

Date of Hearing: July 12, 2023

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Juan Carrillo, Chair

SB 440 (Skinner) – As Amended June 30, 2023

**SENATE VOTE:** 30-8

**SUBJECT:** Regional Housing Finance Authorities.

**SUMMARY:** Authorizes two or more local governments to establish a regional housing authority (Authority) for purposes of raising, administering, and allocating funding and providing technical assistance at a regional level for affordable housing development, as specified. Specifically, **this bill:**

- 1) Defines the following terms:
  - a) “Affordable housing” to mean housing that is subject to an affordability restriction by a public entity that reserve units for persons and families of low or moderate income, as defined.
  - b) “Board” to mean the governing board of an Authority.
  - c) “Local Government” to mean a city, county, or special district, including a school districts or community college district.
  - d) “Underlying land use jurisdiction” to mean any of the Authority’s representatives or counties.
- 2) Authorizes two or more local governments to establish an Authority, as specified.
- 3) Provides that the formation and jurisdictional boundaries of the Authority are not subject to Local Agency Formation Commission Law.
- 4) Specifies that an Authority’s purpose is to raise, administer, and allocate funding and provide technical assistance at a regional level for affordable housing development, including new construction and the preservation of existing housing to serve a range of incomes and housing types, including rental and owner-occupied housing.
- 5) Prohibits an entity that is located within the jurisdiction of the Bay Area Housing Finance Authority (BAHFA) or the Los Angeles County Affordable Housing Solutions Agency (LACAHS) from participating in an Authority established pursuant to this bill.
- 6) Provides that an Authority shall be governed by a board of directors consisting of a minimum of three directors. All directors shall be elected officials representing the cities, special districts, or counties that are members of the Authority. The Authority shall consist of

members appointed by each of the cities, special districts, or counties that are a member of the Authority in proportion to the population served by the member city, special districts, or county.

- 7) Requires the board to elect a chairperson and a vice chairperson from among its members at the first meeting held in each calendar year.
- 8) Specifies that a board member may receive a per diem, as specified, but that amount shall not exceed \$100 per meeting.
- 9) Provides that a board member shall serve a term of two years.
- 10) Specifies the process for filling a vacancy on the board.
- 11) Provides that board members are subject to ethics training requirements, and that the Authority is subject to the Ralph M. Brown Act, the California Public Records Act, and the Political Reform Act of 1974.
- 12) Requires the Authority to engage in public participation processes, which include the following:
  - a) Outreach efforts to encourage the active participation of a broad range of stakeholder groups in the planning process, including, but not limited to, affordable housing and homelessness advocates, nonprofit developers, neighborhood and community groups, environmental advocates, equity organizations, home builder representatives, and business organizations.
  - b) Holding at least one public meeting regarding any relevant plan or proposals being considered by the Authority, as specified.
  - c) A process for enabling members of the public to provide a single request to receive Authority notices, information, and updates.
- 13) Authorizes the Authority to make and enforce rules and regulations necessary for governing the Authority, the preservation of order, and the transaction of business.
- 14) Provides that, in exercising the powers and duties conferred on the Authority by this bill, the Authority may act by resolution, and that a board member shall exercise independent judgement on behalf of the interest of the residents, property owners, and the public in furthering the intent of this bill.
- 15) Specifies when and where an Authority shall hold board meetings.
- 16) Provides that, five years after the voters approve an initial ballot measure to generate revenues for the Authority, the Authority shall review the implementation of the measure. The review shall include an analysis of the expenditures to date, and the number of affordable housing units produced and preserved at different household income levels.

- 17) Requires the board to form an advisory committee composed of nine representatives with knowledge and experience in the areas of affordable housing finance, development, and management, including rental and owner occupied housing. The advisory committee shall assist in the development of funding guidelines and the overall implantation of this bill.
- 18) Specifies that, consistent with the provisions of this bill, the advisory committee shall provide consultation and make recommendations to the board. The advisory committee shall meet as necessary to fulfill their roles and responsibilities.
- 19) Provides that and Authority may do all of the following:
  - a) Place one or more measures on the ballot to raise revenue and allocate funds throughout the jurisdiction of the Authority, as specified.
  - b) Establish any of the following:
    - i) An infrastructure finance district.
    - ii) And enhanced infrastructure financing district.
    - iii) An affordable housing authority.
    - iv) A climate resilience district.
  - c) Apply for and receive grants or loans from public and private entities.
  - d) Solicit and accept gifts, fees, grants, loans, and other allocations from public and private entities.
  - e) Deposit or invest moneys of the Authority in banks or financial institutions, as specified.
  - f) Sue and be sued, as specified.
  - g) Engage counsel and other professional services.
  - h) Enter into and perform all necessary contracts.
  - i) Enter into joint powers agreements.
  - j) Hire staff, define their qualifications and duties, and provide a schedule of compensation for the performance of their duties.
  - k) Utilize staff employed by the cities, special districts, and counties that established the Authority, as authorized by the representative cities, counties, or special districts.
  - l) Allocate and deploy capital and generated fees or income, as specified.

- m) Acquire, hold, and manage or cause to be managed existing buildings for the purpose of attaching long-term affordability restrictions on the housing units to protect against displacement.
  - n) Land bank, assemble parcels, and lease, purchase, or otherwise acquire land for purpose of housing development or redevelopment and associated infrastructure. For any property acquired, the Authority shall have the power to set the land use and development parameters for such property, including setting the request for proposal criteria and selection process for a development partner.
  - o) Accept excess or surplus property from the state, for which the state shall convey its land use authority over such property.
  - p) Accept public land and buildings from any governmental entity, as specified.
  - q) Establish and modify the terms of potential capital investments deployed by the Authority, including waiving or forgiving interest or principal payments.
  - r) Collect data on housing production and monitor progress on meeting regional and state housing goals.
  - s) Provide support and technical assistance to local governments in relation to producing and preserving affordable housing.
  - t) Provide public information about the Authority's housing programs and policies.
  - u) Incur and issue general obligations bonds and other indebtedness, and otherwise incur liabilities or obligations, as specified, and issue mortgage revenue bonds pursuant to existing law.
  - v) Create one or more California limited liability companies of which Authority is the sole member and exercise any of the powers granted to the Authority by this bill through those limited liability companies.
  - w) Any other express or implied powers necessary to carry out the intent and purposes of this bill.
- 20) Specifies that if the Authority proposes a measure that will generate revenues and that requires voter approval pursuant to the California Constitution, the board of supervisors of the county or counties in which the Authority has determined to place the measure on the ballot shall call a special election on the measure. The special election shall be consolidated with the next regularly scheduled statewide election and the measures shall be submitted to the voters in the appropriate counties, consistent with the requirement of Articles, XIII, XIII, and XIII, and Article XVI of the California Constitution, as applicable.
- 21) Specifies the requirements an Authority must follow when placing a measure on the ballot.
- 22) Provides that an Authority shall only have the power to exercise land use authority and set development parameters if the Authority includes the underlying land use jurisdiction. If the

authority includes territory of multiple land use jurisdictions, each land use jurisdiction shall be a member of the Authority before the Authority can exercise these powers.

- 23) Prohibits and Authority from acquiring property by eminent domain.
- 24) Specifies that action taken by and Authority to raise, administer, or allocate funding for affordable housing preservation, new affordable housing production, or to provide technical assistance consistent with the Authority's purpose shall be exempt from the California Environmental Quality Act (CEQA).
- 25) Requires the Authority board to provide for regular audits of the Authority's accounts and records and report accounting transactions in accordance with general accepted accounting principles adopted by the Governmental Accounting Standards Board of the Financial Accounting Foundation for both public reporting purposes and for reporting activates to the Controller.
- 26) Requires the Authority board to provide for annual financial reports and make copies of the annual financial reports available to the public.
- 27) Authorize an Authority to raise and allocate new revenue through both of the following funding mechanisms:
  - a) Special taxes, subject to voter approval, as follows:
    - i) A parcel tax, as specified.
    - ii) A gross receipts business license tax, as specified.
    - iii) A special business tax, as specified.
    - iv) A special parcel tax, as specified.
    - v) A documentary transfer tax, as specified.
  - b) A commercial linkage fee, as specified.
- 28) Provides that any funding mechanism or combination of funding mechanisms that requires voter approval pursuant to the California Constitution or this bill may be placed on the ballot in all or a subset of the counties within the jurisdiction of the Authority. A measure placed on the ballot in a subset of the Authority counties shall apply only in those counties in which the measure was submitted to the voters.
- 29) Authorizes special taxes authorized by this bill to be imposed by qualified voter initiative.
- 30) Specifies how special taxes and commercial linkage fees shall be administered.
- 31) Authorizes the Authority board to, by majority vote, initiate proceedings to issue general obligation bonds by adopting a resolution stating its intent to issue bonds.

- 32) Specifies that the Authority, with approval of two-thirds of the voters, may levy ad valorem property taxes to secure debt pursuant to Article XIII A of the California Constitution.
- 33) Authorizes the Authority to issue revenue bonds, payable from Authority revenues, in accordance with the Revenue Bond Law of 1941, as specified.
- 34) Provides that the Authority or any person executing the bonds issued pursuant to this bill shall not be personally liable on the bonds by reason of their issuance.
- 35) Specifies that the the bonds and other obligations of the Authority are not a debt of any city, county, or special district, or any of its affiliated entities, or of the state or of any of its political subdivisions, other than the Authority, and neither a city, county, special district, nor the state or any of its political subdivisions, other than the Authority, shall be liable on the bonds, and the bonds or obligations shall be payable exclusively from funds or properties of the Authority, as specified in the applicable bond or other security document. Bonds issued pursuant to this bill shall contain a statement to this effect on their face.
- 36) Provides that, if the signature of any member of the Authority or staff member of the Authority appears on bonds issued pursuant to this title, and that individual ceases to be a member of the Authority or staff member of the Authority before delivery of the bonds, that member's signature shall be as effective as if the member had remained in office.
- 37) Provides that every two years after the issuance of bonds, the Authority shall contract for an independent financial and performance audit. The audit shall be conducted according to the guidelines established by the Controller. A copy of the completed audit shall be provide to the Controller, the Director of Finance, and the Joint Legislative Budget Committee.
- 38) Allows, upon request of the Governor or the Legislature, the Bureau of State Audits to conduct a financial and performance audit of the Authority. The results of any audit shall be provided to the Authority board, the Controller, the Director of Finance, and the Joint Legislative Budget Committee.
- 39) Specifies that any action to determine the validity or adoption of any tax, fee, or other charge provided for in, or the validity of bonds issued pursuant to, this bill, or any of the proceedings, contracts, agreements, or other arrangements or matters entered into, shall be commenced within 60 days from the date of the election or adoption of the resolution approving such matters, as applicable, pursuant to existing validation proceeding law. After that date, the adoption of such a tax, fee, or other charge, the issuance of the bonds, and all proceedings in relation thereto, shall be held valid and incontestable in every respect.
- 40) Provides that revenue generated for the Authority shall be used for any of the following purposes:
  - a) The development of affordable home ownership and rental housing, including programs that enable persons and families of low or moderate income to become or remain homeowners.
  - b) Affordable housing preservation.

- c) Planning and technical assistance related to affordable housing.
  - d) For infrastructure to support housing.
  - e) Any other purpose specifically authorized by this bill.
- 41) Requires the Authority board to, in consultation with the advisory committee, adopt a regional expenditure plan for the use of housing revenue by July 1 of each year, except the Authority board shall select the deadline to adopt the first regional expenditure plan. The regional expenditure plan may cover multiple years, as determined by the Authority board.
- 42) Specifies that the regional expenditure plan shall do both of the following:
- a) Set forth the share of revenue and estimated funding amount to be spent on each of the categories described in 40) above, indicate the household income levels to be served within each category of expenditures, and estimate the number of affordable housing units to be developed by income category.
  - b) Identify existing funding sources from federal, state, and local housing programs and assess how projects and programs to be funded by revenue generated will complement these existing funding sources to meet the housing needs within the jurisdiction of the Authority.
- 43) Provides that in the second year, the Authority shall include a report in the regional expenditure plan that provides allocations and expenditures to date of projects and programs funded and the households served by income level.
- 44) Authorizes, before the distribution of funds each year, the Authority to be entitled to up to 5% of the funds of any measure approved pursuant to this bill for general administration.
- 45) Requires, in the event that demolition or rehabilitation of housing units is required, all the following to apply:
- a) If the housing units are occupied at the date of acquisition, the development must provide the same number or equivalent number of bedrooms to be made available at affordable rent or cost to, and occupied by, persons and families in the same or lower income category as those households in occupancy.
  - b) If existing residents must be relocated due to demolition or rehabilitation needs, the developer must provide relocation benefits to the occupants.
  - c) If existing residents must be relocated due to demolition or rehabilitation needs, the developer must provide a first right of refusal for a comparable unit available in the new or rehabilitated housing development that is affordable to the household at an affordable rent, an affordable cost, or a rent that is consistent with the maximum rent levels stipulated by the public program providing financing for the development.

- 46) Authorizes the Authority to approve funds for a project or program directly to a city, a county, a public entity, or a private project sponsor.
- 47) Provides that an Authority board may make a finding that market rate rents or housing costs are unaffordable to households at 120% of the area median income (AMI) in a particular geographic area. An Authority that makes this finding may utilize a higher income limitation for housing developed and preserved within that particular geographic area, provided that the income limitation does not exceed 150% of the AMI.
- 48) Specifies that when making a finding pursuant 47) above, an Authority shall utilize data on the employment and economy, population, household, and income trends, comparable rents, and demand and absorption rate of the particular geographic area to demonstrate that the higher income limitation is necessary to advance the purposes of this bill.
- 49) Provides that the Authority shall monitor expenditures in coordination with local jurisdictions. The Authority board may adopt guidelines applicable to such funds as deemed necessary to ensure they are spent in a timely manner consistent with the goals of this bill.
- 50) Specifies that, to ensure oversight and accountability, an Authority shall prepare and submit an annual report to the Legislature on allocations and expenditures under its control. The report shall include a description of projects funded and their status, and the households served by income level.
- 51) Provides that if the Commission on State mandates determines that this bill contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made.
- 52) Finds and declares that providing a regional financing mechanism for affordable housing production and preservation throughout the state is a matter of statewide concern and is not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, this bill applies to all cities, including charter cities.

**EXISTING LAW:**

- 1) Establishes BAHFA to raise, administer, and allocate funding for affordable housing in the San Francisco Bay Area, and provide technical assistance at a regional level for tenant protection, affordable housing preservation, and new affordable housing production. (Government Code (GC) § 64502 et al.)
- 2) Establishes LACAHSAs, and authorizes LACAHSAs to utilize specified local financing tools to fund renter protections and the preservation and production of housing units affordable to households earning up to 80 percent of AMI. (GC § 64700 et al.)

**FISCAL EFFECT:** According to the Senate Appropriations Committee:

- 1) Unknown, potentially reimbursable state-mandated costs would be incurred by county officials with respect to elections procedures for revenue measures proposed by an Authority, and the administration of any taxes imposed pursuant to the bill. Staff notes that the bill requires an Authority to reimburse the county for the incremental costs incurred to submit a



measure to the voters, and the county may deduct incremental costs for administering any taxes from the portion transferred to the Authority. Any claims for state reimbursement for other local costs would be subject to a determination by the Commission on State Mandates (General Fund).

- 2) HCD estimates minor and absorbable costs for staff in the Policy Development Division to develop guidance and provide technical assistance to local agencies and developers. HCD notes that it may require additional resources for the cumulative workload associated with this bill in conjunction with several other measures, should they all be enacted (General Fund).

#### COMMENTS:

- 1) **Bill Summary and Author's Statement.** This bill authorizes two or more local governments to establish an Authority for purposes of raising, administering, and allocating funding and providing technical assistance at a regional level for affordable housing development, as specified. The Authority is granted specific powers, and the bill establishes a governance structure and imposes reporting and auditing requirements. It also spells out the specific types of funding streams that may be collected, and that they may be used for affordable housing development and preservation, and infrastructure necessary for those developments.

According to the author, "As California's housing crisis has continued to grow increasingly severe, it has become clear that no one policy can solve it. Instead, the state needs a multifaceted approach to reduce hurdles to housing construction and address the unique housing needs of different regions. SB 440 empowers communities to address their own affordable and missing middle housing shortages by allowing regions to create finance agencies that can fund the construction and preservation of affordable housing. This will help ensure that the local entities who are stepping up to do their part to solve our housing crisis have the tools they need to get straight to work making sure everyone in their community has a home."

This bill is sponsored by the California Housing Consortium.

- 2) **Affordable Housing Need.** According to the 2022 Statewide Housing Plan, to meet California's unmet housing needs, the state needs an additional 2.5 million housing units, including 1.2 million for lower-income households. Decades of underbuilding have led to a lack of housing overall, particularly housing that is affordable to lower-income households. The state needs an additional 180,000 new units of housing a year to keep up with demand – including about 80,000 units of housing affordable to lower-income households. By contrast, production in the past decade has been under 100,000 units per year – including less than 10,000 units of affordable housing per year.

Furthermore, the state's homelessness crisis is driven in large part by the lack of affordable rental housing for lower income people. According to the California Housing Partnership Corporation's (CHPC)'s Housing Need Dashboard, in the current market, nearly 2 million extremely low-income and very low-income renter households are competing for roughly 683,000 available and affordable rental units in the state. Over three-quarters of the state's extremely low-income households and over half of the state's very low-income households are severely rent burdened, paying more than 50 percent of their income toward rent each month.

- 3) **Regional Housing.** In light of the ongoing housing crisis across the state, several jurisdictions sought legislative approval to create regional authorities for the purposes of addressing their regional housing needs:
- a) **BAHFA.** In 2019, the Legislature enacted AB 1487 (Chiu), Chapter 598, Statutes of 2019, which established BAHFA to raise, administer, and allocate funding and provide technical assistance in the nine-county Bay Area region for tenant protection, affordable housing preservation, and new affordable housing production. Two governmental entities provide region-wide housing planning: the Metropolitan Transportation Commission (MTC) and the Association of Bay Area Governments (ABAG). These entities govern BAHFA. Among its powers, BAHFA may place various types of revenue-generating measures on the ballot in all nine Bay Area counties. Specifically, BAHFA may approve:

- i) Various types of special taxes, including parcel taxes.
- ii) A regional commercial linkage fee.
- iii) General obligation and revenue bonds.

If approved, BAHFA retains 20 percent of revenue raised for BAHFA to spend, and distributes remaining funds directly to counties and specified cities for specified housing projects, programs, and related infrastructure. If BAHFA approves a regional commercial linkage fee, it must spend funds according to a regional nexus study, and can only impose the commercial linkage fee if voters first approve a tax. BAHFA planned to put a regional financing measure on the November 2020 ballot, but the COVID-19 pandemic forced the agency to delay its plans. SB 129 (Skinner), Chapter 69, Statutes of 2021, allocated \$20 million to BAHFA to fund five BAHFA pilot programs.

- b) **LACAHSAs.** Building off the Bay Area model, the Legislature approved SB 679 (Kamlager) Chapter 661, Statutes of 2022, which authorized the creation of LACAHSAs. A 19-member board of local government elected officials and housing experts govern the agency. Similar to BAHFA, LACAHSAs can also approve special taxes and bonds, but it does not have the authority to approve a regional commercial linkage fee. LACAHSAs retain 30 percent of the revenue it raises for regional priorities. Discussions are underway locally to put a measure on the November 2024 ballot.

While this bill is modeled on BAHFA and LACAHSAs, this bill would grant newly formed Authorities additional powers not bestowed on those existing entities. These Authorities, in addition to the ability to manage existing buildings, could hold and acquire existing buildings for purposes of attaching affordability requirements. For any property acquired, these Authorities, unlike BAHFA and LACAHSAs, will have the power to set the land use and development parameters for such property, including setting the request for proposal criteria and selection process for a development partner.

- 4) **Local Financing Tools.** Local agencies use various tools to finance affordable housing production and preservation, as well as to protect tenants currently living in those affordable housing units. These include special taxes, impact fees, and bonds.
- a) **Special Taxes.** The California Constitution states that taxes local governments levy are either general taxes, subject to majority voter approval, or special taxes, subject to 2/3

vote (Article XIII C), which local agencies use for specified purposes. Proposition 13 (1978) required a 2/3 vote of each house of the Legislature for state tax increases, and 2/3 vote of local voters for local special taxes. One of the most common forms of a special tax is a parcel tax. Parcel taxes are not ad valorem or assessed based on the value of a property; instead they are generally a flat rate assessed per parcel regardless of its size, or on a per square foot rate. Agencies can use revenues in almost any way that serves local needs, such as ongoing expenses, programs, or buildings. Counties collect parcel taxes with property taxes, and then remit funds to the agency imposing the tax. Property tax law generally guides parcel tax collection.

b) **Bonds.** When public agencies issue bonds, they borrow money from investors, who provide cash in exchange for the agencies' commitment to repay the principal amount of the bond plus interest. Bonds are usually either revenue bonds, which repay investors out of revenue generated from the project the agency buys with bond proceeds, or general obligation bonds, which the public agency pays out of general revenues and the agency guarantees with its full faith and credit. Since bonds produce interest costs, they are generally used for financing projects with useful lives that correspond to the bond's term, such as an affordable housing project. Public agencies generally do not use bonds to fund services, such as procuring legal services. Generally, issuing bonds requires a 2/3 voter approval. However, some types of revenue bonds do not require a 2/3 vote, or any vote at all. For example, the Revenue Bond Law of 1941 only requires majority voter approval.

5) **Related Legislation.** ACA 1 (Aguiar-Curry), would reduce the voter threshold to approve general obligation bonds for the production of affordable housing, among other uses, from two-thirds to 55 percent. ACA 1 is pending in this Committee.

SB 20 (Rubio) would allow local agencies to create trusts by forming JPAs for the purposes of funding the planning and construction of housing for the homeless and low-income persons. The bill establishes a governing structure, and auditing and transparency requirements for the JPAs created pursuant to the bill. SB 20 is pending in the Assembly Housing and Community Development Committee.

6) **Previous Legislation.** SB 679 (Kamlager), Chapter 661, Statutes of 2022, created LACAHSAs and authorizes it to access financing tools in order to fund tenant protection efforts and affordable housing production and preservation initiatives.

AB 1487 (Chiu), Chapter 598, Statutes of 2019, This bill established BAHFA throughout the San Francisco Bay Area and sets forth the governing structure and powers of the BAHFA Board, allowable financing activities, and allowable expenditures of the revenues generated.

7) **Double-Referral.** This bill was double-referred to the Assembly Housing and Community Development Committee, where it passed on a 6-2 vote on June 28, 2023.

8) **Arguments in Support.** The California Housing Consortium writes in support, "SB 440 seeks to maximize the ability of the state to take advantage of this innovative funding model for housing by allowing all regions in California to create their own housing finance agency without needing to come to the legislature first. The bill would authorize two or more local governments to establish a regional housing finance authority to raise, administer, and allocate funding for affordable housing in the jurisdiction of the authority and provide technical assistance at a regional level for affordable housing development, including new

construction and the preservation of existing housing to serve a range of incomes and housing types.”

- 9) **Arguments in Opposition.** The California Taxpayers Association and the California Building Industry Association write in opposition, “SB 440 provides expansive taxing authority to locally formed regional housing authorities. This is a tool that cities and counties already possess, with the ability to raise taxes and earmark revenue for affordable housing projects. The creation of an additional housing agency with excessive taxing authority is unnecessary and inefficient.”

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Housing Consortium [SPONSOR]  
California Housing Partnership  
California State Association of Counties  
Civicwell (formally the Local Government Commission)  
East Bay Yimby  
Fieldstead and Company, INC.  
Grow the Richmond  
How to Adu  
Midpen Housing Corporation  
Mountain View Yimby  
Napa-solano for Everyone  
Northern Neighbors  
Peninsula for Everyone  
People for Housing Orange County  
Progress Noe Valley  
San Francisco Yimby  
Santa Cruz Yimby  
Santa Rosa Yimby  
Slo County Yimby  
South Bay Yimby  
Southside Forward  
Ventura County Yimby  
Yimby Action

**Support if Amended.**

Town of Mammoth Lakes  
Town of Truckee

**Opposition**

California Building Industry Association  
California Business Roundtable  
California Taxpayers Association  
New Livable California DbA Livable California

**Oppose Unless Amended**

California Association of Realtors

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