

Date of Hearing: April 24, 2019

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 1487 (Chiu) – As Amended April 4, 2019

SUBJECT: San Francisco Bay area: housing development: financing.

SUMMARY: Creates the Housing Alliance for the Bay Area (HABA), a regional entity in the San Francisco Bay area, to help address housing issues. Specifically, **this bill:**

- 1) Establishes the San Francisco Bay Area Regional Housing Finance Act, and defines the following terms for purposes of the bill:
 - a) “Board” to mean the governing board of HABA;
 - b) “Entity” to mean HABA;
 - c) “San Francisco Bay area” to mean the entire area within the territorial boundaries of the Counties of Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, Solano, and Sonoma, and the City and County of San Francisco;
 - d) “Lower income households” to have the same meaning as that term is defined in Section 50079.5 of the Health and Safety Code; and,
 - e) “Low or moderate income households” to have the same meaning as “persons and families of low or moderate income,” as defined in Section 50093 of the Health and Safety Code.
- 2) Establishes HABA with jurisdiction extending throughout the San Francisco Bay area. States that the formation and jurisdictional boundaries of the entity are not subject to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000.
- 3) Provides that HABA’s purpose is to increase affordable housing in the San Francisco Bay area by providing for enhanced funding and technical assistance at a regional level for tenant protection, affordable housing preservation, and new affordable housing production.
- 4) Declares that it is the intent of the Legislature that HABA complement existing efforts by cities, counties, districts, and other local, regional, and state entities, related to addressing the goals described in the bill. Declares the intent of the Legislature that HABA be staffed by the existing staff of the Metropolitan Transportation Commission (MTC), or any successor agency, with the understanding that additional staff with expertise in affordable housing finance and other aspects of the entity’s work will be needed.
- 5) Provides that the governing board structure will include 18 voting members, including nine (9) from the MTC and nine (9) from the Association of Bay Area Governments (ABAG). Requires HABA to form an advisory committee comprised of nine representatives with knowledge and experience in the areas of affordable housing finance and development, tenant protection, resident service provision, and housing preservation. Specifies the following for the governing board:

- a) Each member shall serve at the pleasure of the appointing authority; and,
 - b) The appointing authority shall fill any vacancy on the board within 90 days from the date of the vacancy;
- 6) Provides that the board shall select from its members a chair, who shall preside over meetings of the board, and a vice chair from its members, who shall preside in the absence of the chair.
- 7) Allows a member to receive per diem from each board meeting that the member attends, and provides that the board shall set the amount of per diem, not to exceed one hundred dollars (\$100) per meeting. Prohibits a member from receiving a payment for more than two meetings in a calendar month. Allows a member to waive per diem.
- 8) Specifies that members of the board are subject to requirements for ethics training, and that HABA shall be subject to the Ralph M. Brown Act, the Public Records Act, and the Political Reform Act of 1974.
- 9) Requires a member to exercise independent judgment on behalf of the interests of the residents, the property owners, and the public as a whole in furthering the intent and purposes of this title.
- 10) Requires the time and place of the first meeting of the board to be at a time and place within the San Francisco Bay area fixed by the chair of the board. Requires, after the first meeting, the board to hold meetings at times and places determined by the board.
- 11) Allows the board to make and enforce rules and regulations necessary for the government of the board, the preservation of order, and the transaction of business. Allows the powers and duties of the board to be either by ordinance or resolution.
- 12) Allows the board to:
- a) Raise revenue and allocate funds throughout the San Francisco Bay area, as provided in 23), below;
 - b) Apply for and receive grants from federal and state agencies;
 - c) Solicit and accept gifts, fees, grants, and allocations from public and private entities;
 - d) Deposit or invest moneys of the entity in banks or financial institutions in the state, as provided;
 - e) Sue and be sued, except as otherwise provided by law, in all actions and proceedings, in all courts and tribunals of competent jurisdiction;
 - f) Engage counsel and other professional services;
 - g) Enter into and perform all necessary contracts;
 - h) Enter into joint power agreements pursuant to the Joint Exercise of Powers Act;

- i) Hire staff, define their qualifications and duties, and provide a schedule of compensation for the performance of their duties;
 - j) Use staff provided by MTC, as specified;
 - k) Assemble parcels and lease or acquire land for affordable housing development;
 - l) Collect data on housing production and monitor progress on meeting regional and state housing goals;
 - m) Provide support and technical assistance to local governments in relation to producing and preserving affordable housing;
 - n) Provide public information about the entity's housing programs and policies; and,
 - o) Any other express or implied power necessary to carry out the intent and purposes of this title.
- 13) Requires, if HABA proposes a measure pursuant to 12), above, the board of supervisors of the county or counties in which HABA has determined to place the measure on the ballot to call a special election on the measure. Requires the election to be consolidated with the next regularly scheduled statewide election and to be submitted to the voters in the appropriate counties, consistent with the requirements of Article XIII A, XIII C, and XIII D of the California Constitution, as applicable.
- 14) Requires a measure proposed by HABA that requires voter approval to be submitted to the voters of the entity in accordance with specified provisions of the Elections Code.
- 15) Specifies that because HABA has no revenues as of the effective date of this section, the appropriations limit for the entity shall be originally established based on receipts from the initial measure that would generate revenues for the entity, and that establishment of an appropriations limit shall not be deemed a change in an appropriations limit for purposes of Section 4 of Article XIII B of the California Constitution.
- 16) Requires HABA to file a resolution of the entity requesting consolidation and setting forth the exact form of the ballot question, in accordance with specified provisions of the Elections Code, with the board of supervisors of each county in which the measure shall appear on the ballot.
- 17) Requires the legal counsel for HABA to prepare an impartial analysis of the measure, which shall be subject to review and revision by the county counsel of the county that contains the largest population, as specified.
- 18) Requires each county included in the measure to use the exact ballot question, impartial analysis, and ballot language provided by the entity. Requires if two or more counties included in the measure are required to prepare a translation of ballot materials into the same language other than English, the county that contains the largest population, as specified, among those counties that are required to prepare a translation shall prepare the translation, or authorize the entity to prepare the translation, and that translation shall be used by other counties. Requires the elections officials, if a measure proposed by the entity is submitted to

the voters in two or more counties, to mutually agree to use the same letter designation for the measure.

- 19) Requires the county clerk to report the results of the election. Requires HABA to reimburse each county in which that measure appears on the ballot only for the incremental costs incurred by the county elections official related to submitting the measure to the voters with any eligible funds transferred to HABA from ABAG or MTC. Defines “incremental costs” to include all of the following:
 - a) The cost to prepare, review, and revise the impartial analysis of the measure;
 - b) The cost to prepare a translation of ballot materials;
 - c) The additional costs that exceed the costs incurred for other election races or ballot measures, if any, appearing on the same ballot in each county in which the measure appears on the ballot, including both of the following:
 - i) The printing and mailing of ballot materials; and,
 - ii) The canvass of the vote, as specified.
- 20) Prohibits HABA from regulating or enforcing local land use decisions and from acquiring property by eminent domain.
- 21) Requires the board to provide for regular audits of the entity’s accounts and records and to maintain accounting records, to report accounting transactions in accordance with generally accepted accounting principles (GAAP), as specified, for both public reporting purposes and for reporting of activities to the Controller.
- 22) Requires the board to provide for annual financial reports, which shall be made public.
- 23) Allows HABA to do all of the following:
 - a) Raise and allocate new revenue by placing on the ballot in all or a subset of the nine counties in the San Francisco Bay area various funding measures, including through the following funding mechanisms:
 - i) A parcel tax;
 - ii) A commercial linkage fee that is either of the following:
 - (1) A variable rate fee assessed on new construction, providing a credit for a project in a local jurisdiction with an existing linkage fee program;
 - (2) A flat rate fee assessed on new construction;
 - iii) A gross receipts tax with variable rates according to business sector with an exemption for small businesses;
 - iv) A business tax based upon the number of employees assessed at a variable rate with an exemption for small businesses;

- v) One-half of one cent (\$0.005) increase in sales tax;
 - vi) A general obligation (GO) bond to be funded by an ad valorem tax on the assessed value of local properties; and,
 - vii) A revenue bond.
- b) Incur and issue indebtedness and assess fees on any debt issuance and loan products for reinvestment of fees and loan repayments in affordable housing production and preservation;
 - c) Allocate funds to the various cities, counties and other public agencies and affordable housing projects within its jurisdiction to finance affordable housing development, preserve and enhance existing affordable housing, and fund tenant protection programs, in accordance with applicable constitutional requirements; and,
 - d) Declares the intent of the Legislature that the funding measures authorized in 23a), distribute the responsibility of addressing the affordable housing needs of the region across commercial developers, businesses above a certain size, taxpayers, and property owners within the region.
- 24) Provides that revenue generated pursuant to 23), above, shall be used for the construction of new affordable housing, affordable housing preservation, tenant protection programs, and general funds made available to local jurisdictions as an incentive to achieve affordable housing benchmarks to be established by HABA. Requires, subject to funding eligibility and subject to adjustment pursuant to 25), below, HABA to distribute the total funds for the region over a five-year period commencing after revenue is approved by voters as follows:
- a) A minimum of 60% for production of housing units affordable to lower income households;
 - b) A minimum of 5% and a maximum of 10% for tenant protection programs. Requires HABA to give priority to tenant protection programs that have flexibility funding sources, which can be used for any of the following:
 - i) Providing access to counsel for tenants facing eviction;
 - ii) Providing emergency rental assistance to lower income households;
 - iii) Providing relocation assistance for lower income households; and,
 - iv) Collection and tracking of information related to displacement risk and evictions in the region.
 - c) A minimum of 15% and a maximum of 20% for preservation of housing affordable to low- or moderate-income households;
 - d) A minimum of 5% and a maximum of 10% for general funds awarded to a local government that achieves affordable housing benchmarks established by HABA.

- 25) Allows HBA to lower the minimum distribution contained in 24), above, if it adopts a finding that the minimum funding amount exceeds the region's needs. Requires the finding to be placed on a meeting agenda for discussion at least 30 days before HABA adopts the finding.
- 26) Allows HABA to allocate funds directly to a city, a county, a public entity, or a private project sponsor.
- 27) Requires HABA to distribute funds so that an amount equal to or greater than 75% of the revenue received from a county over a five-year period through funding measures authorized by 23a), above, is expended in the county, as specified in 28), below.
- 28) Allows a county to request to administer all or a portion of the funds required to be expended in the county pursuant to 27), above. Allows HABA to approve, deny, or conditionally approve the request based on factors, including, but not limited to, whether the county has a demonstrated track record of successfully administering funds for the purposes listed in 23a), above, and has sufficient staffing capacity to conduct the work effectively.
- 29) Requires HABA to distribute funds to a county based on an expenditure plan submitted by the county and approved by HABA. Allows a county's proposed expenditure plan to contain funding amounts different than those listed above in 24). Allows HABA, in approving a county's expenditure plan and allocating funds, to adjust the funding amounts to ensure compliance with 24), above.
- 30) Requires funds provided to a county that are not committed within three years of collection to be returned to HABA.
- 31) Finds and declares that providing a regional financing mechanism for affordable housing development and preservation in the San Francisco Bay area, is a matter of statewide concern and is not a municipal affair, thereby applying the bill's provisions to all cities, including charter cities.

EXISTING LAW:

- 1) Establishes MTC as the transportation planning, coordinating, and financing agency for the nine-county San Francisco Bay area, and specifies its governance structure, duties, and powers.
- 2) Creates the Bay Area Toll Authority (BATA) as a separate entity governed by the same governing board as the MTC and makes BATA responsible for the programming, administration, and allocation of toll revenues from the state-owned toll bridges in the Bay Area.
- 3) Established the San Francisco Bay Restoration Authority and specifies its governance structure, duties, and powers. These powers include the ability to place revenue measures on the ballot in all of the Bay area counties and to issue bonds based on the proceeds of the revenue measure.

FISCAL EFFECT: This bill is keyed fiscal and contains a state-mandated local program.

COMMENTS:

- 1) **Bill Summary.** This bill establishes HABA and provides for the powers and duties, financing, elections provisions for a potential regional tax measure, and specifies how the revenues raised can be spent.

Pursuant to the bill's provisions, HABA can:

- a) Raise new revenue;
- b) Allocate funds to the various cities, counties, and other public agencies and affordable housing projects within its jurisdiction;
- c) Provide support and technical assistance to local governments in relation to producing and preserving affordable housing;
- d) Assemble parcels and lease or acquire land for affordable housing development;
- e) Collect data on housing production and monitoring progress on meeting regional and state housing goals; and,
- f) Provide public information about the entity's housing programs and policies.

The bill also specifically states that HABA may not regulate or enforce local land use decisions, or acquire property by eminent domain.

HABA may raise new revenue by authorizing the entity to place a measure on the ballot in all or a subset of the nine counties in the San Francisco Bay area. The bill lists the following as potential funding options:

- a) A parcel tax;
- b) A commercial linkage fee that is either of the following:
 - i) A variable rate fee assessed on new construction, providing a credit for a project in a local jurisdiction with an existing linkage fee program; or,
 - ii) A flat rate fee assessed on new construction;
- c) A gross receipts tax with variable rates according to business sector with an exemption for small businesses;
- d) A business tax based upon the number of employees assessed at a variable rate with an exemption for small businesses;
- e) One-half of one cent increase in sales tax;

- f) A general obligation bond to be funded by an ad valorem tax on the assessed value of local properties; and,
- g) A revenue bond.

Should HABA propose a ballot measure that will generate revenues, the board of supervisors of the county or counties in which the entity has determined to place the measure on the ballot must call a special election on the measure, consolidated with the next regularly scheduled statewide election. HABA would reimburse the counties for the incremental cost of the election.

The bill establishes the targets for expenditure of any revenues received through these fundraising measures, as follows, and allows HABA to expend up to 3% of funds for program administration:

- a) At least 60% must go towards production of housing units affordable to lower income households;
- b) From 15-20% for preservation of housing affordable to low- or moderate-income households;
- c) From 5-10% for tenant protection programs; and,
- d) From 5-10% for general funds awarded to a local government that achieves affordable housing benchmarks established by the entity.

At least 75% of the revenue received must return to the county of origin. Counties must submit expenditure plans to HABA for approval. Based on county's plan, capacity, and track record, HABA may allow a county to administer all or a portion its funds directly. HABA may also allocate funds directly to a city, a public entity, or a private project sponsor.

This bill is sponsored by the Non-Profit Housing Association of Northern California and Enterprise Community Partners.

- 2) **Author's Statement.** According to the author, "AB 1487 empowers the Bay Area to help address its affordable housing needs by enabling the region to raise new revenue and support local jurisdictions, and thereby ensure that the entire Bay Area is on track to end the housing crisis by providing affordable housing efficiently and effectively to all residents."
- 3) **Background.** This bill is modeled after several other regional entities, including the San Francisco Bay Restoration Authority (SFBRA), which was created by AB 2954 (Lieber), Chapter 690, Statutes of 2008. SFBRA was charged with raising and allocating resources for the restoration, enhancement, protection, and enjoyment of wetlands and wildlife habitat in the San Francisco Bay and along its shoreline. SFBRA's mission was to formulate a strategy for raising local revenues to help restore 36,000 acres of publicly owned Bay shoreline into tidal wetlands. The estimated cost of such an endeavor is about \$1.43 billion over 50 years.

The Legislature granted SFBRA the ability to utilize several financial tools to raise revenue, including levying a benefit assessment, special tax, or property-related fee, subject to constitutional requirements. Proposition 218 (1996) established that a tax levied by a

special-purpose authority is a special tax which requires two-thirds voter approval. Additionally, the Authority can issue revenue bonds under the Revenue Bond Law of 1941 and incur bond indebtedness, subject to specified requirements.

As a regional government agency, SFBRA spans across nine counties. AB 2103 (Hill), Chapter 373, Statutes of 2010, prescribed the method of how SFBRA places a proposal to levy a special tax before the voters. The Authority's officials wanted to specify the procedures for conducting a special election on a special tax proposed by the Authority and to clarify their existing statutory authority to levy special taxes.

AB 1656 (Fong), Chapter 535, Statutes of 2012, made membership and project eligibility changes, but also contained a provision to extend the sunset date for the Authority from 2029 to 2036. At the time, the Authority wanted the extension to ensure that they would be able to administer revenues from a regional ballot measure they planned to submit to voters. The sunset date extension was removed from AB 1656 following policy concerns raised over the lack of information about the timing of a proposed ballot measure. Most recently, SB 279 (Hancock), Chapter 514, Statutes of 2013, specified procedures for conducting a multi-county election to approve a special tax measure proposed by the Authority. On June 7, 2016, residents of the nine-county region voted with 70% majority to pass a \$12 parcel tax, which is estimated to raise approximately \$25 million annually, or \$500 million over 20 years, to fund shoreline projects that will protect and restore the Bay.

- 4) **CASA.** From the middle of 2017 to the end of 2018, MTC and ABAG convened a series of structured discussions with certain local government officials, developers, major employers, labor interests, housing and policy experts, social equity advocates and non-profit housing providers. This group was deemed the Committee to House the Bay Area, and nicknamed CASA. CASA identified that, to make housing in the region more affordable, 35,000 new housing units would need to be built annually, including 14,000 new subsidized affordable housing units. Additionally, the region has 30,000 units at risk of losing their affordability, and 300,000 lower-income households who are paying more than 50% of their income in rent.

The Bay Area already has substantial resources to fund the production, preservation, and protection of affordable housing; however, CASA's analysis is that there is still a \$2.5 billion funding gap annually between existing resources and what is needed. CASA proposes to meet \$1.5 billion of this deficit with regional and local self-help measures, with the remainder being funded from additional state and federal sources.

- 5) **Policy Considerations.** The Committee may wish to consider the following:
 - a) **New Entity?** This bill creates an entirely new regional entity, when several Bay area entities already exist, like ABAG or MTC. The Committee may wish to consider whether either of those entities could be given this new role, rather than creation of a new entity.
 - b) **Board Makeup of HABA.** The Committee may wish to consider what the makeup of the board should look like to best represent the cities and counties in the Bay area region, and whether the board members should be elected officials of those jurisdictions, thereby creating accountability to their voters. The Committee may wish to ask the author work

on this issue to refine the board makeup, if the outcome is to create an entirely new entity.

- c) **Inequitable Distribution of Funds?** Opponents of the CASA Compact have raised the issue that the establishment of a regional entity to collect and distribute funds may result in an inequitable distribution of such funds, and may create more regional bureaucracy without accountability for local decisions.
- d) **No End Date.** Unlike SFBRA, which has a statutory end date of December 31, 2048, this bill contains no end date for HABA. The Committee may wish to consider whether the actions of HABA should cease after a period of time or whether HABA should continue to exist into perpetuity, and whether a date also needs to be specified for when bonds must be paid off, and other collection of revenue must be terminated, and the winding down of HABA should occur.
- e) **Funding.** This bill allows HABA to raise and allocate new revenue by placing on the ballot various funding measures, including a parcel tax, sales tax, general obligation bonds and a revenue bonds, in addition to other specified fees. These funding mechanisms are missing cross-references to the relevant statutes. The Committee may also wish to consider:
 - i) **Sales Tax.** The author and sponsor may wish to clarify that it is a transactions and use tax (instead of a sales tax) that HABA has the authority to impose, in accordance with the procedures and requirements set forth in the Transactions and Use Tax Law, similar to the authority that the Bay Area Rapid Transit District has. The author may also wish to consider whether to insert language allowing the combined rate of all transactions and use taxes imposed in accordance with the law in the counties in the Bay Area region to exceed the 2% statutory cap.
 - ii) **Revenue Bond.** Revenue bonds are supported by the revenue from a specific project, such as a toll bridge, highway, or local stadium. This also includes bonds backed by revenue received from an enterprise function, like the collection, treatment, and disposal of garbage of sewage. The bill allows HABA to use a revenue bond as a financing mechanism. The Committee may wish to consider what enterprise function HABA is providing that produces revenue to back these types of bonds.
- 6) **Committee Amendments.** In order to address the governance issues raised above in 5a) and 5b), the Committee may wish to consider deleting language related to the board makeup and instead ask the author to work with cities, counties, MTC and ABAG to try to seek consensus on what HABA's board structure should look like.
- 7) **Arguments in Support.** Transform argues that "local jurisdictions cannot tackle this challenge on their own...the Bay Area's housing market is regional, and AB 1487 offers the regional approach we need by creating cross-county tools, programs, and funding to offer relief to our California families, low income communities of color, and long-time residents."
- 8) **Arguments in Opposition.** CalTax writes that "imposing an additional tax on Bay Area residents will increase their cost of living, make housing more expensive, and thus make home ownership and renting more difficult" and that this bill would "increase the fiscal challenges many middle-class families already face."

- 9) **Double-Referral.** This bill was heard by the Housing and Community Development Committee on April 10, 2019, and passed with a 5-2 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

Non-Profit Housing Association of Northern California [SPONSOR]
Enterprise Community Partners, Inc. [SPONSOR]
Bay Area Council
Burbank Housing Development Corporation
California Community Builders
California YIMBY
Chan Zuckerberg Initiative
City of Vallejo
Community Legal Services in East Palo Alto (if amended)
Genesis (if amended)
Greenbelt Alliance
Habitat For Humanity East Bay/Silicon Valley
Hamilton Families
Monument Impact (if amended)
Pico California
Public Advocates Inc. (if amended)
San Francisco Foundation
Silicon Valley At Home (Sv@Home)
TMG Partners
Transform

Oppose

Alameda County Transportation Committee (unless amended)
California Taxpayers Association
Howard Jarvis Taxpayers Association
Livable California
Regional-Video
3 Individual Letters

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