



Office of the Mayor

30CONSENT CALENDAR

June 11, 2019

To: Honorable Mayor and Members of the City Council

From: Mayor Jesse Arreguín, Councilmember Kate Harrison, Councilmember Rigel Robinson, and Councilmember Ben Bartlett

Subject: Support AB 1487 – Housing Alliance for the Bay Area.

RECOMMENDATION

Adopt a Resolution in support of AB 1487 (introduced by David Chiu) and to seek amendments from the author. Send a copy of the Resolution to Governor Gavin Newsom, State Senator Nancy Skinner, and Assemblymembers Buffy Wicks and David Chiu.

BACKGROUND

Between the end of the Great Recession in 2010 and 2017, a net total of over 105,000 units were created in the Bay Area. During the same time period, the Bay Area's population is estimated to have grown by 600,000. This imbalance has resulted in most Bay Area communities unable to meet their Regional Housing Needs Allocation (RHNA) goals, especially in affordable housing.

There is an estimated annual shortfall of \$2.5 billion to address the Bay Area's housing crisis. In recent years, several ballot measures on the local, regional, and state level have passed to increase funding for affordable housing. This includes Measure U1 (2016) and Measure O (2018) in Berkeley, Measure A1 (2016) across Alameda County, and Proposition 1 (2018) in California. Despite efforts to increase funding for affordable housing, a large funding gap remains.

AB 1487 – introduced by Assemblymember David Chiu, would establish the Housing Alliance for the Bay Area (HABA). The purpose of HABA would be to create funding mechanisms to construct affordable housing across the nine-county Bay Area. Specifically, it empowers HABA to place a series of measures on the ballot, in addition to buying and leasing land, for affordable housing purposes. HABA would not have the power to use eminent domain or regulate/enforce local land use decisions.

On May 10, 2019, a joint meeting of the Metropolitan Transportation Commission (MTC) Legislation Committee and Association of Bay Area Governments (ABAG) Legislation Committee made a recommendation to seek the following amendments to AB 1487:

- 1) Ensure no new responsibilities are assigned to ABAG or MTC without the following:

- a. A guaranteed source of funding that is not dependent upon voter approval;
 - b. A provision for the reevaluation and potential dissolution of HABA in the event that the level of revenue approved is too small to meaningfully address the region’s housing crisis;
- 2) Ensure the bill does not require that MTC staff report to a newly structured board;
 - 3) Exclude sales tax increases from revenue options; and
 - 4) Develop a formula that would distribute more than 25 percent of any employer-based (i.e. non-bond and parcel tax measures) revenue to a regional pool.

This bill is consistent with both the Plan Bay Area 2040’s Action Plan to create a regional self-help funding for affordable housing, and the Committee to House the Bay Area (CASA) Element #10 of the CASA Compact calling for the creation of a Regional Housing Enterprise.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

The creation of housing, especially near transit corridors, is consistent with the goals of the Climate Action Plan.

CONTACT PERSON

Mayor Jesse Arreguín 510-981-7100

Attachments:

- 1: Resolution
- 2: Text of AB 1487
- 3: MTC/ABAG Item on AB 1487

RESOLUTION NO. ##,###-N.S.

IN SUPPORT OF AB 1487 – HOUSING ALLIANCE FOR THE BAY AREA

WHEREAS, the housing crisis has had profound effects in the Bay Area, resulting in accelerating displacement of vulnerable communities; and

WHEREAS, between 2010 and 2017, the Bay Area created a net total of approximately 105,000 new units, while the region's population grew by 600,000; and

WHEREAS, this imbalance has resulted in most Bay Area communities inability to meet their Regional Housing Needs Allocation (RHNA) goals, especially in affordable housing; and

WHEREAS, efforts have been made on a local, regional, and statewide level to increase funding for affordable housing, including Measure U1 (2016) and Measure O (2018) in Berkeley, Measure A1 (2016) across Alameda County, and Proposition 1 (2018) in California; and

WHEREAS, despite these efforts, there is an estimated annual shortfall of \$2.5 billion to address the Bay Area's housing crisis; and

WHEREAS, AB 1487 – introduced by Assemblymember David Chiu, would establish the Housing Alliance for the Bay Area (HABA); and

WHEREAS, the purpose of HABA would be to create funding mechanisms to construct affordable housing across the nine-county Bay Area by empowering it to place a series of measures on the ballot in addition to buying and leasing land for affordable housing purposes; and

WHEREAS, this bill is consistent with both the Plan Bay Area 2040's Action Plan to create a regional self-help funding for affordable housing, and the Committee to House the Bay Area (CASA) Element #10 of the CASA Compact calling for the creation of a Regional Housing Enterprise.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby supports AB 1487 – Housing Alliance for the Bay Area.

BE IT FURTHER RESOLVED that the following amendments are requested:

- 1) Ensure no new responsibilities are assigned to ABAG or MTC without the following:
 - a. A guaranteed source of funding that is not dependent upon voter approval;

- b. A provision for the reevaluation and potential dissolution of HABA in the event that the level of revenue approved is too small to meaningfully address the region's housing crisis;
- 2) Ensure the bill does not require that MTC staff report to a newly structured board;
- 3) Exclude sales tax increases from revenue options; and
- 4) Develop a formula that distributes more than 25 percent of employer-based (i.e. non-bond and parcel tax measures) revenue to a regional pool.

BE IT FURTHER RESOLVED that copies of the Resolution be sent to Governor Gavin Newsom, State Senator Nancy Skinner, and Assemblymembers Buffy Wicks and David Chiu.

AMENDED IN ASSEMBLY MAY 16, 2019

AMENDED IN ASSEMBLY APRIL 29, 2019

AMENDED IN ASSEMBLY APRIL 4, 2019

AMENDED IN ASSEMBLY MARCH 26, 2019

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 1487

Introduced by Assembly Member Chiu
(Coauthors: Assembly Members Mullin and Wicks)
(Coauthor: Senator Wiener)

February 22, 2019

An act to add Title 6.8 (commencing with Section 64500) to the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 1487, as amended, Chiu. San Francisco Bay area: housing development: financing.

Existing law provides for the establishment of various special districts that may support and finance housing development, including affordable housing special beneficiary districts that are authorized to promote affordable housing development with certain property tax revenues that a city or county would otherwise be entitled to receive.

This bill, the San Francisco Bay Area Regional Housing Finance Act, would establish the Housing Alliance for the Bay Area (hereafter the entity) and would state that the entity's purpose is to increase affordable housing in the San Francisco Bay area, as defined, by providing for enhanced funding and technical assistance at a regional level for tenant protection, affordable housing preservation, and new affordable housing

production. The bill would establish a governing board of the entity. *The membership, size, and geographic representation of the board shall be determined by the Metropolitan Transportation Commission and the Executive Board of the Association of Bay Area Governments.* The bill would authorize the entity to exercise various specified powers, including the power to raise revenue and allocate funds throughout the San Francisco Bay area, subject to applicable voter approval requirements and other specified procedures, as provided. The bill would also require the board to provide for annual audits of the entity and financial reports, as provided. The bill would include findings that the changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities within the San Francisco Bay area, including charter cities.

The bill would authorize the entity to, among other things, raise and allocate new revenue by placing funding measures on the ballot in the ~~9 San Francisco Bay area counties,~~ *revenue*, incur and issue indebtedness, and 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, as specified, in accordance with applicable constitutional requirements. *In this regard, the bill would authorize the entity to impose various special taxes, including a parcel tax, certain business taxes, and a transactions and use tax, within its jurisdiction and to issue bonds, including revenue bonds, subject to specified procedures. The bill would also authorize the entity to impose a commercial linkage fee, as defined, and require a city or county in the San Francisco Bay area that has jurisdiction over the approval of a commercial development project, as defined, to collect that fee as a condition of that approval and remit the amount of fee to the entity, as provided. The bill would authorize the Metropolitan Transportation Commission to propose a ballot measure to establish any of those funding mechanisms at the November 3, 2020, election, as specified, provided that the entity assumes administration of the funding mechanism upon the approval of the measure. The bill would require that revenue generated by the entity pursuant to these provisions be used for specified housing purposes and require the entity to distribute those funds as provided.*

This bill would make legislative findings and declarations as to the necessity of a special statute for the San Francisco Bay area.

By adding to the duties of local officials with respect to (1) providing staff for the entity and (2) elections procedures for revenue measures on behalf of the entity, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Title 6.8 (commencing with Section 64500) is
2 added to the Government Code, to read:

3

4 TITLE 6.8. SAN FRANCISCO BAY AREA REGIONAL
5 HOUSING FINANCE

6

7 PART 1. FORMATION OF THE HOUSING ALLIANCE FOR
8 THE BAY AREA AND GENERAL POWERS

9

10 CHAPTER 1. GENERAL PROVISIONS

11

12 64500. This title shall be known, and may be cited, as the San
13 Francisco Bay Area Regional Housing Finance Act.

14 64501. The Legislature finds and declares the following:

15 (a) The San Francisco Bay area is facing the most significant
16 housing crisis in the region’s history, as countless residents are
17 contemplating moving, spend hours driving every day, are one
18 paycheck away from an eviction, or experience homelessness.

19 (b) The San Francisco Bay area faces this crisis because, as a
20 region, it has failed to produce enough housing at all income levels,
21 preserve affordable housing, protect existing residents from
22 displacement, and address the housing issue regionally.

1 (c) The housing crisis in the San Francisco Bay area is regional
2 in nature and too great to be addressed individually by the region's
3 101 cities and 9 counties.

4 (d) However, the current process is anything but regional;
5 instead each city and county is each responsible for their own
6 decisions around housing.

7 (e) The San Francisco Bay area faces an annual funding shortfall
8 of two billion five hundred million dollars (\$2,500,000,000) in its
9 efforts to address the affordable housing crisis.

10 (f) A regional entity is necessary to help address the housing
11 crisis in the San Francisco Bay area by delivering resources and
12 technical assistance at a regional scale, including:

13 (1) Providing critically needed funding to affordable housing
14 projects across the San Francisco Bay area.

15 (2) Providing staff support to local jurisdictions that require
16 capacity or technical assistance to expedite the preservation and
17 production of housing.

18 (3) Funding tenant services, such as emergency rental assistance
19 and access to counsel, thereby relieving local jurisdictions of this
20 cost and responsibility.

21 (4) Assembling parcels and acquiring land for the purpose of
22 building affordable housing.

23 (5) Monitoring and reporting on progress at a regional scale.

24 64502. For purposes of this title:

25 (a) "Board" or "entity board" means the governing board of
26 the Housing Alliance for the Bay Area created pursuant to Section
27 64511.

28 (b) "Entity" means the Housing Alliance for the Bay Area
29 established pursuant to Section 64510.

30 (c) "San Francisco Bay area" means the entire area within the
31 territorial boundaries of the Counties of Alameda, Contra Costa,
32 Marin, Napa, San Mateo, Santa Clara, Solano, and Sonoma, and
33 the City and County of San Francisco.

34 (d) "Lower income households" has the same meaning as that
35 term is defined in Section 50079.5 of the Health and Safety Code.

36 (e) "Low- or moderate-income households" has the same
37 meaning as "persons and families of low or moderate income," as
38 defined in Section 50093 of the Health and Safety Code.

39 64503. The Legislature finds and declares that providing a
40 regional financing mechanism for affordable housing development

1 and preservation in the San Francisco Bay area, as described in
2 this section and Section 64501, is a matter of statewide concern
3 and is not a municipal affair as that term is used in Section 5 of
4 Article XI of the California Constitution. Therefore, this title
5 applies to all cities within the San Francisco Bay area, including
6 charter cities.

7
8 CHAPTER 2. THE HOUSING ALLIANCE FOR THE BAY AREA AND
9 GOVERNING BOARD

10
11 64510. (a) The Housing Alliance for the Bay Area is hereby
12 established with jurisdiction extending throughout the San
13 Francisco Bay area.

14 (b) The formation and jurisdictional boundaries of the entity
15 are not subject to the Cortese-Knox-Hertzberg Local Government
16 Reorganization Act of 2000 (Division 3 (commencing with Section
17 56000) of Title 5).

18 (c) The entity’s purpose is to increase affordable housing in the
19 San Francisco Bay area by providing for enhanced funding and
20 technical assistance at a regional level for tenant protection,
21 affordable housing preservation, and new affordable housing
22 production.

23 (d) It is the intent of the Legislature that the entity complement
24 existing efforts by cities, counties, districts, and other local,
25 regional, and state entities, related to addressing the goals described
26 in this title.

27 (e) It is the intent of the Legislature that the entity be staffed by
28 the existing staff of the Metropolitan Transportation ~~Commission,~~
29 *Commission and the Association of Bay Area Governments*, or any
30 successor agency, with the understanding that additional staff with
31 expertise in affordable housing finance and other aspects of the
32 entity’s work will be needed.

33 64511. (a) (1) The entity shall be governed by a ~~board~~
34 ~~composed of _____ voting members.~~ *The board. The membership*
35 *of the board shall consist of commissioners of the Metropolitan*
36 *Transportation Commission and members of the Association of*
37 *Bay Area Governments Executive Board.*

38 (2) *The Metropolitan Transportation Commission and the*
39 *Executive Board of the Association of Bay Area Governments shall*

1 *serve as the appointing authority and appoint members to the entity*
2 *board.*

3 (3) *The appointing authority shall determine the size and*
4 *geographic representation of the entity board.*

5 (4) *The entity shall form an advisory committee comprised of*
6 *nine representatives with knowledge and experience in the areas*
7 *of affordable housing finance and development, tenant protection,*
8 *resident service provision, and housing preservation.*

9 ~~(2)~~

10 (5) *Each member of the entity board shall serve at the pleasure*
11 *of the appointing authority.*

12 ~~(3)~~

13 (6) *The appointing authority shall fill any vacancy on the entity*
14 *board within 90 days from the date on which the vacancy occurs.*

15 (b) *The board shall select from its members a chair, who shall*
16 *preside over meetings of the board, and a vice chair from its*
17 *members, who shall preside in the absence of the chair.*

18 (c) (1) *A member appointed pursuant to this section may receive*
19 *a per diem for each board meeting that the member attends. The*
20 *board shall set the amount of that per diem for a member's*
21 *attendance, but that amount shall not exceed one hundred dollars*
22 *(\$100) per meeting. A member shall not receive a payment for*
23 *more than two meetings in a calendar month.*

24 (2) *A member may waive a payment of per diem authorized by*
25 *this subdivision.*

26 (d) (1) *Members of the board are subject to Article 2.4*
27 *(commencing with Section 53234) of Chapter 2 of Part 1 of*
28 *Division 2 of Title 5.*

29 (2) *The entity shall be subject to the Ralph M. Brown Act*
30 *(Chapter 9 (commencing with Section 54950) of Part 1 of Division*
31 *2 of Title 5), the California Public Records Act (Chapter 3.5*
32 *(commencing with Section 6250) of Division 7 of Title 1), and the*
33 *Political Reform Act of 1974 (Title 9 (commencing with Section*
34 *81000)).*

35 64512. *A member shall exercise independent judgment on*
36 *behalf of the interests of the residents, the property owners, and*
37 *the public as a whole in furthering the intent and purposes of this*
38 *title.*

1 64513. (a) The time and place of the first meeting of the board
2 shall be at a time and place within the San Francisco Bay area
3 fixed by the chair of the board.

4 (b) After the first meeting described in subdivision (a), the board
5 shall hold meetings at times and places determined by the board.

6 64514. (a) The board may make and enforce rules and
7 regulations necessary for the government of the board, the
8 preservation of order, and the transaction of business.

9 (b) In exercising the powers and duties conferred on the entity
10 by this title, the board may act either by ordinance or resolution.

11
12 CHAPTER 3. POWERS OF THE HOUSING ALLIANCE FOR THE BAY
13 AREA
14

15 64520. In implementing this title, the entity may do all of the
16 following:

17 (a) Raise revenue and allocate funds throughout the San
18 Francisco Bay area, as provided in Part 2 (commencing with
19 Section 64600).

20 (b) Apply for and receive grants from federal and state agencies.

21 (c) Solicit and accept gifts, fees, grants, and allocations from
22 public and private entities.

23 (d) Deposit or invest moneys of the entity in banks or financial
24 institutions in the state, as provided in Chapter 4 (commencing
25 with Section 53600) of Part 1 of Division 2 of Title 5.

26 (e) Sue and be sued, except as otherwise provided by law, in
27 all actions and proceedings, in all courts and tribunals of competent
28 jurisdiction.

29 (f) Engage counsel and other professional services.

30 (g) Enter into and perform all necessary contracts.

31 (h) Enter into joint powers agreements pursuant to the Joint
32 Exercise of Powers Act (Chapter 5 (commencing with Section
33 6500) of Division 7 of Title 1).

34 (i) Hire staff, define their qualifications and duties, and provide
35 a schedule of compensation for the performance of their duties.

36 (j) Use staff provided by the Metropolitan Transportation
37 ~~Commission~~. *Commission and the Association of Bay Area*
38 *Governments*. A person who performs duties as interim or
39 temporary staff pursuant to this subdivision shall not be considered
40 an employee of the entity.

1 (k) Assemble parcels and lease or acquire land for affordable
2 housing development.

3 (l) Collect data on housing production and monitor progress on
4 meeting regional and state housing goals.

5 (m) Provide support and technical assistance to local
6 governments in relation to producing and preserving affordable
7 housing.

8 (n) Provide public information about the entity's housing
9 programs and policies.

10 (o) Any other express or implied power necessary to carry out
11 the intent and purposes of this title.

12 64521. (a) If the entity proposes a measure pursuant to
13 ~~subdivision (a) of Section 64520~~ *Part 2 (commencing with Section*
14 *64600)* that will generate ~~revenues~~, *revenues and that requires*
15 *voter approval pursuant to the California Constitution*, the board
16 of supervisors of the county or counties in which the entity has
17 determined to place the measure on the ballot shall call a special
18 election on the measure. The special election shall be consolidated
19 with the next regularly scheduled statewide election and the
20 measure shall be submitted to the voters in the appropriate counties,
21 consistent with the requirements of Articles XIII A, XIII C, and
22 ~~XIII D XIII~~, *or Article XVI* of the California Constitution, as
23 applicable.

24 (b) (1) The entity is a district, as defined in Section 317 of the
25 Elections Code. Except as otherwise provided in this section, a
26 measure proposed by the entity that requires voter approval shall
27 be submitted to the voters of the entity in accordance with the
28 provisions of the Elections Code applicable to districts, including
29 the provisions of Chapter 4 (commencing with Section 9300) of
30 Division 9 of the Elections Code.

31 (2) Because the entity has no revenues as of the effective date
32 of this section, the appropriations limit for the entity shall be
33 originally established based on receipts from the initial measure
34 that would generate revenues for the entity pursuant to subdivision
35 (a), and that establishment of an appropriations limit shall not be
36 deemed a change in an appropriations limit for purposes of Section
37 4 of Article XIII B of the California Constitution.

38 (c) The entity shall file with the board of supervisors of each
39 county in which the measure shall appear on the ballot a resolution
40 of the entity requesting consolidation, and setting forth the exact

1 form of the ballot question, in accordance with Section 10403 of
2 the Elections Code.

3 (d) The legal counsel for the entity shall prepare an impartial
4 analysis of the measure. The impartial analysis prepared by the
5 legal counsel for the entity shall be subject to review and revision
6 by the county counsel of the county that contains the largest
7 population, as determined by the most recent federal decennial
8 census, among those counties in which the measure will be
9 submitted to the voters.

10 (e) Each county included in the measure shall use the exact
11 ballot question, impartial analysis, and ballot language provided
12 by the entity. If two or more counties included in the measure are
13 required to prepare a translation of ballot materials into the same
14 language other than English, the county that contains the largest
15 population, as determined by the most recent federal decennial
16 census, among those counties that are required to prepare a
17 translation of ballot materials into the same language other than
18 English shall prepare the translation, or authorize the entity to
19 prepare the translation, and that translation shall be used by the
20 other county or counties, as applicable.

21 (f) Notwithstanding Section 13116 of the Elections Code, if a
22 measure proposed by the entity pursuant to this title is submitted
23 to the voters of the entity in two or more counties, the elections
24 officials of those counties shall mutually agree to use the same
25 letter designation for the measure.

26 (g) The county clerk of each county shall report the results of
27 the special election to the entity.

28 (h) (1) Notwithstanding Section 10520 of the Elections Code,
29 for any election at which the entity proposes a measure pursuant
30 to subdivision (a) of Section 64520 that would generate revenues,
31 the entity shall reimburse each county in which that measure
32 appears on the ballot only for the incremental costs incurred by
33 the county elections official related to submitting the measure to
34 the voters with any eligible funds transferred to the entity from
35 the Association of Bay Area Governments or the Metropolitan
36 Transportation Commission.

37 (2) For purposes of this subdivision, “incremental costs” include
38 all of the following:

39 (A) The cost to prepare, review, and revise the impartial analysis
40 of the measure that is required by subdivision (d).

1 (B) The cost to prepare a translation of ballot materials into a
2 language other than English by any county, as described in
3 subdivision (e).

4 (C) The additional costs that exceed the costs incurred for other
5 election races or ballot measures, if any, appearing on the same
6 ballot in each county in which the measure appears on the ballot,
7 including both of the following:

- 8 (i) The printing and mailing of ballot materials.
- 9 (ii) The canvass of the vote regarding the measure pursuant to
10 Division 15 (commencing with Section 15000) of the Elections
11 Code.

12 (i) *If the Metropolitan Transportation Commission proposes a*
13 *measure pursuant to Section 64601, the Metropolitan*
14 *Transportation Commission shall assume all duties delegated to*
15 *the entity under this section.*

16 64522. The entity shall not do either of the following:

- 17 (a) Regulate or enforce local land use decisions.
- 18 (b) Acquire property by eminent domain.

19
20 CHAPTER 4. FINANCIAL PROVISIONS
21

22 64530. The board shall provide for regular audits of the entity's
23 accounts and records and shall maintain accounting records and
24 shall report accounting transactions in accordance with generally
25 accepted accounting principles adopted by the Governmental
26 Accounting Standards Board of the Financial Accounting
27 Foundation for both public reporting purposes and for reporting
28 of activities to the Controller.

29 64531. The board shall provide for annual financial reports.
30 The board shall make copies of the annual financial reports
31 available to the public.

32
33 PART 2. FINANCING ACTIVITIES OF THE HOUSING
34 ALLIANCE FOR THE BAY AREA
35

36 CHAPTER 1. GENERAL PROVISIONS
37

38 64600. The entity may do all of the following:

- 39 (a) (1) ~~Raise and allocate new revenue by placing on the ballot~~
40 ~~in all or a subset of the nine counties in the San Francisco Bay area~~

1 various funding measures, including through the following funding
2 mechanisms:

3 ~~(A) A parcel tax.~~

4 ~~(B) A commercial linkage fee that is either of the following:~~

5 ~~(i) A variable rate fee assessed on new construction, providing~~
6 ~~a credit for a project in a local jurisdiction with an existing linkage~~
7 ~~fee program.~~

8 ~~(ii) A flat rate fee assessed on new construction.~~

9 ~~(C) A gross receipts tax with variable rates according to business~~
10 ~~sector with an exemption for small businesses.~~

11 ~~(D) A business tax based upon the number of employees~~
12 ~~assessed at a variable rate with an exemption for small businesses.~~

13 ~~(E) One-half of one cent (\$0.005) increase in sales tax.~~

14 ~~(F) A general obligation bond to be funded by an ad valorem~~
15 ~~tax on the assessed value of local properties.~~

16 ~~(G) A revenue bond.~~

17 *(A) Special taxes, as provided in Article 1 (commencing with*
18 *Section 64610) of Chapter 2, as follows:*

19 *(i) A parcel tax, as provided in Section 64610.*

20 *(ii) A gross receipts tax, as provided in Section 64611.*

21 *(iii) A special business tax, as provided in Section 64612.*

22 *(iv) A transactions and use tax, as provided in Section 64613.*

23 *(B) A commercial linkage fee, as provided in Article 2*
24 *(commencing with Section 64620) of Chapter 2.*

25 *(C) Bonds, as provided in Article 3 (commencing with Section*
26 *64630) of Chapter 2.*

27 *(2) Any funding mechanism authorized pursuant to paragraph*
28 *(1) that requires voter approval pursuant to the California*
29 *Constitution or this part may be placed on the ballot in all or a*
30 *subset of the nine counties in the San Francisco Bay area. A*
31 *measure placed on the ballot in a subset of those nine counties*
32 *shall apply only in those counties in which the measure was*
33 *submitted to the voters.*

34 ~~(2)~~

35 *(3) It is the intent of the Legislature that the funding measures*
36 *authorized by this subdivision distribute the responsibility of*
37 *addressing the affordable housing needs of the region across*
38 *commercial developers, businesses above a certain size, taxpayers,*
39 *and property owners within the region.*

1 (b) Incur and issue indebtedness and assess fees on any debt
2 issuance and loan products for reinvestment of fees and loan
3 repayments in affordable housing production and preservation.

4 (c) Allocate funds to the various cities, counties, and other public
5 agencies and affordable housing projects within its ~~jurisdiction~~
6 *jurisdiction, as provided in Chapter 3 (commencing with Section*
7 *64650)*, to finance affordable housing development, preserve and
8 enhance existing affordable housing, and fund tenant protection
9 programs, pursuant to this title, in accordance with applicable
10 constitutional requirements.

11 *64601. The Metropolitan Transportation Commission may*
12 *propose a measure pursuant to Part 2 (commencing with Section*
13 *64600) that will generate revenues and that requires voter approval*
14 *pursuant to the California Constitution at the November 3, 2020,*
15 *statewide general election, provided that the following conditions*
16 *are met:*

17 (a) *The purpose of the measure is to raise and allocate revenue*
18 *for the entity through one of the mechanisms authorized by*
19 *paragraph (1) of subdivision (a) of Section 64600.*

20 (b) *The Metropolitan Transportation Commission assumes all*
21 *duties delegated to the entity in Section 64521.*

22 (c) *The measure provides that the entity will assume*
23 *administration of the funding mechanism and all duties required*
24 *under this part upon the approval of the measure.*

25

26 CHAPTER 2. REVENUE

27

28 Article 1. Special Taxes

29

30 *64610. (a) Subject to Section 4 of Article XIII A of the*
31 *California Constitution, the entity may impose, by ordinance or*
32 *resolution, a parcel tax within the San Francisco Bay area*
33 *pursuant to the procedures established in Article 3.5 (commencing*
34 *with Section 50075) of Chapter 1 of Part 1 of Division 1 of Title*
35 *5, Section 64521, and any other applicable procedures provided*
36 *by law.*

37 (b) *“Parcel tax” means a special tax imposed upon a parcel of*
38 *real property at a rate that is determined without regard to that*
39 *property’s value and that applies uniformly to all taxpayers or all*
40 *real property within the jurisdiction of the local government.*

1 “Parcel tax” does not include a tax imposed on a particular class
2 of property or taxpayers.

3 (c) The entity shall provide notice of any parcel tax imposed
4 pursuant to this section in the manner specified in Section 54930.

5 64611. (a) (1) The entity may impose, by ordinance or
6 resolution, a special tax, measured by gross receipts, for the
7 privilege of engaging in any kind of lawful business transacted in
8 the San Francisco Bay area pursuant to the procedures established
9 in Article 3.5 (commencing with Section 50075) of Chapter 1 of
10 Part 1 of Division 1 of Title 5, Section 64521, and any other
11 applicable procedures provided by law.

12 (2) The ordinance or resolution imposing a special tax pursuant
13 to this subdivision may provide for the following:

14 (A) Variable rates based on the business sector of each person
15 subject to the tax.

16 (B) Exemptions for small businesses.

17 (C) Collection of the tax by suit or otherwise.

18 (b) If the entity levies a special tax pursuant to subdivision (a)
19 upon a business operating both within and outside the entity’s
20 taxing jurisdiction, the entity shall levy the tax so that the measure
21 of tax fairly reflects that proportion of the taxed activity actually
22 carried on within the taxing jurisdiction.

23 (c) A special tax levied pursuant to subdivision (a) shall not
24 apply to any nonprofit organization that is exempted from taxes
25 by Chapter 4 (commencing with Section 23701) of Part 11 of
26 Division 2 of the Revenue and Taxation Code or Subchapter F
27 (commencing with Section 501) of Chapter 1 of Subtitle A of the
28 Internal Revenue Code of 1986, or the successor of either, or to
29 any minister, clergyman, Christian Science practitioner, rabbi, or
30 priest of any religious organization that has been granted an
31 exemption from federal income tax by the United States
32 Commissioner of Internal Revenue as an organization described
33 in Section 501(c)(3) of the Internal Revenue Code or a successor
34 to that section.

35 64612. (a) (1) The entity may impose, by ordinance or
36 resolution, a special tax measured by the number of employees
37 employed by the taxpayer for the privilege of engaging in any kind
38 of lawful business activity transacted in the San Francisco Bay
39 area pursuant to the procedures established in Article 3.5
40 (commencing with Section 50075) of Chapter 1 of Part 1 of

1 *Division 1 of Title 5, Section 64521, and any other applicable*
2 *procedures provided by law.*

3 *(2) The ordinance or resolution imposing a special tax pursuant*
4 *to this subdivision may provide for collection of the tax by suit or*
5 *otherwise.*

6 *(b) If the entity levies a special tax pursuant to subdivision (a)*
7 *upon a business operating both within and outside the entity's*
8 *taxing jurisdiction, the entity shall levy the tax so that the measure*
9 *of tax fairly reflects that proportion of the taxed activity actually*
10 *carried on within the taxing jurisdiction.*

11 *(c) A special tax levied pursuant to subdivision (a) shall not*
12 *apply to any nonprofit organization that is exempted from taxes*
13 *by Chapter 4 (commencing with Section 23701) of Part 11 of*
14 *Division 2 of the Revenue and Taxation Code or Subchapter F*
15 *(commencing with Section 501) of Chapter 1 of Subtitle A of the*
16 *Internal Revenue Code of 1986, or the successor of either, or to*
17 *any minister, clergyman, Christian Science practitioner, rabbi, or*
18 *priest of any religious organization that has been granted an*
19 *exemption from federal income tax by the United States*
20 *Commissioner of Internal Revenue as an organization described*
21 *in Section 501(c)(3) of the Internal Revenue Code or a successor*
22 *to that section.*

23 *64613. The entity may impose, by ordinance or resolution, a*
24 *transactions and use tax at a rate of no more than 0.5 percent that*
25 *would, in combination with all taxes imposed in accordance with*
26 *the Transactions and Use Tax Law (Part 1.6 (commencing with*
27 *Section 7251) of Division 2 of the Revenue and Taxation Code),*
28 *exceed the limit established in Section 7251.1 of the Revenue and*
29 *Taxation Code, if all of the following requirements are met:*

30 *(a) The entity adopts an ordinance or resolution proposing the*
31 *transactions and use tax by any applicable voting approval*
32 *requirement.*

33 *(b) The ordinance or resolution proposing the transactions and*
34 *use tax is submitted to the electorate and is approved by the voters*
35 *voting on the ordinance pursuant to Article XIII C of the California*
36 *Constitution and Section 64521 of this code.*

37 *(c) The transactions and use tax conforms to the Transactions*
38 *and Use Tax Law (Part 1.6 (commencing with Section 7251) of*
39 *Division 2 of the Revenue and Taxation Code), other than Section*
40 *7251.1 of Division 2 of the Revenue and Taxation Code.*

1 64614. *An action to determine the validity of any special taxes*
2 *levied pursuant to this article may be brought pursuant to Chapter*
3 *9 (commencing with Section 860) of Title 10 of Part 2 of the Code*
4 *of Civil Procedure.*

5
6 *Article 2. Commercial Linkage Fee*
7

8 64620. *As used in this article:*

9 (a) *“Commercial development project” means any project*
10 *involving the issuance of a permit by an underlying land use*
11 *jurisdiction for construction or reconstruction that is undertaken*
12 *within the San Francisco Bay area for the development of land for*
13 *commercial use, but does not include any project involving solely*
14 *a permit to operate.*

15 (b) *“Commercial linkage fee” means a monetary exaction, other*
16 *than a tax or special assessment, established for a broad class of*
17 *projects by legislation of general applicability that is charged to*
18 *an applicant in connection with the approval of a commercial*
19 *development project by an underlying land use jurisdiction for the*
20 *purpose of addressing the need for additional housing development*
21 *necessitated by that commercial development project, as*
22 *determined pursuant to the nexus study undertaken pursuant to*
23 *subdivision (b) of Section 64621.*

24 (c) *“Underlying land use jurisdiction” means any of the*
25 *following entities, as applicable, that has jurisdiction over the*
26 *approval of a commercial development project:*

27 (1) *The following counties:*

28 (A) *The County of Alameda.*

29 (B) *The County of Contra Costa.*

30 (C) *The County of Marin.*

31 (D) *The County of Napa.*

32 (E) *The County of San Mateo.*

33 (F) *The County of Santa Clara.*

34 (G) *The County of Solano.*

35 (H) *The County of Sonoma.*

36 (2) *A city that is located within the territorial boundaries of any*
37 *of the counties specified in paragraph (1).*

38 (3) *The City and County of San Francisco.*

39 64621. (a) (1) *The board may establish, increase, or impose*
40 *a commercial linkage fee within the San Francisco Bay area by*

1 *enactment of an ordinance or resolution, in accordance with the*
2 *requirements of this article, that is in addition to any fee, as defined*
3 *in Section 66000, that is levied by an underlying land use*
4 *jurisdiction.*

5 *(2) A commercial linkage fee may be established, increased, or*
6 *imposed pursuant to this article by an ordinance or resolution of*
7 *the board that provides for either of the following:*

8 *(A) A variable rate fee assessed on a commercial development*
9 *project within the San Francisco Bay area that provides that the*
10 *amount of fee required to be paid to the entity shall be reduced by*
11 *the amount the applicant is required to pay, if any, for a*
12 *commercial linkage fee imposed by the relevant underlying land*
13 *use jurisdiction.*

14 *(B) A flat fee assessed on all commercial development projects*
15 *within the San Francisco Bay area.*

16 *(b) Before establishing, increasing, or imposing a commercial*
17 *linkage fee, the entity shall prepare a regional jobs and housing*
18 *nexus study in order to support the necessity and amount of the*
19 *fee.*

20 *(c) In any action to establish, increase, or impose a commercial*
21 *linkage fee, the board shall do all of the following:*

22 *(1) Identify the purpose of the commercial linkage fee.*

23 *(2) Determine how there is a reasonable relationship between*
24 *the fee's use and the type of commercial development project on*
25 *which the fee is imposed, based on the regional nexus study*
26 *prepared pursuant to subdivision (b).*

27 *(3) Determine how there is a reasonable relationship between*
28 *the need for housing and the type of commercial development*
29 *project on which the fee is imposed, based on the regional nexus*
30 *study prepared pursuant to subdivision (b).*

31 *(4) Determine how there is a reasonable relationship between*
32 *the amount of the fee and the cost of the housing necessitated by*
33 *the commercial development project that is attributable to the*
34 *development on which the fee is imposed, based on the regional*
35 *nexus study prepared pursuant to subdivision (b).*

36 *64622. (a) A commercial linkage fee established, increased,*
37 *or imposed pursuant to this article shall not exceed the reasonable*
38 *cost of providing the housing necessitated by the commercial*
39 *development project for which the commercial linkage fee is*

1 *imposed, as determined in the regional nexus study pursuant to*
2 *subdivision (b) of Section 64621.*

3 *(b) It is the intent of the Legislature in adding this section to*
4 *codify existing constitutional and decisional law with respect to*
5 *the imposition of development fees and monetary exactions on*
6 *developments by local agencies. This section is declaratory of*
7 *existing law and shall not be construed or interpreted as creating*
8 *new law or as modifying or changing existing law.*

9 *64623. (a) Before adopting an ordinance or resolution*
10 *establishing or imposing a new commercial linkage fee or*
11 *approving an increase in an existing commercial linkage fee or*
12 *pursuant to this article, the board shall hold a public hearing, at*
13 *which oral or written presentations can be made, as part of a*
14 *regularly scheduled meeting. Notice of the time and place of the*
15 *meeting, including a general explanation of the matter to be*
16 *considered, shall be published in accordance with Section 6062a.*

17 *(b) Any costs incurred by the entity in conducting the hearing*
18 *required pursuant to subdivision (a) may be recovered as part of*
19 *the commercial linkage fee that is the subject of the hearing.*

20 *64624. (a) Except as otherwise provided in subdivision (c), if*
21 *the board adopts an ordinance, resolution, or other legislative*
22 *enactment establishing or imposing a new commercial linkage fee*
23 *or approving an increase in an existing commercial linkage fee,*
24 *each underlying land use jurisdiction shall, as a condition of*
25 *approving a commercial development project for which it receives*
26 *an application for a conditional use permit or other discretionary*
27 *or ministerial approval, require an applicant to pay the amount*
28 *of commercial linkage fee established, imposed, or increased by*
29 *the entity pursuant to this article. The underlying land use*
30 *jurisdiction shall provide notice to the applicant that does all of*
31 *the following:*

32 *(1) Notifies the applicant that the entity has established,*
33 *increased, or imposed a commercial linkage fee pursuant to this*
34 *article.*

35 *(2) States the amount of commercial linkage fee established,*
36 *increased, or imposed by the entity.*

37 *(3) States that the applicant may protest the commercial linkage*
38 *fee, as provided in Section 64625, and notifies the applicant that*
39 *the 90-day period for that protest and the 180-day period for filing*
40 *an action specified in subdivision (c) of Section 64625 has begun.*

1 (b) Each underlying land use jurisdiction shall collect and, after
2 deduction of any actual and necessary administrative costs
3 incurred by the underlying land use jurisdiction, remit the amount
4 of commercial linkage fee established, increased, or imposed
5 pursuant to this article to the entity. An underlying land use
6 jurisdiction shall remit the amounts required by this subdivision
7 on or before the last day of the month next succeeding each
8 calendar quarterly period.

9 (c) If any amount of commercial linkage fee established,
10 increased, or imposed pursuant to this article is found to be invalid
11 pursuant to Section 64625, each underlying land use jurisdiction
12 shall immediately cease collection of the commercial linkage fee.

13 64625. (a) Any party may protest the imposition of a
14 commercial linkage fee imposed on a commercial development
15 project by the entity pursuant to this article as follows:

16 (1) The party shall pay the total amount of commercial linkage
17 fee required by the ordinance or resolution enacted pursuant to
18 Section 64621, or providing satisfactory evidence of arrangements
19 to pay the commercial linkage fee when due, in accordance with
20 Section 64624.

21 (2) Serving a written notice on the board and the legislative
22 body of the relevant underlying land use jurisdiction that contains
23 all of the following information:

24 (A) A statement that the required payment is tendered or will
25 be tendered when due under protest.

26 (B) A statement informing the board and legislative body of the
27 underlying land use jurisdiction of the factual elements of the
28 dispute and the legal theory forming the basis for the protest.

29 (b) Compliance by any party with subdivision (a) shall not be
30 the basis for an underlying land use jurisdiction to withhold
31 approval of any map, plan, permit, zone change, license, or other
32 form of permission, or concurrence, whether discretionary,
33 ministerial, or otherwise, incident to, or necessary for, the
34 commercial development project. This section does not limit the
35 ability of an underlying land use jurisdiction to ensure compliance
36 with all applicable provisions of law in determining whether or
37 not to approve or disapprove a commercial development project.

38 (c) (1) A protest filed pursuant to subdivision (a) shall be filed
39 at the time of approval or conditional approval of the commercial
40 development project or within 90 days after the date of the

1 *imposition of the commercial linkage fee to be imposed on a*
2 *commercial development project.*

3 (2) *Any party who files a protest pursuant to subdivision (a)*
4 *may file an action to attack, review, set aside, void, or annul the*
5 *imposition of the commercial linkage fee imposed on a commercial*
6 *development project within 180 days after the delivery of the notice*
7 *required by subdivision (a) of Section 64624. Thereafter,*
8 *notwithstanding any other law, all persons shall be barred from*
9 *any action or proceeding or any defense of invalidity or*
10 *unreasonableness of the imposition. Any proceeding brought*
11 *pursuant to this subdivision shall take precedence over all matters*
12 *of the calendar of the court except criminal, probate, eminent*
13 *domain, forcible entry, and unlawful detainer proceedings.*

14 (d) (1) *If the court grants a judgment to a plaintiff invalidating,*
15 *as enacted, all or a portion of an ordinance or resolution*
16 *establishing, increasing, or imposing a commercial linkage fee,*
17 *the court shall direct the entity to refund the unlawful portion of*
18 *the payment, plus interest at an annual rate equal to the average*
19 *rate accrued by the Pooled Money Investment Account during the*
20 *time elapsed since the payment occurred, or to return the unlawful*
21 *portion of the exaction imposed.*

22 (2) *If an action is filed within 120 days of the date at which an*
23 *ordinance or resolution to establish or modify a commercial*
24 *linkage fee to be imposed on a commercial development project*
25 *takes effect, the portion of the payment or exaction invalidated*
26 *shall also be returned to any other person who, under protest*
27 *pursuant to this section and under that invalid portion of that same*
28 *ordinance or resolution as enacted, tendered the payment or*
29 *provided for or satisfied the exaction during the period from 90*
30 *days prior to the date of the filing of the action which invalidates*
31 *the payment or exaction to the date of the entry of the judgment*
32 *referenced in paragraph (1).*

33 (e) *The imposition of a commercial linkage fee occurs, for the*
34 *purposes of this section, when it is imposed or levied on a specific*
35 *commercial development project.*

36 64626. (a) *In any judicial action or proceeding to validate,*
37 *attack, review, set aside, void, or annul any ordinance or resolution*
38 *providing for the establishment, increase, or imposition of a*
39 *commercial linkage fee pursuant to this article in which there is*
40 *an issue whether the fee is a special tax within the meaning of*

1 Section 50076, the entity shall have the burden of producing
2 evidence to establish that the commercial linkage fee does not
3 exceed the reasonable cost of providing the housing necessitated
4 by the commercial development project for which the commercial
5 linkage fee is imposed, as determined in the regional nexus study
6 pursuant to subdivision (b) of Section 64621.

7 (b) A party may only initiate any action or proceeding pursuant
8 to subdivision (a) if both of the following requirements are met:

9 (1) The commercial linkage fee was directly imposed on the
10 party as a condition of project approval, as provided in Section
11 64624.

12 (2) At least 30 days before initiating the action or proceeding,
13 the party requests that the entity provide a copy of the documents,
14 including, but not limited to, the regional nexus study prepared
15 pursuant to subdivision (b) of Section 64621, that establish that
16 the commercial linkage fee does not exceed the reasonable cost
17 of providing the housing necessitated by the commercial
18 development project for which the commercial linkage fee is
19 imposed. In accordance with subdivision (b) of Section 6253, the
20 entity may charge a fee for copying the documents requested
21 pursuant to this paragraph.

22 (c) For purposes of this section, costs shall be determined in
23 accordance with fundamental fairness and consistency of method
24 as to the allocation of costs, expenses, revenues, and other items
25 included in the calculation.

26 64627. (a) Any person may request an audit in order to
27 determine whether any fee or charge levied by the entity exceeds
28 the amount necessary to cover the reasonable cost of providing
29 the housing necessitated by the commercial development project
30 for which the commercial linkage fee is imposed, as determined
31 in the regional nexus study pursuant to subdivision (b) of Section
32 64621. If a person makes that request, the board may retain an
33 independent auditor to conduct an audit to determine whether the
34 commercial linkage fee is reasonable, but is not required to
35 conduct the audit if an audit has been performed for the same fee
36 within the previous 12 months.

37 (b) If an audit pursuant to this section determines that the
38 amount of any commercial linkage fee or charge does not meet
39 the requirements of this article, the board shall adjust the fee
40 accordingly.

1 (c) *The entity shall retain an independent auditor to conduct*
 2 *an audit only if the person who requests the audit deposits with*
 3 *the entity the amount of the entity’s reasonable estimate of the cost*
 4 *of the independent audit. At the conclusion of the audit, the entity*
 5 *shall reimburse unused sums, if any, or the requesting person shall*
 6 *pay the entity the excess of the actual cost of the audit over the*
 7 *sum which was deposited.*

8 (d) *Any audit conducted by an independent auditor pursuant to*
 9 *this section shall conform to generally accepted auditing standards.*

10 (e) *This section shall not be construed as granting any additional*
 11 *authority to any local agency to levy any fee or charge which is*
 12 *not otherwise authorized by another provision of law, nor shall*
 13 *its provisions be construed as granting authority to any local*
 14 *agency to levy a new fee or charge when other provisions of law*
 15 *specifically prohibit the levy of a fee or charge.*

16 64628. *Any action by the entity or interested person under this*
 17 *article shall be brought pursuant to Chapter 9 (commencing with*
 18 *Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.*

19
 20
 21

Article 3. Bonds

22 64630. *The board may, by majority vote, initiate proceedings*
 23 *to issue bonds, other than revenue bonds subject to Section 64638,*
 24 *pursuant to this chapter by adopting a resolution stating its intent*
 25 *to issue the bonds.*

26 64631. *The resolution adopted pursuant to Section 64630 shall*
 27 *contain all of the following information:*

28 (a) *A description of the facilities or developments to be financed*
 29 *with the proceeds of the proposed bond issue.*

30 (b) *The estimated cost of the facilities or developments, the*
 31 *estimated cost of preparing and issuing the bonds, and the*
 32 *principal amount of the proposed bond issuance.*

33 (c) *The maximum interest rate and discount on the proposed*
 34 *bond issuance.*

35 (d) *The date of the election on the proposed bond issuance and*
 36 *the manner of holding the election.*

37 (e) *A determination of the amount of tax revenue available or*
 38 *estimated to be available, for the payment of the principal of, and*
 39 *interest on, the bonds.*

1 (f) A finding that the amount necessary to pay the principal of,
2 and interest on, the proposed bond issuance will be less than, or
3 equal to, the amount determined pursuant to subdivision (e).

4 64632. (a) Except as otherwise provided in subdivision (b),
5 the clerk of the board shall publish the resolution adopted pursuant
6 to Section 64630 once a day for at least seven successive days in
7 a newspaper published in each county in the San Francisco Bay
8 area at least six days a week, or at least once a week for two
9 successive weeks in a newspaper published in a county less than
10 six days a week.

11 (b) If there are no newspapers meeting the criteria specified in
12 subdivision (a), the resolution shall be posted in three public places
13 within each county in the San Francisco Bay area for two
14 succeeding weeks.

15 64633. (a) The board shall submit the proposal to issue bonds,
16 other than revenue bonds subject to Section 64638, to the voters
17 who reside within the San Francisco Bay area in accordance with
18 Section 64521 and this section.

19 (b) Ballots for the special election authorized by subdivision
20 (a) may be distributed to qualified electors by mail with return
21 postage prepaid or by personal service by the election official.
22 The official conducting the election may certify the proper mailing
23 of ballots by an affidavit, which shall be exclusive proof of mailing
24 in the absence of fraud. The voted ballots shall be returned to the
25 election officer conducting the election not later than the hour
26 specified in the resolution calling the election. However, if all the
27 qualified voters have voted, the election shall be closed.

28 64634. (a) Except for revenue bonds issued pursuant to Section
29 64638, bonds may be issued if two-thirds of the voters voting on
30 the proposition vote in favor of issuing the bonds.

31 (b) If the voters approve the issuance of the bonds as provided
32 by subdivision (a), the board shall proceed with the issuance of
33 the bonds by adopting a resolution that shall provide for all of the
34 following:

- 35 (1) The issuance of the bonds in one or more series.
- 36 (2) The principal amount of the bonds that shall be consistent
37 with the amount specified in subdivision (b) of Section 64631.
- 38 (3) The date the bonds will bear.
- 39 (4) The date of maturity of the bonds.
- 40 (5) The denomination of the bonds.

1 (6) *The form of the bonds.*

2 (7) *The manner of execution of the bonds.*

3 (8) *The medium of payment in which the bonds are payable.*

4 (9) *The place or manner of payment and any requirements for*
5 *registration of the bonds.*

6 (10) *The terms of call or redemption, with or without premium.*

7 (c) *If any proposition submitted to the voters pursuant to this*
8 *part is defeated by the voters, the board shall not submit, or cause*
9 *to be submitted, a similar proposition to the voters for at least one*
10 *year after the first election.*

11 (d) (1) *Every two years after the issuance of bonds pursuant*
12 *to this section, the entity shall contract for an independent financial*
13 *and performance audit. The audit shall be conducted according*
14 *to guidelines established by the Controller. A copy of the completed*
15 *audit shall be provided to the Controller, the Director of Finance,*
16 *and to the Joint Legislative Budget Committee.*

17 (2) *Upon the request of the Governor or of the Legislature, the*
18 *Bureau of State Audits may conduct financial and performance*
19 *audits of districts. The results of the audits shall be provided to*
20 *the board, the Controller, the Director of Finance, and the Joint*
21 *Legislative Budget Committee.*

22 64635. *The board may, by majority vote, provide for refunding*
23 *of bonds issued pursuant to Section 64634. However, refunding*
24 *bonds shall not be issued if the total net interest cost to maturity*
25 *on the refunding bonds plus the principal amount of the refunding*
26 *bonds exceeds the total net interest cost to maturity on the bonds*
27 *to be refunded. The board shall not extend the time to maturity of*
28 *the bonds.*

29 64636. (a) *The board or any person executing the bonds issued*
30 *pursuant to Section 64634 shall not be personally liable on the*
31 *bonds by reason of their issuance. The bonds and other obligations*
32 *of the entity issued pursuant to Section 64634 are not a debt of*
33 *any city or county, or of the state or of any of its political*
34 *subdivisions, other than the entity, and neither a city or county*
35 *nor the state or any of its political subdivisions, other than the*
36 *entity, shall be liable on the bonds, and the bonds or obligations*
37 *shall be payable exclusively from funds or properties of the entity.*
38 *Bonds issued pursuant to Section 64634 shall contain a statement*
39 *to this effect on their face.*

1 (b) If any member of the boards whose signature appears on
2 bonds issued pursuant to Section 64634 ceases to be a member of
3 the board before delivery of the bonds, that member's signature
4 shall be as effective as if the member had remained in office.

5 64637. (a) The bonds issued pursuant to Section 64634 may
6 be sold at discount not to exceed 5 percent of par at public sale.
7 At least five days before the sale, notice shall be published,
8 pursuant to Section 6061, in a newspaper of general circulation
9 and in a financial newspaper published in the City and County of
10 San Francisco and in the City of Los Angeles. The bonds may be
11 sold at not less than par to the federal government at private sale
12 without any public advertisement.

13 (b) Bonds issued pursuant to Section 64634 are fully negotiable.

14 64638. (a) Notwithstanding any other provision of this article,
15 the entity may issue bonds, payable from the revenues of any
16 facility or enterprise acquired or constructed by the entity, in the
17 manner provided in the Revenue Bond Law of 1941 (Chapter 6
18 (commencing with Section 54300) of Part 1 of Division 2 of Title
19 5), as modified by subdivision (b). For purposes of this section,
20 the entity shall be deemed to be a local agency within the meaning
21 of Section 54307.

22 (b) For purposes of this section, the provisions of the Revenue
23 Bond Law of 1941 (Chapter 6 (commencing with Section 54300)
24 of Part 1 of Division 2 of Title 5) are modified as follows:

25 (1) Notwithstanding Section 54309, the term "enterprise" means
26 a revenue-producing improvement, building, system, plant, works,
27 facilities, or undertaking used for or useful for the development
28 of housing in the San Francisco Bay area by the entity.

29 (2) Notwithstanding Section 54340, the entity shall not acquire
30 any enterprise by eminent domain.

31 (c) Revenue bonds issued pursuant to this section shall not be
32 subject to the procedures specified in this article, but shall instead
33 be issued in accordance with the procedures specified in the
34 Revenue Bond Law of 1941 (Chapter 6 (commencing with Section
35 54300) of Part 1 of Division 2 of Title 5), as modified by
36 subdivision (b). Except as expressly provided in subdivision (b),
37 if any provision of this title conflicts with the Revenue Bond Law
38 of 1941 (Chapter 6 (commencing with Section 54300) of Part 1 of
39 Division 2 of Title 5) as to the issuance of revenue bonds by the
40 entity, the Revenue Bond Law of 1941 (Chapter 6 (commencing

1 with Section 54300) of Part 1 of Division 2 of Title 5) shall be
2 controlling.

3 64639. (a) An action to determine the validity of bonds issued
4 pursuant to Section 64634 may be brought pursuant to Chapter 9
5 (commencing with Section 860) of Title 10 of Part 2 of the Code
6 of Civil Procedure.

7 (b) In accordance with Section 64638, an action to determine
8 the validity of revenue bonds issued pursuant to Section 64638
9 may be brought in the manner specified in Section 54580.

10
11 CHAPTER 2.3. EXPENDITURES

12
13 ~~64610.~~

14 64650. (a) Revenue generated pursuant to ~~Section 64600~~ this
15 part shall be used for the construction of new affordable housing,
16 affordable housing preservation, tenant protection programs, and
17 general funds made available to local jurisdictions as an incentive
18 to achieve affordable housing benchmarks to be established by the
19 entity. ~~Subject~~ entity as follows:

20 (1) Subject to funding eligibility and ~~subject to~~ adjustment
21 pursuant to ~~subdivision (b)~~, paragraph (2), the entity shall
22 distribute the ~~total funds~~ revenues derived from any special tax
23 imposed pursuant to Article 1 (commencing with Section 64610)
24 of Chapter 2 and the proceeds of bonds issued pursuant to Article
25 2 (commencing with Section 64620) of Chapter 2 for the region
26 over a five-year period commencing after revenue is approved by
27 voters as follows:

28 (1)

29 (A) A minimum of 60 percent for production of housing units
30 affordable to lower income households.

31 (2)

32 (B) A minimum of 5 percent and a maximum of 10 percent for
33 tenant protection programs. The entity shall ~~give priority to~~
34 ~~prioritize flexible funding sources for~~ tenant protection programs
35 ~~that have flexible funding sources.~~ programs. Funding for tenant
36 protection programs may be used for any of the following:

37 (A) ~~Providing access to counsel for tenants facing eviction.~~

38 (i) Legal aid, including representation in eviction proceedings,
39 mediation between landlords and tenants, preeviction legal
40 services, and legal education and awareness for communities.

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1 ~~(B)~~

2 (ii) Providing emergency rental assistance for lower income
 3 households. *Rental assistance provided pursuant to this clause*
 4 *shall not exceed 48 months for each assisted household, and rent*
 5 *payments shall not exceed two times the current fair market rent*
 6 *for the local area, as determined by the United States Department*
 7 *of Housing and Urban Development pursuant to Part 888 of Title*
 8 *24 of the Code of Federal Regulations.*

9 ~~(C)~~

10 (iii) Providing relocation assistance for lower income
 11 households.

12 ~~(D)~~

13 (iv) Collection and tracking of information related to
 14 displacement risk and evictions in the region.

15 ~~(3)~~

16 (C) A minimum of 15 percent and a maximum of 20 percent
 17 for preservation of housing affordable to low- or moderate-income
 18 households.

19 ~~(4)~~

20 (D) A minimum of 5 percent and a maximum of 10 percent for
 21 general funds awarded to a local government that achieves
 22 affordable housing benchmarks established by the entity. *Subject*
 23 *to any limitations on the funding source, eligible expenditures*
 24 *pursuant to this subparagraph include, but are not limited to,*
 25 *infrastructure needs associated with increased housing production,*
 26 *including, but not limited to, transportation, schools, and parks.*

27 ~~(b)~~

28 (2) ~~The entity may lower the minimum distribution in paragraph~~
 29 ~~(1), (2), (3), or (4) of subdivision (a) shall change the distribution~~
 30 ~~requirements in subparagraph (A), (B), (C), or (D) of paragraph~~
 31 ~~(1) if it adopts a finding pursuant to this subdivision paragraph~~
 32 ~~that the minimum funding amount exceeds the region's needs.~~
 33 *region's needs differ from those requirements.* The finding shall
 34 be placed on a meeting agenda for discussion at least 30 days
 35 before the entity adopts the finding.

36 (3) *The entity shall distribute the revenues derived from a*
 37 *commercial linkage fee established, increased, or imposed pursuant*
 38 *to Article 2 (commencing with Section 64620) of Chapter 2 to each*
 39 *city or county in proportion to the amount of fee collected and*
 40 *remitted by each city and each county pursuant to Section 64624.*

1 *A city or county that receives revenues pursuant to this paragraph*
2 *shall use that revenue solely for the production of housing units*
3 *necessitated by a commercial development project on which the*
4 *fee was imposed, as determined by the entity pursuant to Section*
5 *64621.*

6 ~~(e) The~~

7 *(b) Except as otherwise provided in paragraph (3) of subdivision*
8 *(a), the entity may allocate funds directly to a city, a county, a*
9 *public entity, or a private project sponsor.*

10 ~~(d)~~

11 *(c) (1) Subject to paragraph ~~(2); (3)~~ of subdivision (a), the entity*
12 *shall distribute funds so that an amount equal to or greater than 75*
13 *received through the funding measures described in subdivision*
14 *(a) of Section 64600 as follows:*

15 *(A) Seventy-five percent of the revenue received from a county*
16 *over a five-year period through funding measures authorized by*
17 *subdivision (a) of Section 64600 is expended in the county. shall*
18 *be expended in the county of origin.*

19 *(B) Twenty-five percent of the revenue received shall be*
20 *collected by the entity for expenditures consistent with the purposes*
21 *set forth in subdivision (a). These funds can also be leveraged and*
22 *grown for reinvestment in affordable housing. The entity shall*
23 *adopt an expenditure plan for the use of such funds by July 1 of*
24 *each year, beginning in 2021.*

25 *(2) Each county shall submit an expenditure plan to the entity*
26 *as follows:*

27 *(A) The expenditure plan shall be submitted by July 1 of each*
28 *year, beginning in 2021.*

29 *(B) To be deemed complete, the expenditure plan shall specify*
30 *the proposed allocation of funds for the next 12 months, as follows:*

31 *(i) The proposed share of revenues to be allocated to the*
32 *construction of new affordable housing, affordable housing*
33 *preservation, and tenant protection programs. The plan shall*
34 *include a minimum allocation of 40 percent towards construction*
35 *of new affordable housing, 5 percent towards affordable housing*
36 *preservation, and 5 percent towards tenant protection programs,*
37 *unless the county adopts a finding and the entity concurs that those*
38 *minimum targets are inconsistent with subdivision (a) or are*
39 *otherwise not feasible.*

1 (ii) *The plan shall include a description of any specific project*
 2 *or program proposed to receive funding, including the location,*
 3 *amount of funding, and anticipated outcomes.*

4 (3) *If the entity determines, by a vote of its board, that a county*
 5 *has not submitted a complete expenditure plan pursuant to the*
 6 *requirements of subparagraph (B) of paragraph (2), the entity*
 7 *may, by a vote of its board, withhold allocation of revenues to a*
 8 *county until the county submits a complete expenditure plan.*

9 (4) *The entity shall post each completed expenditure plan on*
 10 *its internet website.*

11 ~~(2) (A)~~

12 (5) A county may request to administer all or a portion of the
 13 funds required to be expended in the county pursuant to paragraph
 14 (1). ~~The entity shall approve, deny, or conditionally approve the~~
 15 ~~request based on factors, including, but not limited to, whether the~~
 16 ~~county has a demonstrated track record of successfully~~
 17 ~~administering funds for the purposes listed in subdivision (a) and~~
 18 ~~has sufficient staffing capacity to conduct the work effectively.~~

19 ~~(B) The entity shall distribute funds to a county based on an~~
 20 ~~expenditure plan submitted by the county and approved by the~~
 21 ~~entity. A county's proposed expenditure plan may contain funding~~
 22 ~~amounts different than those listed in subdivision (a). In approving~~
 23 ~~a county's expenditure plan and allocating funds, the entity may~~
 24 ~~adjust the funding amounts to ensure compliance with subdivision~~
 25 ~~(a).~~

26 ~~(C)~~

27 (6) If funds provided to a county for administration pursuant to
 28 this subparagraph (A) are not committed within three years of
 29 collection, the county shall return the funds to the entity.

30 ~~(e)~~

31 (d) The entity may expend up to 3 percent of funds for program
 32 administration.

33 ~~64611.~~

34 64651. The entity shall monitor expenditures in coordination
 35 with local jurisdictions.

36 ~~64612.~~

37 64652. To ensure oversight and accountability, the entity shall
 38 provide an annual report on expenditures which shall include a
 39 tracking of projects funded and the extent to which the minimum
 40 targets in subdivision (a) of Section ~~64610~~ 64650 were achieved.

1 SEC. 2. The Legislature finds and declares that a special statute
2 is necessary and that a general statute cannot be made applicable
3 within the meaning of Section 16 of Article IV of the California
4 Constitution because of the uniquely severe shortage of available
5 funding and resources for the development and preservation of
6 affordable housing and the particularly acute nature of the housing
7 crisis within the nine counties of the San Francisco Bay area region.

8 SEC. 3. If the Commission on State Mandates determines that
9 this act contains costs mandated by the state, reimbursement to
10 local agencies and school districts for those costs shall be made
11 pursuant to Part 7 (commencing with Section 17500) of Division
12 4 of Title 2 of the Government Code.

O

**Metropolitan Transportation Commission and the Association of Bay Area Governments
Joint MTC Legislation Committee and
ABAG Legislation Committee**

May 10, 2019

Agenda Item 7c3

AB 1487 (Chiu): Housing Alliance for the Bay Area

Subject: AB 1487 (Chiu) would establish the Housing Alliance for the Bay Area (HABA) to increase funding for affordable housing in the nine-county region. The bill authorizes HABA to place on the ballot a series of revenue raising measures, subject to certain return to source provisions, to provide funding and technical assistance to local jurisdictions and affordable housing developers to help produce and preserve affordable housing and pay for tenant protection services. The bill provides that HABA would have the authority to buy and lease land for affordable housing purposes, but not the ability to purchase land by eminent domain or regulate or enforce local land use decisions.

Background: Plan Bay Area 2040's Action Plan (adopted jointly by MTC and ABAG in July 2017) called for the creation of regional self-help funding for affordable housing. This position was later incorporated into the Committee to House the Bay Area (CASA) Compact as Element #10. This bill is co-sponsored by the Nonprofit Housing Association of Northern California (NPH) and Enterprise Community Partners, Inc. and calls for the creation of a regional housing entity to raise funds and support local jurisdictions to help achieve the region's bold housing goals.

Discussion: **Funding**
The primary stated purpose of AB 1487 is to raise regional funding for affordable housing to help close an estimated annual funding shortfall of \$2.5 billion to address the region's affordable housing production, preservation and tenant protection needs. Unlike transportation, which has long had access to substantial regional funding through bridge tolls and federal and state funds distributed at the regional level, affordable housing is strictly reliant upon private, local, state and federal funding. A regional funding source would be immensely valuable to help close the funding gap on affordable housing projects that are otherwise struggling to cobble together enough funds across multiple sources, especially for those jurisdictions that have less resources available at the local level.

Key Concerns

From a policy perspective, staff agrees that establishing a regional funding source for affordable housing production and protection-related needs is likely a necessity if we are to make serious progress on the housing crisis. Opportunities to build or preserve affordable housing projects are unpredictable, making a more robust regional funding source a useful option, instead of every jurisdiction needing to close the funding gap by levying taxes locally that might not be put to use for many months or even years.

However, in our various meetings with local elected officials over the last few months we heard concerns about the use of a sales tax or parcel tax for a regional housing program due to concerns this might supplant *future* revenue raising opportunities at the local level. Concerns were also frequently raised regarding the establishment of another regional agency, which may duplicate authorities of existing regional agencies, and/or local governments. While staff does not have a

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recommendation on these points per se, we are raising them for discussion given their importance. In addition to those observations, we outline some significant practical and operational concerns we have with the bill.

Start-Up Funding

The bill requires that MTC staff the HABA but does not provide any start-up or sustaining funding associated with imposition of this new role. While the bill authorizes up to 3 percent of voter-approved funds to be reserved for administrative costs, this doesn't address how the agency is to absorb what would be substantial near-term responsibilities before revenues are collected, or address what should occur if any or all contemplated voter-approved measures fail. In addition, the bill requires that either ABAG or MTC reimburse the counties for the cost of placing the measure on the ballot. The RM 3 election cost MTC \$3.2 million in direct charges from county election offices. Neither agency has funding available (or even eligible) to cover this cost if an election fails.

As such, we recommend amendments to ensure that no new responsibilities are assigned to MTC or ABAG without a) providing a guaranteed source of support funding that is not dependent upon voter approval; and b) including a provision for the re-evaluation and potential dissolution of HABA in the event that the compendium of funds approved by the voters are determined to fall substantially short of the amounts needed to meaningfully address the housing crisis across the region.

Governing Board

The current version of the bill has removed all references to ABAG and MTC as the foundational membership for the HABA governing board, to provide for further discussion of this critical question at the regional level. Nonetheless, we remain concerned that the bill could require MTC staff to serve a new and separate board, potentially placing staff in a conflicted situation. While we have no specific recommendation on the governance question, we believe it is critical that we communicate to the author and bill supporters that neither ABAG nor MTC can support an outcome where MTC staff are assigned to directly report to a newly structured board.

Recommendation: Seek Amendments

Bill Positions: See attached

Attachments: Attachment A: Bill Positions


Therese W. McMillan

Official Positions on AB 1487 (Chiu)

Support

Bay Area Council
Bay Area Housing Advocacy Coalition
Burbank Housing Development Corporation
California Community Builders
California YIMBY
Chan Zuckerberg Initiative
Enterprise Community Partners, Inc.
Greenbelt Alliance
Habitat For Humanity East Bay/Silicon Valley
Non-Profit Housing Association Of Northern California (Nph)
Pico California
Silicon Valley At Home (Sv@Home)
Techequity Collaborative
TMG Partners
Urban Displacement Project, Uc-Berkeley

Support If Amended

Community Legal Services In East Palo Alto
Genesis
Monument Impact
City of Oakland
Public Advocates Inc.
San Francisco Foundation
City of Vallejo

Oppose

California Taxpayers Association
Howard Jarvis Taxpayers Association

Oppose Unless Amended

Alameda County Transportation Commission