

Date of Hearing: April 10, 2019

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

AB 1487 (Chiu) – As Amended April 4, 2019

**SUBJECT:** San Francisco Bay area: housing development: financing

**SUMMARY:** Establishes the San Francisco Bay Regional Housing Finance Act and creates a regional housing agency for the San Francisco Bay area. Specifically, **this bill:**

- 1) Includes the following declarations from the Legislature:
  - a) The San Francisco Bay area is facing the most significant housing crisis in the region's history, as countless residents are contemplating moving, spend hours driving every day, are one paycheck away from an eviction, or homelessness;
  - b) The San Francisco Bay area faces this crisis because, as a region, it has failed to produce enough housing at all income levels, preserve affordable housing, protect existing residents from displacement, and address the housing issue regionally;
  - c) The housing crisis in the San Francisco Bay area is regional in nature and too great to be addressed individually by the region's 101 cities and 9 counties;
  - d) However, the current process is anything but regional; instead each city and county is responsible for their own decisions around housing;
  - e) The San Francisco Bay area faces an annual funding shortfall of \$2,500,000,000 in its efforts to address the affordable housing crisis; and
  - f) A regional entity is necessary to help address the housing crisis in the San Francisco Bay area by delivering resources and technical assistance at a regional scale, including:
    - i. Providing critically funding to affordable housing projects across the San Francisco Bay area;
    - ii. Providing staff support to local jurisdictions that require capacity or technical assistance to expedite the preservation and production of housing;
    - iii. Funding tenant services, such as emergency rental assistance and access to counsel, thereby relieving local jurisdictions of this cost and responsibility;
    - iv. Assembling parcels and acquiring land for the purpose of building affordable housing; and
    - v. Monitoring and reporting on progress at a regional scale.

- 2) Establishes the Housing Alliance for the Bay Area (entity) as follows:
  - a) The entity has jurisdiction extending throughout the San Francisco Bay area, including the entire area within the territorial boundaries of the Counties of Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, Solano, and Sonoma and the City and County of San Francisco;
  - b) The formation and jurisdictional boundaries of the entity are not subject to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000;
  - c) The entity's purpose is to increase affordable housing in the San Francisco Bay area by providing for enhanced funding and technical assistance at a regional level for tenant protection, affordable housing preservation, and new affordable housing production;
  - d) It is the intent of the Legislature that the entity complement existing efforts by cities, counties, districts, and other local, regional, and state entities, related to addressing the goals described in this title; and,
  - e) It is the intent of the Legislature that the entity be staffed by the existing staff of the Metropolitan Transportation Commission (MTC), or any successor agency, with the understanding that additional staff with expertise in affordable housing finance and other aspects of the entity's work will be needed.
- 3) Establishes the governing board for the entity as follows:
  - a) The entity shall be governed by a board composed of 18 voting members, including nine from MTC and nine from the Association of Bay Area Governments (ABAG);
  - b) The entity shall form an advisory body comprised of nine representatives with knowledge and experience in the areas of affordable housing finance and development, tenant protection, resident service provision, and housing preservation;
  - c) Each member of the board shall serve at the pleasure of the appointing authority;
  - d) The appointing authority shall fill any vacancy on the board within 90 days from the date on which the vacancy occurs;
  - e) The board shall select from its members a chair, who shall preside over meetings of the board, and a vice chair from its members, who shall preside in the absence of the chair;
  - f) A member appointed may receive a per diem for each board meeting that the member attends. The board shall set the amount of that per diem for a member's attendance, but that amount shall not exceed one hundred dollars (\$100) per meeting. A member shall not receive a payment for more than two meetings in a calendar month. A member may waive a payment of this per diem;
  - g) Members of the board are subject to Article 2.4 of Chapter 2 of Part 1 of Division 2 of Title 5;

- h) The entity shall be subject to the Ralph M. Brown Act, the California Public Records Act, and the Political Reform Act of 1974;
  - i) Members of the board member shall exercise independent judgment on behalf of the interests of the residents, the property owners, and the public as a whole in furthering the intent and purposes of this title;
  - j) The time and place of the first meeting of the board shall be at a time and place within the San Francisco Bay area fixed by the chair of the board. After the first meeting, the board shall hold meetings at times and places determined by the board;
  - k) The board may make and enforce rules and regulations necessary for the governance of the board, the preservation of order, and the transaction of business; and
  - l) In exercising the powers and duties conferred on the entity by this title, the board may act either by ordinance or resolution.
- 4) Establishes the powers of the entity such that it may:
- a) Raise and allocate new revenue by authorizing the entity to place on the ballot in all or a subset of the nine counties in the San Francisco Bay area various funding measures that distribute the responsibility across commercial developers, businesses above a certain size, taxpayers, and property owners within its jurisdiction. These funding measures may include:
    - i. A parcel tax;
    - ii. A commercial linkage fee that is either of the following:
      - 1. A variable rate fee assessed on new construction, providing a credit for a project in a local jurisdiction with an existing linkage fee program; or
      - 2. A flat rate fee assessed on new construction.
    - iii. A gross receipts tax with variable rates according to business sector with an exemption for small businesses;
    - iv. A business tax based upon the number of employees assessed at a variable rate with an exemption for small businesses;
    - v. One-half of one cent (\$0.005) increase in sales tax;
    - vi. A general obligation bond to be funded by an ad valorem tax on the assessed value of local properties; and
    - vii. A revenue bond.

- b) Incur and issue indebtedness and assess fees on any debt issuance and loan products for reinvestment of fees and loan repayments in affordable housing production and preservation;
  - c) Allocate funds to the various cities, counties, and other public agencies and affordable housing projects within its jurisdiction to finance affordable housing development, preserve and enhance existing affordable housing, and fund tenant protection programs, pursuant to this title, in accordance with applicable constitutional requirements;
  - d) Apply for and receive grants from federal and state agencies;
  - e) Solicit and accept gifts, fees, grants, and allocations from public and private entities;
  - f) Deposit or invest moneys of the entity in banks or financial institutions in the state;
  - g) Sue and be sued, except as otherwise provided by law, in all actions and proceedings, in all courts and tribunals of competent jurisdiction;
  - h) Engage counsel and other professional services;
  - i) Enter into and perform all necessary contracts;
  - j) Enter into joint powers agreements pursuant to the Joint Exercise of Powers Act;
  - k) Hire staff, define their qualifications and duties, and provide a schedule of compensation for the performance of their duties;
  - l) Use staff provided by MTC. A person who performs duties as interim or temporary staff pursuant to this subdivision shall not be considered an employee of the entity;
  - m) Assemble parcels and lease or acquire land for affordable housing development;
  - n) Collect data on housing production and monitor progress on meeting regional and state housing goals;
  - o) Provide support and technical assistance to local governments in relation to producing and preserving affordable housing;
  - p) Provide public information about the entity's housing programs and policies;
  - q) Any other express or implied power necessary to carry out the intent and purposes of this title.
- 5) Specifies the limitations of the powers of the entity in that it may not:
- a) Regulate or enforce local land use decisions; or

- b) Acquire property by eminent domain.
- 6) Enables for the expenditure funding revenues as follows:
- a) The entity must distribute the total funds for the region over a five-year period commencing after revenue is approved by voters as follows:
    - i. A minimum of 60 percent for production of housing units affordable to lower income households.
    - ii. A minimum of 5 percent and a maximum of 10 percent for tenant protection programs. The entity shall give priority to tenant protection programs that have flexible funding sources. Funding for tenant protection programs may be used for any of the following:
      - 1. Providing access to counsel for tenants facing eviction.
      - 2. Providing emergency rental assistance for lower income households.
      - 3. Providing relocation assistance for lower income households.
      - 4. Collection and tracking of information related to displacement risk and evictions in the region.
    - iii. A minimum of 15 percent and a maximum of 20 percent for preservation of housing affordable to low- or moderate-income households.
    - iv. A minimum of 5 percent and a maximum of 10 percent for general funds awarded to a local government that achieves affordable housing benchmarks established by the entity.
  - b) The entity may lower these minimum distribution amounts if it adopts a finding that the minimum funding amount exceeds the region's needs. The finding must be placed on a meeting agenda for discussion at least 30 days before the entity adopts the finding.
  - c) The entity may allocate funds directly to a city, a county, a public entity, or a private project sponsor.
  - d) The entity must distribute funds so that an amount equal to or greater than 75 percent of the revenue received from a county over a five-year period through authorized funding expended in the county, as follows:
    - i. A county may request to administer all or a portion of the funds required to be expended in the county.
    - ii. The entity shall approve, deny, or conditionally approve the request based on factors, including, but not limited to, whether the county has a demonstrated

track record of successfully administering funds for the listed purposes and has sufficient staffing capacity to conduct the work effectively; and

- iii. The entity shall distribute funds to a county based on an expenditure plan submitted by the county and approved by the entity. A county's proposed expenditure plan may contain funding amounts different than those listed above. In approving a county's expenditure plan and allocating funds, the entity may adjust the funding amounts to ensure compliance with the overall allocation requirements.
  - e) If funds provided to a county for administration pursuant are not committed within three years of collection, the county shall return the funds to the entity.
  - f) The entity may expend up to 3 percent of funds for program administration.
- 7) Establishes requirements and procedures for ballot measures necessary to generate funding revenues, as follows:
- a) The entity is a district, as defined in Section 317 of the Elections Code.
  - b) If the entity proposes a measure that will generate revenues, the board of supervisors of the county or counties in which the entity has determined to place the measure on the ballot shall call a special election on the measure. The special election shall be consolidated with the next regularly scheduled statewide election and the measure shall be submitted to the voters in the appropriate counties.
  - c) A measure proposed by the entity that requires voter approval shall be submitted to the voters of the entity in accordance with the provisions of the Elections Code applicable to districts.
  - d) The entity shall file with the board of supervisors of each county in which the measure shall appear on the ballot a resolution of the entity requesting consolidation, and setting forth the exact form of the ballot question.
  - e) The legal counsel for the entity shall prepare an impartial analysis of the measure. The impartial analysis prepared by the legal counsel for the entity shall be subject to review and revision by the county counsel of the county that contains the largest population, as determined by the most recent federal decennial census, among those counties in which the measure will be submitted to the voters.
  - f) Each county included in the measure shall use the exact ballot question, impartial analysis, and ballot language provided by the entity. If two or more counties included in the measure are required to prepare a translation of ballot materials into the same language other than English, the county that contains the largest population, as determined by the most recent federal decennial census, among those counties that are required to prepare a translation of ballot materials into the same language other than

English shall prepare the translation, or authorize the entity to prepare the translation, and that translation shall be used by the other county or counties, as applicable.

- g) If a measure proposed by the entity pursuant to this title is submitted to the voters of the entity in two or more counties, the elections officials of those counties shall mutually agree to use the same letter designation for the measure.
  - h) The county clerk of each county shall report the results of the special election to the entity.
  - i) For any election at which the entity proposes a measure that would generate revenues, the entity shall reimburse each county in which that measure appears on the ballot only for the incremental costs incurred by the county elections official related to submitting the measure to the voters with any eligible funds transferred to the entity from ABAG or MTC. These “incremental costs” include the cost to prepare, review, and revise the impartial analysis of the measure that is required by subdivision; the cost to prepare a translation of ballot materials into a language other than English by any county; and the additional costs that exceed the costs incurred for other election races or ballot measures, if any, appearing on the same ballot in each county in which the measure appears on the ballot, including the printing and mailing of ballot materials and the canvass of the vote regarding the measure.
  - j) Because the entity has no revenues as of the effective date of this section, the appropriations limit for the entity shall be originally established based on receipts from the initial measure that would generate revenues for the entity.
- 8) Requires financial oversight of the entity as follows:
- a) The board shall provide for regular audits of the entity’s accounts and records and shall maintain accounting records and shall report accounting transactions in accordance with generally accepted accounting principles adopted by the Governmental Accounting Standards Board of the Financial Accounting Foundation for both public reporting purposes and for reporting of activities to the Controller.
  - b) The board shall provide for annual financial reports. The board shall make copies of the annual financial reports available to the public.
- 9) The Legislature finds and declares that providing a regional financing mechanism for affordable housing development and preservation in the San Francisco Bay Area, as described in this section and Section 64501, is a matter of statewide concern and is not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, this title applies to all cities within the San Francisco Bay area, including charter cities.
- 10) The Legislature finds and declares that a special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the uniquely severe shortage of available funding and

resources for the development and preservation of affordable housing and the particularly acute nature of the housing crisis within the nine counties of the San Francisco Bay area region.

- 11) If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

**EXISTING LAW:**

- 1) Establishes the MTC as the transportation planning, coordinating, and financing agency for the nine-county San Francisco Bay Area, and specifies its governance structure, duties, and powers (Government Code Title 7.1).
- 2) Creates the Bay Area Toll Authority (BATA) as a separate entity governed by the same governing board as the MTC and makes BATA responsible for the programming, administration, and allocation of toll revenues from the state-owned toll bridges in the Bay Area (Streets and Highway Code Section 30950-309050.4).
- 3) Authorizes BATA to increase the toll rates for certain purposes, including to meet its bond obligations, provide funding for certain costs associated with the Bay Area state-owned toll bridges, including for the seismic retrofit of those bridges, and provide funding to meet the requirements of certain voter-approved regional measures (Streets and Highway Code Section 30914.7).
- 4) Established the San Francisco Bay Restoration Authority and specifies its governance structure, duties, and powers. These powers include the ability to place revenue measures on the ballot in all of the Bay Area counties and to issue bonds based on the proceeds of the revenue measures (Government Code Title 7.25).

**FISCAL EFFECT:** Unknown

**COMMENTS:**

*Purpose of the Bill:* According to the author, “Housing is a regional issue that requires policy and funding coordination across jurisdictions. AB 1487 creates the Housing Alliance for the Bay Area, the first public entity focused entirely on the region’s housing needs. This bill empowers the Bay Area to help address its affordable housing needs by enabling the region to raise new revenue and support local jurisdictions, and thereby ensure that the entire Bay Area is on track to end the housing crisis by providing affordable housing efficiently and effectively to all residents.

*Background:* Bay Area housing prices have long exceeded that of the state and county. This situation has been exacerbated during the economic expansion since the Great Recession ended in 2010, as the Bay Area has added seven times as many jobs as housing units. The mismatch of supply and demand has resulted in an increase in housing prices such that average rents are



\$2,400 (an increase of 60% since 2010) and average home prices are \$790,000 (also an increase of 60% since 2010).

From the middle of 2017 to the end of 2018, the Metropolitan Transportation Commission (MTC) and the Association of Bay Area Governments (ABAG) convened a series of structured discussions with local government officials, developers, major employers, labor interests, housing and policy experts, social equity advocates and non-profit housing providers. This group was deemed the Committee to House the Bay Area, and nicknamed CASA. CASA identified that, to make housing in the region more affordable, 35,000 new housing units would need to be built annually, including 14,000 new subsidized affordable housing units. Additionally, the region has 30,000 units at risk of losing their affordability, and 300,000 lower-income households who are paying more than 50% of their income in rent.

The Bay Area already has substantial resources to fund the production, preservation, and protection of affordable housing; however, CASA's analysis is that there is still a \$2.5 billion funding gap annually between existing resources and what is needed. CASA proposes to meet \$1.5 billion of this deficit with regional and local self-help measures, with the remainder being funded from additional state and federal sources.

*The Housing Alliance for the Bay Area:* This bill establishes the Housing Alliance for the Bay Area (HABA). The entity's purpose is to increase affordable housing in the San Francisco Bay Area by providing for enhanced funding and technical assistance at a regional level for new affordable housing production, affordable housing preservation, and tenant protection. The stated intent of HABA is to complement existing efforts by cities, counties, districts, and other local, regional, and state entities. HABA would create a new district with jurisdiction extending throughout the Bay Area, including the counties of Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, Solano, and Sonoma and the City and County of San Francisco.

The bill specifies the governance process for HABA, including that it would be governed by a board composed of 18 voting members, including nine from MTC and nine from ABAG. The entity must also form an advisory body comprised of nine representatives with knowledge and experience in the areas of affordable housing finance and development, tenant protection, resident service provision, and housing preservation. It would be staffed by MTC staff, recognizing that the agency would need additional staff with expertise in affordable housing finance and other related skills.

*Powers and Limitations of HABA:* The bill establishes HABA's powers, including that it may:

- Raise new revenue;
- Allocate funds to the various cities, counties, and other public agencies and affordable housing projects within its jurisdiction;
- Provide support and technical assistance to local governments in relation to producing and preserving affordable housing;
- Assemble parcels and lease or acquire land for affordable housing development;
- Collect data on housing production and monitoring progress on meeting regional and state housing goals; and
- Provide public information about the entity's housing programs and policies.

The bill also specifically states that HABA may not regulate or enforce local land use decisions, or acquire property by eminent domain.

*Sources of potential revenue:* The bill specifies that HABA may raise new revenue by authorizing the entity to place on the ballot in all or a subset of the nine counties in the San Francisco Bay area. The bill lists the following as potential funding strategies:

- A parcel tax;
- A commercial linkage fee that is either of the following:
- A variable rate fee assessed on new construction, providing a credit for a project in a local jurisdiction with an existing linkage fee program; or
- A flat rate fee assessed on new construction.
- A gross receipts tax with variable rates according to business sector with an exemption for small businesses;
- A business tax based upon the number of employees assessed at a variable rate with an exemption for small businesses;
- One-half of one cent increase in sales tax;
- A general obligation bond to be funded by an ad valorem tax on the assessed value of local properties; and
- A revenue bond.

If HABA proposes a ballot measure that will generate revenues, the board of supervisors of the county or counties in which the entity has determined to place the measure on the ballot must call a special election on the measure, consolidated with the next regularly scheduled statewide election. HABA would reimburse the counties for the incremental cost of the election.

*Distribution of funding:* The bill establishes the targets for expenditure of any revenues received through these fundraising measures, as follows:

- At least 60% must go towards production of housing units affordable to lower income households;
- From 15-20% for preservation of housing affordable to low- or moderate-income households;
- From 5-10% for tenant protection programs; and
- From 5-10% for general funds awarded to a local government that achieves affordable housing benchmarks established by the entity.
- The entity may expend up to 3% of funds for program administration.

The bill also establishes that at least 75% of the revenue received must return to the county of origin. The counties must submit expenditure plans to HABA for its approval. Based on county's plan, capacity, and track record, HABA may allow a county to administer all or a portion its funds directly. HABA may also allocate funds directly to a city, a public entity, or a private project sponsor.

*Double referred:* This bill was also referred to the Assembly Committee on Local Government where it will be heard should it pass out of this committee.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Bay Area Council  
Burbank Housing  
California Community Builders  
California YIMBY  
Chan Zuckerberg Initiative  
Enterprise Community Partners  
Greenbelt Alliance  
Habitat for Humanity East Bay/Silicon Valley  
Non-Profit Housing Association of Northern California  
PICO California  
SV@Home  
TMG Partners

*Support If Amended*

Community Legal Services in East Palo Alto  
Genesis  
Monument Impact  
Public Advocates  
San Francisco Foundation

**Opposition**

California Taxpayers Association (as amended on 4/4/19)  
Howard Jarvis Taxpayers Association

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