

AB 45: Addressing California’s Teacher Shortage with Affordable Housing

*Dylan de Wit**

Code Sections Affected

Health and Safety Code §§ 50570, 50571, 50572, 50573, 50574, 50575 (new).

AB 45 (Thurmond); Vetoed.

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I. INTRODUCTION

In 2016, Etoria Cheeks, a math teacher at the Academy-San Francisco at McAteer, was evicted from her home when the landlord lost the home to foreclosure.¹ Unable to find housing in the San Francisco, Ms. Cheeks slept in local hostels and even spent one night in a homeless shelter before a former teacher finally took her in.² Ms. Cheeks was stuck—unable to afford a market-rate apartment, but earning too much to qualify for the city’s below-market rental lottery program.³ She was homeless.⁴ In May 2017, she resigned from her teaching position.⁵

California faces a dramatic teacher shortage.⁶ As cost of living continues to rise, teachers in high-cost areas struggle to afford living near their place of work, leading to high attrition rates.⁷ To combat these intersecting issues,

1. Heather Knight, *Low Pay, High SF Housing Costs Equal 1 Homeless Math Teacher*, S.F. CHRON. (May 9, 2017, 6:00 AM), <http://www.sfchronicle.com/news/article/Low-pay-high-SF-housing-costs-equal-1-homeless-11130936.php> (on file with *The University of the Pacific Law Review*).

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. Desiree Carver-Thomas & Linda Darling-Hammond, *Addressing California’s Growing Teacher Shortage: 2017 Update*, LEARNING POL’Y INST. (Feb. 8, 2017), <https://learningpolicyinstitute.org/product/addressing-californias-growing-teacher-shortage-2017-update-report> (on file with *The University of the Pacific Law Review*).

7. See Andrew Woo, *June 2016 California Apartment List Rent Report (2016)*, APARTMENT LIST (June 1, 2016), <https://www.apartmentlist.com/rentonomics/california-rent-report-rentonomics/> (on file with *The University of the Pacific Law Review*) (finding that rental prices rose in California 3.8% in 12 months from May

Assemblymember Tony Thurmond authored AB 45 to provide funding for school districts to build affordable rental housing projects, so teachers can live in the communities they serve.⁸ Along with providing affordable rental housing to teachers like Ms. Cheeks, AB 45's proponents claimed affordable housing projects would be an effective tool to recruit and retain highly qualified teachers to hard-to-staff districts.⁹

II. LEGAL BACKGROUND

Existing affordable housing programs vary in form and function.¹⁰ This section discusses the various types of affordable housing programs, including rental and homebuying programs, both targeting teachers and not targeting teachers, at the federal, state, and municipal levels.¹¹ Part A outlines California's shortage of highly qualified teachers.¹² Part B examines whether teachers can afford to rent in California given existing salaries and rental prices.¹³ Part C outlines the federal government's approach to affordable housing.¹⁴ Part D explores California's affordable housing programs for homebuying and rental housing, as well as development programs.¹⁵ Part E looks at affordable rental programs aimed at teachers in San Francisco and Los Angeles.¹⁶ Finally, Part F discusses city and county-operated projects in other states, including New Jersey, Pennsylvania, and North Carolina.¹⁷

A. California's Teacher Shortage

There is little doubt California school districts have trouble recruiting and retaining teachers.¹⁸ High turnover rates negatively impact student learning and

2015 to June 2016, while the national rate rose 2.7%); Katherine Barrett & Richard Greene, *Where Affordable Housing is Scarce, So Are Teachers*, GOVERNING (Feb. 18, 2016), <http://www.governing.com/columns/smart-mgmt/gov-teacher-shortages-affordable-housing.html> (on file with *The University of the Pacific Law Review*).

8. *Hearing on A.B. 45 Before the S. Comm. on Transp. and Hous.*, 2017 Leg., 2016–2017 Sess. (Cal. 2017) (on file with *The University of the Pacific Law Review*) (statement of Assembly Member Tony Thurmond).

9. *Id.*

10. *Infra* Part II.A–F.

11. *Infra* Part II.C–F.

12. *Infra* Part II.A.

13. *Infra* Part II.B.

14. *Infra* Part II.C.

15. *Infra* Part II.D.

16. *Infra* Part II.E.

17. *Infra* Part II.F.

18. Anne Podolsky & Leib Sutchter, *California Teacher Shortages: A Persistent Problem*, LEARNING POL'Y INST. (Nov. 30, 2016), <https://learningpolicyinstitute.org/product/ca-teacher-shortage-persistent-problem-brief> (on file with *The University of the Pacific Law Review*).

can be costly for school districts.¹⁹ Rural and urban school districts are equally affected,²⁰ while those with large minority student populations are especially impacted.²¹

California school districts especially struggle staffing *highly qualified teachers*—those with full licensing, a bachelor’s degree, and subject matter competency in the subject the teacher teaches.²² This highly qualified teacher shortage disproportionately affects school districts with economically disadvantaged student populations.²³

These school districts are left to hire under-qualified, inexperienced teachers who are typically employed under substandard credentials including intern credentials, permits, or waivers.²⁴ Intern credentials are issued to persons completing required teacher preparation coursework while employed as an instructor by a school district.²⁵ An intern teacher can be hired only if a highly qualified candidate is not available.²⁶

19. ELAINE ALLENSWORTH, STEPHEN PONISCIAK, & CHRISTOPHER MAZZEO, CONSORTIUM ON CHI. SCH. RESEARCH, *THE SCHOOL TEACHERS LEAVE: TEACHER MOBILITY IN CHICAGO PUBLIC SCHOOLS 5* (2009), available at https://consortium.uchicago.edu/sites/default/files/publications/CCSR_Teacher_Mobility.pdf (on file with *The University of the Pacific McGeorge School of Law*) (explaining that losing qualified teachers tends to negatively impact student achievement); see also GARY BARNES, EDWARD CROWE & BENJAMIN SCHAEFER, NAT’L COMM’N ON TEACHING & AMERICA’S FUTURE, *THE COST OF TEACHER TURNOVER IN FIVE SCHOOL DISTRICTS: A PILOT STUDY 8–9* (2007) (high teacher turnover forces school administrators to spend time and resources on recruitment and training to fill vacancies).

20. THOMAS S. DEE & DAN GOLDBERGER, THE HAMILTON PROJECT, *UNDERSTANDING AND ADDRESSING TEACHER SHORTAGES IN THE UNITED STATES 8* (2017), available at https://www.brookings.edu/wp-content/uploads/2017/04/es_20170426_understanding_and_addressing_teacher_shortages_in_us_pp_dee_goldhaber.pdf (on file with *The University of the Pacific Law Review*); see also Podolsky & Sutchter, *supra* note 18.

21. See Eric A. Hanushek, John F. Kain, & Steven G. Rivkin, *Why Public Schools Lose Teachers*, J. OF HUM. RESOURCES 328 (2004) (“Schools serving large numbers of academically disadvantaged, black or Hispanic students tend to lose a substantial fraction of teachers each year. . .”).

22. LEIB SUTCHER, LINDA DARLING-HAMMOND, AND DESIREE CARVER-THOMAS, LEARNING POLICY INST., *A COMING CRISIS IN TEACHING? TEACHER SUPPLY, DEMAND, AND SHORTAGES IN THE U.S. 5* (2016), available at https://learningpolicyinstitute.org/sites/default/files/product-files/A_Coming_Crisis_in_Teaching_REPORT.pdf (on file with *The University of the Pacific Law Review*) (finding that one-third of all California teachers are employed under intern credentials, waivers, or other substandard credentials); *Highly Qualified Teachers*, NAT’L ASS’N SPECIAL EDUC. TEACHERS, https://www.naset.org/highly_qualifiedteacher.0.html (last visited June 24, 2017) (on file with *The University of the Pacific Law Review*) (explaining that a “highly qualified teacher” is one that “obtained full State certification as a teacher or passed the State teacher licensing examination and holds a license to teach in the State,” holds a bachelor’s degree, and demonstrates subject matter competency in the subject which the teacher teaches).

23. See Carver-Thomas & Darling-Hammond, *supra* note 6 (stating that schools with high student poverty rates are more likely to be staffed with teachers with PIPs and STSPs).

24. SUTCHER ET AL., note 22, at 13.

25. *California Alternative Route to Certification (Intern Programs)*, CAL. COMM’N ON TEACHER CREDENTIALING, <https://www.ctc.ca.gov/educator-prep/intern/default> (last visited June 24, 2017) (on file with *The University of the Pacific Law Review*).

26. *Id.* (“A [school district, charter organization, or county office of Education] can hire an intern teacher only when a suitable fully prepared teacher is not available.”).

Permits include short-term staff permits (STSPs) and provisional intern permits (PIPs).²⁷ Similar to intern credentials, a high number of permits likely indicates that the school district struggles to bring in highly qualified teachers.²⁸

Finally, the California State Board of Education (SBE) issues waivers exempting school districts and county education offices from complying with certain parts of the California Education Code and regulations.²⁹ The SBE intends these waivers to allow flexibility to school districts and county education offices struggling to meet statutory and regulatory requirements.³⁰ In California, one-third of all teachers are employed under an intern credential, permit, or waiver, leaving students to suffer from subpar instruction by under-qualified teachers.³¹

B. Are Teachers Unable to Rent in California's Cities?

Generally, teachers are capable of renting in California's most expensive cities.³² Teachers are able to rent a two-bedroom apartment in every major California city except San Francisco and San Jose.³³ In San Francisco, California's most expensive city for renters, the average teacher can hardly afford the median rent for a one-bedroom apartment.³⁴ The median rent for a one-bedroom apartment in San Francisco was \$3,560 in June 2016, while the average teacher's salary in the city was about \$65,000.³⁵ This means teachers in the city would need to spend 64%–65% of their gross annual income on housing—more than double the 30% benchmark the federal government uses to determine

27. Carver-Thomas & Darling-Hammond, *supra* note 6.

28. *Id.*

29. *Waivers*, CAL. DEP'T OF EDUC., <http://www.cde.ca.gov/re/lr/wr/index.asp> (last visited June 24, 2017) (on file with *The University of the Pacific Law Review*).

30. *Id.*; see generally *SBE Waivers Provide LEAs Relief From Class Size Restrictions*, CABINET REP. (Nov. 27, 2002), <https://www.cabinetreport.com/politics-education/sbe-waivers-provide-leas-relief-from-class-size-restrictions> (on file with *The University of the Pacific Law Review*) (“California’s State Board of Education, keenly aware of the financial stress schools are under, has since 2009 almost routinely approved class size waivers for scores of districts facing fiscal penalties under existing law generally aimed at keeping no more than 30 students in a classroom.”).

31. SUTCHER ET AL., *supra* note 22, at 5.

32. See BRIAN STROMBERG & MINDY AULT, NAT’L HOUS. CONFERENCE, *PAYCHECK TO PAYCHECK 11* (2016), available at https://www.novoco.com/sites/default/files/atoms/files/nhc_paycheck-to-paycheck_0916.pdf (on file with *The University of the Pacific Law Review*) (stating that teachers can afford to rent a two-bedroom apartment in every major California city except San Jose and San Francisco).

33. See *id.* (stating that teachers can afford to rent a two-bedroom apartment in every major California city except San Jose and San Francisco).

34. See Heather Knight & Joaquin Palomino, *Teachers Priced Out: SF Educators Struggle to Stay Amid Costly Housing, Stagnant Salaries*, S.F. CHRON. (May 13, 2016), <http://projects.sfchronicle.com/2016/teacher-pay/> (on file with *The University of the Pacific Law Review*) (stating that teachers in San Francisco are struggling to afford rents in San Francisco).

35. Woo, *supra* note 7; Knight & Palomino, *supra* note 34.

housing affordability.³⁶ With housing costs more than 50% of their gross annual income, the average teacher in San Francisco would be considered “severely housing-cost burdened.”³⁷ Thus, while teachers may be able to afford rental housing in most California cities, the state’s most expensive city remains unaffordable.³⁸

In rural areas, the limited availability of rental housing may be a reason young, highly qualified teachers avoid employment in certain school districts.³⁹ Rural communities have less rental housing—or none at all—forcing teachers to take on the costlier burden of buying a home.⁴⁰ This may drive highly qualified teachers away from hard-to-staff rural school districts and into cities with available rental housing.⁴¹

C. Federal Approach to Affordable Housing

This section discusses the federal government’s approach to affordable housing, and explains why the average California teacher does not benefit from existing federal housing programs.⁴² Subpart 1 examines the HOME Investment Partnership Program.⁴³ Subpart 2 discusses the Good Neighbor Next Door first-time homebuyer assistance program.⁴⁴

1. HOME Investment Partnership Program

The HOME Investment Partnership Program (HIPP) is a grant program that allocates block and formula grants to states and municipalities to build affordable rental housing.⁴⁵ HIPP mandates that residents of these developments have

36. Knight & Palomino, *supra* note 34; MARY SCHWARTZ & ELLEN WILSON, U.S. CENSUS BUREAU, WHO CAN AFFORD TO LIVE IN A HOME?: A LOOK AT DATA FROM THE 2006 AMERICAN COMMUNITY SURVEY, available at <https://www.census.gov/housing/census/publications/who-can-afford.pdf> (on file with *The University of the Pacific Law Review*).

37. SCHWARTZ & WILSON, *supra* note 36.

38. See Knight & Palomino, *supra* note 34 (“A December survey of 920 teachers and classroom staff conducted by the United Educators of San Francisco union found that 77 percent had a difficult time finding suitable housing. Fifty-nine percent said they were concerned the city’s high cost of housing would force them to leave the district.”).

39. Barrett & Greene, *supra* note 7.

40. *Id.*; Emmie Martin & Sky Gould, *The 12 Key Differences Between Buying and Renting a Home, in One Chart*, Bus. Insider (Nov. 22, 2016), <http://www.businessinsider.com/differences-between-buying-and-renting-a-home-2016-11> (on file with *The University of the Pacific Law Review*) (contrasting the high costs of buying a home with the cost of renting).

41. Barrett & Greene, *supra* note 7.

42. *Infra* Part II.C.1–2.

43. *Infra* Part II.C.1.

44. *Infra* Part II.C.2.

45. HOME Investment Partnership Program, U.S. DEP’T OF HOUS. & URBAN DEV., <https://>

incomes that are 50%–60% of the area median family income.⁴⁶ But the median household income in California is \$61,818,⁴⁷ while the average California public school teacher’s salary is \$72,535.⁴⁸ Thus, teachers make too much money to benefit from the HOME Investment Partnership Program.⁴⁹

2. *Good Neighbor Next Door*

The Good Neighbor Next Door Program (GNND) sells discounted homes to teachers in regions the Department of Housing and Urban Development (HUD) designates as revitalization areas.⁵⁰ Revitalization areas are neighborhoods HUD determines to be in need of community development.⁵¹ Eligible participants in GNND must be first-time homebuyers and live in the home as their only residence for three years.⁵² At the time of this publication, however, there are no available GNND-eligible homes for sale in California on HUD’s website.⁵³

D. *California’s Approach to Affordable Housing*

California has taken several steps to develop affordable housing for its residents, and has focused some programs on helping teachers directly.⁵⁴ Subpart 1 examines the Teacher Housing Act of 2016.⁵⁵ Subpart 2 discusses the

portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/affordablehousing/programs/home/ (last visited June 22, 2017) (on file with *The University of the Pacific Law Review*).

46. *Id.*

47. *Quick Facts*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/table/PST045216/06> (last visited June 22, 2017) (on file with *The University of the Pacific Law Review*).

48. *Average Salary and Expenditure Percentage*, CAL. DEP’T OF EDUC., <http://www.cde.ca.gov/fg/fr/sa/cefavg salaries.asp> (last visited June 22, 2017) (on file with *The University of the Pacific Law Review*).

49. *Id.*

50. *About Good Neighbor Next Door*, U.S. DEP’T HOUSING & URB. DEV., https://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/reo/goodn/gnndabot (last visited June 22, 2017) (on file with *The University of the Pacific Law Review*).

51. *Revitalization Areas*, U.S. DEP’T HOUSING & URB. DEV., https://egis-hud.opendata.arcgis.com/datasets/7242e83a0745476a8185396c74277e8a_0 (last visited June 23, 2017) (on file with *The University of the Pacific Law Review*).

52. *About Good Neighbor Next Door*, *supra* note 50; *Q&A: Good Neighbor Next Door Sales*, U.S. DEPT. HOUSING & URB. DEV., https://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/reo/goodn/gnndfaq (last visited Aug. 15, 2017) (on file with *The University of the Pacific Law Review*).

53. *Search for available HUD Homes in California*, U.S. DEP’T HOUSING & URB. DEV., <https://www.hudhomestore.com> (follow “search” hyperlink; then search by CA State, and “Good Neighbor Next Door” for buyer type) (last visited June 23, 2017) (on file with *The University of the Pacific Law Review*).

54. *Infra* Part II.D.

55. *Infra* Part II.D.1.

California Multifamily Housing Program.⁵⁶ Subpart 3 outlines the Extra Credit Teacher Home Purchase Program.⁵⁷

1. *Teacher Housing Act of 2016*

The Teacher Housing Act of 2016 authorized California school districts to develop and implement affordable rental housing programs for school district employees.⁵⁸ The Act allows school districts to establish private and public partnerships and seek financing for affordable housing developments and programs for their employees.⁵⁹ To encourage investors to take on affordable rental housing projects for teachers, the Act provides clear authorization for developers and school districts to build teacher housing.⁶⁰ Before the Teacher Housing Act of 2016, it was unclear whether Low-Income Housing Tax Credits (LIHTCs) could be used to build housing designated primarily for teachers because the state had not declared a policy favoring teacher-specific housing.⁶¹ The Act established a policy favoring teacher-affordable rental housing, which effectively permits developers who are building teacher housing to use LIHTCs.⁶²

2. *Multifamily Housing Program*

California's Multifamily Housing Program (MHP) furnishes loans to applicants that have "successfully developed at least one affordable housing project" purchase property and develop low-income rental housing.⁶³ MHP developments must rent 40% of their units to tenants earning 60% of the area

56. *Infra* Part II.D.2.

57. *Infra* Part II.D.3.

58. CAL. HEALTH & SAFETY CODE § 53573 (enacted by Chapter 732).

59. *Id.*

60. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 1413, at 4 (Aug. 25, 2016).

61. 26 U.S.C.A. § 42(g)(9)(B) (West 2015) (LIHTCs must be used for housing for "general public use." A state may restrict or favor housing for one specific group if it declares a policy that supports housing for a specified group); *see also* OFFICE OF THE COMPTROLLER OF CURRENCY, LOW-INCOME HOUSING TAX CREDITS: AFFORDABLE HOUSING INVESTMENT OPPORTUNITIES FOR BANKS 1–2 (2014), *available at* <https://www.occ.treas.gov/topics/community-affairs/publications/insights/insights-low-income-housing-tax-credits.pdf> (on file with *The University of the Pacific Law Review*) (stating that the LIHTC program provides tax credits for investors to incentivize affordable housing development).

62. CAL. HEALTH & SAFETY CODE § 53574 (enacted by Chapter 732); SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 1413, at 4 (Aug. 25, 2016) ("By declaring a state policy supporting housing for teachers/school district employees, these housing projects could qualify under federal law as general public housing and therefore be eligible for both federal and state LIHTCs.").

63. *Multifamily Housing Program*, CAL. DEP'T OF HEALTH CARE SERVICES, <http://www.hcd.ca.gov/grants-funding/active-no-funding/mhp.shtml> (last visited Aug. 1, 2017) (on file with *The University of the Pacific Law Review*).

median income (AMI) or below.⁶⁴ AMI is the median household income for the particular metropolitan area or county, adjusted for family size.⁶⁵ This means eligibility for housing will vary depending on where the development is located.⁶⁶ MHP loans last for 55 years at three percent annual interest.⁶⁷

3. *Extra Credit Teacher Home Purchase Program*

The California Housing Finance Agency (CalHFA) partners with private lenders to fund the Extra Credit Teacher Home Purchase Program (ECTP).⁶⁸ ECTP offers school district employees down payment assistance on select single-family homes through loans limited to \$7,500 or no more than three and a half percent of the appraised sales price, or no greater than \$15,000 in CalHFA-defined “high-cost areas.”⁶⁹ While most public school teachers in California’s metropolitan areas qualify for ECTP loans, the limited down payment assistance likely does little to help teachers afford a home in areas with considerably high housing costs.⁷⁰ For instance, at the time of this publication, the median home price in Los Angeles County, a CalHFA-defined high-cost area, was \$580,000.⁷¹ But even factoring for the \$15,000 ECTP down-payment assistance, a teacher in Los Angeles would still need to come up with \$101,000 to afford a 20% down payment on the median-priced home.⁷² This would likely be unachievable for teachers in Los Angeles earning the city’s median salary of \$61,541.⁷³ Thus, the

64. See Urshella Starr, *Multifamily Housing Programs: California Community Transition*, CAL. DEP’T OF HEALTH CARE SERVICES (Oct. 1, 2014), <http://www.dhcs.ca.gov/services/ltc/Documents/MultifamilyHousingPrograms.pdf> (on file with *The University of the Pacific Law Review*) (stating that projects under California’s Multifamily Housing Programs must rent 40 percent of their units to families earning “at or below 60 percent of the” area median income).

65. CAL. GOV. CODE § 54236(h).

66. *Id.* (stating AMI is based on the “metropolitan statistical area”).

67. *Multifamily Housing Program*, *supra* note 63.

68. CAL. HOUS. FIN. AGENCY, EXTRA CREDIT TEACHER HOME PURCHASE PROGRAM 1 (2017), available at <http://www.calhfa.ca.gov/homeownership/programs/ectp.pdf> (on file with *The University of the Pacific Law Review*).

69. *Id.*

70. *Id.* (listing ECTP income limits in San Francisco, Marin, and San Mateo Counties all over \$101,000); *Average Salary and Expenditure Percentage*, *supra* note 48 (the average salary for a California public school teacher is \$72,535); STROMBERG & AULT, *supra* note 32, at 11 (finding the qualifying income to purchase a home in San Francisco, San Jose, Los Angeles, and Sacramento to be higher than \$72,535, the average California public school teacher salary).

71. Jim Puzanghera, *Southern California Home Prices Jump Again. Lots of Residents Worry About Affordability*, L.A. TIMES, Sept. 19, 2017, <http://www.latimes.com/business/la-fi-home-prices-20170919-story.html> (on file with *The University of the Pacific Law Review*).

72. $(\$580,000 \times .2) - \$15,000 = \$101,000$.

73. PUBLIC SCHOOL TEACHER SALARIES IN LOS ANGELES, CALIFORNIA, <https://www1.salary.com/CA/Los-Angeles/Public-School-Teacher-salary.html> (last visited Nov. 19, 2017) (finding the median teacher salary in Los Angeles to be \$61,541 as of October 2017).

ECTP's limited down payment assistance does not necessarily secure affordable housing for teachers attempting to purchase homes in high-cost areas.⁷⁴

E. California Cities' Approaches to Affordable Housing for Teachers

Some cities have recently taken steps toward increasing the supply of rental housing for teachers.⁷⁵ For instance, in May 2017, San Francisco announced its plan to build affordable rental housing for school district employees.⁷⁶ The City committed \$44 million to the project with the intention of building up to 150 affordable housing units.⁷⁷ The school district will continue to own the property, but the developer will own the building and collect rent from tenants.⁷⁸

In 2015, Los Angeles Unified School District (LAUSD) built two affordable rental housing buildings reserved for school district employees.⁷⁹ Attempting to secure housing for those priced out of the community, LAUSD set income limits at 30%–60% percent of the AMI to qualify for housing.⁸⁰ For example, in Hollywood, an applicant could not earn more than \$34,860.⁸¹ But teachers in the district did not qualify for these apartments because they earned more than 60% of the AMI, with the starting salaries at about \$50,300.⁸² Thus, although lower-wage school district employees qualified for LAUSD's housing, teachers did not benefit.⁸³

F. Affordable Rental Housing for Teachers Outside of California

City governments outside of California have invested in teacher-directed affordable rental housing to increase recruitment and retention rates in historically

74. See STROMBERG & AULT, *supra* note 32, at 11 (finding all six California cities included in the study to be unaffordable for teachers).

75. Heather Knight, *Mayor Comes Up With \$44 Million For S.F.'s First Teacher Housing*, S.F. CHRON. (MAY 11, 2017, 8:16 PM), <http://www.sfchronicle.com/news/article/Mayor-comes-up-with-40-million-for-S-F-s-11139143.php> (on file with *The University of the Pacific Law Review*).

76. *Id.*

77. *Id.*

78. *Id.*

79. Press Release, Los Angeles Unified School District, LAUSD Celebrates Grand Opening of Sage Park Affordable Apartments for Families (Apr. 23, 2015), available at <https://2.files.edl.io/bsX50BS88Cc0RceXHF72EptALmuG333OM6ej9RRPD1RSnBLW.pdf> (on file with *The University of the Pacific*).

80. *Affordable Housing Opportunity for LAUSD Employees*, L.A. UNIFIED SCH. DIST., <http://home.lausd.net/apps/news/article/380816> (last visited June 3, 2017) (on file with *The University of the Pacific Law Review*); Anna M. Phillips, *LAUSD Teachers Earn Too Much To Live in the Affordable Housing Apartments Built For Them*, L.A. TIMES (Oct. 19, 2016, 3:30 AM), <http://www.latimes.com/local/education/la-me-edu-teacher-housing-20161019-snap-story.html> (on file with *The University of the Pacific Law Review*).

81. Phillips, *supra* note 80.

82. *Id.*

83. *Id.*

hard-to-staff school districts.⁸⁴ Subpart 1 examines developments in Newark, New Jersey, and Philadelphia, Pennsylvania.⁸⁵ Subpart 2 explores affordable rental housing developments for teachers in Hertford and Dare Counties in North Carolina.⁸⁶

1. Newark and Philadelphia

The City of Newark built Teachers Village, a housing development in downtown Newark, to encourage teachers to live and work in the community.⁸⁷ The project is incomplete, but 100% of the units are reserved.⁸⁸ The development boasts an exciting downtown lifestyle, complete with shops, restaurants, and other amenities.⁸⁹

Similarly, Philadelphia's Oxford Mills development aims to improve a struggling neighborhood by encouraging teachers and education-focused organizations to move in by offering discounted rent.⁹⁰ The developer reserved 60% of the units for teachers and offered teachers 25% discounts on units.⁹¹ In 2017, nearly 70% of its residents were educators.⁹²

2. North Carolina School District Housing for Teachers

North Carolina faces a teacher shortage similar to California.⁹³ The State Employee's Credit Union (SECU), a non-profit credit union, partnered with school

84. See ABOUT OXFORD MILLS, <http://theoxfordmills.com/about/> (last visited Sept. 24, 2017) (on file with *The University of the Pacific Law Review*) (describing the Oxford Mills development and listing available units); see also TEACHERS VILLAGE, <http://www.teachersvillage.com/about.html> (last visited Sept. 24, 2017) (on file with *The University of the Pacific Law Review*) (describing the Teachers Village development).

85. *Infra* Part II.F.1.

86. *Infra* Part II.F.2.

87. Madison Park, *High-Rent School Districts Build Homes for Teachers*, USA TODAY (Mar. 21, 2016, 5:36 PM), <https://www.usatoday.com/story/news/2016/03/21/school-districts-build-teacher-housing/81583792/> (on file with *The University of the Pacific Law Review*).

88. *Id.*

89. Steve Strunsky, *Newark's \$150M Teachers Village Gradually Coming to Life*, N.J. ON-LINE (Jan. 23, 2017), http://www.nj.com/essex/index.ssf/2017/01/teachers_village_in_newark_gradually_filling_in.html (on file with *The University of the Pacific Law Review*).

90. Jon Hurdle, *With an Old Factory, Philadelphia is Hoping to Draw New Teachers*, N.Y. TIMES (May 4, 2013), <http://www.nytimes.com/2013/05/05/education/philadelphia-renovating-apartments-to-lure-teachers.html> (on file with *The University of the Pacific Law Review*).

91. *Id.*

92. PAULA DAVIS, AFFORDABLE HOUSING SOLUTIONS FOR EDUCATORS 14 (2017), available at http://dkfoundation.org/assets/img/DK-021-Affordable-Housing-Solutions-for-Educators_FA.pdf (on file with *The University of the Pacific Law Review*).

93. See William F. West, *Teacher Shortages, Growing Enrollment Test Public Schools*, DAILY ADVANCE (July 24, 2016), <http://www.dailyadvance.com/News/2016/07/24/Teacher-shortages-growing-enrollment-test-public-schools.html> (on file with *The University of the Pacific Law Review*) ("North Carolina is facing critical teacher shortages while more students are swelling the public school system. . .").

districts to finance and build apartment housing for teachers at below-market rates as a way of recruiting and retaining teachers.⁹⁴ The program aims to incentivize recruits to teach in rural and high-cost North Carolina areas by offering below-market rental units.⁹⁵ One housing complex in Hertford County, North Carolina, operated by the Hertford County School District, offers two-bedroom apartments at below-market rates to school district teachers.⁹⁶

Two developments in Dare County—a popular tourist stop with high rental costs—have provided 27 teachers with discounted rental housing.⁹⁷ These developments, located in Run Hill Ridge and Hatteras Island, successfully attracted new, highly qualified teachers to the district—especially those with subject competency in math, foreign language, technology, and special education.⁹⁸ Teachers moving into these developments stated that the availability of affordable rental housing influenced their decision to work in the school district.⁹⁹

III. AB 45

AB 45 aimed to make affordable housing near schools more accessible for school employees as a way of recruiting and retaining highly-qualified teachers to hard-to-staff districts.¹⁰⁰ Had the Governor not vetoed the bill, AB 45 would have established the California School Employees Housing Assistance Program within the California State Treasury, operated by the California Department of Housing and Community Development (HCD).¹⁰¹ The HCD would furnish predevelopment grants to school districts and development loans up to \$10

94. Graham Sharpe, *Teacher Housing in North Carolina*, CMTY. & ECON. DEV., UNIV. OF N.C. SCH. OF GOV'T (June 25, 2015), <https://ced.sog.unc.edu/teacher-housing-in-north-carolina/> (on file with *The University of the Pacific Law Review*).

95. AZARIA VERDIN & RYAN SMITH, THE IMPACT OF HOUSING ON TEACHER RECRUITMENT AND RETENTION IN RURAL AREAS: A CASE STUDY 6 (2013), available at <http://www.dpi.state.nc.us/docs/intern-research/reports/teacherhousing.pdf> (on file with *The University of the Pacific Law Review*) (“In the absence of raises, LEAs must be creative about providing incentives that encourage teachers to remain in certain parts of the state. Quality affordable housing is an example of such an incentive.”).

96. *Id.* at 1–2.

97. *Welcome to Dare! (Affordable Teacher Housing)*, DARE EDUC. FOUND., <http://www.dareeducationfoundation.org/teacher-housing.html> (last visited Aug. 1, 2017) (on file with *The University of the Pacific Law Review*); Verdin & Smith, *supra* note 95, at 1–2.

98. DAVIS, *supra* note 92, at 35.

99. *Welcome to Dare!*, *supra* note 97.

100. Interview with Rodolfo Rivera Aquino, Legislative Aid, Assembly Member Thurmond, in Sacramento, Cal. (June 12, 2017) (notes on file with *The University of the Pacific Law Review*) (claiming teachers are unable to afford housing near their school districts).

101. AB 45 § 50573(a), 2017 Leg., 2017–2018 Sess. (Cal. 2017) (Vetoed on Oct. 15, 2017).

million for developers to build affordable rental housing for all school district employees.¹⁰²

Units in AB 45 housing would be rented only to those making below 120% of the AMI.¹⁰³ To comply with existing law, school districts would be required to rent 100% of the units to people with salaries below 120% of the AMI, and could only charge in rent up to 30% of 60% of the AMI for lower income households and up to 30% of 100% AMI for moderate income households.¹⁰⁴ AB 45 would have required the legislature to appropriate \$25 million before being fully implemented.¹⁰⁵

Predevelopment grants generally cover preliminary development costs, including site acquisition, architectural plans, site preparation, engineering studies, permits, and application fees.¹⁰⁶ Development loans are used to prepare and build real property, including construction and site excavation.¹⁰⁷ AB 45 required that school districts and developers be in partnership with one another to qualify for funding.¹⁰⁸ School districts and developers would only need to enter into a memorandum of understanding—a noncommittal document preceding an official contract—to establish a partnership satisfying AB 45’s requirement.¹⁰⁹

AB 45 described the requirements school districts and developers would need to satisfy to be eligible for development funding.¹¹⁰ Part A explores the qualifications school districts would need to meet to be eligible for AB 45 predevelopment grants.¹¹¹ Part B describes the requirements developers would

102. *Id.* at § 50574(a), (c); *see also* CAL. EDUC. CODE § 52295.10(b) (defining “school district employee” to be any employee of a school district, charter school, or county office of education); *see also* *What is a Charter School?*, NAT’L CHARTER SCH. RESOURCES CTR., <https://www.charterschoolcenter.org/what-is-a-charter-school> (last visited June 24, 2017) (on file with *The University of the Pacific Law Review*) (“Charter schools are public schools operating under a ‘charter,’ essentially a contract entered into between the school and its authorizing agency.”).

103. AB 45 § 50570(a), 2017 Leg., 2017–2018 Sess. (Cal. 2017) (Vetoed on Oct. 15, 2017) (defining “affordable rental housing” for AB 45 projects to comply with § 50093 of the Health & Safety Code, which defines low-moderate income as 120% of the AMI).

104. CAL. GOV. CODE § 65589.5(h)(3).

105. AB 45 § 50575, 2017 Leg., 2017–2018 Sess. (Cal. 2017) (Vetoed on Oct. 15, 2017).

106. *Predevelopment Loan Program*, CAL. DEP’T OF HOUS. & COMM. DEV., <http://www.hcd.ca.gov/grants-funding/active-funding/pdhp.shtml> (last visited June 24, 2017) (on file with *The University of the Pacific Law Review*) (“Eligible costs include but are not limited to site control, site acquisition for future low-income housing development, engineering studies, architectural plans, application fees, legal services, permits, bonding, and site preparation.”).

107. DENISE L. EVANS & O. WILLIAMS EVANS, *THE COMPLETE REAL ESTATE ENCYCLOPEDIA* 132 (2007), *available at* http://cdn1.media.zp-cdn.com/21275/The_Complete_Real_Estate_Encyclopedia-53b767.pdf (on file with *The University of the Pacific Law Review*).

108. AB 45 § 50571(b)(2)(A), 2017 Leg., 2017–2018 Sess. (Cal. 2017) (Vetoed on Oct. 15, 2017).

109. *Id.* at § 50571(a)(1); BLACK’S LAW DICTIONARY (10th ed. 2014) (defining the term “letter of intent” and including the term “memorandum of understanding” as an alternative term).

110. *Id.* at §§ 50571(b)–(c), 50574.

111. *Infra* Part III.A.

need to meet to qualify for AB 45 development loans.¹¹² Finally, Part C explains how AB 45 would be funded.¹¹³

A. *School District Qualifications for Predevelopment Funding under AB 45*

To be a qualified school district under AB 45, a school district would need to possess land for development.¹¹⁴ AB 45 laid out additional need-based criteria for school districts to qualify for funding, such as having a high rate of teachers employed under intern credentials, waivers, or permits; a high number of teachers teaching subjects out of their competency; and significant recruitment costs when searching for new teachers.¹¹⁵ AB 45 prioritized school districts in areas with high rental costs.¹¹⁶

School districts with 60% or more of their student population benefiting from the National School Lunch Program would be given priority for development grants.¹¹⁷ In addition, AB 45 listed predevelopment milestones HCD would consider when awarding grants, including completion of site preparation, engineering studies, bonding, architectural plans, permits, legal services, and application fees.¹¹⁸

B. *Development Loans under AB 45*

AB 45 set qualifications for development loans, as well as the repayment process for loans awarded through the program.¹¹⁹ Subpart 1 examines the project labor agreement requirement in AB 45.¹²⁰ Subpart 2 describes qualifications developers must meet for funding.¹²¹ Subpart 3 explains the repayment process under the program.¹²²

112. *Infra* Part III.B.

113. *Infra* Part III.C.

114. AB 45 § 50570(c)(1), 2017 Leg., 2017–2018 Sess. (Cal. 2017) (Vetoed on Oct. 15, 2017).

115. *Id.* at § 50570(c)(2)(B); *see also supra* Part II.A (explaining intern credentials, emergency permits, and waivers).

116. AB 45 § 50570(c)(2)(D), 2017 Leg., 2017–2018 Sess. (Cal. 2017) (Vetoed on Oct. 15, 2017).

117. *Id.* at § 50571(b)(2)(C).

118. *Id.* at § 50571(b)(2)(B).

119. *Id.* at § 50574.

120. *Infra* Part III.B.1.

121. *Infra* Part III.B.2.

122. *Infra* Part III.B.3.

1. *AB 45's Project Labor Agreement Requirement*

AB 45 projects would need to be a public work under a project labor agreement (PLA).¹²³ Essentially, PLAs require projects to use union labor.¹²⁴ PLAs ensure prevailing wages for workers and prevent work stoppages, lockouts, and similar disruptions.¹²⁵ AB 45 projects would also be required to resolve disputes with arbitration,¹²⁶ and would need to include a nondiscrimination clause and employee drug testing procedures.¹²⁷

2. *Qualifying for AB 45 Development Loans*

AB 45 required HCD to consider minimum requirements when reviewing development loan applications, although AB 45 authorized the department to develop additional rules.¹²⁸ HCD would be required to consider: (1) whether the proposed site is reasonably close to public transportation and other public services; (2) whether development costs are comparable to similar projects in the same locality; and (3) the feasibility of the project.¹²⁹ Further, the applicant must demonstrate that the proposed project utilizes available additional revenue sources.¹³⁰ Lastly, applicants would be required reasonably distribute funding in the district's locality.¹³¹

3. *Repaying AB 45 Loans*

AB 45 places restrictions on the loan repayment process.¹³² The HCD would set payment rates at the minimum amount needed to administer AB 45 programs,¹³³ but could not require borrowers to pay more than 0.42% of the loan

123. AB 45 § 50570(c)(3)(A), 2017 Leg., 2017–2018 Sess. (Cal. 2017) (Vetoed on Oct. 15, 2017) (requiring development projects to meet standards in CAL. LABOR CODE § 1770 (West 2017)); *id.* at § 50570(c)(3)(B) (requiring projects to be subject to CAL. PUB. CONT. CODE § 2500 (West 2017)).

124. John Moran, *Pros and Cons of Using a Project Labor Agreement*, CONN. GEN. ASSEMB. OFF. OF LEGIS. RES. (Nov. 2, 2011), <https://www.cga.ct.gov/2011/rpt/2011-R-0360.htm> (on file with *The University of the Pacific Law Review*).

125. *Id.*

126. CAL. PUB. CONT. CODE § 2500(a)(4)–(5) (West 2017).

127. *Id.* at § 2500(a)(1) (The agreement must prohibit discrimination “based on race, national origin, religion, sex, sexual orientation, political affiliation, or membership in a labor organization in hiring and dispatching workers for the project.”); *Id.* at § 2500(a)(3).

128. AB 45 § 50574, 2017 Leg., 2017–2018 Sess. (Cal. 2017) (Vetoed on Oct. 15, 2017).

129. *Id.* at § 50574(a)(2)(A)–(C).

130. *Id.* at § 50574(a)(3).

131. *Id.* at § 50574(a)(1).

132. *Id.* at § 50574(b)(1)–(3).

133. *Id.* at § 50574(b)(2).

amount annually for the first 30 years.¹³⁴ Also, AB 45 set annual interest rates on loans at three percent.¹³⁵ Lastly, HCD would be required to redistribute all received payments for additional grants and loans.¹³⁶

C. Funding AB 45

A future appropriation of \$25 million from the general fund would fully implement AB 45.¹³⁷ Notably, AB 45 funding would not be cut from the California's current requirement to allocate a certain amount of tax revenue for educational purposes.¹³⁸ California's Propositions 98 and 111 set formulas for determining the minimum amount of funding for education in each yearly budget.¹³⁹ AB 45 would not cut into this required funding, however, because it provided funding to developers as well as school districts, making it an affordable housing initiative instead of a purely educational program.¹⁴⁰

IV. ANALYSIS

Assembly Member Thurmond described AB 45 as a tool for California school districts to effectively recruit and retain highly qualified teachers.¹⁴¹ Several experts recommend approaching California's teacher shortage with creative affordable housing initiatives.¹⁴² Housing costs in California are rising—especially in some of the state's most populated cities.¹⁴³ As housing prices rise,

134. *Id.*

135. *Id.*

136. *Id.*

137. Interview with Rodolfo Rivera Aquino, *supra* note 100 (discussing the likelihood AB 45 would be implemented).

138. See AB 45 § 50573(b), 2017 Leg., 2017–2018 Sess. (Cal. 2017) (Vetoed on Oct. 15, 2017) (“[A]ppropriation of funds from the California School Employee Housing Assistance Fund . . . shall not be deemed to be ‘General Fund revenues appropriated for school districts . . .’ and shall not be included within the ‘total allocations to school districts and community college districts from General Fund proceeds of taxes . . .’”); see also Interview with Rodolfo Rivera Aquino, *supra* note 100 (pointing out that AB 45 would not be funded through Proposition 98 funding).

139. MAC TAYLOR, LEGIS. ANALYST’S OFF., A HISTORICAL REVIEW OF PROPOSITION 98 7 (2017), <http://www.lao.ca.gov/reports/2017/3526/review-prop-98-011817.pdf> (on file with *The University of the Pacific Law Review*).

140. Interview with Rodolfo Rivera Aquino, *supra* note 100 (pointing out that AB 45 would not be funded through Proposition 98 funding).

141. *Hearing on A.B. 45 Before the S. Comm. on Transp. and Hous.*, *supra* note 8.

142. See STROMBERG & AULT, *supra* note 32, at 1 (“The importance of providing affordable housing for teachers is a compelling topic in many communities, as retaining talented educators can be difficult when housing prices rise too high.”); see also SUTCHER ET AL., *supra* note 22, at 6 (suggesting the creation of affordable housing opportunities as a strategy to recruit highly-qualified teachers).

143. Woo, *supra* note 7 (finding that rental prices rose in California 3.8% in 12 months from May 2015 to June 2016, while the national rate rose 2.7%, and rent prices in San Francisco, San Jose, and Los Angeles were

lawmakers fear teachers may be unable to live in the communities they work in, inhibiting the ability of school districts to attract highly qualified teachers for long-term employment.¹⁴⁴ Subpart A explores whether providing affordable rental housing can be an effective tool for school districts to recruit teachers.¹⁴⁵ Subpart B examines and compares existing teacher-affordable rental housing to determine the efficacy of AB 45 projects.¹⁴⁶ Subpart C addresses the consequences of AB 45's PLA requirement and determines whether AB 45 would favor urban school districts over rural ones.¹⁴⁷ Finally, subpart D explains why Governor Brown vetoed AB 45.¹⁴⁸

A. Could Affordable Rental Housing Solve the Teacher Shortage?

If AB 45 was to fulfill its goal of improving California school districts' recruitment and retention rates, affordable housing would need to be enough to entice highly-qualified teachers to accept positions in generally unattractive districts.¹⁴⁹ Most studies suggest that few California teachers are concerned about the affordability of the cities in which they live.¹⁵⁰ One exit survey of former teachers found that 23% of the group would consider returning to their old jobs if housing incentives were in place.¹⁵¹ Out of that same group, however, 67% cited salary increases as a reason for returning to their old job, and 68% cited the opportunity to maintain retirement benefits.¹⁵² Similarly, only 19% of departing faculty at the University of San Francisco cited high cost-of-living as a reason for leaving the school.¹⁵³ These surveys suggest that housing incentives like AB 45 projects might influence some teachers to stay with a district, but not necessarily more than increased salary and guaranteed retirement benefits.¹⁵⁴ While AB 45

above the state median).

144. *Hearing on A.B. 45 Before the S. Comm. on Transp. and Hous.*, *supra* note 8.

145. *Infra* Part IV.A.

146. *Infra* Part IV.B.

147. *Infra* Part IV.C.

148. *Infra* Part IV.D.

149. *Hearing on A.B. 45 Before the S. Comm. on Transp. and Hous.*, *supra* note 8 (noting that the intent of AB 45 was to increase retention and recruitment rates for struggling districts).

150. *See generally* UC SAN FRANCISCO 2012-2014 FACULTY EXIT SURVEY REPORT, 1 (2016), available at <http://academicaffairs.ucsf.edu/ccfl/media/Faculty%20Exit%20Survey%202012-2014.pdf> (on file with *The University of the Pacific Law Review*) (examining exit surveys from departing faculty and their reasons for leaving the university).

151. ANNE PODOLSKY, TARA KINI, JOSEPH BISHOP & LINDA DARLING-HAMMOND, LEARNING POL'Y INST., SOLVING THE TEACHER SHORTAGE: HOW TO ATTRACT AND RETAIN EXCELLENT EDUCATORS 6 (2016), available at https://learningpolicyinstitute.org/sites/default/files/product-files/Solving_Teacher_Shortage_Attract_Retain_Educators_REPORT.pdf (on file with *The University of the Pacific Law Review*).

152. *Id.*

153. UC SAN FRANCISCO 2012-2014 FACULTY EXIT SURVEY REPORT, *supra* note 150, at 1.

154. PODOLSKY ET AL., *supra* note 151, at 6.

would be a creative approach to recruiting and retaining highly qualified teachers, it did not address the primary reasons teachers leave their districts—salary and benefits.¹⁵⁵

B. Using Similar Programs to Gauge AB 45's Likely Effect

Regardless of whether affordable rental housing is a standalone solution to California's teacher shortage, AB 45 may still have operated as one of many tools California school districts could use to increase recruitment and retention.¹⁵⁶ Indeed, programs similar to AB 45 have succeeded in bringing teachers to hard-to-staff school districts.¹⁵⁷ These programs might act as examples to help determine whether AB 45 housing could recruit teachers to school districts they would otherwise avoid.¹⁵⁸ Subpart 1 examines why LAUSD's affordable rental housing program for school employees failed to house any teachers, and why AB 45 would have avoided LAUSD's mistakes.¹⁵⁹ Subpart 2 discusses how Newark's Teachers Village and Philadelphia's Oxford Mills can help gauge AB 45's likely effect.¹⁶⁰ Subpart 3 explains why North Carolina's Dare County school district housing developments might give a positive example of an effective AB 45 program.¹⁶¹

1. LAUSD's Affordable Rental Development for School District Employees

The LAUSD's sponsored development is a poor indication of whether AB 45 projects would have an effect on teacher retention because none of its units actually went to teachers.¹⁶² LAUSD's development capped the qualifying income at 60% of the AMI, meaning teachers making above \$34,860 did not qualify to rent a unit.¹⁶³ But those making above \$34,860 still struggle to find affordable rental housing in Los Angeles, with the average two-bedroom apartment in the city costing \$34,800 per year.¹⁶⁴ Unlike the LAUSD

155. *Id.*

156. *See Hearing on A.B. 45 Before the S. Comm. on Transp. and Hous., supra* note 8 (describing AB 45 as a tool to recruit highly qualified teachers).

157. *Infra* Part IV.B.2; *see also* DAVIS, *supra* note 92, at 4.

158. *Infra* Part IV.B.1–3.

159. *Infra* Part IV.B.1.

160. *Infra* Part IV.B.2.

161. *Infra* Part IV.B.3.

162. Phillips, *supra* note 80.

163. *Id.*

164. *See* Dennis Romero, *\$2,000 Will Get You A 1-Bedroom in L.A.*, LA WEEKLY (Feb. 1, 2017, 10:52 AM), <http://www.laweekly.com/news/2-000-will-get-you-a-1-bedroom-in-la-7882316> (on file with *The University of the Pacific Law Review*) (finding the average 2-bedroom apartment in Los Angeles to cost \$2,900 per month).

development, AB 45 rental housing would have likely been accessible for teachers because units were made available to school district employees earning up to 120% of the AMI.¹⁶⁵

2. *Teachers Village and Oxford Mills*

Newark's Teachers Village and Philadelphia's Oxford Mills successfully rented their teacher-designated units to educators, suggesting an strong market for housing similar to AB-45 developments.¹⁶⁶ Seventy percent of Oxford Mills' total housing went to educators, even though the development only designated 60% of its units for educators.¹⁶⁷ Thus, Oxford Mills was clearly successful in attracting teachers to an otherwise unattractive neighborhood.¹⁶⁸ Oxford Mills' success gives hope that AB 45 housing developments would be able to recruit teachers to school districts in similar low-income neighborhoods.¹⁶⁹

Newark's Teachers Village leased 100% of its total housing, with more than 70% of the units going to teachers.¹⁷⁰ The project, however, is probably unhelpful in measuring the success AB-45 developments would have in attracting teachers to hard-to-staff districts because Teachers Village offers vibrant nightlife and downtown living, including shops, bakeries, restaurants, and medical facilities.¹⁷¹ AB-45 projects—especially those in rural areas and impoverished city neighborhoods—would not guarantee these amenities, and may have equated to little more than dorm-like housing in areas lacking the perks that make Teachers Village attractive.¹⁷² Thus, it is difficult to determine whether AB-45 projects would have the same success as Teachers Village without knowing the location and surrounding amenities of each individual project.¹⁷³

165. AB 45 § 51570(a), 2017 Leg., 2017–2018 Sess. (Cal. 2017) (Vetoed on Oct. 15, 2017) (defining “affordable rental housing” for AB 45 projects to comply with section 50093 of the Health & Safety Code, which defines low-moderate income as 120 percent of the AMI).

166. See DAVIS, *supra* note 92, at 13–14, 17 (describing Teacher's Village's and Oxford Mills' effectiveness in renting to educators).

167. *Id.*

168. See Hurdle, *supra* note 90 (describing the Philadelphia neighborhood of South Kensington as “up-and-coming but still gritty.”).

169. See Paul Barnwell, *The Ongoing Struggle of Teacher Retention*, THE ATLANTIC (May 27, 2015), <https://www.theatlantic.com/education/archive/2015/05/the-ongoing-struggle-of-teacher-retention/394211/> (on file with *The University of the Pacific Law Review*) (“[N]ot only are students in poor schools more likely to have new teachers, they are also disproportionately likely to have a core class—such as English or math—led by an educator who lacks a teaching certification or a college major in the subject he or she is teaching.”).

170. DAVIS, *supra* note 92, at 17.

171. Strunsky, *supra* note 89.

172. See Spencer J. Maxcy, *The Teacherage in American Rural Education*, 30 J. GEN. EDUC., no. 4, 1979, at 267, 268 (describing the history of housing for teachers on or near school grounds to live in rural areas).

173. See Strunsky, *supra* note 89 (discussing the many businesses that surround Teachers Village, including a bakery, grocery store, beauty salon, and restaurants).

3. North Carolina's Affordable Rental Housing Projects

North Carolina's school district-run programs have been successful in bringing in highly qualified teachers to notably unaffordable areas.¹⁷⁴ AB 45 took a similar approach as the Dare County developments, offering discounted rental housing operated by school districts in high-rent areas.¹⁷⁵ Dare County's projects represent a tangible example of AB 45's ability to recruit new teachers because teachers living in Dare County's developments stated they relied on the availability of affordable rental housing when accepting employment in the school district.¹⁷⁶ AB 45 followed the Dare County template, targeting high-rent areas with school districts struggling to staff highly qualified teachers.¹⁷⁷ AB 45 went even further than Dare County's projects by not including a "term out" period, whereas Dare County teacher residents are offered four-year leases in the Dare County complexes.¹⁷⁸ This longer lease format, combined with steady discounted rents, would give teachers time to save their income and hopefully transition into homebuying when they are financially capable to take that step, leading to permanent residence and, thus, long-term employment.¹⁷⁹ Therefore, for school districts in areas where teachers would otherwise be unable to find affordable housing, rental or otherwise, AB 45 may have been an effective tool for attracting and retaining highly qualified teachers.¹⁸⁰

C. Increased Costs and Urban Biases

AB 45 placed restrictions on the entities and proposed projects eligible for funding.¹⁸¹ Subpart 1 examines the implications of AB 45's PLA requirement.¹⁸²

174. *Supra* Part II.F.3. (explaining the success of teacher housing developments in Dare County).

175. *See* AB 45 § 50570(a), 2017 Leg., 2017–2018 Sess. (Cal. 2017) (Vetoed on Oct. 15, 2017) (restricting rental prices to 120 percent of the AMI); *see also id.* at § 50570(c)(2)(D) (including high-rental prices as a factor for AB 45 funding consideration).

176. *Welcome to Dare!*, *supra* note 97.

177. AB 45 §§ 50570(c)(2), (D) 2017 Leg., 2017–2018 Sess. (Cal. 2017) (Vetoed on Oct. 15, 2017).

178. DAVIS, *supra* note 92, at 35.

179. *See* Tanza Loudenback, *Here's Where You Should Store The Money You're Saving For a Down Payment*, BUS. INSIDER (Dec. 21, 2016, 2:10 PM), <http://www.businessinsider.com/where-to-store-the-money-youre-saving-for-a-down-payment-2016-12> (on file with *The University of the Pacific Law Review*) (stating that a homebuyer should save "at least 20% of the purchase price for a down payment" before buying).

180. *See* DAVIS, *supra* note 92, at 35 ("The teacher housing in Dare County has been touted a great success.").

181. *See* AB 45 § 50570, 2017 Leg., 2017–2018 Sess. (Cal. 2017) (Vetoed on Oct. 15, 2017) (listing criteria for determining whether a school district is eligible for a AB 45 pre-development grant); *see also id.* at § 50574 (listing standards for determining whether a proposed project is eligible for AB 45 funding).

182. *Infra* Part IV.D.2. (discussing the implications of a PLA requirement for AB 45 projects).

Subpart 2 assesses whether urban or rural school districts would likely benefit most from AB 45's grant eligibility parameters.¹⁸³

1. Would AB 45's PLA Requirement Limit its Effectiveness?

PLAs, as required in every project funded under AB 45, may increase development costs.¹⁸⁴ This requirement to use union labor, providing benefits and collectively bargained wages, would limit the ability of school districts that are building affordable rental housing to make the most out of their already scarce financing.¹⁸⁵ This was especially concerning because each AB 45 loan would be capped at \$10 million.¹⁸⁶ Therefore, school districts working within funding limitations would face a greater burden with a PLA increasing the costs of development.¹⁸⁷

AB 45 faced strong opposition due to the PLA requirement.¹⁸⁸ For instance, Non-Profit Housing Association of Northern California revoked its support for AB 45 because of its PLA provision, claiming it was unreasonable to require school districts building relatively small and simple housing complexes to comply with PLA restrictions, as PLA projects are generally reserved for larger-scale projects.¹⁸⁹ AB 45's PLA requirement seemed misplaced and contrary to its goal of providing accessible and affordable rental housing to highly qualified

183. *Infra* Part IV.D.3. (examining whether the provisions of AB 45 would favor urban or rural school districts).

184. See PAUL BACHMAN, JONATHAN HAUGHTON & DAVID G. TUERCK, THE BEACON HILL INST., PROJECT LABOR AGREEMENTS AND THE COST OF PUBLIC SCHOOL CONSTRUCTION IN CONNECTICUT 1 (Sept. 2004), available at <http://www.beaconhill.org/BHISudies/PLA2004/PLAinCT23Nov2004.pdf> (on file with *The University of the Pacific Law Review*) (finding PLA projects cost \$30 more per square foot compared to similar non-PLA projects); but see EMMA WAITZMAN & PETER PHILIPS, CTR. FOR LAB. RES. & EDUC., PROJECT LABOR AGREEMENTS AND BIDDING OUTCOMES: THE CASE OF COMMUNITY COLLEGE IN CALIFORNIA 2 (2017), available at <http://laborcenter.berkeley.edu/pdf/2017/Project-Labor-Agreements-and-Bidding-Outcomes.pdf> (on file with *The University of Pacific Law Review*) (finding PLA community college facility development projects came in at lower costs compared to similar non-PLA projects).

185. See Bachman et al., *supra* note 184, at 1 (finding PLA projects cost \$30 more per square foot compared to similar non-PLA projects).

186. AB 45 § 50574(c), 2017 Leg., 2017–2018 Sess. (Cal. 2017) (Vetoed on Oct. 15, 2017).

187. See E-mail from Michael Lane, Policy Director, Non-Profit Hous. Assoc. of Northern Cal., to Alison Hughes, Consultant, Cal. State Senate Comm. on Transp. and Hous. (June 16, 2017) (on file with *The University of the Pacific Law Review*) (stating it is unreasonable to force school districts to use a PLA for a simple affordable housing project).

188. See *Hearing on A.B. 45 Before the S. Comm. on Transp. and Hous.*, 2017 Leg., 2016–2017 Sess. (Cal. 2017) (on file with *The University of the Pacific Law Review*) (statement of Richard Markenson) (stating opposition to PLA provision of AB 45); see also E-mail from Michael Lane, *supra* note 187 (“We had wanted to support Mr. Thurmond’s AB 45 but he took an amendment that would require a Project Labor Agreement. . .”).

189. E-mail from Michael Lane, *supra* note 187.

teachers because it would likely increase costs of development and limit the amount of housing school districts could provide.¹⁹⁰

2. *Rural Versus Urban: Who Would AB 45 Benefit Most?*

California's teacher shortage impacts both urban and rural parts of the state.¹⁹¹ Rural school districts have trouble recruiting highly-qualified teachers because such districts often lack rental housing and young professionals often find rural districts undesirable.¹⁹² Meanwhile, teachers in urban school districts face high cost-of-living and long commutes.¹⁹³ Although AB 45 intended to mitigate the teacher shortage throughout California, some provisions primarily benefitted urban areas.¹⁹⁴ First, AB 45's public transportation proximity requirement effectively eliminated some rural school districts from consideration for development loans.¹⁹⁵ Additionally, AB 45's high rental cost provision favored urban districts over rural ones.¹⁹⁶

a. *AB 45's Public Transportation Requirement*

AB 45 would require the proposed housing development to be "located within reasonable proximity to public transportation."¹⁹⁷ But unlike urban areas, like the Bay Area¹⁹⁸ and Los Angeles,¹⁹⁹ rural areas are less likely to have access to public transportation.²⁰⁰ Therefore, unless the CDH provided an exception for

190. *See id.* ("[T]he increased costs and administrative burdens associated with the PLA would make many projects financially infeasible . . .").

191. Howard Blume, *California Faces a Looming Teacher Shortage, and the Problem is Getting Worse*, L.A. TIMES (Nov. 30, 2016, 7:25 PM), <http://www.latimes.com/local/education/la-me-edu-california-teacher-shortage-20161129-story.html> (on file with *The University of the Pacific Law Review*).

192. TIMOTHY COLLINS, EDUC. RES. INFO. CTR., ATTRACTING AND RETAINING TEACHERS IN RURAL AREAS 1 (1999), available at <http://files.eric.ed.gov/fulltext/ED438152.pdf> (on file with *The University of the Pacific Law Review*) ("The principal reason teachers leave rural areas is isolation—social, cultural, and professional."); Barrett & Greene, *supra* note 7 (teachers in rural areas are forced to buy because of a lack of rental housing).

193. Barrett & Greene, *supra* note 7.

194. *Infra* Part IV.C.2.a–b.

195. *Infra* Part IV.C.2.a.

196. *Infra* Part IV.C.2.b.

197. AB 45 § 50574(a)(2)(A), 2017 Leg., 2017–2018 Sess. (Cal. 2017) (Vetoed on Oct. 15, 2017).

198. *See Bay Area Rapid Transit: Schedules*, <https://www.bart.gov/schedules/bystation> (last visited July 7, 2017) (on file with *The University of the Pacific Law Review*) (displaying a map of the Bay Area Rapid Transit system).

199. *Los Angeles Public Transit*, <http://www.discoverlosangeles.com/blog/los-angeles-public-transit> (last visited July 7, 2017) (on file with *The University of the Pacific Law Review*) (explaining the multiple options for public transportation in Los Angeles).

200. THOMAS W. SANCHEZ, NEIL BANIA & LAURA LEETE, TRANSP. NW. REG'L CTR., RURAL PUBLIC TRANSPORTATION: USING GEOGRAPHIC INFORMATION SYSTEMS TO GUIDE SERVICE PLANNING 2 (June 2002),

rural school districts without access to public transportation, AB 45 funding would effectively be limited to urban school districts with existing access.²⁰¹

b. AB 45's High-Rent Provision

Urban school districts would likely benefit from AB 45's provision giving priority to areas with high rental costs.²⁰² Because urban areas account for the highest rents in California, this factor would primarily benefit urban school districts seeking AB 45 project funding.²⁰³ Focusing on high-rent areas failed to consider why developing teacher rental housing in rural districts is valuable—increased availability.²⁰⁴ Teachers in hard-to-staff rural districts are not necessarily priced out, but instead face a lack of availability in the area, forcing them to either take on the high cost of a down payment on a home, or avoid working in rural areas altogether.²⁰⁵ Thus, AB 45's high rent requirement would have favored urban school districts over rural ones, even though the teacher shortage impacts both equally.²⁰⁶

D. The Governor's Veto

Governor Brown vetoed AB 45 in October 2017.²⁰⁷ Governor Brown's veto was predictable given his established preference for affordable housing legislation that creates a quicker path to development rather than additional funding for programs.²⁰⁸ This stance is predicated on the high cost of current

https://willamette.edu/centers/publicpolicy/pdf/transportation_poverty.pdf (on file with *The University of the Pacific Law Review*) (finding that because county governments with limited revenue generally serve rural cities, and because rural areas have lower populations, public transportation is typically nonexistent); see also JILL L. FINDEIS ET AL., RURAL POL. RES. INST., WELFARE REFORM IN RURAL AMERICA: A REVIEW OF CURRENT RESEARCH 35 (2001), available at <http://www.rupri.org/Forms/p2001-5.pdf> (on file with *The University of the Pacific Law Review*) (“Nearly 80% of rural counties have no public bus access, compared to 2% of metro counties.”).

201. See FINDEIS ET AL., *supra* note 200, at 30 (stating that public transportation “is much more widely available in urban areas”).

202. AB 45 § 50570(c)(2)(D), 2017 Leg., 2017–2018 Sess. (Cal. 2017) (Vetoed on Oct. 15, 2017).

203. Woo, *supra* note 7 (listing the highest rents in California, all of which are major California metropolitans).

204. See Barrett & Greene, *supra* note 7 (stating that teachers in rural areas are forced to buy because of a lack of rental housing).

205. See *id.* (stating that teachers in rural areas are forced to buy because of a lack of rental housing).

206. Blume, *supra* note 191.

207. Letter from Governor Edmund J. Brown, Jr., Governor, to the Members of the California State Assembly (October 15, 2017) (on file with *The University of the Pacific Law Review*) (a veto message).

208. Erika Aguilar, *Opts for Policy Changes, Not Funding, to Boost Affordable Housing*, S. CAL. PUB. RADIO (May 13, 2016), <http://www.scpr.org/news/2016/05/13/60629/gov-brown-opts-for-policy-changes-not-funding-to-b/> (on file with *The University of the Pacific Law Review*).

development, and the difficulty of building given existing regulations.²⁰⁹ In a letter containing his veto message to Members of the California State Assembly, Governor Brown cited Senate Bill (SB) 2, a bill levying a \$75 fee on each recording of a real estate instrument, such as deeds or quitclaim deeds, as reason for the veto.²¹⁰ Enacted in 2017, the bill is projected to gross between \$200 million and \$300 million in revenue, with 70% dedicated to various affordable housing projects.²¹¹ The Governor suggested that SB 2 rendered AB 45 redundant because SB 2 covers housing projects described in AB 45.²¹² Thus, after signing SB 2, which will increase spending on affordable housing by at least \$200 million, it was expected that Governor Brown would reject any additional housing spending programs like AB 45.²¹³

V. CONCLUSION

For teachers like Etoria Cheeks who earn too much to qualify for existing housing assistance programs, but not enough to afford to live in the city they work in, AB 45 had the potential to provide steady, affordable rental housing near their school district.²¹⁴ Existing similar programs suggest that AB 45 may have been a useful and effective tool to entice highly qualified teachers to accept long-term employment work in hard-to-staff school districts.²¹⁵ AB 45 faced a difficult path to implementation given the administration's distaste for additional spending on affordable housing projects that do little to ease the development process, culminating into Governor Brown's eventual veto.²¹⁶ If enacted, however, AB 45 would likely have benefitted urban districts over rural ones due to its requirement that all projects be near public transportation and in high-rent areas.²¹⁷ Additionally, AB 45's PLA requirement was unnecessary and potentially costly for developers and school districts alike, and would likely have

209. Liam Dillon, *California Governor: We're Not Spending More on Low-Income Housing Because It's Too Expensive to Build*, L.A. TIMES (Jan. 10, 2017), <http://www.latimes.com/politics/essential/la-pol-ca-essential-politics-updates-governor-we-re-not-spending-more-on-1484082718-htlmlstory.html> (on file with *The University of the Pacific Law Review*).

210. Letter from Governor Edmund J. Brown, Jr., *supra* note 207; SENATE FLOOR, FLOOR ANALYSIS OF SB 2, at 2 (May 26, 2017).

211. *Id.*; ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT, COMMITTEE ANALYSIS OF SB 2, at 2 (July 12, 2017).

212. Letter from Governor Edmund J. Brown, Jr, *supra* note 207.

213. *See* Dillon, *supra* note 209 (explaining Governor Brown's stance on avoiding additional housing spending without streamlining the development process).

214. Knight, *supra* note 1.

215. *Supra* Part IV.B. (analyzing Teachers Village, Oxford Mills, and Dare County housing developments for teachers).

216. *Supra* Part IV.D.

217. *Supra* Part IV.C.2.

limited the amount of affordable rental housing realized from AB 45.²¹⁸ Nevertheless, AB 45 represented a creative solution to California's highly-qualified teacher and housing shortages, and may act as a useful starting point for local governments faced with high housing costs looking to implement comparable housing programs in school districts struggling to attract and retain highly-qualified teachers.²¹⁹

218. *Supra* Part IV.C.1.

219. *See generally* DAVIS, *supra* note 92, at 9–40 (discussing the effectiveness of teacher-specific rental housing developments in several local governments in the United States).