposition 1C and Proposition 1B bond funds to augment specified appropriations in the 2007-2008 Budget Act:

  a) $100 million to augment the Regional Planning, Housing and Infill Incentive Account;

  b) $50 million to augment the Transit-Oriented Development Account;

  c) $87 million to augment the county portion of the Local Streets and Roads Program; and,
  d) $63 million to augment the Grade-Separation program.

- Includes an urgency clause allowing this bill to take effect immediately upon enactment.

Chapter 39, Statutes of 2008

AB 1460 (Saldaña), Chapter 710, Statutes of 2007:

- Requires the Department of Housing and Community Development (HCD) to award priority points for projects that incorporate particular sustainable building methods and are seeking Proposition 1C funding from the Multifamily Housing Program.

- Defines "sustainable building methods" as either: 1) those established under the Low-Income Housing Tax Credit (LIHTC) Program; or, 2) those established by HCD which are more stringent than those under LIHTC.

AB 2188 (Arambula), Chapter 95, Statutes of 2008:

- Eliminates the January 1, 2009 sunset date on the Department of Housing and Community Development's authority to set flexible funding caps for the state Community Development Block Grant awards to smaller communities.

AB 2494 (Caballero), Chapter 641, Statutes of 2008:

- Establishes the Housing-Related Parks Program (Program) under the administration of the Department of Housing and Community Development (HCD) to implement a portion of Proposition IC (Housing and Emergency Trust Fund Act of 2006) funding.

- Defines "disadvantaged community" to mean an area within a city and/or county that is made up of census tracts in which at least 51% of its residents are low- or moderate-income as designated by the United States (U.S.) Department of Housing and Urban Development using the most recent U.S. Department of Census data available at the time of the Notice of Funding (NOFA).

- Defines "park deficient community" to mean a community that has less than three acres of usable parkland per 1,000 residents.

- Defines "housing start" to mean the documentation of a completed foundation inspection issued during the "designated time period" in the NOFA.

- Requires a jurisdiction to be able to establish "housing starts" at the time of application and requires that the jurisdiction provide documentation of a certificate of occupancy, final inspection or other comparable local approval at the time of receiving an award.

- Provides the following list of criteria for which HCD can award bonus points under the program:

  a) For jurisdictions that demonstrate that grant funds will be spent to improve a park or recreational facility that will serve a "disadvantaged community;"
  b) For a jurisdiction that demonstrates that grant funds will be spent to create a new park or community recreational facility that will serve a "disadvantaged community;"
  c) For a jurisdictions that meets the definition of "park deficient community," and,
  d) For jurisdictions that can demonstrate that grant funds will be spent to create or improve a park or community recreational facility that will support infill development or for development in a jurisdiction that has conformed its general plan to the regional blueprint as determined by the council of governments (COG).

- Allows a jurisdiction that receives grant funds under this Program to subcontract with a recreation and park district or non-profit organization whose purpose is to conserve natural and cultural resources for the creation or improvement of a park or recreational facility.

- Appropriates $459,000 from the Housing Urban-Suburban-and-Rural Parks Account in Proposition IC fund to HCD for startup administrative costs for the Program.

AB 2509 (Galgiani) died in the Senate Committee on Banking, Finance and Insurance:

- Would have created the Homeownership Preservation Mortgage Guarantee Program (Program) to be administered by the Business, Transportation and Housing federal funds made available through the Neighborhood Stabilization Act of 2008 (HR 3818).

- Would have provided that the Program will operate through an administrator to accept and approve applications for loan guarantees from borrowers and issue loan guarantees to lenders.

- Would have provided that each administrator must enter into a written agreement with the state at the beginning of the fiscal year that governs the actions of the administrator, the investment of state funds and any return on investment.

- Would have provided that administrators may only approve a loan guarantee application under all of the following circumstances:

a) The original loan was at risk of foreclosure due to the fact that the mortgage has an adjustable rate that is due to increase and will cause the loan payment amount to grow
b) The property securing the original loan was a single family home that is the sole residence of the borrower;
c) All holders of the original loan agree to waive all prepayment penalties, fees, and other penalties;
d) The borrower's household income does not exceed 150% of the area median income, adjusted for family or household size by the agency in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937;
e) The outstanding principle of the original loan was $450,000 or less;
f) The lender agrees to issue a new or refinanced loan to the borrower in lieu of the original loan guarantee;
g) The borrower has not defaulted on the original loan and will be able to pay under the terms of the new or refinanced loan issued pursuant to the loan guarantee;
h) The borrower meets all underwriting guidelines established by CalHFA;
i) The borrower has equity in the home that was equal to 5% or more of the original loan; and,
j) The borrower has completed a homeownership counseling program.

- Would have prohibited an administrator from issuing a loan guarantee that was either:
  a) For an amount that is more than 20% of the outstanding principal of the original loan; or,
  b) For a term that exceeds five years, unless the value in the current market of the property securing the original loan was less than the amount of the original loan.

- Would have required a restrictive covenant to be recorded on the property for the term of the loan guarantee.

AB 2513 (Caballero) died in the Assembly Committee on Appropriations:

- Would have required the Department of Housing and Community Development, when awarding grants or loans from the Housing and Emergency Shelter Trust Fund of 2006, to give additional consideration to projects within jurisdictions that met at least 75% of their share of the regional housing need in the previous planning period, as demonstrated by housing units permitted.

AB 2670 (Salas), Chapter 332, Statutes of 2008:

- Authorizes the California Department of Veterans Affairs to apply to the California Debt Limit Allocation Committee for the issuance of private activity bonds to be used for qualified residential rental projects.

SB 46 (Perata) died in the Assembly Committee on Appropriations:

- Would have provided statutory framework for expenditure of the $850 million in the Housing and Emergency Shelter Trust Fund Act of 2006 (Proposition 1C) Regional Planning, Housing, and Infill Incentive Account.

- Would have required the Department of Housing and Community Development (HCD) to administer a competitive program to provide capital outlay grants for infill housing development and for related infrastructure that is an integral part of infill housing development.

SB 465 (Lowenthal) died on the Assembly Third Reading File:

- Would have amended SB 86 (Committee on Budget and Fiscal Review), a "trailer bill" to the 2007-08 Budget Act, to allow Business Improvement Districts (BID) to be an "eligible joint applicant" for receipt of funds provided under the $850 million Regional Planning, Housing, and Infill Incentive Account, created by the Housing and Emergency Shelter Trust Fund Act of 2006 (Proposition 1C).

- Would have provided that a city, county, public housing authority or redevelopment agency with jurisdiction over a qualifying infill area may apply jointly with a BID, that include a qualifying infill area, for funds under the Regional Planning, Housing, and Infill Incentive Account.

- Would have required, prior to receiving funds, but after a grant award, joint applicants to submit to the Department of Housing and Community Development documentation that the actual number of permitted housing units are equal or greater than the number of units in the grant application.

SB 546 (Ducheny) died on the Assembly Inactive File:

- Would have required that cumulative information on programs funded under the Housing and Emergency Shelter Trust Fund Acts of 2002 and 2006 (Proposition 46 and Proposition 1C) be included in the Department of Housing and Community Development's (HCD) annual report.

- Would have required that HCD's annual report break out the required information for each program funded by Proposition 46 or Proposition 1C, respectively, and include a cumulative total of this

information for all funds distributed under the Emergency Shelter and Housing Trust Fund Act of 2002 (Proposition 46) and Housing and Emergency Shelter Trust Fund Act of 2006 (Proposition 1C).

SB 585 (Lowenthal), Chapter 382, Statutes of 2008:

- Allows state and federal low-income housing tax credits (LIHTCs) to be used by separate investors.
- Allows the state LIHTC to be allocated to the partners of the partnership that own the project in accordance with the partnership agreement regardless of how the federal LIHTC is allocated and regardless of whether the allocation of the state credit under the terms of the partnership agreement has "substantial economic effect" within the meaning of Internal Revenue Code Section 704(b).
- Requires a deferral of any loss or deduction attributable to the sale, transfer, exchange, abandonment, or any other disposition of a partnership interest prior to the expiration of the federal credit (i.e., until the first taxable year immediately following the end of the 10-year federal credit period).
- Applies to the state LIHTC preliminary reserved for a project on or after January 1, 2009, and before January 1, 2016.

SB 586 (Dutton), Chapter 652, Statutes of 2007:

- Allocates the $100 million Affordable Housing Innovation Fund created by the Housing and Emergency Shelter Trust Fund Act of 2006 (Proposition 1C).
- Provides $50 million for the Affordable Housing Revolving Development and Acquisition Program (Program) established by this bill. Of that amount, $25 million is made available to the "Loan Fund" and $25 million is made available to the "Practitioner Fund."
- Allows the Department of Housing and Community Development (HCD) to administer the program for 24 months after adoption of guidelines and regulations.
- Provides that the Loan Fund is created for the purpose of providing loans to purchase real property for the development or preservation of housing affordable to lower-income households.
- Creates the Practitioner Fund for the purpose of purchasing real property for the development or preservation of housing affordable to low- and moderate-income households.
- Requires HCD to include a general description of activities undertaken pursuant these provisions in its annual report to the Legislature in 2013.
- Provides $35 million for the existing Local Housing Trust matching grant program. Requires that half of the funds be made available for newly established housing trusts. Requires HCD to grant preference to trust funds that agree to expend more than 65% of the state funds for downpayment assistance to first time homebuyers, and requires HCD, when making grants to newly established trust funds, to set aside funding for 36 months from the date the funds are first made available for newly established trust funds in counties of less than 425,000 persons.

- Provides $5 million for the Construction Liability Insurance Reform Pilot Program established by this bill. Provides grants to promote best practices for residential construction quality control as a means of reducing insurance rates for condominium developers. Grants may be used for predevelopment costs of affordable condominium projects funded by HCD or the California Housing Finance Agency that utilize enhanced construction oversight and monitoring programs.

- Provides $10 million to the Innovative Homeownership Program to be designed and administered by HCD to increase or maintain affordable homeownership opportunities for Californians with lower incomes. Requires HCD to include in its annual report to the Legislature how funds were spent during the previous year and such expenditures are consistent with the intent of Proposition 1C.

SB 707 (Ducheny), Chapter 658, Statutes of 2007:

- Allows, beginning July 1, 2008, the Department of Housing and Community Development (HCD) as well as the California Housing Finance Agency (CalHFA) when requested by a borrower, to extend and alter the terms of existing loans made under specified older financial assistance programs.

- Allows HCD, when requested by a borrower, to extend the terms of existing loans made under the Rental Housing Construction Program (RHCP), Special User Housing Rehabilitation Program (SUHRP), and Deferred Payment Rehabilitation Loan Program (DPRLP) programs.

- Provides that extensions of loans are subject to the following conditions:

  a) The borrower must provide HCD with a complete report showing existing tenants, their incomes, and the current rents;

  b) The borrower must agree to extend the term of the loan by 55 years, or the remaining life of the project, but no less than 30 years;

  c) The project has, or will have after the rehabilitation and repairs, a potential remaining useful life of at least 30 years and will be financially feasible;

  d) The rate on the extended term shall be 3% simple interest.

  e) The borrower must agree to a rent schedule requiring that all assisted units be affordable to households earning less than 60% of the area median income and that at least 35% of the assisted units be affordable to households earning less than the "midlevel target used by MHP," unless HDC finds the following:

     i) The project income is insufficient to maintain fiscal integrity;

     ii) The borrower has exhausted all available potential sources of rental subsidies.

  f) Defines "midlevel target" as an income that:

     i) Equals 30% of the statewide median income in counties with incomes less than or equal to 110% of the statewide median; and,

     ii) Equals 35% of the statewide median income in all other counties.

g) The borrower must agree to amend the existing regulatory agreements as needed to conform them to the requirements of this bill and MHP; and,

h) No tenant may be displaced as a result of the regulatory revisions authorized by this bill.

- Allows HCD to subordinate these loans in order for the borrower to refinance existing debt or to secure additional financing if the proceeds will be used only for rehabilitation, repairs, or improvements to the property. HCD may implement this section through guidelines that are exempt from the Administrative Procedures Act.

- Allows CalHFA the same authority provided to HCD under this bill with respect to the RHCP Program.

- Becomes operative on July 1, 2008.

SB 1065 (Correa), Chapter 283, Statutes of 2008:

- Revises the definition of "home mortgage" and "mortgage" to give local housing finance agencies authority to acquire loans for the purpose of refinance.

- Requires any qualifying mortgage that is used to refinance a home to be federally insured, guaranteed or eligible to be purchased by the Federal National Mortgage Association (Fannie Mae) or Federal Home Loan and Mortgage Corporation (Freddie Mac).

- Requires the mortgage purchased to be for an existing home with in the city or county that will be occupied by the owner.

- Applies the maximum household income criteria of 120% of median household income for borrowers refinancing an existing loan with a housing finance agency.

- Applies the maximum household income criteria of 150% of the median household income for borrowers refinancing an existing home in a specified distressed area.

- Provides a sunset date of January 1, 2012.

SB 1220 (Cedillo), Chapter 618, Statutes of 2008:

- Allows sponsors of supportive housing projects funded under the Multifamily Housing Program (MHP) to restrict occupancy of a housing project to veterans if the project meets specified factors:

  a) The veterans served by the housing must possess significant barriers to social reintegration and employment that require specialized treatment and services and are a result of physical or mental disability, substance abuse or the effects of long-term homelessness;

  b) Veterans must meet the income and other eligibility requirements of MHP;

c) The sponsor of the housing must provide or assist in providing specialized treatment and services; and,

d) The property on which the development is located is on land owned or leased by the United States Department of Veteran Affairs (USDVA) or the California Department of Veteran Affairs (CDVA) and is leased to the sponsor for a term of not less than 55 years.

Land Use

Housing Element Law requires every locality to adopt and update a housing element every five years which includes an identification of existing and projected housing needs, an inventory of land suitable for residential development, and a five-year plan to meet those identified needs.

The housing element, as a planning tool, was initially developed to describe how growth would be accommodated using a "best case scenario" approach. A locality was not expected to build the units, but was required to provide appropriate zoning for the development of the housing need identified within its housing element, including the regional need for housing.

Over the years, amendments have been made to Housing Element Law which held local governments responsible for ensuring that housing is actually built, including identifying specific sites, to accommodate a community's lower income housing unit regional allocation.

In 1981, California began a comprehensive program to allocate among local governments the statewide need for low-, moderate- and above moderate-income housing units. For the first time, each community was required to include in the housing element of its general plan a plan to meet its "share" of California's housing need.

Housing Element

Housing element law requires local governments to adequately plan to meet their existing and projected housing needs including their share of the regional housing need. The housing element update process addresses the statewide concern of providing "decent housing and a suitable living environment for every California family," in part by facilitating increases in housing supply to accommodate the needs of the state's population and its growth. The law recognizes the most critical decisions regarding housing development occur at the local level within the context of the general plan. In order for the private sector to adequately address housing needs and demand, local governments must regularly update their general plans, zoning, and development standards to provide opportunities for, and do not unduly constrain, housing development for all income groups.

Regional housing need allocations (RHNAs) for each city and county constitute a fundamental basis for housing element updates. A RHNA for each city and county is a short-term projection of additional housing units needed to accommodate existing households and projected household growth of all income levels by the end of the housing element planning period.

RHNAs establish minimum housing development capacity that cities and counties are to make available via their land use powers to accommodate growth within a short-term planning period. RHNAs are assigned by four income categories as guideposts for each community to develop a mix of housing types for all economic segments of the population. The process is also known as "fair share" planning, as shares of the regional housing need are determined for constituent cities and counties of the affected region(s) of the housing element update cycle. Regions are represented by councils of governments (COGs) or counties, which are charged with preparing regional housing need allocations plans (RHNPs).

The RHNA process is one of the state's earliest forms of intergovernmental or regional planning (since the 1970s), in that it involves roles for State government, COGs, and city and county governments, and also considers components of transportation planning. In consultation with each COG, the Department of Housing and Community Development (HCD) determines the housing needs for each COG using a demographic method based on the Department of Finance's (DOF's) population projections. HCD also

fulfills the functions of a COG in those rural counties for which there is no COG. While HCD forwards projections for the region, the distribution of the need within the region to individual cities and counties is subject to determination by the COG. The COGs allocate the RHNA to their city and county members as a draft, and involve a 90-day review period, in which each city and county has an opportunity to request revision of their need allocation by the COG. The COG may revise the initial allocations, subject to maintaining the total regional need.

While controversy about housing policy is certainly nothing new, the current chronic shortage of affordable housing in California has led to a serious polarization of the debate. On one hand, an alliance of affordable housing advocates and the building and realty industries have insisted that the primary cause for the shortage of housing has been obstructionist and "not-in-my-backyard" (NIMBY) policies pursued by local governments intent on excluding "undesirable" populations. On the other hand, local governments and land use planners have seen the initiatives of the housing advocate/building industry axis as a frontal assault on local government land use authority, and maintain that the primary causes of the housing crisis lie in the state's dysfunctional fiscal relationship to local governments and conflicting and uncoordinated land use mandates coming from Sacramento. In addition, many local governments have expressed extreme frustration with what they have seen as the unpredictable application of RHNA requirements by COGs and HCD, and the perception that HCD has made it unnecessarily difficult to get a housing element certified.

This polarization crystallized in the fierce debate surrounding SB 910 (Dunn) in 2001-02. SB 910 would have imposed strict punitive measures on cities that failed to certify their housing elements. After SB 910 failed in 2002, many of the warring parties agreed to establish a working group outside of the legislative process in the hope that more progress could be made if a group was not constrained by legislative timelines and the polarization inherent in legislative processes.

In the beginning of May 2003, the Legislature established a moratorium on housing element related bills to allow a housing element working group (HEWG) to bring back recommendations for reform during the 2004 session. HEWG included representatives from HCD, cities, counties, councils of governments, planners, the for-profit and nonprofit building industry, housing advocates, and business groups. Ultimately the HEWG agreed to the provisions contained in AB 2158 (Lowenthal) and AB 2348 (Mullin) both of 2004 and signed into law by the Governor.

Major Legislation

AB 242 (Blakeslee), Chapter 11, Statutes of 2008:

- Makes technical changes to the statutes governing regional housing needs allocation (RHNA) transfers in the event of an incorporation or annexation.

- Requires that the city and county submit their agreed-upon RHNA transfer, or their request for a revised RHNA determination, within 90 days of the date of an annexation or incorporation.

- Requires the county and cities that have executed transfers of regional housing needs due to an annexation or incorporation to use the revised in their housing elements and to adopt their housing elements by the appropriate statutory deadlines.

- Requires a city that has received a transfer of a regional housing need as a result of incorporation to adopt its housing element within 30 months of the effective date of incorporation.

- Requires a county or city that has received a transfer of regional housing need as a result of annexation to amend its housing element within 180 days of the effective date of the transfer.

AB 414 (Jones), Vetoed (2007):

- Would have placed limits on the ability of a city or county to include nonresidentially zoned sites that also allow, but do not require, residential uses in its housing element's inventory of land suitable for residential development.

- Would have specified that any determination that a portion of a jurisdiction's share of the regional need can be accommodated on nonresidentially zoned sites that also allow residential uses must be based on the following:

  a) The proportion of the jurisdiction's share of the regional housing need that was met on these sites in the prior planning period;

  b) Recent development activity;

  c) Whether residential units are permitted by right;

  d) The degree to which the development standards and processing requirements facilitate residential uses;

  e) The resources or incentives available for the residential development of these sites; and,

  f) Any other relevant factors as determined by the Department of Housing and Community Development and the local agency, including market trends and demand.

- Would have clarified language in the no-net-loss zoning law to state that the law was triggered in cities and counties with non-compliant housing elements if a project was approved on a site that allowed both residential and commercial uses that would result in the development of fewer than 80% of the number of residential units than would be allowed under the maximum residential density for the site.

  Governor Schwarzenegger's veto message: As California's population grows, it is becoming more difficult for cities and counties to identify sites to accommodate all of the housing need. This bill would unnecessarily limit the flexibility that local governments currently have to identify sites zoned for nonresidential uses that could accommodate a portion of their share of the regional housing need. The current practices utilized by the Department of Housing and Community Development during the review of housing elements provides for a case-by-case evaluation of sites as to their realistic potential for the development of housing.

AB 641 (Torrico), Chapter 603, Statutes of 2007:

- Prohibits local governments from requiring the payment of local developer fees before the developer has received a certificate of occupancy, pursuant to a specified exemption, for any housing

development in which at least 49 percent of the units are affordable to low- or very low-income households.

- Exempts developer fees levied for school construction purposes from the provisions of the bill.

AB 1019 (Blakeslee), Chapter 165, Statutes of 2007:

- Creates a process for reallocating a county's share of the regional housing need to a city in the event that unincorporated land is annexed to the city.

- Specifies that if the annexed land was subject to a development agreement that was entered into by the city and a landowner prior to January 1, 2008, the revised housing needs determination shall be based upon the number of units allowed by the development agreement.

AB 1259 (Caballero), Chapter 696, Statutes of 2007:

- Extends for one year the deadline for local governments within the regional jurisdiction of the Association of Monterey Bay Area Governments to complete the fourth revision of their housing elements, and authorizes the Department of Housing and Community Development (HCD) to revise the most recent regional housing needs determination for the Sacramento Area Council Governments (SACOG) region.

AB 1366 (Portantino) as introduced:

- Would have added optional contents to the annual housing element progress report.

As amended July 10, 2008 (Vetoed):

- Would have made housing element compliance a threshold requirement for a local government applicant to the CalHome Program and the Building Equity and Growth in Neighborhoods (BEGIN) Program.

- Would have required that a local government applicant to the CalHome and BEGIN programs have submitted its annual housing element progress report within the previous 12 months, with respect to any application submitted on or after the April 1 following HCD's adoption of forms and definitions for the report.

- Would have required, under the Infill Infrastructure Grant (IIG) Program that a project be located in a jurisdiction that has submitted its annual housing element progress report within the previous 12 months, with respect to any application submitted on or after the April 1 following HCD's adoption of forms and definitions for the report.

Governor Schwarzenegger's veto message: This bill would require local governments to have approved housing elements and to have submitted annual housing element progress reports for eligibility for funding of specified affordable housing programs administered by the Department of Housing and Community Development. As a result, this bill could exclude housing projects located in some communities from accessing Proposition 1C housing bond funds for affordable housing

projects. While compliance with housing element law is important, withholding funding could have the effect of reducing affordable housing options in communities where it is most needed.

AB 2000 (Mendoza), Vetoed (2008):

- Would have permitted a local government in which newly constructed housing units exceeded its regional housing need allocation (RHNA) share for a particular income level during a planning period to count any housing units newly constructed in excess of its share of RHNA for an income level towards meeting its RHNA share for the same or a higher income level for the subsequent planning period.

- Would have required a local government to have submitted to HCD the required annual progress report on implementation of its general plan within 12 months preceding the adoption of the housing element for the subsequent planning period in order to count any housing units newly constructed in excess of its share of RHNA for an income level towards meeting its RHNA share for the same or a higher income level for the subsequent planning period.

  Governor Schwarzenegger's veto message: This bill would permit a city or county, where construction of housing units exceeded their fair share of the regional housing need in the prior planning period, to credit those units against the jurisdiction's fair share for the next planning period. While the goal of rewarding cities and counties that exceed their fair share is laudable, this bill would negatively impact the housing industry by reducing the amount of land available for residential development and could result in more regulatory barriers to housing.

  Additionally, this bill would require on-going appropriations from the General Fund in order for the Department of Housing and Community Development to comply with the law.

AB 2069 (Jones), Chapter 491, Statutes of 2008:

- Clarifies the definition of "lower residential density" under the no-net-loss zoning law to specify that the law's provisions are triggered:

  1) In cities and counties with compliant housing elements when the approval of a project on a site on which the zoning permits residential use results in fewer housing units on the site than were projected in the housing element.

  2) In cities and counties with non-compliant housing elements when a project is approved on a residentially zoned site at a density that is lower than 80% of the maximum allowable residential density for that site or when a project is approved on a site that allows both residential and nonresidential uses that would result in the development of fewer than 80% of the number of residential units that would be allowed under the maximum residential density for the site.

AB 2280 (Saldaña), Chapter 454, Statutes of 2008:

- Clarifies that the density bonus for senior housing is 20% of the number of senior units included in the project, not 20% of the total units.

- Requires that requests for waivers of development standards be based on physical impediments to constructing the project, rather than on an economic feasibility test.

- Specifies that in determining a project's density bonus, if the density allowed under the jurisdiction's zoning ordinance is inconsistent with the density allowed under the land use element of the general plan, the general plan density shall prevail.

- Extends to five years the length of a time a local government has to expend its share of funds from the sale of a moderate-income density bonus unit.

- Makes a number of other minor changes to the density bonus law.

AB 2322 (Portantino) failed passage in the Assembly Committee on Housing and Community Development:

- Would have allowed a city to reduce its regional housing need allocation by 10% if it had adopted a program that met all of the following requirements:

  a) Actively promoted placement of foster youth in existing family-based households through advertisement and city-based incentives;
  b) Provided a process for coordinating city and county assistance to help interested persons by providing information and documents necessary to meet the responsibility of caring for foster youth;
  c) Served as a resource to assist interested persons in accessing existing services that support the placement of foster youth in existing family-based households;
  d) Provided a plan to measure the success of the program, in coordination with the county's current system of data outcomes; and
  e) Approved by the council of governments (COG) that assigned the city's RHNA share, or by the Department of Housing and Community Development (HCD) if there was no COG.

- Would have prohibited the COG or HCD from approving the program for a subsequent housing element planning period if the program could not be shown to have met 2.5% or more of the city's RHNA share in the previous planning period.

- Would have limited participation to five cities per COG and five cities from areas not covered by COGs.

- Would have required each city that adopts a program to submit to the COG or HCD, as appropriate, two progress reports per planning period on dates established by the COG or HCD.

- Would have required that these reports include, but not be limited to, the number of foster placements with duration of one year or more that occurred within the reporting period as verified by the county program that manages foster placements.
- Would have sunsetted the bill's provisions on January 1, 2016.

AB 2604 (Torrico), Chapter 246, Statutes of 2008:

- Allows local agencies to defer the collection of developer fees up to the close of escrow, with the exception of school impact fees.

AB 3005 (Jones), Chapter 692, Statutes of 2008:

- Requires a local agency, when imposing a fee for the purpose of mitigating vehicular traffic impacts on a housing development located near a transit station and meeting other specified characteristics, to set the fee at a rate that reflects reduced automobile trip generation, unless the local agency finds that the development would not significantly reduce automobile trip generation.

- Specifies that the bill's provisions do not apply until January 1, 2011, to a housing development that is located within an area covered by a capital improvement plan for traffic facilities that was adopted on or before January 1 2009, and for which fees are collected to mitigate the impacts of traffic.
- Specifies that if a housing development does not meet the characteristics described in the bill, the local agency may charge a fee that is proportional to the estimated rate of automobile trip generation associated with the housing development.

SB 2 (Cedillo), Chapter 633, Statutes of 2007:

- Requires cities and counties to identify in their housing elements a zone or zones where emergency shelters are allowed as a permitted use without a conditional use permit or other discretionary permit.

- Specifies that the identified zone or zones shall include sufficient capacity to accommodate the need for emergency shelter.

- Requires that each local government identify a zone or zones that can accommodate at least one year-round emergency shelter.

- Specifies that if the local government cannot identify a zone or zones with sufficient capacity, the local government shall include a program to amend its zoning ordinance to include such a zone or zones within one year of the adoption of the housing element.

- Requires the local government to demonstrate that existing or proposed permit processing, development, and management standards are objective and encourage and facilitate the development of emergency shelters.

- States that emergency shelters may only be subject to those development and management standards that apply to residential or commercial development within the same zone, except that a local government may apply written, objective standards that include all of the following:

  a) The maximum number of beds or persons permitted to be served nightly by the facility;

  b) Off-street parking based upon demonstrated need, provided that the standards do not require more parking for emergency shelters than for other residential or commercial uses within the same zone;

  c) The size and location of exterior and interior onsite waiting and client intake areas;

d) The provision of onsite management;

e) The proximity to other emergency shelters, provided that emergency shelters are not required to by more than 300 feet apart;

f) The length of stay;

g) Lighting; and,

h) Security during hours that the emergency shelter is in operation.

- Allows a local government that can demonstrate to the satisfaction of the Department of Housing and Community Development the existence of one or more emergency shelters either within its jurisdiction or pursuant to a multijurisdictional agreement that can accommodate its need for emergency shelter to comply with the zoning requirements of the bill by identifying a zone or zones where new emergency shelters are allowed with a conditional use permit.

- Requires the housing element's analysis of governmental constraints on housing to also demonstrate local efforts to remove governmental constraints that hinder the locality from meeting the need for supportive housing, transitional housing, and emergency shelter.

- Specifies that transitional housing and supportive housing shall be considered a residential use of property and shall be subject only to those restrictions that apply to other residential dwellings of the same type in the same zone.

- Requires local governments to assess the need for emergency shelter based on annual and seasonal need.

- Allows local governments to reduce the need for emergency shelter by the number of supportive housing units that are identified in an adopted 10-year plan to end chronic homelessness and that are either vacant or for which funding has been identified to allow construction during the planning period.

- Applies the provisions of the Housing Accountability Act to emergency shelters.

- Includes transitional housing and supportive housing within the definition of "housing development project" under the Housing Accountability Act.

SB 12 (Lowenthal), Chapter 5, Statutes of 2007:

- Revises and tailors the Regional Housing Need Assessment (RHNA) for the Southern California Association of Governments (SCAG) for purposes of their June 30, 2007, housing element update.

- Provides that for purposes of the 2007 housing element update, the RHNA for SCAG shall be determined according to the provisions of this bill.

- Provides that SCAG shall develop a long-term growth forecast, by five year increments considering: population; employment; and, households.

- Requires SCAG to conduct 14 public workshops to discuss the regional growth forecast and the methodology by which housing needs are proposed to be allocated to sub-regions or to individual jurisdictions.

- Requires SCAG to describe how the plan is consistent with elements of existing law as well as the employment, transportation, and environmental needs of the region.

- Provides that a city or county may file only one appeal of its draft allocation to SCAG or a delegate sub-region based on either an unforeseen change in circumstances or lack of adequate consideration of factors raised during the workshop process.

- Provides that the final allocation plan shall ensure that the total regional housing need, by income category, is maintained.

- Requires SCAG to show how the plan is consistent with the update of the regional transportation plan and also takes into account information provided by member jurisdictions and members of the public.

Manufactured and Mobile Homes

Mobilehome parks are a popular source of affordable housing, especially for seniors and low- and moderate-income families. Statewide, there are 5,750 parks, with 464,778 spaces, housing an estimated 800,000 people.

The mobilehome park industry, however faces many challenges: few new parks are being built; park owners and residents are often locked in a struggle of complaints, counter-complaints, lawsuits, and counter-lawsuits; residents are buying their parks through the conversion process and becoming park owners; a growing number of land-lease manufactured home communities are being constructed which offer affordability without the problems of the park owner/resident relationship; and additionally some mobilehome parks face safety and security issues.

The age and location of many parks create other problems. Older mobilehome parks suffer from significant infrastructure deterioration: sewers, utilities, roads, and common areas need to be upgraded and replaced. As cities expand, the areas surrounding the parks are developed for industrial or commercial use. Park owners are tempted to sell their land to developers for higher profits, thereby displacing long-time residents.

There are five major issues facing mobilehome park residents in the state:

1) Rent increases (largely a local issue)
2) Old and dilapidated facilities
3) Rents and fees
4) Pass-through fees
5) Maintenance and organization

In response to some of these issues, SB 700 (O'Connell) Chapter 520, Statutes of 1999 created a new state inspection program that requires at least one inspection every four years. The program focuses mainly on those parks with the most serious violations or substantial number of complaints.

Senior-Only Mobilehome Parks

Prior to 1988, many mobilehome parks were reserved for adults only (age 18 and over). The passage of the 1988 Fair Housing Amendments Act, which prohibits age discrimination in housing except for senior citizen housing, caused a shift in the demographics of mobilehome parks by forcing owners whose parks did not meet the criteria for senior housing to open their parks to families with children. In 1988, 75% of mobilehome parks were either senior- or adult-only parks; by 1994, only 25% of parks restricted occupancy to seniors.

In 1995, under pressure from senior groups, Congress enacted HR 660, which eliminated the requirement that senior housing provide significant facilities and services requirements. While this change makes it easier to develop senior housing, it is unclear whether family mobilehome parks will be able to convert to senior parks since 80% of the spaces must be rented to a person who is age 55 or older.

New Directions for Manufactured Housing

For the last several decades, the manufactured housing industry has been quietly transforming itself--with quality improvements, imaginative designs, and legislative measures on both federal and state levels--from a narrow-niche builder of "trailers" or "mobilehomes" into a broad-band builder of a wide range of housing products. Many of these new housing products compete quality-for-quality and amenity-for-amenity with conventional site-built housing.

Although still the supplier of mobilehome park housing, the industry has been busy creating new markets for its new products. The industry is producing housing for inner-city infill lots; standard single-family subdivision developments; long-term, land-lease manufactured housing communities; and rural property. More than half of all new manufactured homes are being sited outside of mobilehome parks, with approximately 32% installed on

permanent foundations in urban, suburban, or rural neighborhoods. There were 8,441 new manufactured homes delivered in California in 2003.

The driving force behind the manufactured home industry is the affordability of its products. Through the efficiencies of factory, and savings generated from a shorter construction schedule, manufactured housing is the most affordable type of housing available in California today. Construction costs average $9 less per square foot than site-built construction. In 1995, the average cost per square foot for site-built construction was $50.00, compared to manufactured housing with an average per-foot "installed" cost of $41.00. For an average 1500 square foot home, the savings amount to $13,500.

Major legislation

AB 285 (Garcia) failed passage in the Assembly Committee on Housing and Community Development.

- Would have changed the exemptions allowable for local rent control ordinances in mobilehome parks.
- Would have deleted the exemption from a local rent control ordinance provided if a homeowner has not rented their mobilehome to another party.
- Would have deleted the standard currently in place for determining whether or not a mobilehome was an owner's principal residence.
- Would have deleted the requirement that park management provide a homeowner with a copy of the state or county records relied upon to establish the mobilehome was not the homeowner's principal residence or that their principal residence wais out of state before altering the rent and replaced it with a requirement that the management provide the homeowner with "notice of all evidence."
- Would have provided a homeowner does not have to be in the mobilehome on a continuous basis for it to be deemed the homeowner's principal residence but it must be the owner's day-to-day residence and usual residence of return.
- Would have established a set of factors which constitute sufficient evidence that the mobilehome was not the owner's principal residence.
- Would have deleted the provision that provides the rent control exemption does not apply when a mobilehome owner was prevented from renting their mobilehome because the park management does not permit or limits subleasing the park space.
- Would have provided the rent control exemption does not apply if the mobilehome is the principal residence of a homeowner and it was subleased because a homeowner was receiving emergency or medical treatment and is absent from their home or the home wais leased under other specified provisions.

AB 339 (Cook), Chapter 543, Statutes of 2007:

- Requires an escrow agent to hold funds in escrow upon receiving a written notice by a party to the sale of a manufactured home or mobilehome, as specified, which requests for the funds to be held in escrow.

- Requires an escrow agent, upon receiving notice from a party to the escrow of a dispute, to inform the party of his or her right to hold funds in escrow by submitting a written request to that effect.

- Requires the escrow agent, at the opening of escrow, to provide notice of the right to request that funds be held in escrow.

- Deletes the requirement for the escrow agent to hold funds in escrow upon notification of a dispute between the parties.

AB 446 (Soto), Chapter 549, Statutes of 2007:

- Requires the management of a mobilehome park to provide a homeowner with notice specifying the reason a mobilehome must be removed from a park upon resale.

- Requires the management of a mobilehome park to establish that a mobilehome meets one of the conditions in Civil Code Section 798.73.

- Requires the park management to provide a homeowner with notice specifying the particular condition that permits the removal of the mobilehome.

AB 1111 (De Saulnier) died on the Senate Inactive File.

- Would have allowed a local public agency to prohibit mobilehome park management from amending or striking the provision in an existing park rule or regulation that limits residency or tenancy to individuals 55 years of age and older.

AB 1153 (Garcia), Chapter 166, Statutes of 2007:

- Requires that manufacturers, distributors, dealers, and sellers of manufactured homes, mobilehomes, and commercial coaches who apply for an occupational license must submit to a criminal background check.

- Requires that manufacturers, distributors, dealers, and sellers of manufactured homes, mobilehomes, and commercial coaches who apply for an occupational license to conduct business in California must submit fingerprints and other information to the California Department of Justice (DOJ) to be used for a criminal history check.

- Provides that DOJ shall forward to the Federal Bureau of Investigation requests for federal criminal history information and shall share with Department of Housing and Community Development (HCD) the results of these criminal history checks on applicants.

- Requires HCD to request subsequent arrest notification service from DOJ for its occupational licensees who manufacture, distribute, or sell manufactured homes, mobile homes, or commercial coaches.

- Requires DOJ to charge a fee sufficient to cover the costs of performing these criminal history checks.

AB 1309 (Calderon) died on the Assembly Inactive File:

- Would have established vacancy decontrol for mobilehomes sold in mobilehome parks in jurisdictions with local rent control ordinances.

- Would have made legislative findings regarding the negative effects of stringent local rent control ordinances on the quantity and quality of housing in mobilehome parks and the need to include vacancy decontrol in local rent control ordinances.

- Would have provided if the tenancy in a mobilehome park was voluntarily terminated the management may set the initial rent for a space when there was a change in ownership of the mobilehome on that space.

- Would have allowed, until January 1, 2011, the park management to set the initial rent not to exceed the greater of either of the following: 20% in excess of the rental rate in effect immediately proceeding tenancy or 70% of prevailing market rent for comparable units as defined in an appraisal in accordance with nationally recognized professional appraisal standards.

- Would have allowed the park management to set the initial rent to market rate after January 1, 2011.

- Would have provided, after an initial rent are set, an increase in rent are subject to regulations adopted by the local legislative agency.

- Would have exempted changes in ownership that result from the death of a mobilehome owner where the deceased tenant's spouse takes ownership and occupancy of the mobilehome.

AB 1542 (Evans), Vetoed (2007):

- Would have added requirements to the Subdivision Map Act (the Map) for a conversion of a moiblehome park by a subdivider to resident ownership including providing additional rent control protections to non-purchasing mobilehome park residents.

- Would have provided in the case of a jurisdiction that has a local rent control ordinance, those provisions will continue to apply to mobilehome spaces not purchased by a resident.

- Would have provided in the absence of a local rent control ordinance the state rent control formula provided in Government Code Section 66427.5 will apply to mobilehome park spaces that residents do not purchase.

- Would have expanded the scope of the hearing on the Map required prior to the conversion of a mobilehome park to resident ownership to issues other than compliance with Government Code Section 66427.5.

  Governor Schwarzenegger's veto message: I am greatly concerned about housing affordability and homeownership for all Californians. I understand the sanctity of the home and the importance of having stability in your living situation. This need for stability was eloquently expressed by the many seniors throughout California who have written to me on both sides of this bill.

  I also recognize that compared to other housing issues there is a uniqueness regarding mobilehomes and all the varied manners of ownership, leasing, affordability, and opportunity. It is because of this uniqueness that laws were enacted to create statewide standards for mobilehome parks.

  The intent of current state law is to provide an opportunity for home ownership to those mobilehome owners who desire to own both their home and the land it rests on. The law also offers protections for low-income individuals against unwarranted rent increases.

  While the bill's intent is to preserve low-income housing, it also extends rent control in certain circumstances to mobilehome owners in much of the state no matter what their income level. It is unclear what state interest is served by the extension of rent control for those who do not have an economic disadvantage. In addition, establishing two statewide standards for rent control seems confusing and unnecessary.

  It is clear that mobilehome issues require a comprehensive approach to ensure that low income individuals and families are protected, homeownership opportunities are afforded to those who choose them, and stability of the home and property is preserved.

  I urge the Legislature over the coming year to find a solution that provides true balance for all the stakeholders involved in mobilehome issues.

AB 2050 (Garcia), Chapter 737, Statutes of 2008:

- Requires, at the time of sale, all mobilehomes and manufactured homes to have a smoke alarm installed in each room designed for sleeping and to have all fuel-gas-burning water heaters seismically braced, anchored, or strapped.

SB 538 (Battin), Chapter 540, Statutes of 2007:

- Revises the definitions of mobilehomes and manufactured housing.

- Makes legislative findings regarding the need to clarify in statute the difference between a "mobilehome" and "manufactured home:"

  a) Confusion exists among consumers, enforcement agencies, and lenders regarding the difference between "manufactured housing" and "mobilehomes;"

  b) All single-family constructed housing built on or after June 15, 1976, that are in compliance with the standards of the Department of Housing and Urban Development (HUD) under the National

Manufactured Housing Construction and Safety Standards Act of 1974, are manufactured housing and not "mobilehomes" and, as such, are subject to additional benefits; and,

c) Changes made through this bill to clarify the meaning of the terms "mobilehome" and "manufactured home" are not intended to affect consumer protections provided for those housing products.

- Changes the name of the Mobilehomes-Manufactured Housing Act of 1980 to the Manufactured Housing Act of 1980 (Act).

- Revises the definition of a mobilehome and manufactured home. To be considered a manufactured home, the product must have been constructed on or after June 15, 1976. Defines a "mobilehome" as a transportable dwelling structure built before June 15, 1976.

- Makes clarifying and conforming changes in the Act to reflect these definitions, including that these definitions shall be the operative definitions for delineating the permissible scope of work for the General Manufactured Housing Contractor (C-47) license.

- Requires the Department of Housing and Community Development to update the construction, alteration and conversion regulations of commercial modulars on or after January 1, 2008.

- Replaces the word "coach" with "modular" and replaces the words "multi-unit manufactured housing" with "multi-family manufactured housing."

SB 541 (Alquist) as introduced:

- Would have prohibited the management of a mobilehome park from denying tenancy to a mobilehome purchaser solely on the basis that the purchaser does not satisfy any minimum income requirement of the park.

- Would have required the park management, in determining the income of a purchaser to consider the purchasers' other financial assets if the purchaser provides evidence of, including but not limited to savings accounts, certificates of deposit, stock portfolios, trust interests of which the purchaser was a beneficiary, real property, or other similar financial interests.

- Would have allowed the park management to consider whether or not the financial assets the individual provides evidence of, produce an income and whether or not they can be liquated or sold.

As amended August 21, 2008:

- Removed all reference to management of mobilehome parks.

- Would have increased the maximum penalties levied against hospitals for immediate jeopardy and other specified violations.

Chapter 605, Statutes of 2008

SB 589 (Correa), Chapter 557, Statutes of 2007:

- Clarifies that the Department of Housing and Community Development (HCD) has the authority to require sewer repairs and sewage spill clean-up relating to sewer systems and permanent buildings in mobilehome and special occupancy parks.

- Includes sewage among the materials that are prohibited from being deposited on the ground in a mobilehome park.

- Includes permanent buildings' plumbing fixtures and a park's sewage system, in addition to plumbing fixtures of manufactured homes, mobilehomes, and recreational vehicles, as the source of the waste materials that may not be deposited upon the ground.

- Allows the local enforcement agency or HCD to order the removal or sanitation or both of the sewage, waste water, or material that has been spilled. The enforcement agency may order the removal or sanitation to be consistent with the requirements of and in consultation with the local environmental health agency.

- Applies parallel provisions of this bill to the Special Occupancy Parks Act.

SB 753 (Correa), Chapter 561, Statutes of 2007:

- Specifies that a loan to purchase a mobilehome or manufactured home or both a subdivided lot and the mobilehome or manufactured home may be secured by either the land alone or both the land and the home.

- Makes CalHome funds available to nonprofit corporations, community land trusts and stock cooperatives formed from a majority of the residents of a mobilehome park to purchase mobilehome park and convert them to resident ownership.

- Provides a manufactured home or mobilehome does not need to be on a permanent foundation to receive CalHome funds.

- Prohibits the use of CalHome funds for the purchase of the first lot or space in a manufactured housing community that is being converted to resident ownership unless two-thirds of the residents approve the conversion.

SB 900 (Corbett) died in the Assembly Committee on Housing and Community Development:

- Would have added requirements to the Subdivision Map Act (the Map) for a conversion of a mobilehome park by a subdivider to resident ownership to avoid the economic displacement of non-purchasing residents.

- Would have provided for non-purchasing residents, at median-area-income and below the average monthly rent may increase annually from the preconversion rent by an amount equal to the average monthly increase in rent in the four years immediately preceding the conversion or by the percentage increase in the Consumer Price Index (CPI) which ever was less.

- Would have provided for non-purchasing residents who are moderate-income, the monthly rent may increase from the preconversion rent to market levels, as determined by an appraisal, in equal annual increases over the next six-year period.

- Would have provided for non-purchasing residents who are not median income or below or moderate-income the monthly rent may increase from preconversion rent to market levels in equal annual amounts over a six-year period.

- Would have prohibited the pass through of charges for new capital improvements made after the conversion to resident ownership to non-purchasing residents who are at median income or below.

- Would have required the use of the Department of Housing and Community Development most recent official state income limit guidelines be used to determine if non-purchasing residents are eligible for rental protections.

SB 981 (Padilla) as introduced:

- Would have required the management of a mobilehome park to keep existing physical improvements of common facilities of a park in good working order and condition through rents and not other fees.

- Would have required the rental agreement for a mobilehome to specify that the management must maintain existing physical improvements through rents and not through other fees.

- Would have applied to rental agreements including month-to-month rental agreements executed, extended, or renewed on or after January 1, 2008.

- Would have specified that the provisions of this bill are not intended to preempt or control an existing local mobilehome rent control ordinance which includes provisions for fees or charges for maintenance of existing common area facilities or existing park infrastructure.

As amended September 10, 2007 (Perata), Vetoed (2008):

- Removed all reference to housing.

- Would have established statutory standards and requirements for claims payment and dispute resolution for non-contracting hospital-based physicians.

SB 1107 (Correa), Chapter 170, Statutes of 2008:

- Requires the management of a mobilehome park to allow a homeowner or resident to install accommodations for the disable on the home or the site, lot, or space on which the mobilehome is located, including, but not limited to, ramps or handrails on the outside of the home, as long as the installation of those facilities complies with code and those facilities are installed pursuant to a permit, if a permit is required for the installation.

- Allows a mobilehome owner, regardless of age, to share his/her home with a live-in caregiver who provides care pursuant to a written treatment plan without being charged a fee for that person.

SB 1122 (Correa) died in the Assembly Committee on Appropriations:

- Would have authorized the Department of Housing and Community Development (HCD), upon request of a local agency, to establish an enhanced level of enforcement to resolve code violations in mobilehome parks that constitute an immediate risk to life, health, and safety.

SB 1234 (Corbett), Chapter 115, Statutes of 2008:

- Prohibits the ownership or management of a mobilehome park from entering an enclosed accessory structure without the prior written consent of the resident, except in case of emergency or when the resident has abandoned the mobilehome or accessory structure.

SB 1452 (Correa), Chapter 750, Statutes of 2008:

- Establishes civil penalties of $250 to $2000 for violations of specified provisions in state law by those who sell or build manufactured housing.

- Allows the Department of Housing and Community Development (HCD) to refuse to issue a manufactured housing occupational license to an applicant who has been liable in a civil court action for any act or conduct that involved moral turpitude and is substantially related to the qualifications, functions, or duties of the licensed activity.

- Adds the following to the list of violations for which HCD may assess an additional civil penalty payable to HCD against a manufactured housing occupational licensee:

  a) Failure by HCD-certified, third-party inspectors to perform their legal duties; and,
  b) Selling a manufactured home without affixing a label or insignia showing the home meets safety standards.

- Allows, under the Factory Built Housing Law, HCD to assess a civil penalty payable to HCD for any of the following:

  a) Failure to affix to the manufactured housing an insignia of HCD approval showing that the housing meets standards;
  b) Conflict of interest on the part of or failure to perform by an independent, HCD-qualified manufactured housing design approval agency; and,
  c) Conflict of interest on the part of or failure to perform by an independent, HCD-qualified manufactured housing quality assurance agency.

Redevelopment

Redevelopment began in 1945 as a post-war blight removal program that used federal urban-renewal grants to clean up blighted urban areas. These first projects were few in number: 27 projects in 1966. Project size was also limited; prior to 1957, most project areas ranged from 10 to 100 acres.

Today, however, due to the use of tax-increment financing authorized by the voters in 1952 and fiscal restrictions imposed upon local governments by Proposition 13, redevelopment has emerged as a key local financing tool. Redevelopment has grown so tremendously that now there is scarcely a jurisdiction that does not have an agency. By 2002, there were a total of 413 redevelopment agencies in California -- in 382 cities, 27 counties, and four joint city-county agencies -- and a total of 764 project areas. Many project areas encompass thousands of acres.

California redevelopment agencies derive their authority to exercise the power of eminent domain from an express grant of that authority in the Community Redevelopment Law (Health & Safety Code §33391). The Legislature has specifically found that ". . . whenever the redevelopment of blighted areas cannot be accomplished by private enterprise alone, without public assistance in the acquisition of land, . . . it is in the public interest to employ the power of eminent domain . . . to provide a means by which blighted areas may be redeveloped or rehabilitated" [Health & Safety Code §33037(b)]. The Legislature has further found that ". . . the redevelopment of blighted areas and the provision for appropriate continuing land use and construction policies in them constitute public uses and purposes for which money may be advanced or expended and private property acquired, and are governmental functions of state concern in the interest of the health, safety and welfare of the people of the state and the communities in which the areas exist" [Health & Safety Code §33037(c)]. These sections were enacted by the Legislature in 1963.

Redevelopment agencies accumulate their funds by freezing the property tax base within a project area that has been found to be blighted. "Blight" is determined by meeting specific statutory conditions. With the property tax base frozen, all the affected taxing entities that receive property tax -- schools, fire departments, police departments, special districts -- continue to receive the same share of property tax that they received in the year when the redevelopment plan took effect. For instance, if a school was receiving $100,000 in property tax in 1990, it continues to receive that amount from the project area throughout the life of the redevelopment plan. Any additional property tax generated above the base year goes to the redevelopment agency. But the agency must share a percentage of this money with the affected taxing entities. A statutory formula requires certain percentages of funds to be passed through to the affected taxing entities. The specific percentages increase through the term of the redevelopment project.

A central interest the state has with redevelopment is its significant fiscal impact on the General Fund. These state costs are the result of the state guaranteeing minimum levels of school funding. Schools currently receive approximately 50% of local property tax dollars. When a redevelopment project area is declared and the property tax base within that area is "frozen," a large portion of the increase in the property tax increment generated within the project area flows to the redevelopment agency. Schools -- unlike all the other affected taxing entities that receive property tax within a project area -- are then reimbursed by the state for any amounts that they lose to redevelopment.

City officials and developers tout redevelopment's benefits and advantages to revive down-trodden urban areas; tax watch-dog groups and adversely-affected business owners view redevelopment agencies as administrative behemoths that gobble up scarce tax dollars and engage in grand-scale development deals of dubious value. The suspicious see redevelopment agencies as engaging in games of fiscal sleights of hand with its true powers only understood by attorneys, consultants, and staff.

In many cases, redevelopment powers have been used prudently and have produced good results. Examples are numerous where a run-down urban area is "redeveloped" and brought back to life again. In other more-controversial cases, these powers have been used to "develop" as opposed to redevelop. This happens when large areas of vacant land are deemed "blighted," and redevelopment agencies issue bonds without a public vote. These funds are then used to build infrastructure to attract development or to engage in bidding wars with surrounding communities to attract auto malls and "big-box" retailers and other sales-tax generators.

Some have argued that redevelopment powers have greatly expanded over the years. In fact the opposite is true. Since the 1960s the Legislature has tightened and further restricted the use of redevelopment powers. Redevelopment reform legislation has been introduced at roughly 10 to 15 year intervals. Contrary to the belief that redevelopment agency power has increased over the years, after each round of reforms, redevelopment agencies have had additional requirements and limitations placed on their ability to conduct redevelopment activity.

Redevelopment Reform: AB 1290

The early 1990's were difficult times for redevelopment agencies. Many members of the Legislature were openly criticizing agencies for adopting large project areas with questionable evidence of blight, engaging in bidding wars with other jurisdictions for new commercial developments, and hoarding millions of dollars in unspent housing set aside funds. The cry for reform was in the air. With little sympathy for the pleas of the defenders of redevelopment, the Legislature raided these perceived "cash cows" to help balance the state's budget deficit for two years in a row. In response to this negative environment, the California Redevelopment Association sponsored AB 1290 (Isenberg) Chapter 942, Statutes of 1993, which proposed numerous reforms to the existing redevelopment process. The bill focused on issues that had historically caused concerns among redevelopment critics, including the definition of "blight," the length of time a redevelopment plan stayed in effect, and mitigation agreements.

In brief, AB 1290:

- Altered the definition of "blight" by both modifying the specific definitions and dividing the conditions into two separate categories: physical and economic.

- Specified term limits for new and previously adopted project areas, i.e., the term of the redevelopment plan, the term of the available flow of tax increment moneys, and the term of the agency's redevelopment powers.

- Increased and modified penalties for the failure to expend tax increment moneys in an agency's Low and Moderate Income Housing Fund.

- Authorized the development of affordable housing units outside the project area to count toward an agency's inclusionary requirements. Under the provisions of the bill, an agency must produce two units outside the project area for every one unit owed.

- Prohibited the dedication of sales tax to an agency by its legislative body.

- Authorized the financing of facilities or capital equipment made in conjunction with the development or rehabilitation of property used for industrial or manufacturing purposes.

- Deleted provisions relating to negotiated mitigation agreements and, instead, provided for a guaranteed statutory pass-through beginning in the first year of a project area for all affected taxing entities.

Redevelopment Reform 2005-2006

Exercise of the power of eminent domain by a public entity remains controversial. Despite safeguards, examples of abuse do occur. Abuse typically derives from violations of existing law. Remedies for abuse and violations of redevelopment law are provided under existing law. Where violations of law occur, parties may seek legal redress.

During the summer and fall of 2005, three hearings were held to consider whether further reforms to state redevelopment law, including changes to the statutory definition of blight, may be beneficial in preventing misuse of eminent domain powers by local government entities. The bipartisan committees participating in those hearings were: Senate Local Government Committee; Senate Transportation & Housing Committee; Assembly Housing & Community Development Committee; and Assembly Local Government Committee.

The bipartisan committee recommended eight bills for consideration by the Legislature. Upon adjournment of the 2005-06 regular session the Legislature presented all eight bills to the Governor. Ultimately, each bill was signed and enacted into law by the Governor.

As redevelopment authority is the threshold to most eminent domain activity in California, the Governor and most observers believed that the reforms provided in those eight pieces of Legislation negated the need for further eminent domain reform as provided by ballot initiative in November 2006.

Major legislation:

AB 987 (Jones), Chapter 690, Statutes of 2007:

- Requires a redevelopment agency to make certain changes as to the monitoring and recording of affordability covenants and gives persons directly affected by a breach standing to enforce affordability covenants.

- Requires a redevelopment agency to record a specified document reciting and referencing affordability covenants and restrictions for all new or substantially rehabilitated housing units, if those units were developed or otherwise assisted by the Low and Moderate Income Housing Fund (LMIHF), as established by the Community Redevelopment Law (CRL). Specifies, however, that this requirement shall only apply to all new and substantially rehabilitated housing units that are developed or assisted after the effective date of this bill.

- Requires a redevelopment agency to compile a listing of the existing affordability covenants and restrictions on all parcels and units that were developed or otherwise assisted by LMIHF. Provides further that this listing shall be made available to the public and updated on an annual basis.

- Provides that affordability covenants and restrictions created pursuant to the low- and moderate-income housing provisions of CRL may be enforceable by a resident, resident association, former resident, or applicant of an affected unit.

- Make various technical and conforming changes relating to the recording and posting requirements, exempt domestic violence shelters from the posting requirements, and narrow the standing of who could enforce an action to residents, resident associations, former residents, and applicants who are directly affected by the breach of a covenant.

AB 1283 (Laird), Chapter 62, Statutes of 2007:

- Extends the repeal date, from January 1, 2008 to January 1, 2013, from provisions of the Health and Safety Code that allow Contra Costa County, Monterey County and Santa Cruz County Redevelopment Agencies to consider 40% of income as the measure for an affordable housing payment as related to their home buyer assistance programs.

- Requires all reporting requirements to the State Controller to continue.

AB 1496 (Leno), Chapter 318, Statutes of 2008:

- Specifies that the Treasure Island Development Authority (TIDA) does not need to create a project area committee (PAC) for the redevelopment projects on the former Naval Station Treasure Island (NSTI) if specified requirements are met.

    a) Consult with and obtains the advice of the existing Treasure Island/Yerba Buena Island Citizens Advisory Board (CAB) concerning the adoption and implementation of a redevelopment plan for NSTI;
    b) Amend the membership composition of the CAB to include not less than four specific slots for residents currently residing on NSTI, including slots designated for low and moderate income residents, at least 120 days before the adoption of the redevelopment plan for NSTI; and,
    c) Hold at least one public meeting to explain the new CAB composition, at which time TIDA does the following:

        i) Provides written notice of the public meeting explaining the new CAB composition and the opportunity for NSTI residents to serve on the CAB to all residents of NSTI at the time of the public meeting; and,
        ii) Prescribes the procedure for selection of the resident members of the CAB, which procedures must require that the resident members of the CAB be selected by a vote of the existing residents of the NSTI.

- Requires that persons of low- and moderate-income, lawfully occupying the existing housing on NSTI at the time the redevelopment plan for NSTI is adopted and at the time the existing housing is removed or demolished, be offered new permanent housing adequate to accommodate the household to be constructed within the redevelopment project area, at a cost or rent not exceeding the affordable housing costs or affordable rent, as defined.

AB 2097 (Coto), Vetoed (2008):

- Would have allowed a redevelopment agency (RDA) in the County of Santa Clara to use tax increment funds from the Low- and Moderate-Income (L&M) Fund to pay for supportive services for new permanent units occupied by persons and families with extremely low income.

- Would have required a RDA that spends its L&M Funds on supportive services to provide a report to the Assembly Committee on Housing and Community Development and the Senate Committee on Transportation and Housing on or before March 31, 2013.

  Governor Schwarzenegger's veto message: This bill would allow a redevelopment agency to divert funds set aside for the construction of affordable housing to finance supportive services which include staff salaries and other ongoing costs. While the intent of this bill, to increase social services for individuals who are homeless, is laudable, AB 2097 would set a precedent for the expenditure of redevelopment funds on ongoing, programmatic costs that create new levels of financial risk for taxpayers. Because redevelopment funds are based largely on bond indebtedness, they should be strictly limited to one-time costs associated with capital improvements and other physical work. In addition, this bill would reduce the available funding for actual housing production, which undermines state and local efforts to increase affordable housing opportunities for families with low and moderate incomes.

AB 2594 (Mullin), Vetoed (2008):

- Would have allowed a redevelopment agency (agency), until January 1, 2013, to use non-Low- & Moderate-Income Housing (L&M) Funds to acquire, assume, or refinance loans to eligible homeowners with sub-prime or nontraditional mortgages in default or at risk of default.

- Would have limited the funds that redevelopment agencies can use to purchase, assume, or refinance subprime or nontraditional mortgages to non-L&M funds.

- Would have allowed an agency to use non-L&M Fund monies to do any of the following within its jurisdiction:

  a) Purchase, assume or refinance existing sub-prime or nontraditional mortgages or make new loans on homes owned by eligible homeowners who are low- or moderate-income; and,
  b) Purchase homes that have been foreclosed and are vacant and sell those homes to low- or moderate-income persons or families.

- Would have allowed an agency to adopt local criteria governing the use of funds including but not limited to limiting assistance to defined neighborhoods or a geographic area or to target specific income categories.

- Would have included a sunset date of January 1, 2013.

  Governor Schwarzenegger's veto message: If this bill was signed into law, it would be in conflict with the recently enacted budget trailer legislation. By allowing redevelopment agencies to use tax increment revenue to purchase, assume, or refinance nontraditional and subprime mortgages, the bill would reduce the tax increment available for transfer to the Educational Revenue Augmentation Funds, as the budget trailer legislation requires.

SB 437 (Negrete McLeod), Chapter 90, Statutes of 2007:

- Requires redevelopment agencies to include within their annual report and implementation plan, time limits for eminent domain, establishment of debt, plan effectiveness and repayment of debt.

- Requires redevelopment agency annual reports, that are delivered to the local legislative body to include, in addition to requirements provided under existing law, the fiscal years that the agency expects the following to expire:

  a) Time limit for the commencement of eminent domain proceedings.

  b) Time limit for the establishment of indebtedness to finance the project.

  c) Time limit for the effectiveness of the redevelopment plan.

  d) Time limit to repay indebtedness.

- Requires the redevelopment implementation plan to identify the fiscal year that the agency expects the following to expire:

  a) Time limit for the commencement of eminent domain proceedings.

  b) Time limit for the establishment of indebtedness to finance the project.

  c) Time limit for the effectiveness of the redevelopment plan.

  c) Time limit to repay indebtedness.

SB 1689 (Lowenthal), Vetoed (2008):

- Would have given the Department of Housing and Community Development (HCD) authority to forward any audit or investigation of a redevelopment agency (RDA) which revealed a major violation to the Attorney General (AG) for action.

- Would have required the AG to decide within 45 days of receiving the notice of major violations whether to file an action requiring the RDA to correct the violation.

- Would have given the State Controller (Controller) authority to conduct quality control reviews of RDAs independent financial audit reports to the extent possible through existing budget resources.

- Would have provided if the Controller determines that the audit was conducted in a manner that may constitute unprofessional conduct the auditor must refer the case to the California Board of Accountancy (Board).

- Would have provided if the Board determines that the independent auditor conducted the audit in an unprofessional manner than the auditor is prohibited from conducting audits for a period of three years in addition to any other penalties the Board may impose.

- Would have provided that if the Controller found that two consecutive quality control reviews performed by an independent auditor were not performed in substantial conformity with provision of the audit and reporting guidelines then the Controller must notify the auditor and the Board in writing.

- Would have provided if an independent auditor did not file a written appeal with the Board within 30 days then the Controller's determination was final.

- Would have provided the Board may take either of the following actions if an independent auditor files an appeal:

  a) Find that the Controller's determination should not be upheld; or,
  b) Schedule the appeal for a hearing

- Would have provided that if the Controller's determination that an auditor was not performed in substantial compliance then the auditor was ineligible to perform RDA audits for three years or for any period and subject to conditions ordered by the board.

- Would have required the Controller to notify each RDA of those independent auditors that are ineligible to perform audits and prohibits an RDA from using them.

Miscellaneous

AB 239 (DeSaulnier) as introduced:

- Would have allowed Contra Costa and San Mateo Counties to increase real estate document recording fees to fund affordable housing development.

- Would have allowed the Contra Costa County Board of Supervisors and the San Mateo County Board of Supervisors to charge an additional flat fee, not to exceed $25, for each recorded real estate document in excess of one page.

- Would have required funds raised pursuant to this measure to be deposited in individual accounts established by the Contra Costa County Board of Supervisors and the San Mateo County Board of Supervisors and be used only to help finance the construction, rehabilitation, or purchase of housing affordable to extremely low-, very low-, low- and moderate-income households and for any local matching contributions required by federal law.

- Would have specified that housing constructed with funds raised pursuant to this measure must meet one of the following requirements:

  a) Be located within the urban limit line;

  b) Be multifamily housing with an average density of at least 14 units per acre; or

  c) Be designed in a manner that complements existing neighborhoods, promotes social interactions, is pedestrian friendly, and allows for potential mixed use.

As amended August 18, 2008 (Vetoed):

- Removed all reference to real estate document recording fees.

- Would have enacted the Alcoholism and Drug Abuse Counselors Licensing Law and provides for the licensing of these counselors by the Board of Behavioral Sciences within the Department of Consumer Affairs.

AB 382 (Housing Committee), Chapter 596, Statutes of 2007:

- The committee omnibus housing measure that makes technical and non-substantive changes to various sections of the law dealing with housing.

AB 607 (Brownley), Chapter 599, Statutes of 2007:

- Requires all residential hotels to provide each unit with a locking mail receptacle that is acceptable for mail delivery by the United States (U.S.) Post Office by July 1, 2008.

- Requires all mail receptacles located in residential hotels to meet the standards of the U.S. Postal Service Domestic Mail Manual and the Fair Housing Act.

- Allows a city or county to develop ordinances that provide greater protection with respect to a locking mail receptacle.

AB 725 (Lieber), Vetoed (2008):

- Would have required the Department of Housing & Community Development (HCD), on or before April 1, 2009, to convene the first meeting a working group of subsidized affordable housing providers to draft a uniform subsidized affordable housing application and for HCD to post the application on its website.

- Would have required HCD to do all of the following if the working group developed a draft uniform application:

  a) Reviewed the draft to determine if it complied with departmental policy and if not returned it to the working group for any necessary changes;

  b) Provided the draft of the application to the Department of Fair Employment and Housing (DFEH) who would review the draft for compliance with the fair housing statutes it enforced and make any necessary changes and return the draft to HCD;

  c) Added a statement to the application indicating that it can be downloaded in formats accessible to people with disabilities and the website from which it can be downloaded;

  d) Provided the completed uniform application to the State Council of Developmental Disabilities which would do all of the following:

     i) Selected a contractor to be paid up to $4,000 to develop two formats of the uniform application both in English, with a large font, one with color illustrations and one without;

     ii) Required the contractor to conduct at least one test of the application with a focus group of persons with disabilities; and,

     iii) Reviewed and approved the accessible formats developed by the contractor and provided them to HCD.

  e) Posted the final application on its Web site; and,

  f) Reconvened the working group as necessary to draft revisions of the application to comply with changes in law or the requirements of federal or state funding agencies.

- Would have required the California Tax Credit Allocation Committee (TCAC) and the California Housing Finance Agency (CalHFA) to award additional points to future funding applicants who agree to distribute and accept the uniform application.

- Would have made the provisions of the bill regarding the creation of accessible formats of the application inapplicable if the State Council of Development Disabilities did not produce the accessible formats of the application because of financial limitations.

Governor Schwarzenegger's veto message: This bill is unnecessary and impractical for the Department of Housing and Community Development to implement. Providers of rental housing are free to develop a uniform rental housing application on their own should they find such an application helpful for their housing developments or for their prospective tenants. Also, since housing providers would be able to request additional information on this application, it in effect would not truly be a universal application.

Additionally, this bill would require state agencies, when awarding housing funding or tax credits, to assign bonus points to applicants using the universal rental application. This provision places the use of a specific rental application on the same priority level as other high level programmatic priorities such as housing affordability, project readiness, and funding commitments. This is not an appropriate way to disperse scarce housing bond funds.

AB 1574 (Houston) as introduced:

- Would have limited the imposition of residential real property transfer fees to properties for which the Department of Real Estate has issued a public report under the Subdivision Map Act.

- Would have restricted the prospective use of transfer fees by requiring that the fee: (1) only go to public entities or nonprofit organizations identified in the subdivision public report; (2) constitute no more than two percent of the sale price; (3) be imposed for no greater than 99 years; (4) provide a public benefit within the region; and (5) not be used for expenses relating to lobbying.

- Would have required the seller of residential real property to provide an additional disclosure statement to notify the buyer about any transfer fee, the amount, recipients, purpose, and expiration of the fee.

- Would have required any person or entity that imposed a transfer fee to record a specified document with the county recorder as a prerequisite to any assessment and payment of that fee, as specified.

- Would have defined transfer fee and exempted certain fees from that definition.

As amended July 2, 2008 (Plescia), Vetoed:

- Removed all reference to private transfer fees on real property.

- Would have created the California Outpatient Pharmacy Patient Safety and Improvement Act.

AB 1831 (Mendoza) died in the Senate Committee on Appropriations:

- Would have required the Department of Housing and Community Development (HCD) in collaboration with the California Department of Education (CDE) to report to the Legislature and the Governor information on existing local programs designed to help public school teachers secure housing in the community in which they work.

- Would have required on or before November 15, 2009, HCD in collaboration with CDE to produce a report to the Legislature and the Governor that:

a) Detailed existing local programs, including but not limited to programs in other states that are designed to help teachers or faculty members in securing housing;
b) Made recommendations on the feasibility of replicating successful programs for the purpose of establishing programs for teachers or faculty members in other communities; and,
c) Specified the factors and any common elements that lead to successful programs.

- Would have specified that programs examined in the report shall include, but are not limited to, local programs for low-interest loans for teachers or faculty members to purchase homes and local programs that provide affordable housing opportunities to teachers or faculty members, including renting, leasing or purchasing.

AB 2016 (Housing Committee), Chapter 664, Statutes of 2008:

- The committee omnibus housing measure that makes technical and non-substantive changes to various sections of the law dealing with housing.

AB 2019 (Fuentes), Vetoed (2008):

- Would have given tenants the ability to enforce the provisions of law requiring owners of assisted housing developments to give affordable housing developers and others the right to make an offer to purchase the development in order to preserve its affordability when the owner fails to renew participation in a subsidy program.

  Governor Schwarzenegger's veto message: This bill would give tenants the ability to initiate legal action against an owner of publicly subsidized, rent-restricted, or assisted housing if the owner fails to provide the proper legal notice when the owner decides to remove the property from the subsidized housing market.

  This measure, while well intentioned, attempts to achieve this goal by expanding the number of individuals who have standing to initiate legal action and enforce current notification requirements. This could increase overall litigation throughout the state. In addition, owners, who may have simply been unaware of the notification requirements, may face excessive and unnecessary delays or court costs prior to the sale or transfer of their property. These types of delays and burdens could discourage potential buyers of the affordable housing development and increase the chances that individuals who own, or are considering the purchase of, affordable housing units will choose not to enter the market.

AB 2554 (Mullin), Chapter 138, Statutes of 2008:

- Provides that the Department of Housing and Community Development (HCD) shall reassume responsibility for enforcing the Employee Housing Act, the Mobilehome Parks Act and the Special Occupancy Parks Act within 90 days of receiving notice that a city or county is canceling its local enforcement, and clarifies which already-collected fees a local government must remit to HCD.

AB 2818 (Jones), Vetoed (2008):

- Would have prohibited a public housing authority from disposing of public housing units affordable to low- and moderate-income households without meeting certain requirements, including replacing the units.

  Governor Schwarzenegger's veto message: This bill would prohibit a local housing authority from disposing of certain types of subsidized public housing unless the housing authority meets certain state mandated conditions, including the full replacement of disposed of housing units.

  The restrictions that this bill would add are unnecessary and over burdensome to local housing authorities. The federal government has been reducing subsidy funding for public housing, but the demand for public housing is not declining. Local housing authorities must have the flexibility to dispose of financially unsupportable housing in an efficient and timely manner that minimizes the loss of housing units. This bill would impose new notice requirements and other restrictions and limitations that would limit too severely that vital flexibility.

AJR 21 (Portantino), Resolution Chapter 126, Statutes of 2008:

- Urges public housing agencies in the state that provide HCV under the Section 8 of the U.S. Housing Act of 1937, to include shared housing as a option for all voucher recipients especially foster youth and the elderly in the next plan the agency submits to HUD.

- Petitions the U.S. President and Congress to enact legislation reducing the tenant's portion of the rent to 20% of monthly income for extremely low income special needs recipients who utilize shared housing.

SB 127 (Kuehl), Vetoed (2008):

- Would have required disclosure documents to be delivered to a buyer within a specified time period after the execution of the purchase agreement or the opening of escrow in the sale of real property, a manufactured home or mobilehome rather than as soon as possible.

- Would have required, in the sale of real property, manufactured home or mobilehome specified documents be delivered to a buyer, as soon as possible, before transfer of title, but no later than 10 days after the execution of the purchase agreement unless the parties to the sale agree to negotiate a time longer than 10 days in writing.

- Would have required an owner in a common interest development to provide a list of specified documents to a prospective buyer, as soon as possible, before transfer of title, but no later than 20 days after either the execution of a purchase agreement or the opening of escrow whichever is later.

  Governor Schwarzenegger's veto message: The historic delay in passing the 2008-2009 State Budget has forced me to prioritize the bills sent to my desk at the end of the year's legislative session. Given the delay, I am only signing bills that are the highest priority for California. This bill does not meet that standard and I cannot sign it at this time.

SB 1386 (Lowenthal), Vetoed (2008):

- Would have created the Carbon Monoxide (CO) Poisoning Prevention Act of 2008 (the Act).

- Would have defined a "carbon monoxide device" as a device that met all of the following requirements:

  a) Detected CO and produces a distinct audible alarm;
  b) Was battery powered, a plug in device with a battery backup or installed as recommended by Standard 720 of the National Fire Protection Association that is either wired into the alternating current power line of the dwelling unit with a secondary battery backup or connected to a system via a panel;
  c) Have been tested and certified pursuant to the requirements of the American National Standards Institute (ANSI) and Underwriters Laboratories Inc. (UL), by a nationally recognized testing laboratory as specified; and,
  d) If combined with a smoke detector the device must:

     i) Meet the standards that apply to CO alarms as described in the Act;
     ii) Meet the standards that apply to smoke detectors in Section 13113.7; and,
     iii) Emit an alarm or voice warning in a manner that clearly differentiates between a CO alarm and a smoke detector warning.

- Would have defined "dwelling unit intended for human occupancy" to include single family dwelling, factory built home, duplex, lodging house, dormitory apartment complex, hotel, motel, condominium, stock cooperate, time-share project or dwelling unit of a multi-family complex. Would have exempted a property owned or leased by the state or a local government agency.

- Would have defined "fossil fuel" to mean coal, kerosene, oil, wood, fuel gases, and other petroleum or hydrocarbon product which emit carbon monoxide as a byproduct of combustion.

- Would have required a CO device that has been approved by the State Fire Marshal to be installed in any dwelling intended for human occupancy that has a fossil fuel burning heater or appliance, fireplace, or an attached garage within the earliest applicable timeframe as follows:

  a) For all existing single-family dwelling units intended for human occupancy on or before July 1, 2010;
  b) For all new single-family and multi-family residential construction one year after the effective date of the 2010 edition of the California Building Standards (CBS) Code of Regulations which include regulations on carbon monoxide devices; and,
  c) For all other dwellings intended for human occupancy on the first January 1 or July 1 that occurs more than two years after the publication date of the 2010 edition of the CBS Code of Regulations.

- Would have provided a violation of this Act was punishable by a maximum fine of $200 for each offense.

- Would have required a resident of a single-family home to receive a 30-day notice to correct a violation of this Act prior to being assessed a fine.

- Would have allowed a local jurisdiction to enact or amend an ordinance requiring CO devices that was consistent with the Act.

- Would have required an owner of rental units to test and maintain the CO device in that dwelling unit.

- Would have allowed an owner to enter into a unit to test and maintain a CO device.

- Would have required an owner to give a tenant twenty-four hours notice, except in an emergency, before entering the unit to install, repair, test or maintain a CO device.

- Would have required a tenant to notify the manager or owner of a unit if the CO device did not work.

- Would have provided that an owner or authorized agent was not in violation of the Act if he or she did not receive notice that the device was not working.

- Would have required effective two years after the California Building Standards Commission (CBSC) adopted standards for the installation of carbon monoxide devices any seller of a single-family home, factory-built home, condominium, duplex, stock cooperative, or time-share unit must disclose to the prospective buyer in writing whether or not the home was in compliance with the CO alarm statute.

- Would have provided the disclosure statement may be included in existing transactional documents including but not limited to a real estate sales contract or recipe for deposit or a transfer disclosure statement.

- Would have provided that real estate agents and other agents to a sales transaction are not required to monitor or ensure compliance with the law.

- Would have provided that third-party agents to a sales transaction are not held liable for any error, inaccuracy, or omission relating to the disclosure, except that a real estate agent may be held liable where he or she participates in the making of the disclosure with actual knowledge of the falsity of the disclosure.

- Would have provided that the exclusive remedy for failure to disclose was an award of actual damages up to $100 and that a transfer of title may not be invalidated on the basis of a failure to disclose.

- Would have required the Department of Housing and Community Development (HCD) to in consultation with the State Fire Marshal (SFM) to develop and propose building standards for CO devices to the CBSC during the 2010 CBS Code adoption cycle or later if HCD determined there was not a sufficient quantity of tested and approved CO devices available to meet the requirements of the Act.

- Would have required the SFM to develop a process to approve and list carbon monoxide devices and would have authorized the State Fire Marshal to charge a fee to cover the cost of approval.

- Would have prohibited a person from marketing or selling a CO device that have not been approved by the SFM.

- Would have required the SFM to develop a process to certify and decertify CO devices which shall consider the effectiveness and reliability of the devices including their propensity to record false alarms.

- Would have required the SFM to charge an appropriate fee to manufacturers of CO device to cover the cots associated with the approval and listing of CO devices and the costs of HCD for developing and proposing building standards for CO devices.

- Would have prohibited a person from marketing, distributing, offering for sale or selling any CO devices in the state that have not been approved and listed by the SFM.

- Would have provided if the HCD or the CSBC adopted regulations or standards for a CO device after July 1, 2010 and an owner had already installed an alarm, the owner would not be required to install a new device meeting the new regulations until the owner applied for a permit to make repairs or alternations to the dwelling that would exceed $1,000.

- Would have combined the seller disclosure requirements for a smoke detector, carbon monoxide device, and water heater strapping and bracing in a real estate transaction on to the same forms.

Governor Schwarzenegger's veto message: This bill would require that carbon monoxide devices be installed in residences beginning in 2010, thus placing a building standard in statute. This bill would also require that the Department of Housing and Community Development develop additional building standards concerning specific installation requirements for these devices.

While I am certainly concerned with the health and safety of Californians, this bill is an undesirable approach. Building standards should not be statutory. The Building Standards Commission (BSC) was created to ensure an open public adoption process allowing experts to develop standards and periodic updates to the building codes. Placing building standards in statute rather than regulation circumvents the existing state regulatory adoption process and excludes the input of safety and construction experts.

Smoke detectors in homes were approved by the BSC after a process of review of the safety, need, and reliability of the product. This process should be utilized for carbon monoxide devices.

Additionally, product reliability is an issue that has also affected attempts to require carbon monoxide devices through national building codes. The International Code Council, which writes a national model building code, recently rejected two proposals to require the installation of carbon monoxide devices in new residential dwellings, citing the lack of clear direction for placement of the devices and the propensity for false alarm indications. A recent test study indicated that alarm technology is not adequately reliable, resulting in false alarms or no alarm at all.

APPENDIX I (numeric order)

APPENDIX II (subject order)