

Date of Hearing: July 3, 2019

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

SB 5 (Beall) – As Amended June 17, 2019

SENATE VOTE: 31-4

SUBJECT: Affordable Housing and Community Development Investment Program

SUMMARY: Establishes the Affordable Housing and Community Development Investment Program (Program). Specifically, **this bill:**

- 1) Establishes the Affordable Housing and Community Development Investment Committee (Committee), comprised of nine specified state department representatives and legislative appointees and gives it responsibility for reviewing and approving or denying local agency plans for projects proposed to be funded under the Program.
- 2) Requires the Department of Housing and Community Development (HCD) to provide technical assistance and administrative support necessary for the Committee to consider local plans.
- 3) Allows various local agencies to apply for the Program, either individually or jointly, as specified.
- 4) Authorizes a city, county, or special district to establish an Affordable Housing and Community Development Investment Agency, as specified, to apply for program funding.
- 5) Requires, for an applicant to receive funding, submission of the following information:
 - a) A description of the proposed projects the applicant plans to complete and the funding amount necessary for each year every project is to receive funding;
 - b) Information necessary to demonstrate that the plan complies with all of the statutory requirements of the Program;
 - c) Certification that any low- and moderate-income housing or other projects or portions of other projects that receive funding from the program will use streamlined review processes;
 - d) A plan for outreach to, and retention of, women, minority, disadvantaged youth, formerly incarcerated, and other underrepresented subgroups in coordination with the California Workforce Investment Board and local boards; and,
 - e) An economic and fiscal analysis paid for and prepared by the applicant.
- 6) Allows the Committee to approve, deny, or modify an application.
- 7) Requires the Committee to ensure distribution of funds with geographic equity in mind, and create a scoring methodology that prioritizes projects based on the number and type of housing units created.

- 8) Outlines the following eligible uses of funding, subject to certain exclusions if the applicant has taken certain actions that hinder housing development:
 - a) Construction of affordable housing, defined as units affordable to households making 120 percent of area median income.
 - b) Transit-oriented development in priority locations that maximize density and transit use and contribute to the reduction of vehicle miles traveled and greenhouse gas emissions.
 - c) Infill development to assist in the construction or rehabilitation of infrastructure that supports high-density, affordable, and mixed-income housing in area designated as infill, as specified.
 - d) Promoting strong neighborhoods through supporting local community planning and engagement efforts to revitalize and restore neighborhoods including housing infrastructure and public facilities, as specified.
 - e) Protecting communities from the effects of climate change, including the construction, repair, replacement, and maintenance of infrastructure.
- 9) Requires that at least 50% of the overall program funding and 50% of each plan's funding is used on the construction of affordable housing. At least 80% of this set-aside must be used to provide rental and owner-occupied housing for low-income households with an annual income of up to 80% of the area median income, as specified. The remaining funds may be used for the production of moderate-income housing (households with an annual income between 80% and 120 % of the area median income), as specified.
- 10) Subjects rental and sales prices for housing assisted with the 80% set aside to specified caps, and subjects all housing to the following recorded affordability restrictions: 55 years for rental housing; 45 years for owner-occupied housing; and at least 15 years for self-help housing.
- 11) Prohibits funds from subsidizing market rate units, but allows funding for infrastructure of developments that include market rate units.
- 12) Requires that plans dedicate at least 30 percent of housing units to affordable housing and keep those units affordable for at least 55 years.
- 13) Reserves at least 12 percent of overall program funding for counties with 200,000 residents or less, and two percent for technical assistance to such counties to make sure they have the technical capacity to apply for the program. If these counties do not spend all of these funds in any year, SB 5 reserves that funding for these counties in subsequent years.
- 14) Requires projects that receive funding to meet specified labor and anti-displacement requirements.
- 15) Requires a housing project to certify that a skilled and trained workforce will be used, except for the following exemptions:
 - a) One-hundred percent of the units in the housing development are affordable to households earning 80 percent or below of the area median income;

- b) The housing developments with 25 units or less; and,
 - c) The housing project is located in a county with a population of 100,000 or less.
- 16) Allows the Committee to approve plans for the Program provided that the Legislature enacts a budget bill for the applicable fiscal year that specifies the amount available to the Committee.
 - 17) Caps the amount of funding the Committee can approve to no more than \$200 million in any year from July 1, 2021, to June 30, 2026, and no more than \$250 million in any year from July 1, 2026, to June 30, 2030.
 - 18) Allows the Legislature to direct the Committee to suspend the Program if the state taps into its Rainy Day account or suspends the Proposition 98 guarantee without impacting previously approved funding.
 - 19) Allows the Committee, upon approval of a plan, to direct the county auditor to transfer an amount of property tax revenue that is equal to the amount approved by the Committee for that applicant from the ERAF to a specified county Fund established by this bill. The county auditor would then allocate specified funds to program applicants.
 - 20) Specifies that these transfers can only come from ERAF amounts that were going to be used for K-12 schools to ensure that the General Fund backfills the lower property tax revenue to schools.
 - 21) Gives the Department of Finance the ability to recalculate, or “rebench,” the Proposition 98 guarantee so that schools receive the same amount of funding they would have absent this Program.
 - 22) Authorizes the county auditor to deduct its administrative costs from the amounts transferred from ERAF before allocating the balance to applicants with approved plans, as specified.
 - 23) Requires the recipient of diverted ERAF funds to submit an annual report in years the applicant receives funding as specified.
 - 24) Requires that the Committee, in years it allocates program funding, to compile these reports into an annual report, which it submits to the Legislature.
 - 25) Allows the Committee to direct the applicant to develop a corrective action plan if the applicant does not spend the funds as laid out in their plan, as specified.
 - 26) Gives the applicant one year to develop the corrective action plan and take steps to implement the plan.
 - 27) Requires the Committee to direct the county auditor to stop any transfers from ERAF, and the applicant would be prohibited from applying for additional funding from this Program for five years or apply for other state grant programs, if the applicant does not comply with the corrective action plan.

EXISTING LAW:

- 1) Dissolved California redevelopment agencies (RDAs) (ABX1 26, Blumenfield, Chapter 5, Statutes of 2011-12, First Extraordinary Session), which used property tax increment financing to pay for economic development projects in blighted areas.
- 2) Requires the state to provide a minimum level of funding for K-12 schools and community colleges.
- 3) Redirects almost one-fifth of total statewide property tax revenue from cities, counties, and special districts to K-12 and community college districts.
- 4) Requires county auditors deposit the redirected property tax revenue into a countywide fund for schools, also known as a county's Educational Revenue Augmentation Fund (ERAF).
- 5) Requires that counties with more ERAF revenue than necessary to offset all state aid to nonbasic aid K-12 and community college districts use these excess funds for countywide special education programs, and any remaining funds be returned to cities, counties, and special districts in proportion to the amount of property taxes they contributed to ERAF.
- 6) Replaces revenue lost when the vehicle license fee (VLF) was reduced in the early 2000s with (a) ERAF and, if ERAF revenues are not sufficient, from (b) nonbasic aid K-12 and community college districts, with all reductions in revenue to K-12 and community college districts offset by additional state aid.

FISCAL EFFECT: Unknown

COMMENTS:

Background: Article XVI, Section 16 of the California Constitution authorizes the Legislature to provide for the formation of RDAs to eliminate blight in an area by means of a self-financing schedule that pays for the redevelopment project with tax increment derived from any increase in the assessed value of property within the redevelopment project area (or tax increment). Prior to Proposition 13 very few RDAs existed; however after its passage RDAs became a source of funding for a variety of local infrastructure activities. Eventually, RDAs were required to set-aside 20% of funding generated in a project area to increase the supply of low- and moderate-income housing in the project areas. At the time RDAs were dissolved, the Controller estimated that statewide, RDAs were obligated to spend \$1 billion on affordable housing.

At the time of dissolution, over 400 RDAs statewide were diverting 12% of property taxes, over \$5.6 billion yearly. In 2011, facing a severe budget shortfall, the Governor proposed eliminating RDAs in order to deliver more property taxes to other local agencies. Ultimately, the Legislature approved and the Governor signed two measures, ABX1 26 (Blumenfield), Chapter 5 and ABX1 27 (Blumenfield), Chapter 6 that together dissolved RDAs as they existed at the time and created a voluntary redevelopment program on a smaller scale. In response the California Redevelopment Association (CRA) and the League of California Cities, along with other parties, filed suit challenging the two measures. The Supreme Court denied the petition for peremptory writ of mandate with respect to ABX1 26. However, the Court did grant CRA's petition with respect to ABX1 27. As a result, all RDAs were required to dissolve as of February 1, 2012.

Replacement tools: In 2014, the Legislature authorized the creation of EIFDs (SB 628, Beall), quickly followed by Community Revitalization and Investment Authorities (CRIAs) in 2015 (AB 2, Alejo). Similar to EIFDs, CRIAs use tax increment financing to fund infrastructure projects, with two big differences: CRIAs may only be formed in economically depressed areas, but don't require voter approval. Two years ago, the Legislature authorized the formation of Affordable Housing Authorities (AHAs), which may use tax increment financing exclusively for rehabilitating and constructing affordable housing and also do not require voter approval to issue bonds (AB 1598, Mullin). Last year, SB 961 (Allen) removed the vote requirement for a subset of EIFDs to issue bonds and required these EIFDs to instead solicit public input. While these entities share fundamental similarities with RDAs in terms of using various forms of tax-increment financing, they differ in one important aspect: not having access to the school's share of property tax revenue.

Educational revenue augmentation funds: Proposition 13 gave the state authority to allocate the local property tax among local agencies, schools, and community college districts. Each year, the state estimates how much each district will receive in local property tax revenue (and student fee revenue in the case of community colleges). Then, the annual Budget Act appropriates state General Fund to "make up the difference" and fund the district's revenue limit or apportionment at the intended level. Frequently, however, the actual property tax revenues allocated to school districts may be less than the state and local agencies anticipate. The state's education finance system addresses these shortfalls differently for different types of educational entities. For K-12 districts that require additional funding to meet the minimum guaranteed level of funding, known as nonbasic aid school districts, all funding shortfalls are backfilled automatically with additional state aid. In contrast, basic aid districts do not require state aid to meet the minimum guaranteed level of funding because local property tax is sufficient. Explicit state action is required to backfill community college funding shortfalls.

In 1992-93 and 1993-94, in response to serious budgetary shortfalls, the state permanently redirected almost one-fifth of total statewide property tax revenue from cities, counties, and special districts to K-12 and community college districts. Under the changes in property tax allocation laws, county auditors deposit the redirected property tax revenue into a countywide fund for schools, also known as a county's Educational Revenue Augmentation Fund (ERAF). In 2017-18, cities, counties, and special districts deposited around \$9.6 billion into county ERAFs. Because Proposition 98 obligates the state to ensure that school districts all receive a minimum guaranteed level of funding, contributions to ERAF reduce the state's funding obligations for K-14 education. Before counties distribute property tax revenue from ERAF to nonbasic aid schools and community colleges, the county diverts some ERAF back to local agencies to account for two other funding formulas, (1) excess ERAF and (2) the Vehicle License Fee (VLF) swap.

VLF Swap. Californians pay a fee to operate motor vehicles, also known as the VLF. Revenues serve various purposes including funding local agencies' core services. In the early 2000s, the state reduced the VLF and, as a result, local agencies lost revenue. The state backfilled this lost revenue from the General Fund. The VLF swap was a negotiated agreement between the state and cities and counties to replace a state-controlled reimbursement subject to annual appropriation with a locally administered revenue source resulting in a more reliable fund source for these local agencies. Specifically, the VLF swap replaced the General Fund VLF backfill with property taxes redirected at the county level from (1) ERAF and, if ERAF revenues are not sufficient, from (2) nonbasic aid K-12 and community college districts, with all reductions in

revenue to K-12 and community college districts offset by additional state aid. The VLF swap shifts billions of dollars annually from ERAF to non-school local agencies.

Funding mechanics. SB 5 creates the Affordable Housing and Community Development Investment Program (Program) administered by the state, program funds can be used to support affordable housing and infrastructure. Local entities submit a plan to a state committee with representation from nine different agencies and departments. The committee is authorized to approve \$200 million in plans in the first year, increasing in \$200 million increments each year for five years until reaching \$1 billion after five years. The next four years, the annual increase in funding the committee can approve increases by \$250 million each year until it reaches \$2 billion after nine years. The bill allows the Legislature to suspend the program if the state taps into its Rainy Day account or suspends the Proposition 98 guarantee.

When the committee approves a plan, it directs the county auditor to reduce the amount of property tax revenue the applicant would otherwise have contributed to the county's ERAF. The applicant retains these funds they would have otherwise transferred to ERAF to use for the projects included in their plan. The bill specifies that these reductions can only come from ERAF amounts that were going to be used for K-12 schools, which ensures that the General Fund backfills the lower property tax revenue to schools. To the extent that the bill inadvertently reduces the school funding, the bill gives the Department of Finance the ability to recalculate, or "rebench," the Proposition 98 guarantee so that schools receive the same amount of funding they would have absent this program.

Housing provisions: The bill requires that at least 50 percent of funding is used on the construction of affordable housing. SB 5 prohibits funds from subsidizing market rate units, but allows funding for infrastructure of developments that include market rate units. Each plan must dedicate at least 30 percent of housing units to affordable housing and keep those units affordable for at least 55 years. SB 5 also includes anti-displacement language which prohibits a program plan from demolishing affordable housing units that have recorded covenants, rent controlled housing, or housing that tenants have lived in for the last 10 years.

Will it work? Redevelopment agencies and tax increment financing were created in Article XVI, Section 16 of California Constitution. Generally, the Constitution limits or restricts the power of the Legislature, however, in the case of Article XVI, Section 16 the Legislature is granted the power to create redevelopment agencies to eliminate blight through the capture of the growth in property tax (tax increment) in a designated project area. Article XVI, Section 16 states that all tax revenues derived from any increase in the assessed value of the property in a project area *shall* be collect and those revenues *shall* be paid into a special fund of the redevelopment agency to pay the indebtedness incurred by the redevelopment agency to finance a redevelopment project area. Thus all taxing entities contribute tax increment in a project area. This bill doesn't require all of the taxing entities in a project area to contribute tax increment, which is inconsistent with the authority created by Article XVI, Section 16. The school's portion of property tax would be contributed to a project that receives funding from the state through a shift of funding through ERAF. Like redevelopment agencies, the funding scheme proposed in this bill relies about the issuance of bonds to support the activities of local entities. Does this funding scheme provide enough certainty to the bond market that both the tax increment from the project area and the school's portion of property tax through ERAF will be a secure source to repay bonds?

Arguments in support: Supporters of the bill point to the loss of funding for affordable housing created by the dissolution of redevelopment agencies and the need to provide new resources. The Non-profit Housing Association of Northern California (NPH) writes, “Since the dissolution of Redevelopment in 2012, the housing affordability crisis in California has reached unprecedented levels with a shortfall of more than 1.4 million affordable homes. Since then, local governments throughout the State have struggled even more than before to produce their fair share of new affordable housing and are in desperate need of a new funding tool to help them meet their goals under the State-mandated Regional Housing Needs Assessment (RHNA). Redevelopment previously provided a critical source of local subsidy, providing \$220 million annually in the Bay Area alone that was used to both build new affordable homes and the critical local infrastructure necessary to support those homes.”

Arguments in opposition: The California Teachers Association “Appreciates Senator Beall’s willingness to attempt to hold school funding harmless in the March 18th amendments by re-benching Test 1 under Proposition 98. Unfortunately, these amendments do not address our overarching opposition to diverting property tax funds from schools. Should California face another recession, this measure would harm schools by leaving them for fiscally vulnerable to jeopardizing the most stable source of revenue they would receive should Proposition 98 be suspended. Additionally, while we appreciate the amendments that would put a pause on the components of SB 5 (Beall) should there be an economic downturn, this language requires Legislative action, which is not a guarantee that it will take place.”

Related legislation:

AB 11 (Chiu) would create authorize a city or county to create affordable housing and infrastructure agency (AHIA) subject to approval by the Strategic Growth Council (SGC). All taxing entities are required to participate in the AHIA, however, AHIA would be required to pass through property tax sufficient to keep the other taxing entities whole, excluding the schools' portion. The state would backfill schools to meet Proposition 98 obligations.

Previous legislation:

AB 2 (Alejo) Chapter 319, Statutes of 2015, authorizes local governments to create Community Revitalization and Investment Authorities (authorities) to use tax increment revenue to improve the infrastructure, assist businesses, and support affordable housing in disadvantaged communities. It requires that at least 25% of all tax increment revenues that are allocated to the authority from any participating entity must be deposited into a separate Low- and Moderate-Income Housing Fund and used by the authority for the purposes of increasing, improving, and preserving the community's supply of low- and moderate-income housing available at affordable housing cost.

SB 628 (Beall) Chapter 785, Statutes of 2014, allows local agencies to create enhanced infrastructure financing districts (EIFD) to finance specified infrastructure projects and facilities.

Double-referred: This bill was also referred to the Assembly Committee on Local Government where it will be heard should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Abode Services
Affordable Housing Network of Santa Clara County
American Planning Association, California Chapter
Associated Builders and Contractors Northern California Chapter
Association of Bay Area Governments
Bay Area Council
Big City Mayors
Bill Wilson Center
Bridge Housing Corporation
California Apartment Association
California Association for Local Economic Development
California Association of Housing Authorities
California Contract Cities Association
California Forward Action Fund
California Hawaii State Conference of the NAACP
California Housing Partnership
California Labor Federation, AFL-CIO
California League Conservation Voters
California Legislative Conference of Plumbing, Heating & Piping Industry
California State Association of Electrical Workers
California State Council of Laborers
California State Pipe Trades Council
Catholic Charities of Santa Clara County
Cities Association of Santa Clara County
City of Alameda
City of Albany
City of Arcata
City of Atascadero
City of Beverly Hills
City of Brentwood
City of Burbank
City of Camarillo
City of Cerritos
City of Cloverdale
City of Clovis
City of Concord
City of Cotati
City of Covina
City of Crescent City
City of Downey
City of East Palo Alto
City of Encinitas
City of Escondido
City of Eureka
City of Farmersville

City of Fort Bragg
City of Fountain Valley
City of Garden Grove
City of Glendale
City of Goleta
City of La Mirada
City of Laguna Beach
City of Laguna Niguel
City of Lakeport
City of Lakewood Ca
City of Los Alamitos
City of Mill Valley
City of Modesto
City of Moorpark
City of Mountain View
City of Napa
City of Norwalk
City of Novato
City of Orange Cove
City of Palo Alto
City of Paramount
City of Pasadena
City of Pinole
City of Pismo Beach
City of Placentia
City of Rancho Cucamonga
City of Rohnert Park
City of Rosemead
City of Roseville
City of Salinas
City of San Carlos
City of San Diego
City of San Jose
City of San Rafael
City of Sand City
City of Santa Cruz
City of Santa Monica
City of South Pasadena
City of Stanton
City of Stockton
City of Thousand Oaks
City of Vallejo
City of West Hollywood
City Manager of the City of Hollister
Coalition for Humane Immigrant Rights
Construction Employers' Association
Core Affordable Housing
Councilmember Tony Madrigal, Modesto City Council, District 2
EAH Housing

East Bay Housing Organizations
Eden Housing
First Community Housing
Habitat for Humanity East Bay / Silicon Valley
Housing California
Housing Trust Silicon Valley
Indivisible San Jose
International Union of Operating Engineers
International Union of Operating Engineers, Cal-Nevada Conference
Kosmont Companies
League of California Cities
League of California Cities, San Diego County Division
Local Government Commission
Los Angeles County Division, League of California Cities
Marin County Council of Mayors and Council Members
Mayor of San Jose Sam Liccardo
Metropolitan Transportation Commission
MidPen Housing Corporation
Midpeninsula Regional Open Space District
MuniServices
National Electrical Contractors Association, California Chapters
Newport Realty Advisors
Non-Profit Housing Association of Northern California
Northern California Allied Trades
Northern California Carpenters Regional Council
Northern California Sheet Metal Workers' Local 104
Petaluma Pie Company
PICO California
Rainbow Chamber Of Commerce Silicon Valley
ROEM Development Corporation
Sacramento Area Council of Governments
San Diego Association of Governments
San Francisco Housing Action Coalition
San Joaquin County Hispanic Chamber of Commerce
San Jose Conservation Corps & Charter School
Sand Hill Property Company
Santa Clara & San Benito Counties Building & Construction Trades Council
Santa Clara Valley Open Space Authority
Satellite Affordable Housing Associates
Silicon Valley at Home (Sv@Home)
Silicon Valley Leadership Group
Silicon Valley Young Democrats
South Bay AFL-CIO Labor Council
South Bay Cities Council of Governments
South Bay YIMBY
Southern California Association of Governments
Southwest California Legislative Council
SPUR
Stanislaus Council of Governments

State Building and Construction Trades Council of California
TechEquity Collaborative
Tenderloin Neighborhood Development Corporation
Town of Colma
Town of Corte Madera
Town of Danville
Town of Fairfax
Tracy Chamber of Commerce
Tuolumne County Chamber of Commerce
UA Local Union 393
United Contractors
Ventura Council of Governments
Wall and Ceiling Alliance
Western States Council of Sheet Metal Workers
Western Wall and Ceiling Contractors Association o
Working Partnerships USA

Support If Amended

Mountain Housing Council of Tahoe Truckee

Opposition

California Teachers Association
Howard Jarvis Taxpayers Association
Individual (1)

Oppose Unless Amended

Association of California School Administrators
California Association of School Business Officials
California School Boards Association
Los Angeles Unified School District Board of Education
School Employers Association of California
Small School Districts Association

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