

Metropolitan Transportation Commission and Association of Bay Area Governments
Joint MTC ABAG Legislation Committee

June 14, 2024

Agenda Item 3d

Assembly Bill 598 (Wicks): Bay Area Housing Finance Authority (BAHFA) Funding

Subject:

Clarification of the limitations on BAHFA's authority to condition funding disbursements on local jurisdictions' land use and housing policies.

Background:

Assembly Bill (AB) 598 (Wicks) makes changes to BAHFA's enabling statute at the request of MTC/ABAG staff following discussions with the Bay Area Council ("Council") and Building Industry Association of the Bay Area ("BIA") in May and subsequent direction from BAHFA Chair Pedroza, ABAG President Ramos and Legislation Committee Chair Canepa pursuant to the MTC/ABAG policies for urgent legislative action.

BAHFA's Expenditure Plan and Funding Programs

BAHFA's Expenditure Plan is a statutorily required document that defines, over a five-year period, the spending programs, projects and policies applicable to BAHFA's 20 percent share of a regional housing bond. On April 18, 2024, the ABAG Executive Board (as the Executive Board to BAHFA) approved the 2025-30 Expenditure Plan for the \$20 billion bond anticipated for the November 2024 ballot. The BAHFA Board is scheduled to approve the same plan on June 26, 2024.

The 2025-30 Expenditure Plan outlines the requirements by which BAHFA must prioritize and spend bond funds issued in the first two funding tranches.

For production funds (52% of the total), these include:

1. Set "return-to-source" investment targets in each county, based on assessed property values.
2. Prioritize permanent supportive housing developments and developments that serve extremely low-income households.
3. Work collaboratively with jurisdictions to secure oversubscribed resources.

For preservation funds (at least 15% of the total), the requirements include:

1. Prioritize investments in historically disinvested areas.
2. Forestall eviction risk or affordability loss.
3. Support community-controlled housing through a 20% set-aside target.

Meeting these requirements will require a project-level analysis. For example, does the project provide homes for people with extremely low incomes or experiencing homelessness? Is it financially feasible over the long term? Does it leverage BAHFA funding with sources other than existing over-subscribed sources? The Expenditure Plan does not anticipate conditioning projects' eligibility on jurisdiction-wide policies adopted by localities.

County and City Expenditure Plans

Under state law, the nine counties and four cities (Napa, Oakland, San Jose and Santa Rosa) who will receive a direct allocation of regional housing bond funds must adopt an expenditure plan for those funds. BAHFA is required to approve the locality's expenditure plan if it meets the criteria established in state law; BAHFA does not have discretion to impose additional requirements.

Stakeholder Concerns

In mid-May, the Council and BIA reached out to BAHFA staff with significant concerns about the potential for BAHFA's funding programs to be used to encourage cities and counties to adopt policies that they believe make market rate housing development more difficult and costly to build. BAHFA staff met with both organizations and other stakeholders to develop options for addressing these concerns while maintaining the goals and requirements outlined in BAHFA's Expenditure Plan.

On May 22, 2024, the Council and BIA requested the BAHFA Board's support for proposed bill language to address their concerns (see Attachment A). The BAHFA Board Chair Alfredo Pedroza responded in a letter dated May 24, 2024. The letter committed that the Chair would direct staff to work with the Council, BIA and other stakeholders on legislation reflecting the proposed language. (See Attachment B.)

The legislation consists of two key changes. The first clarifies that BAHFA cannot impose conditions on counties' and cities' expenditure plans beyond those outlined in BAHFA's enabling statute. The second provision prohibits BAHFA from rendering a proposed housing development ineligible for funding from BAHFA's portion of the bond proceeds based on the land use or housing policies of the locality in which it's located. Both amendments are consistent with BAHFA's enabling legislation, which prohibits BAHFA from regulating or enforcing local land use decisions. (See Gov. Code § 64522(a).)

Recommendation: Support

Sponsor / ABAG Executive Board Approval

Sponsor / Commission Approval

Discussion:

Given the regional Expenditure Plan's focus on evaluating projects based on project-level criteria rather than a locality's policies, staff believes the language in AB 598 makes explicit what was already implied in BAHFA's enabling legislation and would not alter BAHFA's plans or goals. Staff have worked to clarify and explain BAHFA's statutory requirements and the additional goals and obligations created by new BAHFA documents, such as the Expenditure Plan, for Bay Area stakeholders over the last two years. The Council/BIA have concerns about broader conditions affecting real estate and housing development throughout the region. While BAHFA's funding programs are not structured in a manner that would exacerbate these concerns, AB 598 provides further reassurance as to BAHFA's future actions and goals. For these reasons, staff recommends a support position on AB 598 (Wicks).

Known Positions:Support

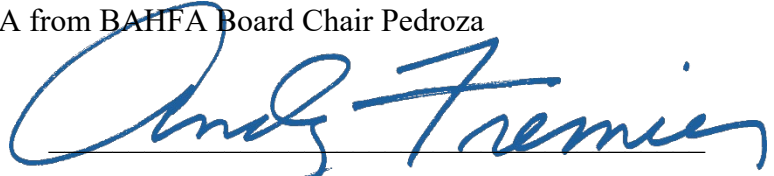
None known

Oppose

None known

Attachments:

- Attachment A: Letter to BAHFA Board from BAC-BIA
- Attachment B: Letter to BAC-BIA from BAHFA Board Chair Pedroza



Andrew B. Fremier



May 22, 2024

Dear Bay Area Housing Finance Authority Board Members,

As the representatives of the Bay Area business and development communities, the Bay Area Council and Building Industry Association of the Bay Area are writing jointly to request that the Bay Area Housing Finance Authority (BAHFA) statute be modified to make it expressly clear that the award of bond proceeds shall be fully consistent with BAHFA statutory authority for projects providing affordable housing, and will not be used in the future as an incentive or leverage to drive local housing policy and program changes that may reflect future political priorities of the BAHFA board but be detrimental to market rate and mixed income housing.

To effectuate this clarification, we have worked on the following language with BAHFA staff, and have reviewed with supporters of the BAHFA bond. We respectfully request that the BAHFA Board ask the legislature to add this language to the BAHFA statute.

We request your urgent support for the legislative amendment as the timeline for the Bond support is shortening by the day and we would like to throw our support unequivocally behind the pending BAHFA bond.

With this language addition adopted by the legislature, both our organizations be in a position to support the BAHFA bond and work to see it passed.

Our proposed amendment is as shown below:

New paragraph, Sec. 64650(d)(6)(v)

(v) The authority may not impose any other conditions for an expenditure plan to be deemed complete to allocate funds required pursuant to this section. Notwithstanding the foregoing, the Authority may enter into an agreement with a county or city that receives an allocation of County housing revenue to ensure that the authority or county, city or county and city take the actions necessary or incidental to implementing the purpose of this section.

Additional sentences (in **bold**) added to Sec. 64650(d)(5)(B):

*To the extent feasible, the regional expenditure plan shall include a description of any specific project or program proposed to receive funding, including the location, amount of funding, and anticipated outcomes, as well as the estimated funding level for each of the categories listed in subparagraph (A) or (B) of paragraph (2) of subdivision (b). **The regional expenditure plan shall not render projects ineligible for funding based on the presence or absence of any city or county or city and county land use or housing policies. Notwithstanding the foregoing, BAHFA may use project-specific conditions to prioritize projects for funding.***

Sincerely,

Matt Regan, Bay Area Council

Paul Campos, Building Industry Association of the Bay Area



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May 24, 2024

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RE: Legislative Changes re: BAHFA's Enabling Statute

Dear Mr. Campos and Mr. Regan,

Thank you for your letter dated May 22, 2024 regarding requested changes to the Bay Area Housing Finance Authority's enabling statute as relates to potential conditions BAHFA could attach to its funding programs, pending voter approval of the Bay Area's first regional affordable housing bond. Since passage of AB 1487 (Chiu, 2019), BAHFA has been working hard to demonstrate the added value we can bring to addressing the Bay Area's significant housing challenges. Our organizations agree that the Bay Area needs to *massively* increase the number of housing units that are available if we want to be a prosperous, equitable and environmentally sustainable region long-term. While I am concerned about the last-minute nature of this request, in the spirit of partnership, I am directing our staff to work with you on a legislative fix this session that will address your concerns, consistent with the language in the attached.

To the extent issues arise during the legislative process that leads you or BAHFA staff to seek revisions to the attached language, I trust that negotiations will be done in good faith to arrive at a mutually agreed upon path forward that will help get the bond passed.

Sincerely,

Alfredo Pedroza
Chair

AP:rl
Attachment

Attachment

Add new paragraph, Sec. 64650(d)(6)(v):

(v) The authority may not impose any other conditions for an expenditure plan to be deemed complete to allocate funds required pursuant to this section. Notwithstanding the foregoing, the Authority may enter into an agreement with a county or city that receives an allocation of County housing revenue to ensure that the authority or county, city, or city and county take the actions necessary or incidental to implementing the purpose of this section.

Amend Sec. 64650(d)(5)(B) as follows (changes shown in blue):

(B) The regional expenditure plan shall set forth the share of revenue and estimated funding amount to be spent on each of the categories established in subdivision (b), indicate the household income levels to be served within each category of expenditures, and estimate the number of affordable housing units to be built or preserved and the number of tenants to be protected. To the extent feasible, the regional expenditure plan shall include a description of any specific project or program proposed to receive funding, including the location, amount of funding, and anticipated outcomes, as well as the estimated funding level for each of the categories listed in subparagraph (A) or (B) of paragraph (2) of subdivision (b). *The regional expenditure plan shall not render projects ineligible for funding based on the presence or absence of any city or county or city and county land use or housing policies. Notwithstanding the foregoing, BAHFA may use project-specific conditions to prioritize projects for funding.* Beginning the second year, the authority shall include a report in the regional expenditure plan that provides its allocations and expenditures to date of projects and programs funded and the extent to which the minimum targets in subparagraph (A) or (B) of paragraph (2) of subdivision (b) were achieved.