



METROPOLITAN  
TRANSPORTATION  
COMMISSION

**Agenda Item 9a**  
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## *Memorandum*

TO: Legislation Committee

DATE: May 5, 2017

FR: Deputy Executive Director, Policy

W. I. 1131

RE: AB 686 (Santiago): Housing Discrimination – Affirmatively Further Fair Housing

### **Background**

In 2015, the Obama Administration adopted an affirmatively further fair housing (AFFH) rulemaking to strengthen compliance with the longstanding obligation for recipients of federal housing funding to advance fair housing goals. The rule requires Department of Housing and Urban Development (HUD) grantees, including 33 Bay Area cities and counties, to incorporate fair housing community planning into HUD-required planning documents and prioritize actions the jurisdiction will take to address impediments to achieving full housing integration within their borders. The Trump Administration has since indicated opposition to the new approach and legislation was introduced (H.R. 482 and S. 103) to nullify the AFFH rule, creating uncertainty over the future of the rule.

In response, Assembly Bill 686 (Santiago) seeks to place the AFFH duty in state law and adds failure to affirmatively further fair housing as a new category of housing discrimination. While the federal AFFH rule applies only to HUD grantees, this bill applies the fair housing obligation to any state, regional or local agency that administers programs and activities related to housing and community development, including MTC and the Association of Bay Area Governments (ABAG). The bill further requires MTC and ABAG to incorporate a fair housing assessment into the Sustainable Communities Strategy (SCS) – the state’s general term for Plan Bay Area 2040 (Plan), the Bay Area’s long-range Regional Transportation Plan (RTP). This provision would require that the SCS include a commitment to take specific meaningful actions to affirmatively further fair housing.

### **Recommendation: Oppose Unless Amended**

#### **Discussion**

AB 686 has the laudable policy goal of furthering fair housing opportunity. MTC supports this policy and does not object to incorporating AFFH into state policy. However, given that regional agencies have no land use authority, the focus on regional planning and the SCS is misplaced. Staff takes issue with the requirement that the SCS take meaningful action in areas over which regional agencies have no enforcement authority. Cities and counties have jurisdiction over land use and housing investment strategies, and therefore it makes sense for them to continue to be responsible for fair housing compliance. This was reinforced in a 2015 update to MTC’s environmental justice analysis for Plan Bay Area which showed that while planned transportation investments equitably benefitted minority and low-income households, there are widespread inequities in other areas including access to fair and affordable housing.

Another cause for concern is the potential conflict of the AFFH requirement with other state policy goals, putting public agencies in a bind and at risk of litigation. For example, California Senate Bill 375 (Steinberg, 2008) requires metropolitan areas to create a SCS that aligns land use and

transportation planning in order to reduce greenhouse gas emissions (GHG). The Plan's core strategy to reduce GHG emissions focuses growth in locally-identified Priority Development Areas (PDAs), or existing neighborhoods served by public transit. This may or may not affirmatively further fair housing. Therefore, the addition of a new state policy objective to the SCS would require a re-evaluation and potential revision of SB 375 to ensure each objective can realistically be reached.

The Plan is already required to meet federal nondiscrimination obligations as a part of the metropolitan transportation planning process, which are incorporated into the Plan through the equity framework. This equity framework has three components: A Title VI analysis of investments to identify any disparate impacts on populations based on race, color or national origin; an environmental justice analysis to identify any adverse impacts on low-income and minority populations or communities of concern; and an equity analysis that assesses benefits of planned investments on communities of concern in comparison to the rest of the region. These obligations provide room for assessing affordable housing and access to opportunity challenges.

Given the lack of enforcement authority at the regional level and potential legal ramifications and conflicts with other state policies, staff recommends an "oppose unless amended" position on AB 686, authorizing staff to pursue an amendment that would eliminate the provisions related to regional planning agencies and the SCS and instead, require a study identifying strategies to better-align HUD-grantee fair housing plans and policies with regional transportation and land use planning.

#### **Known Positions**

##### **Support**

National Housing Law Project (co-sponsor)  
Public Advocates (co-sponsor)  
Western Center on Law & Poverty (co-sponsor)  
AFSCME  
Alliance of Californians for Community Empowerment  
American Planning Association, California Chapter (*if amended*)  
Bay Area Legal Aid  
California Environmental Justice Alliance  
California Housing Partnership Corporation  
California Reinvestment Coalition  
Communities for a Better Environment  
Courage Campaign  
Disability Rights California  
Enterprise Community Partners  
Equal Justice Society  
Fair Housing Advocates of Northern California  
Fair Housing Council of Orange County  
Grounded Solutions Network  
Human Equity Law Project

##### **HERA**

Law Foundation of Silicon Valley  
Lawyers' Committee for Civil Rights Under Law  
Legal Aid Association of California  
Legal Aid Foundation of Los Angeles  
Legal Aid Society of San Diego  
Legal Services of Northern California  
Little Tokyo Service Center  
Mission Economic Development Agency  
National Association of Social Workers  
Non-Profit Housing Association of Northern California  
Peace and Freedom Party of California  
Policy Link  
Project Sentinel  
Public Counsel  
Public Interest Law Project  
Tenants Together

##### **Opposition**

California Association of Councils of Governments

  
Alix A. Bockelman

SH:gd