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**AB-1487 San Francisco Bay area: housing development: financing.** (2019-2020)

Text	Votes	History	Bill Analysis	Today's Law As Amended ⓘ	Compare Versions	Status	Comments To Author
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AMENDED IN SENATE JULY 11, 2019

AMENDED IN SENATE JULY 03, 2019

AMENDED IN ASSEMBLY MAY 16, 2019

AMENDED IN ASSEMBLY APRIL 29, 2019

AMENDED IN ASSEMBLY APRIL 04, 2019

AMENDED IN ASSEMBLY MARCH 26, 2019

CALIFORNIA LEGISLATURE— 2019–2020 REGULAR SESSION

**ASSEMBLY BILL**

**NO. 1487**

**Introduced by Assembly Member Chiu**  
**(Coauthors: Assembly Members Mullin and Wicks)**  
**(Coauthor: Senator Wiener)**

**February 22, 2019**

An act to add Title 6.8 (commencing with Section 64500) to the Government Code, relating to housing.

**LEGISLATIVE COUNSEL'S DIGEST**

AB 1487, as amended, Chiu. San Francisco Bay area: housing development: financing.

Existing law provides for the establishment of various special districts that may support and finance housing development, including affordable housing special beneficiary districts that are authorized to promote affordable housing development with certain property tax revenues that a city or county would otherwise be entitled to receive.

This bill, the San Francisco Bay Area Regional Housing Finance Act, would establish the Bay Area Housing

Finance Authority (hereafter the authority) and would state that the authority's purpose is to raise, administer, and allocate funding for affordable housing in the San Francisco Bay area, as defined, and provide technical assistance at a regional level for tenant protection, affordable housing preservation, and new affordable housing production. The bill would provide that the governing board of the Metropolitan Transportation Commission serve as the governing board of the authority. ~~The bill would authorize the authority to exercise various specified powers, including the power to raise revenue and allocate funds throughout the San Francisco Bay area, subject to applicable voter approval requirements and other specified procedures, as provided. The bill would also require the board to provide for annual audits of the authority and financial reports, as provided. The bill would include findings that the changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities within the San Francisco Bay area, including charter cities.~~

~~The bill would authorize the authority to, among other things, raise and allocate new revenue, incur and issue indebtedness, and allocate funds to the various cities, counties, and other public agencies and affordable housing projects within its jurisdiction to finance affordable housing development projects, subject to specified procedures, preserve and enhance existing affordable housing, and fund tenant protection programs, as specified, in accordance with applicable constitutional requirements. In this regard, the bill would authorize the entity to impose various special taxes, including a parcel tax, and certain business taxes, within its jurisdiction and to issue bonds, subject to specified procedures. The bill would also authorize the executive board of the Association of Bay Area Governments to impose a commercial linkage fee, as defined, and require a city or county in the San Francisco Bay area that has jurisdiction over the approval of a commercial development project, as defined, to collect that fee as a condition of that approval and remit the amount of fee to the authority, as provided. The bill would require the authority to ratify the commercial linkage fee adopted by the executive board of the Association of Bay Area Governments. The bill would require that revenue generated by the authority pursuant to these provisions be used for specified housing purposes and require the authority to distribute those funds as provided.~~

This bill would make legislative findings and declarations as to the necessity of a special statute for the San Francisco Bay area.

By adding to the duties of local officials with respect to (1) providing staff for the authority and (2) elections procedures for revenue measures on behalf of the authority, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** Title 6.8 (commencing with Section 64500) is added to the Government Code, to read:

**TITLE 6.8. San Francisco Bay Area Regional Housing Finance**  
**PART 1. Formation of the Bay Area Housing Finance Authority and General Powers**  
**CHAPTER 1. General Provisions**

**64500.** This title shall be known, and may be cited, as the San Francisco Bay Area Regional Housing Finance Act.

**64501.** The Legislature finds and declares the following:

(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 experience 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 each responsible for their own decisions around housing.

(e) The San Francisco Bay area faces an annual funding shortfall of two billion five hundred million dollars (\$2,500,000,000) in its efforts to address the affordable housing crisis.

(f) Regional funding 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:

(1) Providing critically needed funding to affordable housing projects across the San Francisco Bay area.

(2) Providing staff support to local jurisdictions that require capacity or technical assistance to expedite the preservation and production of housing.

(3) Funding tenant services, such as emergency rental assistance and access to counsel, thereby relieving local jurisdictions of this cost and responsibility.

(4) Monitoring and reporting on progress at a regional scale.

**64502.** For purposes of this title:

(a) "Authority" means the Bay Area Housing Finance Authority established pursuant to Section 64510.

(b) "Board" means the governing board of the Bay Area Housing Finance Authority.

(c) "Executive board" means the executive board of the Association of Bay Area Governments.

(d) "San Francisco Bay area" means 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.

~~(e) "Lower income households" has the same meaning as that term is defined in Section 50079.5 of the Health and Safety Code.~~

~~(f) "Low- or moderate-income households" has the same meaning as "persons and families of low or moderate income," as defined in Section 50093 of the Health and Safety Code.~~

**64503.** 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.

## **CHAPTER 2. The Bay Area Housing Finance Authority and Governing Board**

**64510.** (a) (1) The Bay Area Housing Finance Authority is hereby established with jurisdiction extending throughout the San Francisco Bay area.

(2) The authority is a public instrumentality and shall be governed by the same board that governs the Metropolitan Transportation Commission. The authority shall be a separate legal entity from the Metropolitan Transportation Commission.

(b) The formation and jurisdictional boundaries of the authority are not subject to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Division 3 (commencing with Section 56000) of Title 5).

(c) The authority's purpose is to raise, administer, and allocate funding and provide technical assistance at a regional level for tenant protection, affordable housing preservation, and new affordable housing production.

(d) The authority shall be staffed by the existing staff of the Metropolitan Transportation Commission or any successor agency, with the understanding that additional staff with expertise in affordable housing finance will be needed to administer the funding authorized in this chapter.

(e) It is the intent of the Legislature that the powers granted to the authority and the executive board under this title shall be transferred to a future regional agency if an agency is established to replace the Metropolitan Transportation Commission and the Association of Bay Area Governments and integrate regional transportation and housing funding and policy decisions within the San Francisco Bay area under one governing board, subsequent to a robust public engagement process at the regional level.

**64511.** (a) (1) The executive board shall review and approve projects authorized by this chapter prior to review, approval, and allocation by the authority.

(2) The executive board shall form an advisory committee comprised of nine representatives with knowledge and experience in the areas of affordable housing finance and development, tenant protection, and housing preservation to assist in the development of funding guidelines and the overall implementation of the program.

(b) 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.

(c) (1) A member of the board appointed pursuant to this section 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.

(2) A member may waive a payment of per diem authorized by this subdivision.

(d) (1) Members of the board are subject to Article 2.4 (commencing with Section 53234) of Chapter 2 of Part 1 of Division 2 of Title 5.

(2) The authority shall be subject to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5), the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and the Political Reform Act of 1974 (Title 9 (commencing with Section 81000)).

~~(e)(1)Five years after the voters approve an initial ballot measure pursuant to Section 64521, the authority and the executive board shall review the implementation of the measure. The review shall include the following:~~

~~(A)An analysis of the expenditures to date.~~

~~(B)The number of affordable housing units produced and preserved at different household income levels.~~

~~(C)The tenant protection services provided, and the roles of the executive board and the authority.~~

~~(2)The executive board and the authority may, upon mutual concurrence, as a part of the review described in this subdivision elect to transfer or delegate a responsibility authorized in this title to the executive board or the authority, as applicable, except for the provisions of Chapter 3.~~

**64512.** A member of the board 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.

**64513.** (a) 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.

(b) After the first meeting described in subdivision (a), the board shall hold meetings at times and places determined by the board.

**64514.** (a) The board may make and enforce rules and regulations necessary for governing the authority, the preservation of order, and the transaction of business.

(b) In exercising the powers and duties conferred on the authority by this title, the board may act by resolution.

~~3.Powers of the Bay Area Housing Finance Authority~~

~~64520.In implementing this title, the authority may do all of the following:~~

~~(a)Subject to the approval of the executive board, place a measure on the ballot to raise revenue and allocate funds throughout the San Francisco Bay area, as provided in Part 2 (commencing with Section 64600):~~

~~(b)Apply for and receive grants from federal and state agencies:~~

~~(c)Solicit and accept gifts, fees, grants, and allocations from public and private entities:~~

~~(d)Deposit or invest moneys of the authority in banks or financial institutions in the state, as provided in Chapter 4 (commencing with Section 53600) of Part 1 of Division 2 of Title 5:~~

~~(e)Sue and be sued, except as otherwise provided by law, in all actions and proceedings, in all courts and tribunals of competent jurisdiction:~~

~~(f)Engage counsel and other professional services:~~

~~(g)Enter into and perform all necessary contracts:~~

~~(h)Enter into joint powers agreements pursuant to the Joint Exercise of Powers Act (Chapter 5 (commencing with Section 6500) of Division 7 of Title 1):~~

~~(i)Hire staff, define their qualifications and duties, and provide a schedule of compensation for the performance of their duties:~~

~~(j)Use staff provided by the Metropolitan Transportation Commission:~~

~~(k)Collect data on housing production and monitor progress on meeting regional and state housing goals:~~

~~(l)Provide support and technical assistance to local governments in relation to producing and preserving affordable housing:~~

~~(m)Provide public information about the authority's housing programs and policies:~~

~~(n)Any other express or implied power necessary to carry out the intent and purposes of this title:~~

~~64521.(a)Subject to the approval of the executive board before voter approval, if the authority proposes a measure pursuant to Part 2 (commencing with Section 64600) that will generate revenues and that requires voter approval pursuant to the California Constitution, the board of supervisors of the county or counties in which the authority 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, consistent with the requirements of Articles XIII A, XIII C, and XIII, or Article XVI of the California Constitution, as applicable:~~

~~(b)(1)For the purpose of placement of a measure on the ballot, the authority is a district, as defined in Section 317 of the Elections Code. Except as otherwise provided in this section, a measure proposed by the authority that requires voter approval shall be submitted to the voters of the counties, as determined by the authority, in accordance with the provisions of the Elections Code applicable to districts, including the provisions of Chapter 4 (commencing with Section 9300) of Division 9 of the Elections Code:~~

~~(2)Because the authority has no revenues as of the effective date of this section, the appropriations limit for the authority shall be originally established based on receipts from the initial measure that would generate revenues for the authority pursuant to subdivision (a), and that establishment of an appropriations limit shall not be deemed a change in an appropriations limit for purposes of Section 4 of Article XIII B of the California~~

~~Constitution:~~

~~(c)The authority shall file with the board of supervisors of each county in which the measure shall appear on the ballot a resolution of the board requesting consolidation, and setting forth the exact form of the ballot question, in accordance with Section 10403 of the Elections Code.~~

~~(d)The legal counsel for the authority shall prepare an impartial analysis of the measure. The impartial analysis prepared by the legal counsel for the authority 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.~~

~~(e)Each county included in the measure shall use the exact ballot question, impartial analysis, and ballot language provided by the authority. 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 authority to prepare the translation, and that translation shall be used by the other county or counties, as applicable.~~

~~(f)Notwithstanding Section 13116 of the Elections Code, the elections officials of the counties where the measure proposed by the authority is placed on the ballot shall mutually agree to use the same letter designation for the measure.~~

~~(g)The county clerk of each county shall report the results of the special election to the authority. If two-thirds of all voters voting on the question at the special election vote affirmatively, or a different approval threshold required by the California Constitution at the time the election is held, the measure shall take effect in the counties in which the measure appeared on the ballot within the timeframe specified in the measure.~~

~~(h)(1)Notwithstanding Section 10520 of the Elections Code, for any election at which the authority proposes a measure pursuant to subdivision (a) of Section 64520 that would generate revenues, the authority 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 proceeds from the measure, or if the measure fails, with any eligible funds transferred to the authority from the Association of Bay Area Governments or the Metropolitan Transportation Commission or other public or private entity.~~

~~(2)For purposes of this subdivision, "incremental costs" include all of the following:~~

~~(A)The cost to prepare, review, and revise the impartial analysis of the measure that is required by subdivision (d).~~

~~(B)The cost to prepare a translation of ballot materials into a language other than English by any county, as described in subdivision (e).~~

~~(C)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 both of the following:~~

~~(i)The printing and mailing of ballot materials.~~

~~(ii)The canvass of the vote regarding the measure pursuant to Division 15 (commencing with Section 15000) of the Elections Code.~~

~~64522.The authority shall not do either of the following:~~

~~(a)Regulate or enforce local land use decisions.~~

~~(b)Acquire property by eminent domain.~~

~~4.Financial Provisions~~

~~64530.The board shall provide for regular audits of the authority'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.~~

~~64531. The board shall provide for annual financial reports. The board shall make copies of the annual financial reports available to the public.~~

~~2. Financing Activities of the Bay Area Housing Finance Authority~~

~~1. General Provisions~~

~~64600. The authority may do all of the following:~~

~~(a) (1) Raise and allocate new revenue through the following funding mechanisms:~~

~~(A) Special taxes, subject to voter approval, as provided in Article 1 (commencing with Section 64610) of Chapter 2, as follows:~~

~~(i) A parcel tax, as provided in Section 64610.~~

~~(ii) A gross receipts business license tax, as provided in Section 64611.~~

~~(iii) A special business tax, as provided in Section 64612.~~

~~(B) A commercial linkage fee, as provided in Article 2 (commencing with Section 64620) of Chapter 2.~~

~~(C) Bonds, as provided in Article 3 (commencing with Section 64630) of Chapter 2.~~

~~(2) Any funding mechanism or combination of funding mechanisms authorized pursuant to paragraph (1) that requires voter approval pursuant to the California Constitution or this part may be placed on the ballot in all or a subset of the nine counties in the San Francisco Bay area, but in no case shall it be placed on the ballot in fewer than four counties. A measure placed on the ballot in a subset of those nine counties shall apply only in those counties in which the measure was submitted to the voters.~~

~~(3) It is the intent of the Legislature that the funding measures authorized by this subdivision distribute the responsibility of addressing the affordable housing needs of the region across commercial developers, businesses above a certain size, taxpayers, and property owners within the region.~~

~~(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 developers for housing projects approved by the executive board within its jurisdiction, as provided in Chapter 3 (commencing with Section 64650), 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.~~

~~2. Revenue~~

~~1. Special Taxes~~

~~64610. (a) Subject to Section 4 of Article XIII A of the California Constitution, and approval by the executive board before the measure is placed on the ballot, the authority may impose, by resolution, a parcel tax within the San Francisco Bay area pursuant to the procedures established in Article 3.5 (commencing with Section 50075) of Chapter 1 of Part 1 of Division 1 of Title 5, Section 64521, and any other applicable procedures provided by law.~~

~~(b) "Parcel tax" means a special tax imposed upon a parcel of real property at a rate that is determined without regard to that property's value and that applies uniformly to all taxpayers or all real property within the jurisdiction of the local government. "Parcel tax" does not include a tax imposed on a particular class of property or taxpayers.~~

~~(c) The authority shall provide notice of any parcel tax imposed pursuant to this section in the manner specified in Section 54930.~~



~~64611.(a)(1)The authority may impose, subject to approval by the executive board before placement on the ballot, by resolution, a special tax, measured by gross receipts, for the privilege of engaging in any kind of lawful business transacted in the San Francisco Bay area pursuant to the procedures established in Article 3.5 (commencing with Section 50075) of Chapter 1 of Part 1 of Division 1 of Title 5, Section 64521, and any other applicable procedures provided by law.~~

~~(2)The resolution imposing a special tax pursuant to this subdivision may provide for the following:~~

~~(A)Variable rates based on the business sector of each person subject to the tax.~~

~~(B)Exemptions for small businesses.~~

~~(C)Collection of the tax by suit or otherwise.~~

~~(b)If the authority levies a special tax pursuant to subdivision (a) upon a business operating both within and outside the authority's taxing jurisdiction, the authority shall levy the tax so that the measure of tax fairly reflects that proportion of the taxed activity actually carried on within the taxing jurisdiction.~~

~~(c)A special tax levied pursuant to subdivision (a) shall not apply to any nonprofit organization that is exempted from taxes by Chapter 4 (commencing with Section 23701) of Part 11 of Division 2 of the Revenue and Taxation Code or Subchapter F (commencing with Section 501) of Chapter 1 of Subtitle A of the Internal Revenue Code of 1986, or the successor of either, or to any minister, clergyman, Christian Science practitioner, rabbi, or leader of any religious organization that has been granted an exemption from federal income tax by the United States Commissioner of Internal Revenue as an organization described in Section 501(c)(3) of the Internal Revenue Code or a successor to that section.~~

~~64612.(a)(1)Subject to concurrence of the executive board before the measure is placed on the ballot, the authority may impose, by resolution, a special tax measured by the number of employees employed by the taxpayer for the privilege of engaging in any kind of lawful business activity transacted in the San Francisco Bay area pursuant to the procedures established in Article 3.5 (commencing with Section 50075) of Chapter 1 of Part 1 of Division 1 of Title 5, Section 64521, and any other applicable procedures provided by law.~~

~~(2)The resolution imposing a special tax pursuant to this subdivision may provide for collection of the tax by suit or otherwise.~~

~~(b)If the authority levies a special tax pursuant to subdivision (a) upon a business operating both within and outside the authority's taxing jurisdiction, the authority shall levy the tax so that the measure of tax fairly reflects that proportion of the taxed activity actually carried on within the taxing jurisdiction.~~

~~(c)A special tax levied pursuant to subdivision (a) shall not apply to any nonprofit organization that is exempted from taxes by Chapter 4 (commencing with Section 23701) of Part 11 of Division 2 of the Revenue and Taxation Code or Subchapter F (commencing with Section 501) of Chapter 1 of Subtitle A of the Internal Revenue Code of 1986, or the successor of either, or to any minister, clergyman, Christian Science practitioner, rabbi, or leader of any religious organization that has been granted an exemption from federal income tax by the United States Commissioner of Internal Revenue as an organization described in Section 501(c)(3) of the Internal Revenue Code or a successor to that section.~~

~~64613.An action to determine the validity of any special taxes levied pursuant to this article may be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.~~

~~2.Commercial Linkage Fee~~

~~64620.As used in this article:~~

~~(a)"Commercial development project" means any project involving the issuance of a permit by an underlying land use jurisdiction for construction or reconstruction that is undertaken within the San Francisco Bay area for the development of land for commercial use, but does not include any project involving solely a permit to operate.~~

~~(b)"Commercial linkage fee" means a monetary exaction, other than a tax or special assessment, established for a broad class of projects by legislation of general applicability that is charged to an applicant in connection~~



~~with the approval of a commercial development project by an underlying land use jurisdiction for the purpose of addressing the need for additional housing development necessitated by that commercial development project, as determined pursuant to the nexus study undertaken pursuant to subdivision (b) of Section 64621.~~

~~(c) "Underlying land use jurisdiction" means any of the following entities, as applicable, that has jurisdiction over the approval of a commercial development project:~~

~~(1) The following counties:~~

~~(A) The County of Alameda;~~

~~(B) The County of Contra Costa;~~

~~(C) The County of Marin;~~

~~(D) The County of Napa;~~

~~(E) The County of San Mateo;~~

~~(F) The County of Santa Clara;~~

~~(G) The County of Solano;~~

~~(H) The County of Sonoma;~~

~~(2) A city that is located within the territorial boundaries of any of the counties specified in paragraph (1);~~

~~(3) The City and County of San Francisco;~~

~~64621. (a) (1) The executive board may establish, increase, or impose a commercial linkage fee within the San Francisco Bay area by enactment of a resolution, in accordance with the requirements of this article, that is in addition to any fee, as defined in Section 66000, that is levied by an underlying land use jurisdiction. The board shall ratify, by resolution, any commercial linkage fee or modification to a commercial linkage fee adopted by the executive board.~~

~~(2) (A) A commercial linkage fee may be established, increased, or imposed pursuant to this article by resolution of the executive board that provides for either of the following:~~

~~(i) A variable rate fee assessed on a commercial development project within the San Francisco Bay area that establishes a higher fee in jurisdictions with a greater imbalance between job creation and new housing development and a lower fee or no fee in jurisdictions with lesser imbalance between job creation and new housing development;~~

~~(ii) A flat fee assessed on all commercial development projects within the San Francisco Bay area;~~

~~(B) A resolution establishing or revising the fee shall provide that the amount of the fee required to be paid shall be reduced by the amount that the applicant is required to pay, if any, for a commercial linkage fee imposed by the relevant underlying land use jurisdiction.~~

~~(b) Before establishing, increasing, or imposing a commercial linkage fee, the executive board shall prepare a regional jobs and housing nexus study in order to support the necessity and amount of the fee.~~

~~(c) In any action to establish, increase, or impose a commercial linkage fee, the executive board shall do all of the following:~~

~~(1) Identify the purpose of the commercial linkage fee;~~

~~(2) Determine how there is a reasonable relationship between the fee's use and the type of commercial development project on which the fee is imposed, based on the regional nexus study prepared pursuant to subdivision (b);~~

~~(3) Determine how there is a reasonable relationship between the need for housing and the type of commercial development project on which the fee is imposed, based on the regional nexus study prepared pursuant to~~

~~subdivision (b):~~

~~(4)Determine how there is a reasonable relationship between the amount of the fee and the cost of the housing necessitated by the commercial development project that is attributable to the development on which the fee is imposed, based on the regional nexus study prepared pursuant to subdivision (b):~~

~~64622.(a)A commercial linkage fee established, increased, or imposed pursuant to this article shall not exceed the reasonable cost of providing the housing necessitated by the commercial development project for which the commercial linkage fee is imposed, as determined in the regional nexus study pursuant to subdivision (b) of Section 64621:~~

~~(b)It is the intent of the Legislature in adding this section to codify existing constitutional and decisional law with respect to the imposition of development fees and monetary exactions on developments by local agencies. This section is declaratory of existing law and shall not be construed or interpreted as creating new law or as modifying or changing existing law:~~

~~64623.(a)Before adopting a resolution establishing or imposing a new commercial linkage fee or approving an increase in an existing commercial linkage fee pursuant to this article, the executive board shall hold a public hearing, at which oral or written presentations can be made, as part of a regularly scheduled meeting. Notice of the time and place of the meeting, including a general explanation of the matter to be considered, shall be published in accordance with Section 6062a:~~

~~(b)Any costs incurred by the executive board in conducting the hearing required pursuant to subdivision (a) may be recovered as part of the commercial linkage fee that is the subject of the hearing:~~

~~64624.(a)Except as otherwise provided in subdivision (c), if the executive board adopts a resolution or other legislative enactment establishing or imposing a new commercial linkage fee or approving an increase in an existing commercial linkage fee, the board shall adopt a resolution concurring with the establishment, imposition, or increase of the fee and each underlying land use jurisdiction shall, as a condition of approving a commercial development project for which it receives an application for a conditional use permit or other discretionary or ministerial approval, require an applicant to pay the amount of commercial linkage fee established, imposed, or increased by the executive board and the authority pursuant to this article. The underlying land use jurisdiction shall provide notice to the applicant that does all of the following:~~

~~(1)Notifies the applicant that the executive board and the authority have established, increased, or imposed a commercial linkage fee pursuant to this article:~~

~~(2)States the amount of commercial linkage fee established, increased, or imposed by the executive board and the authority:~~

~~(3)States that the applicant may protest the commercial linkage fee, as provided in Section 64625, and notifies the applicant that the 90-day period for that protest and the 180-day period for filing an action specified in subdivision (c) of Section 64625 has begun:~~

~~(b)Each underlying land use jurisdiction shall collect and, after deduction of any actual and necessary administrative costs incurred by the underlying land use jurisdiction, remit the amount of commercial linkage fee established, increased, or imposed pursuant to this article to the authority. An underlying land use jurisdiction shall remit the amounts required by this subdivision on or before the last day of the month next succeeding each calendar quarterly period:~~

~~(c)If any amount of commercial linkage fee established, increased, or imposed pursuant to this article is found to be invalid pursuant to Section 64625, each underlying land use jurisdiction shall immediately cease collection of the commercial linkage fee:~~

~~64625.(a)Any party may protest the imposition of a commercial linkage fee imposed on a commercial development project by the executive board and the authority pursuant to this article as follows:~~

~~(1)The party shall pay the total amount of commercial linkage fee required by the resolution enacted pursuant to Section 64621, or providing satisfactory evidence of arrangements to pay the commercial linkage fee when due, in accordance with Section 64624:~~

~~(2)Serving a written notice on the board and the legislative body of the relevant underlying land use jurisdiction that contains all of the following information:~~

~~(A)A statement that the required payment is tendered or will be tendered when due under protest.~~

~~(B)A statement informing the board and legislative body of the underlying land use jurisdiction of the factual elements of the dispute and the legal theory forming the basis for the protest.~~

~~(b)Compliance by any party with subdivision (a) shall not be the basis for an underlying land use jurisdiction to withhold approval of any map, plan, permit, zone change, license, or other form of permission, or concurrence, whether discretionary, ministerial, or otherwise, incident to, or necessary for, the commercial development project. This section does not limit the ability of an underlying land use jurisdiction to ensure compliance with all applicable provisions of law in determining whether or not to approve or disapprove a commercial development project.~~

~~(c)(1)A protest filed pursuant to subdivision (a) shall be filed at the time of approval or conditional approval of the commercial development project or within 90 days after the date of the imposition of the commercial linkage fee to be imposed on a commercial development project.~~

~~(2)Any party who files a protest pursuant to subdivision (a) may file an action to attack, review, set aside, void, or annul the imposition of the commercial linkage fee imposed on a commercial development project within 60 days after the delivery of the notice required by subdivision (a) of Section 64624. Thereafter, notwithstanding any other law, all persons shall be barred from any action or proceeding or any defense of invalidity or unreasonableness of the imposition. Any proceeding brought pursuant to this subdivision shall take precedence over all matters of the calendar of the court except criminal, probate, eminent domain, forcible entry, and unlawful detainer proceedings.~~

~~(d)(1)If the court grants a judgment to a plaintiff invalidating, as enacted, all or a portion a resolution establishing, increasing, or imposing a commercial linkage fee, the court shall direct the authority to refund the unlawful portion of the payment, plus interest at an annual rate equal to the average rate accrued by the Pooled Money Investment Account during the time elapsed since the payment occurred, or to return the unlawful portion of the exaction imposed.~~

~~(2)If an action is filed within 120 days of the date at which a resolution to establish or modify a commercial linkage fee to be imposed on a commercial development project takes effect, the portion of the payment or exaction invalidated shall also be returned to any other person who, under protest pursuant to this section and under that invalid portion of that same resolution as enacted, tendered the payment or provided for or satisfied the exaction during the period from 90 days prior to the date of the filing of the action which invalidates the payment or exaction to the date of the entry of the judgment referenced in paragraph (1).~~

~~(e)The imposition of a commercial linkage fee occurs, for the purposes of this section, when it is imposed or levied on a specific commercial development project.~~

~~64626.(a)In any judicial action or proceeding to validate, attack, review, set aside, void, or annul any resolution providing for the establishment, increase, or imposition of a commercial linkage fee pursuant to this article in which there is an issue whether the fee is a special tax within the meaning of Section 50076, the executive board and the authority shall have the burden of producing evidence to establish that the commercial linkage fee does not exceed the reasonable cost of providing the housing necessitated by the commercial development project for which the commercial linkage fee is imposed, as determined in the regional nexus study pursuant to subdivision (b) of Section 64621.~~

~~(b)A party may only initiate any action or proceeding pursuant to subdivision (a) if both of the following requirements are met:~~

~~(1)The commercial linkage fee was directly imposed on the party as a condition of project approval, as provided in Section 64624.~~

~~(2)At least 30 days before initiating the action or proceeding, the party requests that the executive board provide a copy of the documents, including, but not limited to, the regional nexus study prepared pursuant to~~

~~subdivision (b) of Section 64621, that establish that the commercial linkage fee does not exceed the reasonable cost of providing the housing necessitated by the commercial development project for which the commercial linkage fee is imposed. In accordance with subdivision (b) of Section 6253, the executive board may charge a fee for copying the documents requested pursuant to this paragraph.~~

~~(c)For purposes of this section, costs shall be determined in accordance with fundamental fairness and consistency of method as to the allocation of costs, expenses, revenues, and other items included in the calculation.~~

~~64627.(a)Any person may request an audit in order to determine whether any fee or charge levied by the executive board and the authority exceeds the amount necessary to cover the reasonable cost of providing the housing necessitated by the commercial development project for which the commercial linkage fee is imposed; as determined in the regional nexus study pursuant to subdivision (b) of Section 64621. If a person makes that request, the executive board and the authority may retain an independent auditor to conduct an audit to determine whether the commercial linkage fee is reasonable, but is not required to conduct the audit if an audit has been performed for the same fee within the previous 12 months.~~

~~(b)If an audit pursuant to this section determines that the amount of any commercial linkage fee or charge does not meet the requirements of this article, the executive board and the authority shall adjust the fee accordingly.~~

~~(c)The authority shall retain an independent auditor to conduct an audit only if the person who requests the audit deposits with the authority the amount of the executive board's and the authority's reasonable estimate of the cost of the independent audit. At the conclusion of the audit, the authority shall reimburse unused sums, if any, or the requesting person shall pay the authority the excess of the actual cost of the audit over the sum which was deposited.~~

~~(d)Any audit conducted by an independent auditor pursuant to this section shall conform to generally accepted auditing standards.~~

~~(e)This section shall not be construed as granting any additional authority to any local agency to levy any fee or charge which is not otherwise authorized by another provision of law, nor shall its provisions be construed as granting authority to any local agency to levy a new fee or charge when other provisions of law specifically prohibit the levy of a fee or charge.~~

~~64628.Any action by the executive board and the authority or interested person under this article shall be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.~~

~~3.Bonds~~

~~64630.The board may, by majority vote, initiate proceedings to issue bonds pursuant to this chapter by adopting a resolution stating its intent to issue the bonds.~~

~~64631.The resolution adopted pursuant to Section 64630 shall contain all of the following information:~~

~~(a)A description of the facilities or developments to be financed with the proceeds of the proposed bond issue.~~

~~(b)The estimated cost of the facilities or developments, the estimated cost of preparing and issuing the bonds, and the principal amount of the proposed bond issuance.~~

~~(c)The maximum interest rate and discount on the proposed bond issuance.~~

~~(d)The date of the election on the proposed bond issuance and the manner of holding the election.~~

~~(e)A determination of the amount of tax revenue available or estimated to be available, for the payment of the principal of, and interest on, the bonds.~~

~~(f)A finding that the amount necessary to pay the principal of, and interest on, the proposed bond issuance will be less than, or equal to, the amount determined pursuant to subdivision (e).~~

~~64632.(a)Except as otherwise provided in subdivision (b), the clerk of the board shall publish the resolution~~

~~adopted pursuant to Section 64630 once a day for at least seven successive days in a newspaper published in each county in the San Francisco Bay area at least six days a week, or at least once a week for two successive weeks in a newspaper published in a county less than six days a week:~~

~~(b) If there are no newspapers meeting the criteria specified in subdivision (a), the resolution shall be posted in three public places within each county in the San Francisco Bay area for two succeeding weeks:~~

~~64633. (a) The authority shall submit the proposal to issue bonds to the voters who reside within the San Francisco Bay area in accordance with Section 64521 and this section:~~

~~(b) Ballots for the special election authorized by subdivision (a) may be distributed to qualified electors by mail with return postage prepaid or by personal service by the election official. The official conducting the election may certify the proper mailing of ballots by an affidavit, which shall be exclusive proof of mailing in the absence of fraud. The voted ballots shall be returned to the election officer conducting the election not later than the hour specified in the resolution calling the election. However, if all the qualified voters have voted, the election shall be closed:~~

~~64634. (a) Bonds may be issued if two-thirds of the voters voting on the proposition vote in favor of issuing the bonds:~~

~~(b) If the voters approve the issuance of the bonds as provided by subdivision (a), the board shall proceed with the issuance of the bonds by adopting a resolution that shall provide for all of the following:~~

~~(1) The issuance of the bonds in one or more series:~~

~~(2) The principal amount of the bonds that shall be consistent with the amount specified in subdivision (b) of Section 64631:~~

~~(3) The date the bonds will bear:~~

~~(4) The date of maturity of the bonds:~~

~~(5) The denomination of the bonds:~~

~~(6) The form of the bonds:~~

~~(7) The manner of execution of the bonds:~~

~~(8) The medium of payment in which the bonds are payable:~~

~~(9) The place or manner of payment and any requirements for registration of the bonds:~~

~~(10) The terms of call or redemption, with or without premium:~~

~~(c) If any proposition submitted to the voters pursuant to this part is defeated by the voters, the authority shall not submit, or cause to be submitted, a similar proposition to the voters for at least one year after the first election:~~

~~(d) Every two years after the issuance of bonds pursuant to this section, the authority shall contract for an independent financial and performance audit. The audit shall be conducted according to guidelines established by the Controller. A copy of the completed audit shall be provided to the Controller, the Director of Finance, and to the Joint Legislative Budget Committee:~~

~~64635. The board may, by majority vote, provide for refunding of bonds issued pursuant to Section 64634. However, refunding bonds shall not be issued if the total net interest cost to maturity on the refunding bonds plus the principal amount of the refunding bonds exceeds the total net interest cost to maturity on the bonds to be refunded:~~

~~64636. (a) The authority or any person executing the bonds issued pursuant to Section 64634 shall not be personally liable on the bonds by reason of their issuance. The bonds and other obligations of the authority issued pursuant to Section 64634 are not a debt of any city or county, the Association of Bay Area Governments, the Metropolitan Transportation Commission or any of its affiliated entities, or of the state or of~~

~~any of its political subdivisions, other than the authority, and neither a city or county nor the state or any of its political subdivisions, other than the authority, shall be liable on the bonds, and the bonds or obligations shall be payable exclusively from funds or properties of the authority. Bonds issued pursuant to Section 64634 shall contain a statement to this effect on their face:~~

~~(b) If any member of the boards whose signature appears on bonds issued pursuant to Section 64634 ceases to be a member of the board before delivery of the bonds, that member's signature shall be as effective as if the member had remained in office:~~

~~64637. (a) The bonds issued pursuant to Section 64634 may be sold at discount not to exceed 5 percent of par at public sale. At least five days before the sale, notice shall be published, pursuant to Section 6061, in a newspaper of general circulation and in a financial newspaper published in the City and County of San Francisco and in the City of Los Angeles. The bonds may be sold at not less than par to the federal government at private sale without any public advertisement.~~

~~(b) Bonds issued pursuant to Section 64634 are fully negotiable:~~

~~64638. An action to determine the validity of bonds issued pursuant to Section 64634 may be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure:~~

~~3. Expenditures~~

~~64650. (a) Revenue generated pursuant to this part shall be used for the construction of new affordable housing, affordable housing preservation, tenant protection programs, and general funds made available to local jurisdictions as an incentive to achieve or reward for achieving affordable housing benchmarks to be established by the authority and executive board as follows:~~

~~(1) Subject to funding eligibility and adjustment pursuant to paragraph (2), the authority shall distribute the revenues derived from any special tax imposed pursuant to Article 1 (commencing with Section 64610) of Chapter 2 and the proceeds of bonds issued pursuant to Article 2 (commencing with Section 64620) of Chapter 2 for the region in a manner that achieves the following minimum shares over a five-year period commencing after revenue is approved by voters as follows:~~

~~(A) A minimum of 50 percent for production of housing units affordable to lower income households. Funding for production programs may be used for either of the following:~~

~~(i) To finance the development and construction of affordable housing for at least 55 years.~~

~~(ii) To acquire land for the purpose of building affordable housing:~~

~~(B) A minimum of 5 percent for tenant protection programs. The authority, with concurrence of the executive board, shall prioritize nonbond proceeds revenue sources for tenant protection programs to meet the minimum requirement of this subparagraph. Funding for tenant protection programs may be used for any of the following:~~

~~(i) Legal aid, including representation in eviction proceedings, preeviction legal services, and legal education and awareness for communities:~~

~~(ii) Providing emergency rental assistance for lower income households. Rental assistance provided pursuant to this clause shall not exceed 48 months for each assisted household, and rent payments shall not exceed two times the current fair market rent for the local area, as determined by the United States Department of Housing and Urban Development pursuant to Part 888 of Title 24 of the Code of Federal Regulations:~~

~~(iii) Providing relocation assistance for lower income households:~~

~~(iv) Collection and tracking of information related to displacement risk and evictions in the region:~~

~~(C) A minimum of 15 percent for preservation of housing affordable to low- or moderate-income households. Funding for preservation programs may be used to acquire, rehabilitate, and preserve existing affordable housing units, in order to prevent the loss of affordable housing:~~

~~(D) 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 authority and executive board. Subject to any limitations on the funding source, including limitations on the use of bond proceeds, eligible expenditures pursuant to this subparagraph include, but are not limited to the following:~~

- ~~(i) Staffing costs to help accelerate the production of housing in a jurisdiction;~~
- ~~(ii) Infrastructure needs associated with increased housing production, including, but not limited to, transportation, schools, and parks;~~
- ~~(iii) Homeless shelters, infrastructure to support those shelters, and supportive services and related programs that serve the homeless;~~

~~(2) Subject to consultation with the advisory committee and a 55 percent approval of the executive board, the authority may, by a 55 percent vote, change the distribution requirements in subparagraph (A), (B), (C), or (D) of paragraph (1) if the executive board and the authority adopt a finding pursuant to this paragraph that the region's needs differ from those requirements. The finding shall be placed on a meeting agenda of the executive board and the authority for discussion at least 30 days before either the executive board or the authority adopt the finding;~~

~~(3) The authority shall distribute the revenues derived from a commercial linkage fee established, increased, or imposed pursuant to Article 2 (commencing with Section 64620) of Chapter 2 to each city or county in a manner that is consistent with the nexus fee adopted by the executive board. A city or county that receives revenues pursuant to this paragraph shall use that revenue solely for the production of housing units necessitated by a commercial development project on which the fee was imposed, as determined by the executive board pursuant to Section 64621;~~

~~(b) Except as otherwise provided in paragraph (3) of subdivision (a), the authority may allocate funds directly to a city, a county, a public entity, or a private project sponsor;~~

~~(c)(1) Subject to paragraph (3) of subdivision (a), the authority shall distribute funds received through the funding measures authorized in Sections 64610 and 64611 as follows:~~

~~(A) At least 75 percent of the revenue received shall be allocated to the county of origin for expenditure in that county. Each county board of supervisors shall determine the appropriate entity within their county to administer the funds. Counties may use up to 3 percent of these funds for administrative purposes to assist with the delivery of the expenditure plan in their county;~~

~~(B) Up to 25 percent of the revenue received shall be collected by the authority for expenditures consistent with the purposes set forth in subdivision (a) and shall be eligible to be spent in any county in which the measure is in effect. These funds can also be leveraged and grown for reinvestment in affordable housing;~~

~~(2) Subject to paragraph (3) of subdivision (a), the authority shall distribute funds received through the funding measure authorized in Section 64512 as follows:~~

~~(A) At least 50 percent of the revenue received shall be allocated to the county of origin. Each county board of supervisors shall determine the appropriate entity within their county to administer the funds allocated to their county. Counties may use up to 3 percent of these funds for administrative purposes to assist with the delivery of the expenditure plan in their county;~~

~~(B) Up to 50 percent of the revenue received shall be collected by the authority for expenditures consistent with the purposes set forth in subdivision (a) and shall be eligible to be spent in any county in which the measure is in effect;~~

~~(3) For funds distributed pursuant to subparagraph (A) of paragraph (1) and subparagraph (A) of paragraph (2), counties shall provide a direct allocation to a city in their county if it is one of the three largest cities in the nine-county region, as determined on the basis of the most recent population estimate by the Department of Finance. The allocation shall be based on the city's share of the county's regional housing need allocation for very low, low-, and moderate-income households;~~

~~(4) The executive board and the authority shall, in consultation with the advisory committee, adopt a regional~~



~~expenditure plan for the use of any available funds pursuant to subparagraph (B) of paragraph (1) and subparagraph (B) of paragraph (2) by July 1 of each year. The expenditure plan shall set forth the share and estimated funding amount to be spent on each of the categories as established in subdivision (a), 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.~~

~~(5) Each county shall submit an expenditure plan to the authority as follows:~~

~~(A) The expenditure plan shall be submitted by July 1 of each year.~~

~~(B) To be deemed complete, the expenditure plan shall specify the proposed allocation of funds for the next 12 months, as follows:~~

~~(i) The proposed share of revenues to be allocated to the construction of new affordable housing, affordable housing preservation, and tenant protection programs. The plan shall include a minimum allocation of 50 percent towards construction of new affordable housing, 15 percent towards affordable housing preservation, and 5 percent towards tenant protection programs, unless the county adopts a finding and the executive board and the authority concur that those minimum targets are inconsistent with subdivision (a) or are otherwise not feasible or are otherwise not the best use of funds to achieve the county's regional housing need allocation.~~

~~(ii) The plan shall include a description of any specific project or program proposed to receive funding, including the location, amount of funding, and anticipated outcomes.~~

~~(iii) Commencing with the second year, each county shall include in its expenditure plan a report on its allocations and expenditures to date of projects funded and the extent to which the minimum targets in subdivision (a) were achieved.~~

~~(6) If the authority determines, by a vote of its board, that a county has not submitted a complete expenditure plan pursuant to the requirements of subparagraph (B) of paragraph (2), the authority may, by a vote of its board, withhold allocation of revenues to a county until the county submits a complete expenditure plan.~~

~~(7) The authority shall post each completed expenditure plan on its internet website.~~

~~(8) A county may request the authority to administer its share of the funds pursuant to paragraphs (1) and (2). If the authority agrees to administer the funds, it shall develop and adopt an annual expenditure plan that shall be jointly approved by the authority and the executive board, and projects allocated according to that plan shall be subject to the same timelines described in paragraph (9).~~

~~(9) After funds administered by a county pursuant to subparagraph (A) of paragraph (1) and subparagraph (A) of paragraph (2) are committed to a specific project, they shall remain available for expenditure for three years. However, the authority may authorize expenditure beyond three years pursuant to guidelines that shall be reviewed and adopted by the executive board and the authority. The authority and the executive board may adopt further guidelines designed to expedite the use of these funds.~~

~~(10) Funds allocated to a city pursuant to paragraph (3) shall be committed to a specific project within five years of receipt. Once committed to a specific project, funds shall be remain available for expenditure for an additional three years. However, the authority may authorize expenditure beyond those additional three years. The authority may require that any funds allocated to a city pursuant to paragraph (3) that are not committed to a specific project within three years shall be transferred to the authority for use in any county in which the measure appeared on the ballot.~~

~~(d) The authority shall be entitled to up to 3 percent of funds for program administration.~~

~~64651. The authority shall monitor expenditures in coordination with local jurisdictions.~~

~~64652. To ensure oversight and accountability, the authority shall provide an annual report on allocations and expenditures under its control, which shall include a tracking of projects funded and the extent to which the minimum targets in subdivision (a) of Section 64650 were achieved.~~

**SEC. 2.** 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.

**SEC. 3.** 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.