Date of Hearing: March 20, 2024

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Juan Carrillo, Chair
AB 2157 (Bonta) – As Introduced February 6, 2024

**SUBJECT**: City of Alameda Health Care District: certificates of participation: lien.

**SUMMARY**: Enacts a statutory lien to secure certificates of participation (COPs) issued by the City of Alameda Health Care District (District). Specifically, **this bill**:

1) Specifies that all obligations of the District in connection with any and all COPs executed and delivered by or on behalf of the District between January 1, 2024, and December 31, 2034, including COPs executed and delivered before 2064 to refund the COPs, shall be secured by a statutory lien on all of the revenues generated from parcel taxes levied pursuant to Measure A, approved by the voters of the District at the general election held on April 9, 2002.

2) Provides that this lien shall arise automatically without the need for any action or authorization by the District or the Board of Directors of the District. The lien shall be valid and binding from the time the COPs are executed and delivered.

3) Specifies that the parcel tax revenue shall immediately be subject to this lien, and the lien shall immediately attached to the parcel tax revenue and be effective, binding, and enforceable against the District, its successors, purchasers of those revenues, creditors, and all others asserting rights therein, irrespective of whether those parties have notice of the lien and without the need for any physical delivery, recordation, filing, or further act.

4) Finds and declares that a special statute is necessary and that a general law cannot be made applicable because of the unique circumstances regarding financing obligations of the District.

5) Contains an urgency clause.

**EXISTING LAW**:

1) Defines the following terms [Government Code (GC) § 5450):

   a) "Bonds" means any bonds, notes, bond anticipation notes, commercial paper, or other evidences of indebtedness, or lease, installment purchase, or other agreements, or certificates of participation therein, that are not issued pursuant to statutory authority containing a provision governing the perfection and priority of pledges of collateral unless the provision provides that this chapter shall govern.

   b) "Collateral" means any revenues, moneys, accounts receivable, contractual rights to payment, and other rights to payment of whatever kind, subject to the pledge provided for or created in a pledge document.

c) “Pledge” means, and as used in any pledge document shall be deemed to create, a grant of a lien on and a security interest in and pledge of the collateral referred to in a pledge document.

2) Requires a pledge of collateral by any public body to secure, directly or indirectly, the payment of the principal or redemption price of, or interest on, any bonds, or any reimbursement or similar agreement with any provider of credit enhancement for bonds, which is issued by or entered into by a public body, to be valid and binding in accordance with the terms of the pledge document from the time the pledge is made for the benefit of pledgees and successors thereto (GC § 5451).

3) Requires the collateral to immediately be subject to the pledge, and the pledges constitute a lien and security interest which shall immediately attach to the collateral and be effective, binding, and enforceable against the pledgor, its successors, purchasers of the collateral, creditors, and all others asserting the rights therein, to the extent set forth, and in accordance with, the pledge document irrespective of whether those parties have notice of the pledge and without the need for any physical delivery, recordation, filing, or further act (GC § 5451).

4) Establishes the Alfred E. Alquist Hospital Facilities Seismic Safety Act of 1983 (Alquist Act), to ensure that hospital buildings are designed and constructed to resist the forces generated by earthquakes and requires the Department of Health Care Access and Information (HCAI), formerly the Office of Statewide Health Planning and Development (OSHPD), to propose building standards for earthquake resistance and to provide independent review of the design and construction of hospital buildings. [Health and Safety Code (HSC) § 129675, et seq.]

5) Establishes timelines for hospital compliance with seismic safety standards, including a requirement that buildings posing a significant risk of collapse and a danger to the public be rebuilt or retrofitted to be capable of withstanding an earthquake, or removed from acute care service, by January 1, 2008 and a requirement that a hospital must also be capable of continued operation by January 1, 2030. (HSC § 130060, § 130065)

**FISCAL EFFECT**: None.

**COMMENTS**:

1) **Healthcare Districts**. Near the end of World War II, California faced a severe shortage of hospital beds. To respond to the inadequacy of acute care services in rural areas, the Legislature enacted the Local Hospital District Law, to provide medically underserved areas without access to hospital facilities a source of tax dollars that could be used to construct and operate community hospitals. SB 1169 (Maddy), Chapter 696, Statutes of 1994, changed the name of the principal act to “The Local Healthcare District Law” to better reflect the shift in the provision of healthcare services outside hospital settings.

   The powers and duties granted to healthcare districts under existing law have remained largely unchanged while the demographics of areas being served by the districts, access and provision of healthcare services, and the districts themselves have vastly changed. For example, following the change in law in 1994, at least 14 healthcare districts have filed for bankruptcy, and over one-third of the healthcare districts in California have either closed or sold their hospital.

State law allows healthcare districts to exercise various powers, including to lease or own property; build and operate healthcare facilities and services, including emergency services, free clinics, diagnostic and testing centers, health education programs, wellness and prevention programs, rehabilitation, and aftercare; to provide assistance to other entities to carry out those services; and to sell their assets.

Generally, a five-member board of directors manages each healthcare district. Each member must be a registered voter residing in the district and serves a four-year term, with the exception of the initial board. The board of supervisors of the county with the greatest share of land in the district appoints the initial board. Upon appointment, the board selects two members by lot to serve two-year terms with the remaining three serving four-year terms.

Many healthcare districts receive a share of local property taxes. Some levy special parcel taxes, and some charge for services. Some healthcare districts generate revenues from district resources, such as property lease income, and some districts receive grants from public and private sources.

2) **Seismic Safety Requirements.** In 1973, the Legislature passed the Alquist Act, which required all new hospital construction to meet stringent seismic safety standards. The original Alquist Act did not apply to existing buildings, partly because of the expectation that older hospital buildings would be replaced with conforming buildings over time. However, by the time the 1994 Northridge earthquake occurred more than 20 years later, 80% of hospital beds were still in pre-1973 non-conforming buildings. The Northridge earthquake experience prompted the Legislature to update the Alquist Act in 1994 to bring older hospital buildings into compliance with structural requirements by 2008 (which was subsequently delayed through various bills over the years), and to adopt additional requirements that would ensure hospitals, by January 1, 2030, would not only remain standing, but would also remain operational following a major earthquake (referred to as "2030 compliance").

3) **Certificates of Participation.** The California Constitution prevents counties and cities from creating multi-year general obligation debt without 2/3-voter approval. School districts need 55% voter approval. Because the constitutional ban does not mention special districts, the Legislature has allowed special districts to use a variety of debt financing tools without voter approval. COPs are a type of debt instrument that cities, counties, and special districts can issue without voter approval. COPs can take different forms. A COP entitles the holder to a share of a pledged revenue stream, which typically comes from lease payments made by the issuer. Since COPs are structured as lease payments, they do not typically require voter approval.

4) **Statutory Liens.** Federal bankruptcy law defines a "lien" as a charge against or interest in property to secure payment of a debt or performance of an obligation. A "statutory lien" is a distinct type of lien that arises solely by force of statute. Unlike other types of liens, a statutory lien likely remains enforceable even after a bankruptcy filing.

There have been a few recent examples of statutory liens for local agencies. The Legislature authorized the West Contra Costa Health Care District (WCCHCD) to sell COPs secured by a statutory lien on the district's voter-approved parcel tax revenues [SB 644 (Hancock), Chapter 742, Statutes of 2011). WCCHCD filed for relief under Chapter 9 bankruptcy in 2006, and emerged from bankruptcy thereafter. However, it never managed to regain financial solvency and fell further into debt. The WCCHCD shut its hospital, a full-service acute care facility in 2015. WCCHCD again filed for bankruptcy in 2018, and SB 522 (Glazer), Chapter 133, Statutes of 2018 subsequently dissolved the WCCHCD Board of Directors and required the Board of Supervisors of Contra Costa County to either serve as or appoint the district board.

Additionally, AB 582 (Levine), Chapter 23, Statutes of 2013, enacted a statutory lien to secure COPs issued by the Palm Drive Healthcare District (PDHCD). In 2007, PDHCD filed for bankruptcy protection. The bankruptcy court subsequently approved a plan of adjustment that required the PDHCD to sell COPs and use the proceeds to satisfy its obligations under the plan and finance other specified expenses. PDHCD issued $11 million in COPs in 2010, allowing it to exit from bankruptcy. According to a Sonoma Local Agency Formation Commission Report, "PDHCD sold the health care facility to the American Advanced Management Group in 2019, after seeking approval from voters within the PDHCD's territory. At that time, the PDHCD no longer provided emergency or acute care services, directly or through a management agreement. The District has continued to provide limited community health services through grants to community organizations, an activity that could fall under the 'other medical services' authorized power.

"Whether the District could continue to operate, without exercising the powers to provide emergency and acute care services, has been variously discussed, but no determination on the matter has been entertained by Sonoma LAFCO to date. Generally, there is some consensus within the community that the primary if not sole activity of the District was to support the provision of emergency and acute care services at the facility in Sebastopol.

"Perhaps of most import however, is that the District Board has determined that the District should be dissolved, with a successor agency (the County) assigned to wrap up the financial affairs of the District. Fundamentally, this means managing the continued collection of tax assessments in order to pay off debt." PDHCD officially dissolved on August 7, 2020.

5) **City of Alameda Health Care District.** According to the Alameda LAFCO, the District was formed on July 1, 2002 after approval by over two-thirds (69%) of voters. The District was formed to take on operations of the Alameda Hospital, which was at the time operated as a nonprofit and was facing ongoing operating losses. At the time of formation, the voters also approved a parcel tax of $298 per parcel on the property owners of Alameda to defray operating costs and capital needs of the Alameda Hospital. The parcel tax exists in perpetuity and raises approximately $6 million in revenue annually.

According to the District, Alameda Hospital began negotiations in late 2012 with Alameda County Medical Center, now known as Alameda Health System (AHS). As a result, an affiliation agreement was finalized in the form of a Joint Powers Agreement (JPA). By the joint exercise of the common statutory powers of these two public organizations to operate health care facilities, the JPA facilitated the preservation of Alameda Hospital as a health care resource for Alameda County. The JPA was approved by both the District and AHS

Boards in 2013 and the affiliation was implemented in 2014. Under the JPA, AHS oversees and manages the operation of Alameda Hospital and its affiliated programs, including: licensure, certifications, financial management, and maintenance facilities. There are requirements for AHS to report regularly on such operations and improvements to the District Board of Directors. The District maintains responsibility for collection of the parcel tax revenue and for ensuring that it is used only to support hospital and health care services and facilities in the City of Alameda. Under the Joint Powers Agreement, AHS was obligated to:

a) Maintain at least 50 acute care beds.

b) Maintain an emergency department in Alameda.

c) Ensure completion of the State seismic standards for hospitals under SB 90 and SB 2190, which must be started in 2020 and completed in 2022.

In 2022, AB 2904 (Bonta) would have required the HCAI to grant Alameda Hospital a seven-year extension of the 2030 seismic safety deadline for buildings housing specified service. The Governor vetoed AB 2904 saying, "I commend the author for responding to their district's facility-specific needs, as well as the commensurate planning necessary to meet the 2030 deadline. However, any consideration of an extension must be contemplated across all communities and across all types of facilities, in a holistic manner. Only with a comprehensive strategy can we begin the discussion that will ensure that patients and their families, as well as the communities that these facilities serve, can be protected in a seismic or emergency event."

According to the District, it is estimated that the 2030 upgrades will cost approximately $54 million, all of which will be financed by the COPs. The expected savings because of the statutory lien authority is $2.8 million.

6) **Bill Summary and Author Statement.** This bill requires all COPs executed and delivered by the District between January 1, 2024, and December 31, 2034, including COPs executed before 2064 to refund COPs, to be secured by a statutory lien on all revenue generated on the District's parcel taxes. This bill also contains an urgency clause. The District is the sponsor of this bill.

   According to the author, "Alameda Hospital is the only hospital on the island of Alameda and is licensed as an acute care hospital, with many skilled nursing and subacute beds that has served the over 75,000 residents of Alameda and adjoining communities for over 100 years. Like many other hospitals, Alameda Hospital is facing financial constraints in meeting the state's 2030 seismic safety requirements. Closure of this hospital would be detrimental to the island. AB 2157 will help the hospital secure additional financing to help bridge that financial gap."

7) **Policy Considerations.** The Committee may wish to consider the following:

   a) **Winners and Losers**. By protecting investors holding COPs from becoming creditors if the District files for bankruptcy protection, AB 2157 may increase the risks borne by other potential creditors in a municipal bankruptcy proceeding. The District has indicated that it does not have debt of any kind, but it is unclear if it will need to issue additional debt in the future. The Committee may wish to consider if state law should shield some creditors in any bankruptcy proceeding, potentially leaving a smaller pool of remaining creditors to bear the costs of restructuring.

b) **Will We See More**? The District may not be the only local government confronting severe fiscal challenges resulting from the need to seismically retrofit a hospital. The Committee may wish to consider whether enacting a statutory lien to secure COPs issued by the District to help facilitate the seismic upgrades for its hospital may set a precedent that will invite similar requests for legislative relief from other financially stressed local governments.

8) **Arguments in Support.** According to the Districts, "The Hospital has achieved total compliance with the 2020 seismic retrofit requirement which were designed to prevent collapse of hospital structures. Alameda Hospital has served Alameda and neighboring communities for over one hundred years and is the only acute care facility on the island of over 70,0000 residents.

"In addition to 66 licensed acute beds and an emergency department with a certified stroke program, the Hospital also operates 181 distinct part skilled nursing and subacute beds, most of which are always of needy long term care residents. The threat of losing its acute license by 2030 would threaten all the services with closure.

"The Hospital has spent the last four years planning an approach to compliance with the 2030 standards, only to find estimates may run as much as $53 million, an amount that a hospital the size of Alameda cannot afford, especially in the wake of the pandemic, which has caused widespread financial hardship on the healthcare industry.

"AB 2157 would allow district officials to execute and deliver the certificates of participation, secured via statutory lien, needed to initiate the financing required to meet seismic standards as required by state law. Alameda Hospital is an essential service on an island separated from Oakland by two tunnels and three bridges and needs this critical legislation to limit major disruptions to healthcare services for our community."

9) **Arguments in Opposition.** None on file.

10) **Urgency Clause.** This bill contains an urgency clause and requires a 2/3 vote of each house.

**REGISTERED SUPPORT / OPPOSITION**:

**Support**

City of Alameda Health Care District [SPONSOR]
Alameda Health System

**Opposition**

None on file

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