

AMENDED IN SENATE AUGUST 7, 2006

AMENDED IN SENATE JUNE 21, 2006

AMENDED IN ASSEMBLY MAY 3, 2006

AMENDED IN ASSEMBLY MARCH 30, 2006

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2638**

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**Introduced by Assembly Member Laird  
(Coauthors: Assembly Members Hancock, Mullin, and Torrico)**

February 24, 2006

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An act to amend Section 50843 of, and to add Sections 50842.1, 50842.2, and 50843.5 to, the Health and Safety Code, relating to housing, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 2638, as amended, Laird. Housing trust fund.

(1) Existing law establishes the Local Housing Trust Fund Matching Grant Program for the purpose of supporting local housing trust funds dedicated to the creation or preservation of affordable housing. The Department of Housing and Community Development is authorized to make matching grants available to cities and counties, or a city and county, and existing charitable nonprofit organizations that have created, funded, and operated housing trust funds prior to January 1, 2003. Existing law also authorizes the department to make matching grants available to new local housing trusts created after January 1, 2003. Existing law provides that a project receiving funds is ineligible for funding through the Multifamily Housing Program. Existing law requires funds unencumbered within 30 months of

receipt to revert to the department for use in the Multifamily Housing Program and requires loan repayments to accrue to the department to support the development of rental housing consistent with the Multifamily Housing Program if the local grantee trust no longer exists.

This bill would allow a project receiving funds from this program to be eligible for funding through the Multifamily Housing Program and would require funds that revert to the department to be used in the Local Housing Trust Fund Matching Grant Program and loan repayments accruing to the department to be used in the Local Housing Trust Fund Matching Grant Program.

(2) Existing law requires the Local Housing Trust Fund Matching Grant Program to be operated under guidelines adopted by the department that are exempt from the requirements of Administrative Procedure Act.

This bill would, for grants made available from funds other than those made available pursuant to the Housing and Emergency Shelter Trust Fund Act of 2002, and subject to the availability of funds, require, rather than authorize, the department to make these grants and would eliminate the distinction between housing trusts that existed before January 1, 2003, and those that are created after that date. The bill would also eliminate, *for grants made available from funds other than those made available pursuant to the Housing and Emergency Shelter Trust Fund Act of 2002*, the requirement that the program be operated under guidelines adopted by the department that are exempt from the requirements of the Administrative Procedure Act.

(3) Existing law authorizes the department to establish competitive criteria for the award of local housing trust fund matching grants and requires the funding priorities used in the Multifamily Housing Program to be used if grant applications exceed available funds.

This bill would delete this authorization for grants made available from funds other than those made available pursuant to the Housing and Emergency Shelter Trust Fund Act of 2002.

(4) Existing law requires program funds to be used to provide loans for the construction of rental housing affordable to, and restricted for, very low income persons and families earning less than 60% of the area median income.

This bill would instead, for grants made available from funds other than those made available pursuant to the Housing and Emergency Shelter Trust Fund Act of 2002, require funds be used for the

acquisition, construction, or rehabilitation of rental housing, emergency shelters, safe havens, transitional housing, and for sale housing. The bill would require at least 30% of these funds to be expended on projects, units, or shelters that are affordable to, and restricted for, extremely low income persons and families, no more than 20% of these funds to be expended on projects or units affordable to, and restricted for, moderate-income persons and families whose income does not exceed 120% of the area median income, and the remaining funds to be used for projects, units, or shelters that are affordable to, and restricted for, lower income persons and families. The bill would require the grantee to record deed restrictions on for sale housing to ensure that ~~the housing is affordable to households that meet the relevant income qualifications for at least 30 years or provide for equity sharing upon resale~~ *the owner and grantee share the equity when the property is sold or, if the property is sold within 30 years from the date trust funds are used to acquire, construct, or rehabilitate the property, the owner or subsequent owner sell the home at an affordable housing cost to a household that meets the relevant income qualifications.*

(5) Existing law requires funds unencumbered within 30 months of receipt to revert to the department.

This bill would, for grants made available from funds other than those made available pursuant to the Housing and Emergency Shelter Trust Fund Act of 2002, extend this 30 month period to 54 months.

(6) Existing law requires the department to provide a report the Legislature regarding the program no later than December 31, 2005.

~~The~~ *This* bill would require the department's report to the Legislature to be provided by January 30 of the year following a year in which funds are awarded by the program.

The bill would also make technical, nonsubstantive changes.

(7) This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

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

- 1 SECTION 1. Section 50842.1 is added to the Health and
- 2 Safety Code, to read:

1 50842.1. The Legislature finds and declares all of the  
2 following:

3 (a) Local housing trusts are locally developed responses to  
4 regional housing needs and are responsive to local control.

5 (b) Local housing trusts have an excellent record of  
6 accomplishment of serving as efficient vehicles for disbursing  
7 resources at the local level.

8 (c) As of January 1, 2006, there were 21 city and nine county  
9 housing trusts throughout California producing thousands of  
10 units of affordable housing, through the utilization of millions of  
11 dollars of locally generated funds, resulting in the leverage of  
12 millions more for the development of affordable housing.

13 (d) Housing trusts are local sources of revenue for affordable  
14 housing and very often are a direct result of local constituencies  
15 coming together around affordable housing. These relationships  
16 are often long term and include a broad set of community players  
17 that go beyond the traditional supporter of affordable housing.

18 SEC. 2. Section 50842.2 is added to the Health and Safety  
19 Code, to read:

20 50842.2. There is hereby established the Local Housing Trust  
21 Fund Matching Grant Program, to be administered by the  
22 department, for the purpose of supporting local housing trust  
23 funds dedicated to the creation or preservation of affordable  
24 housing as described in this section. Local housing trust funds  
25 shall be derived on an ongoing basis from private contributions  
26 or governmental sources that are not otherwise restricted in use  
27 for housing programs.

28 SEC. 3. Section 50843 of the Health and Safety Code is  
29 amended to read:

30 50843. (a) This section applies only to grants awarded  
31 pursuant to this chapter from funds made available pursuant to  
32 Part 11 (commencing with Section 53500).

33 (b) The department may make matching grants available to  
34 cities and counties, or a city and county, that have created,  
35 funded, and operated housing trust funds prior to January 1,  
36 2003, and to existing charitable nonprofit organizations described  
37 in Section 501(c)(3) of the Internal Revenue Code that have  
38 created, funded, and operated housing trust funds prior to January  
39 1, 2003. These funds shall be awarded through the issuance of a  
40 Notice of Funding Availability (NOFA). The department may

1 establish competitive criteria consistent with the funding  
2 priorities used in the Multifamily Housing Program (Chapter 6.7  
3 (commencing with Section 50675)) to be used in the event that  
4 applications exceed the funds available. Applicants that provide  
5 matching funds from a source or sources other than impact fees  
6 on residential development shall receive a priority for funding.

7 (c) The department may make matching grants available to  
8 new local housing trusts created by cities and counties, or a city  
9 and county, and to fund new housing trusts created by charitable  
10 nonprofit organizations described in Section 501(c)(3) of the  
11 Internal Revenue Code that provide low-income housing  
12 assistance. As used in this section, “new housing trust” means a  
13 housing trust that was not in existence prior to January 1, 2003.  
14 The department may consider grant applications, submitted  
15 pursuant to this paragraph, and determine their eligibility for  
16 funding, in the order in which they are received.

17 (d) Housing trusts eligible for funding under this section shall  
18 have the following characteristics:

19 (1) They utilize a public or joint public and private fund  
20 established by legislation, ordinance, resolution, or a  
21 public-private partnership to receive specific revenue to address  
22 local housing needs.

23 (2) They receive ongoing revenues from dedicated sources of  
24 funding such as taxes, fees, loan repayments, or private  
25 contributions.

26 (e) The minimum allocation to an applicant shall be one  
27 million dollars (\$1,000,000), and no applicant may receive an  
28 allocation in excess of two million dollars (\$2,000,000). All  
29 funds provided pursuant to this section shall be matched on a  
30 dollar-for-dollar basis. No application shall be considered unless  
31 the department has received adequate documentation of the  
32 deposit in the local housing trust fund of the local match and the  
33 identity of the source of matching funds. Applicants shall be  
34 required to continue funding the local housing trust fund from  
35 these identified local sources, and continue the trust in operation,  
36 for a period of no less than five years from the date of award. If  
37 the funding is not continued for a five-year period, then (A) the  
38 amount of the department’s grant to the local housing trust fund,  
39 to the extent that the trust fund has ~~encumbered~~ *unencumbered*  
40 funds available, shall be immediately repaid, and (B) any

1 payments from ~~the project~~ *any projects* funded by the local  
2 housing trust fund that would have been paid to the local housing  
3 trust fund shall be paid instead to the department and used for the  
4 program. The total amount paid to the department pursuant to (A)  
5 and (B), combined, shall not exceed the amount of the  
6 department's grant.

7 (f) Funds shall be used to provide loans for the construction of  
8 rental housing projects, or for construction of units within rental  
9 housing projects, affordable to, and restricted for, very low  
10 income persons and families earning less than 60 percent of the  
11 area median income. All assisted units shall be restricted for not  
12 less than 55 years. Loan repayments shall accrue to the grantee  
13 housing trust, or to the department if the trust is no longer in  
14 existence, for use in the program. After expiration of the standard  
15 agreement between the department and grantee, loan repayments  
16 to the grantee housing trust may be used consistent with Section  
17 50843.5.

18 (g) In order for a city, county, or city and county to be eligible  
19 for funding, the applicant shall have, at the time of application,  
20 an adopted housing element that the department has determined,  
21 pursuant to Section 65585 of the Government Code, is in  
22 substantial compliance with the requirements of Article 10.6  
23 (commencing with Section 65580) of Chapter 3 of Division 1 of  
24 Title 7 of the Government Code. In order for a nonprofit  
25 organization applicant to be eligible for funding, the applicant  
26 shall agree to utilize funds provided under this chapter only for  
27 projects located in cities, counties, or a city and county that have,  
28 at the time of application, an adopted housing element that the  
29 department has determined, pursuant to Section 65585 of the  
30 Government Code, to be in substantial compliance with the  
31 requirements of Article 10.6 (commencing with Section 65580)  
32 of Chapter 3 of Division 1 of Title 7 of the Government Code.  
33 For the purposes of this section, eligible local housing trust funds  
34 may not include any ongoing restricted fund that is required to be  
35 established pursuant to federal or state law.

36 (h) Recipients shall have held, or shall agree to hold, a public  
37 hearing or hearings to discuss and describe the project or projects  
38 that will be financed with funds provided pursuant to this section.  
39 As a condition of receiving a grant pursuant to this section, any  
40 nonprofit organization shall agree that it will hold one public

1 meeting a year to discuss the criteria that will be used to select  
2 projects to be funded. That meeting shall be open to the public,  
3 and public notice of this meeting shall be provided, except to the  
4 extent that any similar meeting of a city or county would be  
5 permitted to be held in closed session.

6 (i) No more than 5 percent of the funds appropriated to the  
7 department pursuant to subparagraph (C) of paragraph (1) of  
8 subdivision (a) of Section 53533 shall be used to pay the costs of  
9 administration of this section.

10 (j) A local housing trust fund shall encumber funds provided  
11 pursuant to this section no later than 54 months after receipt. Any  
12 funds not encumbered within that period shall revert to the  
13 department for use in the program.

14 (k) Recipients shall be required to file periodic reports with the  
15 department regarding the use of funds provided pursuant to this  
16 section. No later than December 31, 2005, the department shall  
17 provide a report to the Legislature regarding the number of trust  
18 funds created, a description of the projects supported, the number  
19 of units assisted, and the amount of matching funds.

20 (l) This program shall be operated under guidelines adopted by  
21 the department and shall not be subject to the requirements of  
22 Chapter 3.5 (commencing with Section 11340) of Part 1 of  
23 Division 3 of Title 2 of the Government Code.

24 SEC. 4. Section 50843.5 is added to the Health and Safety  
25 Code, to read:

26 50843.5. (a) Subject to the availability of funding, the  
27 department shall make matching grants available to any city,  
28 county, or city and county that has created, funded, and operated  
29 housing trust funds and to existing charitable nonprofit  
30 organizations described in Section 501(c)(3) of the Internal  
31 Revenue Code that have created, funded, and operated housing  
32 trust funds. These funds shall be awarded through the issuance of  
33 a Notice of Funding Availability (NOFA). Applicants that  
34 provide matching funds from a source or sources other than  
35 impact fees on residential development shall receive a priority for  
36 funding.

37 (b) Housing trusts eligible for funding under this section shall  
38 have the following characteristics:

39 (1) Utilization of a public or joint public and private fund  
40 established by legislation, ordinance, resolution, or a

1 public-private partnership to receive specific revenue to address  
2 local housing needs.

3 (2) Receipt of ongoing revenues from dedicated sources of  
4 funding such as taxes, fees, loan repayments, or private  
5 contributions.

6 (c) The minimum allocation to an applicant shall be one  
7 million dollars (\$1,000,000), and no applicant may receive an  
8 allocation in excess of two million dollars (\$2,000,000). All  
9 funds provided pursuant to this section shall be matched on a  
10 dollar-for-dollar basis with money that is not required by any  
11 state or federal law to be spent on housing. No application shall  
12 be considered unless the department has received adequate  
13 documentation of the deposit in the local housing trust fund of  
14 the local match and the identity of the source of matching funds.  
15 Applicants shall be required to continue funding the local  
16 housing trust fund from these identified local sources, and  
17 continue the trust in operation, for a period of no less than five  
18 years from the date of award. If the funding is not continued for a  
19 five-year period, then (1) the amount of the department’s grant to  
20 the local housing trust fund, to the extent that the trust fund has  
21 ~~encumbered~~ *unencumbered* funds available, shall be immediately  
22 repaid, and (2) any payments from ~~the project~~ *any projects*  
23 funded by the local housing trust fund that would have been paid  
24 to the local housing trust fund shall be paid instead to the  
25 department and used for the program or its successor. The total  
26 amount paid to the department pursuant to (1) and (2), combined,  
27 shall not exceed the amount of the department’s grant.

28 (d) (1) Funds shall be used for the predevelopment costs,  
29 acquisition, construction, or rehabilitation of the following types  
30 of housing or projects:

31 (A) Rental housing projects or units within rental housing  
32 projects. The affordability of all assisted units shall be restricted  
33 for not less than 55 years.

34 (B) Emergency shelters, safe havens, and transitional housing,  
35 as these terms are defined in Section 50801.

36 (C) For sale housing projects or units within for sale housing  
37 projects.

38 (2) At least 30 percent of the total amount of the grant and the  
39 match shall be expended on projects, units, or shelters that are  
40 affordable to, and restricted for, extremely low income persons

1 and families, as defined in Section 50106. No more than 20  
2 percent of the total amount of the grant and the match shall be  
3 expended on projects or units affordable to, and restricted for,  
4 moderate-income persons and families whose income does not  
5 exceed 120 percent of the area median income. The remaining  
6 funds shall be used for projects, units, or shelters that are  
7 affordable to, and restricted for, lower income persons and  
8 families, as defined in Section 50079.5.

9 (3) If funds are used for the acquisition, construction, or  
10 rehabilitation of for sale housing projects or units within for sale  
11 housing projects, the grantee shall record a deed restriction  
12 against the property that will ensure compliance with one of the  
13 following requirements upon resale of the for sale housing units:

14 ~~(A) The purchaser shall occupy the unit and meet the relevant~~  
15 ~~income qualifications for at least 30 years or shall make the unit~~  
16 ~~available to households that meet the relevant income~~  
17 ~~qualifications for at least 30 years.~~

18 *(A) If the property is sold within 30 years from the date that*  
19 *trust funds are used to acquire, construct, or rehabilitate the*  
20 *property, the owner or subsequent owner shall sell the home at*  
21 *an affordable housing cost, as defined in Section 50025.5, to a*  
22 *household that meets the relevant income qualifications.*

23 (B) The owner and grantee shall share the equity in the unit  
24 pursuant to an equity sharing agreement. The grantee shall reuse  
25 the proceeds of the equity sharing agreement consistent with this  
26 section. To the extent not in conflict with another public funding  
27 source or law, all of the following shall apply to the  
28 equity-sharing agreement provided for by the deed restriction:

29 (i) Upon resale by an owner-occupant of the home, the  
30 owner-occupant of the home shall retain the market value of any  
31 improvements, the downpayment, and his or her proportionate  
32 share of appreciation. The grantee shall recapture any initial  
33 subsidy and its proportionate share of appreciation, which shall  
34 then be used to make housing available to persons and families of  
35 the same income category as the original grant and for any type  
36 of housing or shelter specified in paragraph (1).

37 (ii) For purposes of this subdivision, the initial subsidy shall  
38 be equal to the fair market value of the home at the time of initial  
39 sale to the ~~nonprofit organization~~ *owner-occupant* minus the  
40 initial sale price to the ~~low-income~~ owner-occupant, plus the

1 amount of any downpayment assistance or mortgage assistance.  
 2 If upon resale by the owner-occupant the market value is lower  
 3 than the initial market value, then the value at the time of the  
 4 resale shall be used as the initial market value.

5 (iii) For purposes of this subdivision, the grantee's  
 6 proportionate share of appreciation shall be equal to the ratio of  
 7 the initial subsidy to the fair market value of the home at the time  
 8 of the initial sale.

9 (e) Loan repayments shall accrue to the grantee housing trust  
 10 for use pursuant to this section. If the trust no longer exists, loan  
 11 repayments shall accrue to the department for use in the program  
 12 or its successor.

13 (f) In order for a city, county, or city and county to be eligible  
 14 for funding, the applicant shall have, at the time of application,  
 15 an adopted housing element that the department has determined,  
 16 pursuant to Section 65585 of the Government Code, is in  
 17 substantial compliance with the requirements of Article 10.6  
 18 (commencing with Section 65580) of Chapter 3 of Division 1 of  
 19 Title 7 of the Government Code. In order for a nonprofit  
 20 organization applicant to be eligible for funding, the applicant  
 21 shall agree to utilize funds provided under this chapter only for  
 22 projects located in cities, counties, or a city and county that have,  
 23 at the time of application, an adopted housing element that the  
 24 department has determined, pursuant to Section 65585 of the  
 25 Government Code, to be in substantial compliance with the  
 26 requirements of Article 10.6 (commencing with Section 65580)  
 27 of Chapter 3 of Division 1 of Title 7 of the Government Code.

28 (g) Recipients shall have held, or shall agree to hold, a public  
 29 hearing or hearings to discuss and describe the project or projects  
 30 that will be financed with funds provided pursuant to this section.  
 31 As a condition of receiving a grant pursuant to this section, any  
 32 nonprofit organization shall agree that it will hold one public  
 33 meeting a year to discuss the criteria that will be used to select  
 34 projects to be funded. That meeting shall be open to the public,  
 35 and public notice of this meeting shall be provided, except to the  
 36 extent that any similar meeting of a city or county would be  
 37 permitted to be held in closed session.

38 (h) No more than 5 percent of the funds appropriated to the  
 39 department ~~pursuant to subparagraph (C) of paragraph (1) of~~

1 ~~subdivision (a) of Section 53533~~ *for the purposes of this program*  
2 shall be used to pay the costs of administration of this section.

3 (i) A local housing trust fund shall encumber funds provided  
4 pursuant to this section no later than 36 months after receipt. Any  
5 funds not encumbered within that period shall revert to the  
6 department for use in the program or its successor.

7 (j) Recipients shall be required to file periodic reports with the  
8 department regarding the use of funds provided pursuant to this  
9 section. No later than December 31 of each year in which funds  
10 are awarded by the program, the department shall provide a  
11 report to the Legislature regarding the number of trust funds  
12 created, a description of the projects supported, the number of  
13 units assisted, and the amount of matching funds received.

14 SEC. 5. This act is an urgency statute necessary for the  
15 immediate preservation of the public peace, health, or safety  
16 within the meaning of Article IV of the Constitution and shall go  
17 into immediate effect. The facts constituting the necessity are:

18 In order that local housing trusts may continue to encumber  
19 funds provided pursuant to Section 50843 of the Health and  
20 Safety Code for an additional two years, it is necessary that this  
21 act take effect immediately.