

Date of Hearing: April 11, 2018

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 2035 (Mullin) – As Amended March 20, 2018

SUBJECT: Affordable housing authorities.

SUMMARY: Makes a number of administrative and technical changes to Affordable Housing Authority Law. Specifically, **this bill:**

- 1) Revises Affordable Housing Authority Law, as follows:
 - a) Makes changes to the definitions section of Affordable Housing Authority Law, as follows:
 - i) Revises the definition of “affordable workforce housing” and strikes out references to affordable rent;
 - ii) Adds a definition of “authorizing resolution;” and,
 - iii) Adds a definition of “property tax increment.”
 - b) Specifies, in the case of an Affordable Housing Authority (authority) created by a city and county, that the mayor shall appoint the same number of members as are appointed by the legislative body of the city and county, and that appointment shall not be subject to review by the legislative body of the city and county.
 - c) Requires property tax increment from a taxing entity other than the city or county that formed the authority that has adopted a resolution to allocate its share of property tax increment to be held in a separate fund by the authority.
 - d) Requires the provision for the receipt of property tax increment to become effective in the property tax year that begins after the December 1 immediately following the adoption of a resolution, as specified. Requires the resolution to be provided to the county auditor-controller no later than the December 1 immediately following its adoption.
 - e) Revises requirements related to a taxing entity repealing a resolution that was adopted to allocate property tax increment to specify that that repealed resolution will be of no further effect beginning in the fiscal year following the adoption of any repeal, by giving the auditor-controller at least 90 days’ notice prior to the end of the current fiscal year, provided that the auditor-controller shall continue to allocate the taxing entity’s share that has been pledged to the repayment of debt issue by the authority until that debt has been fully repaid, including by means of a refinancing or refunding. Specifies the purposes of how that annual amount of a taxing entity’s share will be determined.
 - f) Requires that when the loans, advances, and indebtedness of an authority, if any, and interest thereon, have been paid, or the maximum amount of time in years has passed in accordance with a resolution, all funds thereafter received from taxes upon the taxable property in the authority’s boundaries shall be paid in the funds of the respective taxing agencies as taxes on all other property are paid.

- g) Requires all of the taxes levied and collected upon the taxable property in the boundaries of the authority to be paid into the funds of the respective taxing agencies as though the authority had not been created unless the total assessed valuation of the taxable property in the boundaries of an authority exceeds the total assessed value of the taxable property in the boundaries as shown by the last equalized roll.
- h) Specifies that a resolution allowing the allocation of sales and use tax or transactions and use tax may be repealed and be of no further effect, provided, however, that the tax revenues allocated to the authority that have been pledged to the repayment of debt issued by the authority shall continue to be so allocated until the debt has been fully repaid, including by means of a refinancing or refunding, unless otherwise agreed upon by the authority and the taxing entity.
- i) Requires the county auditor-controller, prior to distributing property tax increment to the authority, to deduct any costs incurred by the county in administering the provisions of the bill.
- j) Provides that the provisions of the bill shall not be construed to alter in any way the manner in which ad valorem property tax revenues and other revenue streams related to ERAF, tax equity allocation to cities, and other specified portions of existing law.
- k) Revises requirements for the issuance of bonds for the authority.
- l) Revises auditing requirements from every five years to every year, commencing in the calendar year in which the authority has allocated a cumulate total of more than \$1 million dollars in property tax increment revenues, and other revenues, as specified, including any proceeds of a debt issuance.
- m) Requires that any action or proceeding to attack, review, set aside, void, or annul the creation of an authority, the adoption of a plan, the allocation of tax revenues, as specified, or the issuance of bonds by the authority, shall be commenced within 30 days after the enactment of the resolution authorizing the action. Requires those actions to be brought pursuant to specified sections of law. Allows an authority in specified circumstances to bring an action in the superior court of the county in which the authority is located to determine the validity of the bonds, warrants, contracts, obligations, or evidences of indebtedness, as specified.
- n) Makes other minor, technical, and conforming changes.

EXISTING LAW:

- 1) Allows a city, county, or city and county to adopt a resolution creating an affordable housing authority that shall be limited to providing low- and moderate-income housing and affordable workforce housing. Provides that a school entity, as defined, may not participate in an authority. A successor agency may not participate in an authority. Allows a city or county that created a redevelopment agency that was dissolved to form an authority only if certain conditions are met, like receiving a finding of completion from the Department of Finance.
- 2) Requires the governing board of an authority to be an odd number of members with at least five or seven members in total, 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;
 - b) In the case of an authority created by a city and county authority jointly, at least three members of the city council and three members of the board of supervisors; and,
 - c) At least one member of the public who lives or works within the boundaries of the city or county that created the authority.
- 3) Requires an authority to, by resolution, create a Low and Moderate Income Housing Fund and adopt an affordable housing investment plan that may include either or both of the following:
- a) A provision for the receipt of property tax increment funds generated within the area; or,
 - b) A provision for the receipt of any tax revenues allocated to the authority pursuant to 7), below.
- 4) 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 estimated amount 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 Fund during each of the five years;
 - e) A description of how the program will implement the requirements for expenditures of funds in the 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 property tax increment revenues during the term of the plan.
 - h) Time limits as follows:
 - i) Forty-five years for the establishment of loans, advances, and indebtedness; and,
 - ii) Forty-five years for the repayment of all of the authority's debts and obligations and fulfilling all of the authority's housing obligations, as specified.

- i) A feasible method or plan for relocation of families and persons to be temporarily or permanently displaced from housing facilities in the plan area.
- 5) Requires the authority to hold a public hearing before adopting a plan, and requires the authority to provide notice of that hearing, as specified.
 - 6) Allows any city, county, or special district, as specified, to adopt a resolution directing the county auditor-controller to allocate its share of property tax increment funds within the area covered by the plan to the authority. Allows the resolution to direct the county auditor-controller to allocate less than the full amount of the property tax increment, and to establish a maximum amount of time in years that the allocation will take place. Allows a resolution to be repealed and be of no further effect by giving the auditor-controller 90 days' notice; provided, however, that the auditor-controller shall continue to allocate to the authority the taxing entity's share of ad valorem property taxes that have been pledged to the repayment of debt issued by the authority until that debt has been fully repaid.
 - 7) Allows a taxing entity, via resolution, to allocate other revenues to the authority, including revenues derived from local sales and use taxes imposed pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law, or transactions and use taxes imposed pursuant to the Transactions and Use Tax Law, in specified circumstances.
 - 8) Requires a minimum of 95% of the allocated property tax increment revenues pursuant to 6), above, and allocated tax revenues pursuant to 7), above, to be used to increase, improve, and preserve the community's supply of housing for low-, very low-, and moderate-income households. Prohibits more than 5% to be used for administration.
 - 9) Requires housing funds to be spent in proportion to the share of the regional housing need allocated to the city, county, or city and county for each income category pursuant to existing law.
 - 10) Allows an authority to do all of the following:
 - a) Provide for low- and moderate-income housing and affordable workforce housing;
 - b) Remedy or remove a release of hazardous substances, as specified;
 - c) Provide for seismic retrofits of existing buildings;
 - d) Acquire and transfer real property, as specified;
 - e) Issue bonds, as specified;
 - 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;
 - g) Adopt a plan;
 - h) Make loans or grants for owners of tenants to improve, rehabilitate, or retrofit buildings or structures within the plan area; and,

- i) Construct foundations, platforms, and other like structural forms necessary for the provision or utilization of air rights sites for buildings to be used for the purposes of providing affordable housing.

- 11) Requires an authority to contract for an independent audit, as specified.
- 12) Requires an authority to receive a priority for assistance in housing programs administered by HCD, and other state agencies and departments.
- 13) 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.
- 14) Requires an authority to comply with the Ralph M. Brown Act, the California Public Records Act, and the Political Reform Act of 1974.

FISCAL EFFECT: None

COMMENTS:

- 1) **Background on AHA Law.** AB 1598 (Mullin), Chapter 764, Statutes of 2017, authorizes a city or county to create an affordable housing authority, modeled after Community Revitalization and Investment Authority (CRIA) law, to fund activities related to the promotion and development of affordable housing. AB 1598 specifies that the authority can capture property tax increment, or revenues from a local sales and use tax or transactions and use tax, provided that the use of those revenues by the authority is consistent with the purposes for which that tax was imposed. The bill also contained 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, as well as a requirement for the authority to comply with the Ralph M. Brown Act, Public Records Act, and the Political Reform Act.
- 2) **Bill Summary.** This bill makes a number of technical and clarifying changes to Affordable Housing Authority law, and is sponsored by the author.

The bill requires property tax increment from a taxing entity that has adopted a resolution to allocate its share of property tax to be held in a separate fund by the authority; specifies the date in which the receipt of property tax increment will become effective; revises requirements for taxing entities to repeal a resolution, and when that resolution will be effective; requires the county auditor-controller, prior to distributing property tax increment to the authority, to deduct any costs incurred by the county; revises audit requirements for the AHA; and, provides clarity in how ad valorem property tax revenues and other local government revenues streams will be treated should an AHA be formed. The bill also revises and expands definitions used throughout AHA law, and includes other minor, technical and conforming changes.

- 3) **Author's Statement.** According to the author, "AB 2035 is a follow-up to AB 1598 (Mullin), which was signed into law, allowing cities and counties to create Affordable Housing Authorities to fund the promotion and development of affordable housing through

local tax increment financing, without raising taxes. AB 2035 clarifies Affordable Housing Authority law to ensure tax increment financing for affordable housing can be implemented.”

- 4) **Committee Amendments.** In order to correct a mistake and clarify the intent of the bill with respect to the different options for the governing board of an authority, the Committee may wish to suggest the following amendments:

On page 5, line 16:

(c) The governing board of an authority created pursuant to this division shall be an odd number of members with at least five or seven members in total, as follows:

(1) (A) *In the case of a city forming an authority, at least three members of the city council or the board of supervisors appointed by the city council or the board of supervisors.*

(B) In the case of a county forming an authority, at least three members of the board of supervisors appointed by the board of supervisors

(C) B) In the case of an authority created jointly by a city and a county authority jointly, at least three members of the city council and three members of the board of supervisors.

(D) (C) In the case of an authority created by a city and county, the mayor shall appoint the same number of members as are appointed by the legislative body of the city and county. Appointments made pursuant to this subparagraph shall not be subject to review by the legislative body of the city and county.

(2) At least one member of the public who lives or works within the boundaries of the city or county that created the authority.

- 5) **Arguments in Support.** Supporters argue that this bill will provide clarity to taxing entities and local auditor-controllers on how to address complexities in the local property tax increment framework.
- 6) **Arguments in Opposition.** Opponents argue that the bill continues to perpetuate the issues raised in AB 1598, including the use of eminent domain and the allowance of bonds issued without voter approval.
- 7) **Double-referral.** This bill is double-referred to the Housing and Community Development Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Apartment Association
California Association of Realtors
Habitat for Humanity California
Non-Profit Housing Association of Northern California

Opposition

Howard Jarvis Taxpayers Association

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