

# Metropolitan Transportation Commission and Association of Bay Area Governments Joint MTC Executive Committee and ABAG Administrative Committee

May 18, 2020

Agenda Item 4.a.

## AB 1487 Housing Revenue Measure

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**Subject:** Follow-up to Questions at the April Board meetings related to AB1487 Implementation and Mechanics

This item summarizes the legal and administrative framework for the Bay Area Housing Finance Authority (BAHFA), including the steps necessary to pursue a November 2020 revenue measure and a pathway to explore expanding the region's housing portfolio even absent a November 2020 ballot measure. This is an informational item to frame the discussion and provide context for the decisions that the Joint Committee will recommend to the ABAG Executive Board and the Metropolitan Transportation Commission as part of Agenda Items 4.b. and 4.c.

**Background:** **Statutory Framework for BAHFA as Distinct Legal Entity**

The Bay Area Housing Finance Authority (BAHFA) was established on January 1, 2020 when AB 1487 (2019, Chiu) went into effect. Ever since, BAHFA has existed as a distinct legal entity by virtue of state statutory law.<sup>1</sup> Only the State Legislature has the authority to amend, expand, or dissolve BAHFA. However, AB 1487 vests the power to decide when to activate BAHFA with the BAHFA Board, which is comprised of the same members as the MTC Commission. Once activated, one of the unique features of BAHFA is that many decisions about the authority's activities and expenditures must be made jointly by the BAHFA Board and the ABAG Executive Board.

State law sets forth the mechanics for activating BAHFA. The trigger to activate BAHFA is for the Chair of the BAHFA Board – who is the same as the Chair of the Commission – to call the first meeting of the BAHFA Board.<sup>2</sup> During its first meeting, the BAHFA Board is required to address several housekeeping matters as a public agency, such as adopting a conflict of interest code, electing officers, etc. Thereafter, the BAHFA Board may set its own meeting schedule – meeting as frequently or infrequently as its workload dictates.<sup>3</sup> The BAHFA Board, in conjunction with the ABAG Executive Board, must appoint an Advisory Committee to provide consultation and recommendations to the BAHFA Board and ABAG Executive Board; the Advisory Committee is a consultative body and does not have any independent decision-making authority.<sup>4</sup> AB 1487 does not

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<sup>1</sup> Government Code § 64510(a)(2).

<sup>2</sup> Government Code § 64513(a).

<sup>3</sup> Government Code § 64513(b).

<sup>4</sup> Government Code § 64511(a)(2)(A)-(B).

require a minimum number of meetings of the BAHFA Board nor of the Advisory Committee.

AB 1487 requires activation of the BAHFA Board in certain circumstances. For example, BAHFA must be activated to advance a regional ballot measure to raise revenues for the “3 Ps.” Technically, it is the BAHFA Board, as opposed to the Commission, that must vote to place regional revenue measures on the ballot.<sup>5</sup> As such, AB 1487 would require activation of BAHFA *prior to* placing a measure on the ballot. To meet practical and statutory requirements, it would be necessary to formally activate BAHFA at least a month prior to adoption of the final resolution placing an initiative on the county ballots. This statutory framework means that BAHFA could incur election-related costs without having certainty that it has secured a revenue source; AB 1487 does not include an independent funding source to reimburse election-related costs if a measure is put to the voters and fails.

In addition to the authority to propose regional ballot measures to raise affordable housing revenue, AB 1487 infuses BAHFA with other powers beyond those held by MTC and ABAG. For example, state law vests BAHFA with the power to accept “gifts, fees, grants, loans, and other allocations from public and private entities,”<sup>6</sup> and to deploy funds to support affordable housing through a wide variety of housing financing tools including by directly underwriting projects.<sup>7</sup> More generally, given the shared decision-making structure that includes both ABAG and the BAHFA Board (comprised of the same members of the Commission), AB 1487 creates an opportunity for BAHFA to serve as a vehicle for a coordinated regional housing portfolio and a home for the region’s “3 Ps” funding with the clear support of the Legislature. The statute does not require activation of BAHFA on any specific timeline to undertake such purposes. In contrast to a ballot measure, activation of BAHFA for these purposes could be timed to align with the specific activities proposed – and, importantly, with the resources needed to launch and administer them.

While BAHFA represents a new package of tools for the regional agencies’ housing efforts, including the statutory ability to accept private funding, it is important to note that both ABAG and MTC operate housing programs within their existing portfolios. For ABAG, this includes the Regional Housing Needs Allocation (RHNA) process, the capacity to issue conduit financing through the Advancing California Finance Authority (ACFA), as well as an emerging technical assistance program funded by the Regional Early Action Planning Grants (REAP) program. MTC’s housing work includes policy development and growth forecasting for Plan Bay Area along with various funding programs such as the Transit Oriented Affordable Housing (TOAH) fund and the One Bay Area

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<sup>5</sup> See, e.g., Government Code § 64520(a); § 64600.

<sup>6</sup> Government Code § 64520(c).

<sup>7</sup> Government Code § 64520(k).

Grants (OBAG) program. The agencies' combined existing housing portfolio is described in more detail in Agenda Item 4c. Regardless of the decisions made with respect to BAHFA, the agencies will remain engaged on housing issues to some extent through their existing portfolios.

**Budgetary Considerations**

Although AB 1487 established BAHFA, it did not include a dedicated funding source for start-up costs nor ongoing operating costs of the new authority. Instead, the statute vested BAHFA with the power to develop and receive new funding streams that could pay for administrative costs as well as new programming.

The primary large-scale funding mechanisms authorized in AB 1487 include special taxes and bonds that would require approval by Bay Area voters,<sup>8</sup> and for which BAHFA would be entitled to up to 5% of funds for general administration and overhead.<sup>9</sup> If the voters were to approve a revenue measure, the election-related costs to place the initiative on the ballot could be reimbursed from the proceeds of the measure. As noted above, the statute does not establish a financial backstop to reimburse election-related costs if a revenue measure is unsuccessful at the ballot.

In addition to voter-approved revenue measures, AB 1487 provides BAHFA with the authority to solicit and receive gifts, fees, grants, loans, and other allocations from both public and private entities.<sup>10</sup>

In the absence of any new revenue stream, AB 1487 establishes that BAHFA will be staffed by the existing staff of MTC.<sup>11</sup>

The regional government's ability to absorb any new housing activities, whether BAHFA is activated swiftly or held in hibernation for some period, is now severely constrained by budget limits caused by COVID-19's impacts on the economy. This is particularly true for additional staffing needs – which are not feasible in the current budget environment without new dedicated revenue sources. Existing MTC/ABAG staff have some capacity to explore revenue streams and strategize about potential future activities, but do not have capacity to launch and operate entirely new BAHFA programs absent new dedicated resources.

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<sup>8</sup> AB 1487 also authorizes the ABAG Executive Board and the BAHFA Board to impose a regional commercial linkage fee, but they can only do so after the voters have first passed a parcel tax or a general obligation bond. Government Code § 64621(a)(4). Consequently, a commercial linkage fee is not an option currently available to the boards and is not discussed further in this memo.

<sup>9</sup> Government Code § 64650(e).

<sup>10</sup> Government Code § 64520(b)-(c).

<sup>11</sup> Government Code § 64510(d).

**For Discussion:** As ABAG and MTC consider near- and long-term opportunities to address the Bay Area's housing challenges, there are several paths for consideration. Staff has provided three options below. Joint Committee members will weigh these options as part of two sequential decision points. Agenda Item 4b involves a "go/no go" recommendation for a November 2020 ballot initiative, and Option 1 operationalizes a decision to proceed in November. If there is no ballot initiative in November, Agenda Item 4c presents a choice whether the agencies will explore non-ballot pathways to expand the region's housing portfolio, subject to additional funding (Option 2), or remain focused on executing the region's existing housing portfolio without expansion (Option 3).

Staff provides this summary of the decision points as an informational item prior to the two action items to ensure that Committee Members have full information about the range of options and outcomes before making the pivotal "go/no go" decision.

**Option 1: Pursue a November 2020 Revenue Measure**

If the ABAG Executive Board and the Commission decide to pursue a revenue measure for the November 2020 ballot, BAHFA must be activated swiftly to meet statutory and administrative deadlines. The BAHFA Board must convene its first meeting no later than June, with a vote on the final resolution to place the measure on the ballot in July.

*Advantage(s):*

- Opportunity to raise \$10 billion in the near-term that would ensure that BAHFA is well-resourced to develop sustainable administrative capacity and deploy high-impact programs.

*Resource Considerations:*

- Election-related expenses are estimated at roughly \$3 million for the cost of reimbursing each county for the incremental cost to place the measure on the ballot, as well as translation of ballot materials and engaging election legal counsel.
- Significant staff time would be required in the next 3-6 months to meet statutory and administrative requirements. This would involve close coordination with staff and elected officials in all nine counties, preparing all necessary ballot materials, and developing agenda materials for numerous ABAG/MTC/BAHFA Committee, Commission, and Board meetings. Staff would have little to no capacity to explore potential alternative BAHFA activities as described in Option 2 while preparing for the election.
- Additional details of the resource considerations for this option are included in the materials for Agenda Item 4b but are on the order of \$3 million for reimbursement to counties, an additional

\$100,000 in other direct election-related costs, as well as expenses of 2-3 full time equivalent (FTEs) for 3-6 months.

*Risk(s):*

- If a measure is unsuccessful at the ballot there would be no revenue for reimbursement of the roughly \$3 million in election-related costs.

**Option 2: Develop a Proposal for Alternative (Non-Ballot) Strategies to Enhance Regional Housing Portfolio**

If the agencies decide not to pursue a November 2020 revenue measure, staff could develop a detailed proposal for how to position the region to take advantage of funding opportunities from non-ballot sources to make an impact on the Bay Area's housing crisis. Staff could redirect resources that would otherwise be spent on the ballot measure to evaluate alternative approaches, including when to activate the BAHFA Board and for what purposes. This would include exploring revenue opportunities and developing a proposed work plan that is sized to fit the various revenue scenarios. Staff could return with a proposed framework in June.

*Advantage(s):*

- Position BAHFA to be considered as a receptacle for potential short-term funding opportunities at the federal and state levels, especially to assist low-resource jurisdictions. Staff would approach this in close collaboration with local jurisdictions to ensure that BAHFA only intervenes if there is a value-add regional approach.
- Capitalize on the momentum for BAHFA in corporate and philanthropic sectors to position BAHFA to receive private funding, particularly resources that may have otherwise been earmarked for a November 2020 ballot measure campaign.
- Signal opportunity for "bold and unflinching" regional leadership on housing during COVID-19 relief and recovery efforts.

*Resource Considerations:*

- Moderate staff time required in the short term to explore alternative revenue options and develop proposed strategies.
- Ongoing demands on staff time could vary depending on direction from ABAG/MTC.
  - On one end of the spectrum is a "streamlined approach," wherein ABAG/MTC provide direction on the proposed work plan and then meet on this topic only as needed to evaluate quantifiable, guaranteed funding sources. If policymakers chose to activate BAHFA as part of this approach, the BAHFA Board and Advisory Committee could meet once then remain in hibernation until new

resources are secured. This low-resource approach would enable staff to explore revenue opportunities and return to policymakers once there is a realistic assessment of potential revenue.

- On the other end of the spectrum is a “robust approach,” which would involve a series of meetings of joint ABAG/MTC committees, the ABAG Executive Board, and the Commission to provide staff with ongoing feedback and direction. If policymakers chose to activate BAHFA as part of this approach, the BAHFA Board and Advisory Committee would meet regularly to contribute feedback and guidance. This would require significant staff resources.
- There are various middle-path options between these two extremes that would require moderate staff resources.
- Additional detail about the range of potential revenue sources and corresponding activities for this option are included in the materials for Agenda Item 4c.

*Risk(s):*

- The potential funding opportunities may never convert into concrete revenue streams. If pursuing the “robust approach,” this could expend significant staff resources without a corresponding return.
- Continuing conversations about the role of BAHFA could raise expectations among the public and other stakeholders that the region does not have the resources to meet.

**Option 3: Focus on ABAG and MTC’s Existing Regional Housing Portfolio**

In light of COVID-19 related budget concerns and limited staff capacity, the agencies could choose to focus on executing existing regional housing work plans that already exist in the ABAG and MTC portfolios. BAHFA would be held in hibernation unless and until ABAG and MTC wish to reopen consideration of potential expanded housing activities.

*Advantage(s):*

- Avoid raising expectations of BAHFA without a dedicated source of funding.
- Maximize conservation of resources during a very challenging budget environment.

*Resource Considerations:*

- No additional resources required. Staff would dedicate existing resources to ongoing programs.

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- More detail about ABAG and MTC's existing housing portfolio is provided in the materials for Agenda Item 4c.

*Risk(s):*

- By stepping away from conversations about activating BAHFA and the various housing-related responses to COVID-19, the region may forego potential new revenue sources for expanded housing activities.

**Recommendation:** Informational item only.

**Attachments:** A. Summary Fact Sheet for AB 1487



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# Summary of AB 1487 (Chiu, 2019)

## San Francisco Bay Area Regional Housing Finance Act

### Overview

Assembly Bill 1487 (Chiu, 2019) authorizes San Francisco Bay Area voters to approve various new taxes, that would be applicable regionwide, to help pay for new affordable housing, preserve existing affordable housing, and protect tenants from displacement or eviction. Specifically, the bill authorizes the Association of Bay Area Governments Executive Board and the newly-established Bay Area Housing Finance Authority (BAHFA), which is governed by the same board that governs the Metropolitan Transportation Commission (MTC), to place on the ballot four new revenue options and to impose a commercial linkage fee once certain conditions have been satisfied.

### Why Establish a Regional Funding Source for Housing?

Housing is a regional issue that requires policy and funding coordination across jurisdictions. The Bay Area's 101 cities and nine counties are now responsible for solving the region's housing crisis on their own with limited resources and capacity. While MTC and ABAG have provided planning and policy tools to address the crisis, more money is needed to boost affordable housing construction and to preserve existing affordable housing at a regional scale.

### What are the New Revenue Options ?

Any new revenue source to be placed upon the ballot will require a two-thirds vote. Options include a parcel tax, a general obligation bond, and two employer-based taxes—a per-employee “head tax” and a gross receipts tax. After conducting a regional nexus study subject to various findings, ABAG and BAHFA also may impose a regional commercial linkage fee capped at \$10 per square foot (plus an annual inflation adjustment) for affordable housing, but only if voters already have approved either a general obligation bond or a parcel tax.



### How Can the Funds Be Used?

AB 1487 invests funds across the “3Ps” of production, preservation and protection. Specifically:

- Two-thirds of voter-approved funds must be dedicated to the production and preservation of affordable housing.
  - At least 52% must be spent on the production of rental housing restricted to be affordable to lower-income households (at or below 80% of the area median income or AMI) for at least 55 years.
  - At least 15% must be spent on the acquisition, rehabilitation and preservation of existing housing units that are restricted to be affordable to low-or moderate-income households (up to 120% of AMI) for 55 years.
- At least 5% must be spent on tenant protection
- Up to 10% of regional funds (see below) may be spent on a grant program for cities and counties that support housing and related uses. These may include infrastructure needs such as transportation, schools and parks; homeless shelters and homelessness prevention programs; programs to support home-ownership for low- or moderate-income households; and additional tenant protection efforts.

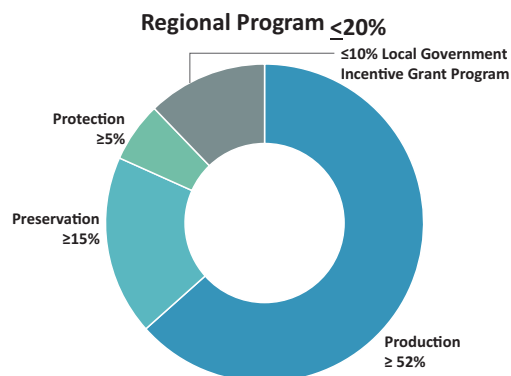
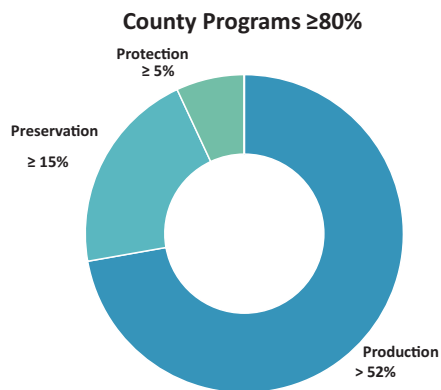
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- In sum, 28 percent of the funds are uncommitted to any particular 3P category and can be flexibly invested in accordance with local and regional housing needs across the 3P categories, and adjusted over time. See below for further details on how the 3P terms are defined in the bill.

## Who Makes Spending Decisions?

- Local governments, specifically counties, will make the vast majority of investment decisions for the use of AB 1487 funds, subject to guidelines to be developed by the ABAG Executive Board and BAHFA.
- Specifically:
  - At least 80% of the revenue generated from a parcel tax, a general obligation bond or a gross receipts tax must be invested in the county in which it was generated, leaving 20% for a regional funding pool that can be spent in any county in which the measure appears on the ballot.

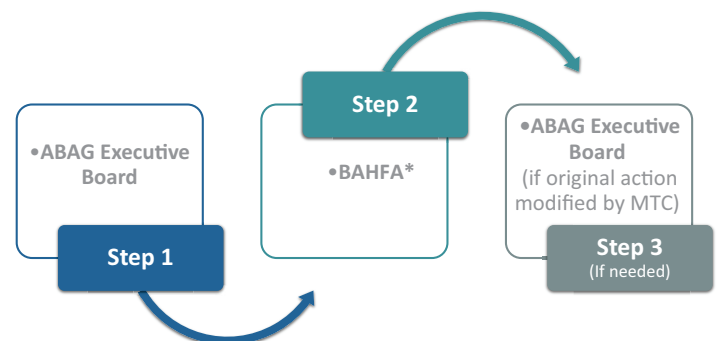


- For the “head tax” (based on the number of employees), the bill requires a lower “return to source” minimum share of “at least 50%”. This enables a larger share of revenue from cities or counties with a high concentration of jobs to be shared with other jurisdictions that may be zoning for and building a significant share of housing to support jobs outside boundaries.

- Investment of commercial linkage fee revenue is subject to the findings and analysis of a nexus study which must be prepared and adopted by the ABAG Executive Board, and ratified by BAHFA, before it is instituted. As such, no formulas are associated with this fee.
- Decisions about how to spend the county-based funds will be made in expenditure plans adopted by each county board of supervisors. Each county will determine the appropriate entity to administer its share of the funds. The bill provides that these expenditure plans may span multiple years, but counties must submit annual reports on their expenditures to date by July 1 each year after the first year of revenue is received.
- Regional funding will be controlled jointly by the ABAG Executive Board and BAHFA and will also be set forth in an expenditure plan.

## How Will Ballot Decisions be Made?

- All major decisions related to revenue and expenditure of funds will be made by both ABAG and BAHFA, with ABAG acting first. If BAHFA's action differs from ABAG's, such changes must be subsequently approved by ABAG.
- AB 1487 states that the Legislature's intent is to transfer governing powers to a new regional agency if MTC and ABAG merge, or if a new regional agency takes their place, but the bill does not require the two organizations to merge. Any ABAG-MTC merger would require subsequent legislation.
- The ABAG Executive Board and MTC each may, upon mutual agreement, defer to the other a responsibility assigned to it.



\* AB 1487 establishes the Bay Area Housing Finance Authority (BAHFA) with the same board and staff as MTC (like the Bay Area Toll Authority).

## Role and Powers of BAHFA

- AB 1487 states that the purpose of BAHFA 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.”
- BAHFA's jurisdiction includes the nine-county San Francisco Bay Area, but a ballot measure may be limited to as few as four counties.
- BAHFA is governed by the same board that governs MTC but is a separate legal entity.
- BAHFA is staffed by MTC or any successor agency with the understanding that new staff with expertise in affordable housing finance will be needed.
- All BAHFA meetings are subject to the Ralph M. Brown Act's public meeting requirements.

## Direct Allocation to Certain Cities

- For larger cities or those that are expected to meet a significant share of their county's housing needs, the bill provides funds to them directly rather than to the counties in which they reside. This includes Oakland, San Francisco and San Jose
- In counties other than Alameda, SF and Santa Clara, cities that receive more than 30% of their county's regional housing needs allocation (RHNA) for low-income households may receive a direct allocation upon request. Cities currently exceeding this 30% threshold include Fairfield, Napa, San Rafael and Santa Rosa. Counties may elect to provide suballocation to other cities but are only required to offer suballocation to those cities that exceed the 30% threshold.
- The amount provided to a city receiving a direct allocation is determined by that city's share of the county's regional RHNA allocation for low-income households.
- A city receiving a direct allocation is allowed five years to spend the funds after they are committed to a specific project. Counties may authorize an extension for up to two years if needed.

## How Are the “3P” Terms Defined in AB 1487?

- **Production** is defined broadly based on an existing definition in state law for housing development costs and includes the cost of land, site preparation, permits, construction and financing.
- **Preservation** includes preserving publicly-subsidized housing, purchasing existing private housing to preserve its affordability, and converting hotels and motels to affordable housing.
- **Protection** includes:
  - Pre-eviction and eviction legal services, counseling, education, representation, and services to improve habitability
  - Emergency rental assistance for lower-income households
  - Relocation assistance for lower-income households beyond local or state requirements already in effect
  - Collection and tracking of information related to displacement and displacement risks, rents, and evictions in the Bay Area.

## Adjustments to Minimum 3P Shares

- Changes to the minimum “3P” shares for production, preservation and protection is subject to a two-thirds vote of the ABAG Executive Board and BAHFA, and may only be considered five years after voter approval of a funding measure. Any such changes also are subject to public participation requirements and consultation with a new AB 1487-related advisory committee.
- To make an adjustment, the ABAG Executive Board and BAHFA must also adopt a finding — with the ABAG Executive Board acting first — that the region's needs in a given category differ from the 3P shares specified in the bill.

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## Protection from Displacement

The bill includes a number of provisions to limit displacement of existing residents resulting from demolition to make way for new affordable housing or rehabilitation of existing housing. Specifically:

- Funds used for affordable housing preservation shall not result in the displacement of existing residents even if their household income exceeds 120% of AMI.
- Buildings shall achieve 100% occupancy by low-or moderate-income households over time through unit turnover
- If existing residents are relocated due to rehabilitation or demolition of units for preservation purposes, the developer is required to:
  1. provide such residents a “right of first refusal” to rent or buy comparable units at an affordable rent or purchase price.
  2. provide such residents with relocation benefits in an area convenient to their current employment and at a cost or rent no greater than 30% of their income.
  3. at least the same number of units at equivalent rent or affordable housing cost to persons and families in the same or lower income category as those residing in the units at the time of demolition or rehabilitation.

## Report Requirements

BAHFA and the ABAG Executive Board must conduct a review of any voter-approved measure after five years. This review must include expenditures to date; number of affordable housing units produced or preserved at different income levels; tenant protection services provided; and the roles of BAHFA and the Executive Board.

## Advisory Committee & Public Participation Requirements

AB 1487 requires formation of an advisory committee to provide input and recommendations to the ABAG Executive Board and BAHFA about funding guidelines and overall implementation. The board is required to be comprised of nine representatives with knowledge of affordable housing finance, tenant protection, and housing preservation.

In addition, the bill requires outreach efforts to include broad participation of stakeholder groups and for BAHFA to hold at least one public meeting 30 days before it acts on a plan or proposal in order to provide ample time for discussion.

For more information, contact **Rebecca Long**, Manager of Government Relations, [rlong@bayareametro.gov](mailto:rlong@bayareametro.gov) or [info@bayareametro.gov](mailto:info@bayareametro.gov).



ASSOCIATION OF BAY AREA GOVERNMENTS  
METROPOLITAN TRANSPORTATION COMMISSION

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