

Date of Hearing: April 24, 2019

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 1717 (Friedman) – As Amended April 10, 2019

SUBJECT: Transit-Oriented Affordable Housing Funding Program Act.

SUMMARY: Creates the Transit-Oriented Affordable Housing Funding Program Act to use tax increment to fund multifamily housing near transit. Specifically, **this bill:**

1) Defines the following terms:

- a) “Affected taxing entity” to mean any governmental taxing agency which levied or had levied on its behalf a property tax on all or a portion of the property located in the proposed district in the fiscal year or before the designation of the district;
- b) “Affected taxing entity equity amount” to mean the amount of ad valorem property tax revenue the affected taxing entity would have received from property located within the redevelopment project area in the absence of the affordable housing financing district;
- c) “District” to mean a transit-oriented affordable housing district;
- d) “District contract” to mean a contract between the California Housing Finance Agency (CalHFA) and a district;
- e) “Governing board” to mean the legislative body of a city that establishes a district;
- f) “High-quality bus corridor” to mean a corridor with a fixed route bus service that meets both of the following:
 - i) Has average service intervals of no more than 15 minutes during the four peak hours between 6 a.m. and 10 a.m., and the four peak hours between 3 p.m. and 7 p.m., Monday through Friday; and,
 - ii) Has average service intervals of no more than 20 minutes during the hours of 6 a.m. to 10 a.m., Monday through Friday;
- g) “Landowner” to mean any person shown as the owner of land on the last equalized assessment roll known to be the owner of the land by the legislative body;
- h) “Legislative body” to mean the city council or the board of supervisors of a city and county that participates in the program by establishing a district;
- i) “Major transit stop” to mean a site containing an existing rail station or a ferry terminal served by either buss or rail transit service;
- j) “Multifamily housing development to mean a project that includes a mixed-use project for which a developer seeks entitlement from the city that includes 10 or more proposed residential units that is located within the plan area;

- k) “Plan area” and “area included within a district” to include only those properties located within a program area that are selected by CalHFA and are eligible to participate based on the inclusion of affordable housing;
 - l) “Program area” to mean any site, parcel, or area, which the territorial boundaries of a city participating in the program that is eligible for program funding and located within one-half mile of transit and is zoned for multifamily housing;
 - m) “Program funding” to mean financing provided by a district and agency;
 - n) “Transit-oriented affordable housing district” to mean a legally constituted governmental entity separate and distinct from the city that established it for the purpose of financing affordable housing. Requires a district is subject to the Ralph M. Brown Act; and,
 - o) “Trust fund” to mean the Transit-Oriented Affordable Housing Trust Fund.
- 2) Allows a city participating in the Program to enact an ordinance to establish a district. Requires the city to notify CalHFA of its intent to participate in the Program and formation of a district and provide a copy of the ordinance establishing the district and an estimate of the current percentage of the area within the jurisdiction’s boundaries of the city that is within one-half mile of a major transit stop or one-quarter mile of a high-quality bus corridor.
- 3) Requires CalHFA to notify the city of receipt of the notice within 30 days. Provides that the city’s participation in the program is effective as of the date of the CalHFA’s acknowledgement of that notice or after the 30-day period, whichever occurs sooner. Provides that once the city’s participation in the Program becomes effective, the city may designate program areas and approve multifamily developments to be funded under the program.
- 4) Requires the district to prepare a financing plan consistent with the general plan that includes all of the following:
- a) A map and legal description of the district;
 - b) Identification of areas proposed to be included in the district that are close to transit as defined or are multi-family sites;
 - c) A statement that the plan area comprises only those parcels within program areas defined;
 - d) A financing section that includes the following:
 - i) A projection of the amount of tax revenues expected to be received by the district in each year during which the district will receive tax revenues;
 - ii) A plan for awarding program funds as specified;
 - iii) A pass-through provision that requires all the affected taxing entities excluding the schools and the city establishing the entity at an amount equivalent to what the taxing entity would receive without the district; and,

- iv) Procedures for allocation of program funding to each multifamily housing development within the plan are not to exceed the amount or the term for which those multifamily housing project are eligible.
- 5) Authorizes a city council or board of supervisors to designate one or more program areas that cover any site that meets the following requirements:
 - a) The site is located within one-half mile of a major transit stop or one-quarter mile radius of a high-quality bus corridor; and,
 - b) The site is zoned to permit multifamily housing as an allowable use under the city's zoning ordinances and is designated for residential use in the city's general plan and land use map.
 - 6) Allows a city council or board of supervisors, landowner residing within the city, or any member of the public to propose to designate program areas that are located near transit and multi-family.
 - 7) Provides that if the governing board or a person other than the landowner designates a program area, the governing board shall provide notice to the landowner.
 - 8) Requires a governing board to maintain a map identifying all areas within the city designated as program area.
 - 9) Requires any action or proceeding to attack, review, set aside, void, or annul the creation of a district shall be started within 30 days after enactment of the financing plan.
 - 10) Requires a multi-family housing development to meet the following criteria to qualify for program funding:
 - a) At least two-thirds of the total square footage of the multifamily development is designated for residential use;
 - b) It is located within qualifying distance of transit;
 - c) It includes deed-restricted affordable units as required; and,
 - d) It is located on a site that is zoned to permit multifamily housing as an allowable use.
 - 11) Requires an application for the Program to contain the following:
 - a) A description of the multifamily housing development;
 - b) The total square footage of the multifamily housing development project including both the residential and nonresidential;
 - c) The number of market rate units and the number of affordable units as required that are proposed for the development;
 - d) Specified financial information; and,

- e) Any other information the district or CalHFA determines necessary to make a development eligible for funding.
- 12) Requires a district to provide CalHFA a copy of the application for a development. Provides that upon receipt of approval by CalHFA a district can approve a development for funding.
 - 13) Allows a district to approve a development for funding at the same time any conditional use permit or discretionary permit or other zoning entitlements are approved by the city, but cannot approve funding before receiving these approvals. Requires a district to provide CalHFA proof of local land use approvals with the application for funding.
 - 14) Requires a multifamily development that receives program funding to include units that are subject to 55 year affordability at one of the following affordability levels:
 - a) At least 5% of the total units are restricted to very low income households;
 - b) At least 10% of the total units are restricted to lower income households; or,
 - c) At least 15% of the total units are restricted to moderate income households.
 - 15) Requires any affordable housing units that are included in a multifamily housing development as a condition of approval by a local inclusionary housing ordinance to be considered in the determination of whether the multifamily housing development meet the minimum requirements specified to qualify for a program.
 - 16) Provides that for multi-family housing developments that include the minimum percentage of very low, lower income and moderate income units:

Percentage Very Low Income Units	Program Funding Limit (dollars)	Term of Division of Taxes (years)
13 or less	—	4
14	—	9
15	—	14
16	—	17
17	—	21
18	—	24
19	—	27
20 or more	—	29

Percentage Lower Income Units	Program Funding Limit (dollars)	Term of Division of Taxes (years)
15 or less	—	5
16	—	10
17	—	14
18	—	18
19	—	21
20	—	23
21	—	26
22	—	28
23 or more	—	30

Percentage Moderate Income Units	Program Funding Limit (dollars)	Term of Division of Taxes (years)
17 or less	—	5
18	—	9
19	—	13
20	—	16
21	—	19
22	—	22
23	—	24
24	—	26
25	—	28
26 or more	—	30

17) Provides that if the multifamily housing development includes a qualifying percentage of units affordable at more than one income level as specified in 14), above, the development must be eligible for the maximum amount of funding and the longest term for the division of taxes for which it qualifies.

18) Provides that if the developer of multifamily housing does not complete the development within an unspecified period of time the developer is required to pay to the district an amount equal to the amount of program funding that the developer received.

19) Specifies the process of allocating tax increment in a district.

20) Authorizes a district to use revenues from various local funding sources provided that the appropriate threshold of voter-approval has been met.

21) Authorizes a district to enter into a contract with CalHFA to include at a minimum the following provisions:

- a) No later than December 31 of each year, during which the contract is in effect, the district shall remit all of the tax increment or other local funding for the district to CalHFA;
 - b) Requires CalHFA to remit the tax increment collected in the project area to the Controller;
 - c) Requires CalHFA to issue revenue bonds secured by tax increment collected in project areas; and,
 - d) Provides that money remitted to Cal HFA and deposited in the trust fund are property of the district that remitted the money and are not state money.
- 22) Requires CalHFA to develop a process for preliminarily approving or disproving multifamily housing developments for participation in the program.

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

COMMENTS:

- 1) **Bill Summary and Author's Statement.** This bill would create a tax increment financing tool for multifamily housing development near transit that includes a percentage of affordable housing. Local governments would identify districts within either one-half mile of transit or one-quarter mile that are zoned for multifamily housing. A city would then freeze the property tax rate in the district and capture growth of the city and school district's property tax. The city would transfer this property tax to the State Controller and CalHFA could bond against the property tax. CalHFA will send the money back to the project to fund development of the multifamily housing. This bill is sponsored by Up for Growth Action.

According to the author, "AB 1717 creates a program to incentivize density and create affordable housing units in transit corridors. The program provides funding to support high density development that is within a half mile of major transit stops and a quarter mile of bus service, on land that is zoned for multifamily housing. This mechanism allows individual cities to designate areas to be eligible for this financial support. To determine if a project is eligible, the proposed development must be inside the city-designated program area and at least two-thirds of the total square footage must be multifamily. The development must also provide affordability based on the set-aside requirements of the program. Individual developments receive financial support in the form of a bond from CalHFA in exchange for providing high density development with income-restricted units for 55 years. The amount of the bond is determined by the duration of the tax abatement."

- 2) **March 2018 Informational Hearing.** This Committee held a joint informational hearing on March 14, 2018, entitled "A Review and Analysis of Current Community Development Tools" with the Housing and Community Development Committee. The goal of this hearing was to review the status of current community development tools for local agencies, specifically tax-increment tools like Enhanced Infrastructure Financing Districts (EIFDs), Community Revitalization and Investment Authorities (CRIAs), Affordable Housing Authorities (AHAs), and Neighborhood Infill and Transit Improvement Act (NIFTIs), all tools that were created after redevelopment agencies (RDAs) were dissolved.

The hearing sought to answer whether the new tools were being used, and if so, where and for what types of projects. At that hearing, Committee members heard from multiple witnesses and stakeholders that these new tools have not been used very much yet and that several reasons exist for this, including that many cities no longer have knowledgeable staff on hand to help set up these new tools at the local level, and that some cities are just starting to look at these tools and figure out which one would best fit their needs.

Background on Tax Increment Tools for Local Agencies. After the dissolution of redevelopment agencies in 2011, the Legislature worked on the creation of several new tools to help cities and counties finance infrastructure improvements, including the following:

- a) **EIFDs.** SB 628 (Beall), Chapter 785, Statutes of 2014, authorized the legislative body of a city or county to establish an EIFD to capture property tax increment, adopt an infrastructure financing plan, and issue bonds upon approval by 55% of the voters, in order to finance public capital facilities or other specified projects of communitywide significance, including, but not limited to, brownfield restoration and other environmental mitigation, the development of projects on a former military base, transit priority projects, and projects to implement a sustainable communities strategy. SB 628 also allowed other affected taxing entities to participate in the EIFD by contributing their property tax increment revenues to the EIFD, and provided the method for this division and allocation of taxes. Provisions in SB 628 specify that the allocation of tax increment revenues to an EIFD must not be construed to prevent an EIFD from using revenues authorized by other specified statutes, subject to applicable voter approval requirements. Several cities have formed EIFDs: West Sacramento, La Verne, and San Diego.
- b) **CRIsAs.** AB 2 (Alejo and Garcia), Chapter 319, Statutes of 2015, allowed local government entities, excluding schools, to form a CRIA to collect 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 powers, like eminent domain, to eradicate blight.

Like redevelopment agencies, AB 2 allows CRIsAs to freeze the property taxes at the time the plan for revitalizing the area is approved. The CRIA will collect all the tax increment or the increase in property taxes that is generated after that point and use it on specified activities. CRIA law requires the taxing entities in the area, including the county, city, special districts, or a military base, to 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 authority. To date, no cities have formed a CRIA.

- c) **AHAs.** AB 1598 (Mullin), Chapter 764, Statutes of 2017, authorizes a city or county to create an AHA, modeled after CRIA law, to fund activities related to the promotion and

development of affordable housing. The bill's provisions specify that the AHA 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 the tax was imposed. The bill also contains the process for forming the AHA, the governance structure of the AHA, and requires the AHA to adopt an affordable housing investment plan and what that plan must contain, as well as a requirements to comply with the Ralph M. Brown Act, Public Records Act, and the Political Reform Act. To date, no cities have formed an AHA.

- d) **NIFTI.** AB 1568 (Bloom), Chapter 764, Statutes of 2017, establishes the NIFTI Act, in existing EIFD law, and specifically allows an EIFD to capture sales and use tax or transactions and use tax revenues, should a city or county decide to allocate such revenues to the EIFD. The revenues would be used specifically to fund an area that is an infill site, and the bill requires that 20% of the funds be used for housing purposes. AB 1568 specifies that only an EIFD that is coterminous with the city or county that formed the EIFD can use taxes in this manner. The bill also requires that the legislative body of the city or county that elects to make an allocation of local sales and use tax to establish the procedures that will be used to calculate the revenues, the decision process by which a city or county will determine the amount that will be dedicated to the proposed district, and fix a time and place for public hearing on the proposal. To date, no cities have formed at NIFTI.
 - e) **NIFTI-2.** SB 961 (Allen), Chapter 559, Statutes of 2018, allows for the formation of a NIFTI-2, which can issue bonds to finance affordable housing developments near transit stations, without voter approval.
- 2) **Arguments in Support.** Supporters argue that the promotion of transit-oriented development is a key component in improving the connections between transportation, housing and jobs, and that this bill provides the financial incentive and the means to promote housing near transit by leveraging the bonding authority of CalHFA.
 - 3) **Arguments in Opposition.** Howard Jarvis Taxpayers Association, writes “However, we have long believed that any long-term redevelopment entity needs to achieve two-thirds voter approval before either approving bonds or engaging in tax increment financing. This is especially true with vertical housing districts where tax revenues will be diverted primarily from cities, counties and special districts, potentially taking money away from valuable existing programs. Residents in those areas deserve to have a say about how their tax dollars will be used for decades to come, especially because the projects are likely to last longer than the local government officials who authorized them will be in office.
 - 4) **Double-Referral.** This bill was heard in the Housing and Community Development Committee on April 10, 2019, and passed with a 6-1 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

Alameda County Transportation Commission
American Planning Association, California Chapter
Bay Area Housing Advocacy Coalition
California Apartment Association
California Association of Realtors (if amended)
California Association of Veteran Service Agencies
California State Treasurer
California YIMBY
Up For Growth

Opposition

Howard Jarvis Taxpayers Association

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