

Date of Hearing: April 19, 2017

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 1598 (Mullin) – As Amended April 6, 2017

SUBJECT: Affordable housing authorities.

SUMMARY: Allows a city or county to create an affordable housing authority to fund affordable housing, similar to a Community Revitalization and Investment Authority (CRIA). Specifically, **this bill:**

- 1) Defines the following terms, for purposes of the bill’s provisions:
 - a) “Authority” to mean an affordable housing authority;
 - b) “Consenting local agency” to mean a local agency that has adopted a resolution of its governing body consenting to the affordable housing investment plan;
 - c) “Plan” to mean an affordable housing investment plan adopted pursuant to 6), below;
 - d) “Real property” to mean any of the following:
 - i) Land, including land under water and waterfront property;
 - ii) Buildings, structures, fixtures, and improvements on the land;
 - iii) Any property appurtenant to or used in connection with the land; and,
 - iv) Every estate, interest, privilege, easement, franchise, and right in land, including rights-of-way, terms for years, and liens, charges, or encumbrances by way of judgment, mortgage, or otherwise and the indebtedness secured by those liens.
- 2) Allows a city, county, or city and county (hereafter referred to as “city and county”) to adopt a resolution creating an affordable housing authority (authority) and a Low and Moderate Income Housing Fund which shall be limited to providing low- and moderate-income housing. States that an authority is a public body, corporate and politic.
- 3) Provides that a school entity, as specified, may not participate in an authority.
- 4) Specifies the membership of the governing board of an authority, as follows:
 - a) At least three members of the city council or the board of supervisors appointed by the city council or the board of supervisors, or; in the case of an authority created by a city and county jointly, at least three members of the city council and three members of the board of supervisors; and,
 - b) At least one member of the public who lives or works within the boundaries of the city or county that created the authority;

- 5) Allows the boundaries of an authority to be identical to the boundaries of the city or county that created the authority.
- 6) Requires an authority, by resolution, to adopt an affordable housing investment plan (plan) that may include either of the following:
 - a) A provision of the receipt of tax increment funds generated within the area;
 - b) If the boundaries of the authority are identical to the boundaries of the city or county that created the authority, a provision for the receipt of any increase of the total receipts of local sales and use tax or transactions and use tax from one year to the next collected by a consenting local agency and attributable to the area of the authority. Specifies that sales and use tax and transactions and use tax revenues may be allocated and used in the same manner as tax increment.
- 7) Requires the plan to include each of the following elements:
 - a) A statement of the principal goals and objectives of the plan;
 - b) An affordable housing program that describes how the authority will fulfill its objective and if duties and activities will be assigned to a city or county housing department or public housing authority;
 - c) The amount available in the Low and Moderate Income Housing Fund and the estimated amounts that will be deposited in the fund during each of the next five years;
 - d) Estimates of the number of new, rehabilitated, or price restricted residential units to be assisted during each of the five years and estimates of the expenditures of moneys from the Low and Moderate Income Housing Fund during each of the five years;
 - e) A description of how the program will implement the requirements for expenditures of funds in the Low and Moderate Income Housing Fund over a 10-year period at various income levels;
 - f) Estimates of the number of units, if any, to be developed by the authority for very low-, low-, and moderate-income households during the next five years;
 - g) A fiscal analysis setting forth the projected receipt of revenue and projected expenses over a five-year planning horizon, including the potential issuance of bonds backed by tax increment and increased local sales and use and transactions and use tax revenues during the term of the plan. Requires bonds to be issued in conformity with existing law; and,
 - h) Time limits as follows:
 - i) 45 years for the establishing of loans, advances, and indebtedness; or,
 - ii) 45 years for repayment of all of the authority's debts and obligations and fulfilling all of the authority's housing obligations. Requires the plan to specify that an authority shall dissolve as a legal entity in no more than 45 years, and that no further taxes shall

be allocated to the authority thereafter. Specifies that this shall not be interpreted to prohibit an authority from refinancing outstanding debt solely to reduce interest costs.

- 8) Allows, at any time prior to or after adoption of the plan, any city, county, or special district (other than a school entity or successor agency) that receives ad valorem property taxes from property located within an area, or local sales and use taxes or transactions and use taxes, to adopt a resolution directing the county auditor-controller to allocate its share of tax increment funds within the area covered by the plan, or its increased local sales and use taxes or transactions and use taxes attributable to the area, to the authority. Allows the resolution to direct the county auditor-controller to allocate less than the full amount of the tax increment, or increased attributable tax revenues, and establish a maximum amount of time in years that the allocation takes place. Allows a resolution for an authority to be repealed and be of no further effect by giving the county auditor-controller 90 days' notice, with the county auditor-controller continuing to allocate to the authority the taxing entity's share of ad valorem property taxes, or local sales and use or transactions and use taxes that have been pledged to the repayment of debt issued by the authority until the debt has been fully repaid. Requires the city, county, or special district to approve a memorandum of understanding with the authority governing the authority's use of tax increment funds and local sales and use and transactions and use tax revenues for administrative and overhead expenses.
- 9) Requires a minimum of 95% of the allocated tax increment revenues and allocated local sales and use or transactions and use tax revenues to be used to increase, improve, and preserve the community's supply of housing for low- and moderate-income families. Prohibits more than 5% of allocated revenues to be used for administration.
- 10) Requires housing funds expended by an authority to be spent proportionally on low-, very low-, and moderate-income housing.
- 11) Allows an authority to do all of the following:
 - a) Provide for low- and moderate-income housing;
 - b) Remedy or remove a release of hazardous substances pursuant to the Polanco Redevelopment Act;
 - c) Provide for seismic retrofits of existing buildings in accordance with all applicable laws and regulations;
 - d) Acquire and transfer real property, as specified below. Requires the authority to retain controls and establish restrictions or covenants running with the land sold or leased for private use for the periods of time and under the conditions as provided in the plan. States that the establishment of these controls is a public purpose;
 - e) Issue bonds in conformity with existing law;
 - f) Borrow money, receive grants, or accept financial or other assistance or investment from the state or the federal government or any other public agency or private lending institution for any project within its area of operation, and comply with any conditions of a loan or grant. Allows an authority to qualify for funding as a disadvantaged community, pursuant to the Water Security, Clean Drinking Water, Coastal and Beach

Protection Act of 2002, or as defined in Local Agency Formation Commission law that defines “disadvantaged unincorporated community.” Allows an authority to enter into an agreement with a qualified community development entity, as defined, to coordinate investments of funds derived from the New Markets Tax Credit with those of the authority in instances where coordination offers opportunities for greater efficiency of investments to improve conditions described in c) and d), above, within the territorial jurisdiction of the authority;

- g) Receive funds allocated to it pursuant to a resolution adopted by a city, county, or special district to transfer these funds from a source described in existing Enhanced Infrastructure Financing District law related to net available revenues, property tax increment, and utilize other applicable revenues, as specified;
 - h) Adopt an affordable housing plan, as specified above;
 - i) Make loans of grants for owners or tenants to improve, rehabilitate, or retrofit buildings or structures within the plan area; and,
 - j) Construct foundations, platforms, and other like structural forms necessary for the provision or utilization of air rights sites for buildings to be used for purposes of providing affordable housing.
- 12) Requires the authority to contract for an independent audit conducted in accordance with generally accepted governmental auditing standards every five years, beginning in the calendar year in which the authority has allocated a cumulative total of not more than \$1 million in tax increment or local sales and use or transactions and use tax revenues, including any proceeds of a debt issuance.
- 13) Requires an authority to prepare a feasible method or plan for relocation of all of any families and persons to be temporarily or permanently displaced from housing facilities as a result of actions by the authority.
- 14) Requires the authority to receive a priority for assistance in housing programs administered by the California Housing Finance Agency, the Department of Housing and Community Development, and other state agencies and departments.
- 15) Allows an authority to transfer its housing responsibilities to a housing authority or city or county housing department if it determines that combining funding streams will reduce administrative costs or expedites the construction of affordable housing.
- 16) Requires all housing assisted by an authority to remain affordable for at least 55 years for rental units and 45 years for owner-occupied units.
- 17) Allows an authority, within the area of that authority, to:
- a) Purchase, lease, obtain an option upon, acquire by gift, grant, bequest, devise, or otherwise, any real or personal property, any interest in property, and any improvements on it, including repurchase of developed property previously owned by the authority. Requires the authority to obtain an appraisal from a qualified independent appraiser to

determine the fair market value of property before the authority acquires or purchases real property;

- b) Accept, at the request of the legislative body of the community, a conveyance of real property, located either within or outside the plan area, owned by a public entity and declared surplus by the public entity, or owned by a private entity. Allows the authority to dispose of that property to private persons or to public or private entities, by sale or long-term lease for development. Allows all or any part of the funds derived from the sale or lease of that property to, at the discretion of the legislative body of the community, be paid to the community, or to the public entity from which any of that property was acquired;
 - c) Sell, lease, grant, or donate real property owned or acquired by the authority in a plan area to a housing authority or to any public agency for public housing projects; and,
 - d) Offer for resale property acquired by an authority for rehabilitation and resale within one year after completion of rehabilitation. Requires properties held by an authority in excess of a one-year period to be listed in the authority's annual report with information conveying the reasons that property remains unsold and indicating plans for its disposition.
- 18) Requires the authority to retain controls and establish restrictions or covenants running with land sold or leased for private use for those periods of time and under those conditions as are provided in the plan. States that the establishment of those controls is a public purpose.
- 19) Requires an authority to obligate lessees or purchasers of property acquired in an affordable housing project to:
- a) Use the property for the purpose designated in the affordable housing plan;
 - b) Begin the project within a period of time which the authority fixes as reasonable;
 - c) Comply with the covenants, conditions, or restrictions that the authority deems necessary to prevent speculation or excess profttaking in undeveloped land, including right of reverter to the agency. States that covenants, conditions, and restrictions imposed by an authority may provide for the reasonable protection of lenders; and,
 - d) Comply with other conditions that the authority deems necessary to carry out the purposes of the bill's provisions.

EXISTING LAW:

- 1) Specifies that a CRIA is a public body, corporate and politic, with jurisdiction to carry out a community revitalization plan (plan) within a community revitalization and investment area (area).
- 2) Allows a CRIA to be created in any one of the following ways:
 - a) A city, county, or city and county may adopt a resolution creating a CRIA; or,

- b) A city, county, city and county, and special district, or any combination thereof, may create a CRIA by entering into a joint powers agreement.
- 3) Specifies the makeup of the governing body of the CRIA.
 - 4) Allows a CRIA to carry out a plan within an area, and requires that not less than 80% of the land calculated by census tracts, census block groups, as defined by the United States Census Bureau, of any combination of both within the area shall be characterized by both of the following conditions:
 - a) An annual median household income that is less than, at the option of the CRIA, 80% of the statewide, countywide, or citywide annual median income; and,
 - b) Three of the following four conditions:
 - i) An unemployment rate that is at least 3% points higher than the statewide average annual unemployment rate, as specified;
 - ii) Crime rates, as documented by records maintained by the law enforcement agency that has jurisdiction in the plan area for violent or property crime offenses, that are at least 5% higher than the statewide average crime rate for violent or property crime offenses, as specified;
 - iii) Deteriorated or inadequate infrastructure, including streets, sidewalks, water supply, sewer treatment or processing, and parks; and,
 - iv) Deteriorated commercial or residential structures.
 - 5) Allows, as an alternative to 4), above, a CRIA to carry out a plan with an area if it meets either of the following conditions:
 - a) The area is established within a former military base that is principally characterized by deteriorated or inadequate infrastructure and structures; or,
 - b) The census tracts or census block groups within the area are situated within a disadvantaged community, as specified.
 - 6) Specifies that the Ralph M. Brown Act (Brown Act), Public Records Act, and the Political Reform Act apply to a CRIA.
 - 7) Allows a CRIA to adopt a plan that may include a provision for the receipt of tax increment funds generated within the area, as specified, provided the plan includes specified elements.
 - 8) Specifies the time limits for a CRIA, as follows:
 - a) 30 years for establishing loans, advances, and indebtedness; and,
 - b) 45 years for the repayment of all the CRIA's debts and obligations, and fulfilling all of the CRIA's housing obligations, as specified.

- 9) Requires a CRIA to consider adoption of the plan at three public hearings that shall take place at least 30 days apart, and requires specified actions at those three hearings.

FISCAL EFFECT: This bill is keyed fiscal.

COMMENTS:

- 1) **Bill Summary.** This bill authorizes a city or county to create an affordable housing authority, modelled after CRIA law, to fund activities related to the promotion and development of affordable housing. The bill's provisions specify that the authority could capture property tax increment, and sales and use tax increment and transactions and use tax increment, assuming that the entity consents. The bill also contains the process for forming the authority, the governance structure of the authority, and requires the authority to adopt an affordable housing investment plan and what that plan must contain.

The bill is sponsored by the author.

- 2) **Author's Statement.** According to the author, "Over the past six years, cities and counties in California have lost nearly 70% of all state and federal funding formerly available for affordable housing, and even deeper cuts to the US Department of Housing and Urban Development (HUD) are anticipated. According to the California Housing Partnership, there is a shortfall of over 1.54 million homes affordable to lower-income families and not one county in the state has a sufficient number of affordable rental homes.

"This bill expands AB 2 (Alejo, 2015) which created Community Revitalization and Investment Authorities (CRIAs). For many communities, the "blight" findings and indices of crime and unemployment required under AB 2 are not applicable metrics. Many cities in the Bay Area, for example, are not lacking in private investment in commercial and office development, but are, instead, seeing a wide and ever-growing job-housing gap that far outpaces the production of new affordable homes.

"Therefore, localities need a tool to capture the growth in tax increment produced by new commercial development and invest those revenues in the production of homes affordable to the local workforce."

- 3) **Background on CRIAs.** Over the last 60 years, redevelopment agencies used tax increment to finance affordable housing, community development, and economic development projects. The dissolution of redevelopment agencies created a void and as such, an effort to create new tools that would support community and economic development activities was undertaken. AB 2 (Alejo and E. Garcia), Chapter 319, Statutes of 2015, allows local government entities, excluding schools, to form a CRIA to collect property tax increment and issue debt. The CRIA could use its powers to invest in disadvantaged communities with a high crime rate, high unemployment, and deteriorated and inadequate infrastructure, commercial, and residential buildings. Three of these four conditions would constitute blight. The area where the CRIA could invest would also be required to have an annual median household income that is less than 80% of the statewide annual median income. This is different from redevelopment agencies that were required to conduct a study and make a finding that blight existed in a project area before they could use their extraordinary powers, like eminent domain, to eradicate blight.

Like redevelopment agencies, AB 2 allowed CRIAs to freeze the property taxes at the time the plan for revitalizing the area is approved. The CRIA collects all the tax increment or the increase in property taxes that is generated after that point and use it on specified activities. Unlike redevelopment agencies, AB 2 specified that the taxing entities in the area, including the county, city, special districts, or a military base must agree to divert tax increment to the CRIA. Local government entities that initially participate can opt out by giving the auditor-controller sixty days' notice; however, the auditor controller will continue to collect the local government entities' portions of tax increment until any debts issued up until then have been repaid. No portion of the local schools' share of tax increment may go to the CRIA.

- 4) **Policy Considerations.** The Committee may wish to consider the following:
- a) **Differences between an authority and existing CRIA law.** While the creation of an authority pursuant to the bill's provisions is similar to and modelled after CRIA law, there are several distinct differences:
 - i) **CRIA requirements.** A CRIA operates within a defined area characterized by social and economic deterioration. This bill has no such limitations.
 - ii) **What can be financed?** A CRIA can finance a wide-range of public and private projects, including the acquisition, construction or rehabilitation of affordable housing and is required to spend 25% on affordable housing. This bill is specifically limited to providing low- and moderate-income housing and provides that 95% of the revenues shall be used to increase, improve, and preserve affordable housing.
 - iii) **Infrastructure plan and protest requirements.** A CRIA plan is subject to written and oral protest and proceedings to form the CRIA must stop if there is majority protest. An election is required in certain instances based on percentage of protest received. This bill, however, does not contain any opportunity for protest.
 - iv) **Property tax increment vs. sales and use/transactions and use tax increment.** A CRIA is funded through property tax increment. This bill, in addition to property tax increment, introduces the idea of giving sales and use tax increment and transactions and use tax increment from a consenting local agency to the authority.
 - v) **Replacement dwellings.** CRIA law contains replacement dwelling language. This bill does not contain replacement dwelling language, but does require the preparation of a feasible method of plan for relocation of all of any families and persons to be temporarily or permanently displaced from facilities and a result of actions by the authority.
 - b) **Sales and Use Tax Increment and Transactions and Use Tax Increment.** The Committee may wish to consider the following issues, with respect to creating the opportunity for a consenting local agency to share its sales and use taxes or transactions and use taxes with an authority:
 - i) **Redevelopment reform in 1993.** According to a publication entitled "The 2012-13 Budget: Unwinding Redevelopment" by the Legislative Analyst's Office (LAO) published in February of 2012, AB 1290 (Isenberg), Chapter 942, Statutes of 1993, sought to address long-standing concerns about the misuse of redevelopment and to

refocus the program on eradicating urban blight. [AB 1290]: (1) Defined a “blighted area” as one that is predominately urbanized and where certain problems are so substantial that they constitute a serious physical and economic burden to a community that cannot be reversed by private or government actions, absent redevelopment; (2) Replaced the process whereby local agencies and RDAs negotiated the amount of pass-through revenues on a case-by-case-basis with a statutory formula for sharing tax increment revenues; and, (3) ***Limited RDA ability to provide subsidies and assistance to auto dealerships, large volume retailers, and other sales tax generators.***

These reforms moved RDAs away from the potential to choose sales-tax generating projects as did other bills in the 1990s and beyond.

- ii) **Appropriateness of using sales tax increment.** The fundamental premise behind property tax increment (used previously to fund RDA activities) is that investment in a blighted area will increase property values, and thus the “increment” of that increase would go to the RDA while other jurisdictions continue to get the same property tax amount (or “base”), over the life of the RDA. In this manner there was, with RDAs, and with the new CRIA tool, a nexus between the use of property tax increment for the RDA or the CRIA’s purposes. The Committee may wish to consider whether using sales tax increment to fund an authority’s activities meets this same nexus and whether there may be implications for the fiscalization of land use (aka, jurisdictions preferring to site big box-type sales tax generating stores over other projects like affordable housing).
- iii) **Could undermine the will of the voters.** Some sales and use taxes and transactions and use taxes are adopted by voters for a dedicated purpose with a two-thirds voter approval requirement under the Constitution, and can only be spent for the purpose in which the voters approved (like a countywide transactions and use tax that is specifically earmarked for transportation purposes). This bill does not differentiate between general taxes and sales and use and transactions and use taxes that are dedicated for a certain purpose.
- iv) **Implementation and technical issues.** There are numerous technical issues with the sales and use tax and transactions and use tax increment provisions in the bill, as follows:
 - (1) First, the bill directs the county auditor-controller to allocate sales tax; however, under existing law, sales and use taxes, as well as transactions and use taxes are administered and allocated to a city or county by the Board of Equalization.
 - (2) The bill is unclear about what part of the sales tax it is capturing – is it the Bradley-Burns rate that is the local share?
 - (3) What if there are local tax-sharing agreements in place between the involved jurisdictions?
 - (4) Can an agency collect local sales or use tax revenue from a rate imposed by another agency?

- (5) How would the issuance of debt work if the debt is backed by sales and use/transactions and use tax increment, rather than property tax?
 - (6) The current process to calculate property tax increment is contained in the Revenue and Taxation Code; however, no such method exists for calculating sales and use or transactions and use tax increment which would be “attributable to the area of the authority.”
 - c) **Finding of Completion.** Existing law for both Enhanced Infrastructure Financing Districts (EIFDs) and CRIAs requires that creation of each of these tools requires a finding of completion from the Department of Finance (DOF) and compliance with State Controller’s orders regarding RDA dissolution. This bill, however, does not contain such language.
 - d) **Potential for overlap.** The Committee may wish to consider what will happen if a jurisdiction wants to create both an authority and a CRIA or an EIFD, or if there is overlap by a city and a county wishing to each create one of these authorities, as there is a potential for overlap. Who would get the property tax increment in this situation?
- 5) **Committee Amendments.*** The Committee may wish to consider the following amendments:
- a) Limit provisions of the bill dealing with sales and use tax increment or transactions and use tax increment specifically to those measures approved by voters that are consistent with the intent of funding the creation of affordable housing. For instance, the voters in the County of Los Angeles recently approved Measure H – authorizing a 0.25 percent county sales tax for 10 years in order to fund homeless services and prevention, with 69% of the vote. This revenue stream is specifically earmarked for those purposes.
 - b) Require an authority to consider adoption of the plan at a public hearing. CRIA law requires three hearings.
 - c) Ensure that the authority is subject to provisions of the Brown Act, Public Records Act, and the Political Reform Act, similar to CRIA law.
 - d) Limit successor agencies from participating in an authority. Require a city or county that created a created an RDA that was dissolved, from participating in an authority until the agency has a finding of completion from the DOF, and compliance with the orders of the Controller, as specified. All of these limitations are contained in CRIA law.
- *Due to timing constraints, these amendments will be adopted by the Housing and Community Development Committee.
- 6) **Arguments in Support.** Supporters argue that the bill will provide local governments with a critical tool to address the housing affordability crisis without raising taxes, and invest the tax increment revenues in the production of homes affordable to their workers.
 - 7) **Arguments in Opposition.** According to Howard Jarvis Taxpayers Association, notes the concern with the apparent lack of a requirement in the bill that any bonds issued by the

authority be voter-approved, and writes that these bonds could remain on the books for up to 40 years after they are sold, surpassing the probably tenure of most authority members.

- 8) **Double-Referral.** This bill is double-referred to the Housing and Community Development Committee, where it will be heard next, should the bill pass out of this Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Housing Partnership
City of Union City
EAH Housing
Herman Coliver Locus Architecture
Non-Profit Housing Association of Northern California

Opposition

Howard Jarvis Taxpayers Association

Analysis Prepared by: Debbie Michel / L. GOV. / (916) 319-3958