Date of Hearing: June 27, 2012

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
Norma Torres, Chair
SB 1156 (Steinberg) – As Amended: June 20, 2012

SENATE VOTE: 21-15

SUBJECT: Sustainable Communities Investment Authority

SUMMARY: Allows local governments to establish a Sustainable Communities Investment Authority after July 1, 2012, to finance specified activities within a sustainable communities investment area. Specifically, this bill:

1) Allows the city council and board of supervisors representing a sustainable communities investment area to form a joint powers authority to create a Sustainable Communities Investment Authority (Authority) after July 1, 2012, to carry out Community Redevelopment Law.

2) Provides that if the sustainable communities investment area is within an incorporated area, the following apply:

   a) The city council forms the governing board of the Authority and establishes the parameters of the proposed economic development within the sustainable communities investment area with the county's approval;

   b) A governing board for the sustainable communities investment area made up of three members appointed by the city and two by the county; and

   c) If the city designates a sustainable communities investment area that consists of only one project, 100% percent of the tax increment is invested in the project, with the county's approval.

3) If the sustainable communities investment area is within an unincorporated area, the Authority may be formed by the board of supervisors.

4) Provides that members of any governing board formed for a sustainable communities investment area serve for four year terms and can only be removed by the appointing authority for cause.

5) Allows an Authority to enter into financial and other agreements with community colleges, K-12 school districts, and private businesses to facilitate the development and operation of articulated career technical education pathways.

6) Allows an Authority to adopt a plan for a sustainable communities investment area without a finding of blight.

7) Provides that a plan for a sustainable communities investment area will terminate 30 years from the date of the first issuance of bond indebtedness by the Authority.

8) Limits a sustainable communities investment area within the geographic boundaries of a metropolitan planning organization (MPO), where a sustainable communities strategy (SCS) has been adopted and approved by the state Air Resources Board, to including the following:

   a) A transit priority area, provided the planned major transit stop or the high-quality transit corridor will be scheduled to be completed within the planning horizon established by the Code of Federal Regulations;

   b) A transit priority area may include a military base reuse plan with a contaminate site; and

   c) Small walkable communities as defined in Section 21094.5 of the Public Resources Code, except that small walkable communities may also be designated in a city that is within the sustainable communities investment area of a MPO. No more than one small walkable community project area shall be designated within a city.

   d) Sites that are restricted to clean energy manufacturing that are consistent with the SCS if they are within the geographic boundaries of a MPO.

9) Limits clean energy manufacturing to the following:

   a) Manufacture of components, parts, or materials for the generation of renewable energy resources;

   b) Equipment designed to make buildings more energy-efficient or the component parts;

   c) Public transit vehicles or components parts of public transit vehicles; and

   d) Alternative fuel vehicles or component parts of alternative fuel vehicles.

10) Provides that solely for the purposes of a plan for a sustainable communities investment area, an Authority may receive tax increment funds, if the local government with land use jurisdiction has adopted the following:

   a) A sustainable parking standards ordinance that restricts parking in transit priority project areas to encourage transit use to the greatest extent feasible;

   b) An ordinance creating a jobs plan that describes how the project will create construction careers that pay prevailing wages and create living wage permanent jobs, and that contains a program for community outreach, local hire, and job training;

   c) For transit priority areas and small walkable communities within an MPO, a plan consistent with the use designation, density, building intensity, and applicable policies for the area in the SCS and that for new residential construction provides a density of at least 20 dwelling units per net acre and for nonresidential uses provides a minimum floor area ratio of 0.75; and

   d) For small walkable communities outside an MPO, a plan for new residential construction that provides a density of at least 20 dwelling units per net acre and for nonresidential uses provides a minimum floor area ratio of 0.75.

11) Requires that for small walkable communities, transit projects, and clean energy manufacturing sites within an MPO, an Authority must get the agreement of the MPO that the plan for the sustainable communities investment area is consistent with the use designation, density, building intensity and applicable policies of the SCS.

12) Requires the jobs plan to contain programs for outreach to disadvantaged California residents, including veterans of the Iraq and Afghanistan wars, people with a history in the criminal justice system, and single parent families.

13) Requires all entities that receive financial support from the Authority to enter into an agreement with the Authority that includes the entity's commitments to fulfill applicable portions of the jobs plans.

14) Provides that for purposes of collecting tax increment under Section 16 of Article XVI of the Constitution, the terms "district" and" affected taxing entity" exclude a school district and special districts.

15) Requires the Authority to approve any bond financing.

16) Permits a state or local pension fund system to invest capital in the public infrastructure projects and private commercial residential developments undertaken by an Authority.

17) Grants an Authority the ability to exercise the powers of the Marks-Roos Local Bond Pooling Act of 1985.

18) Allows an Authority to implement local transaction and use tax, except that the resolution authorizing the tax may designate the use of the tax.

19) Establishes a process to prequalify developers for construction contracts in excess of $1,000,000.

20) Requires the Department of Industrial Relations to monitor and enforce compliance with prevailing wage requirements for projects that include funds from an Authority and shall charge each awarding body or developer for the reasonable and directly related costs of monitoring and enforcing compliance with the prevailing wage requirements of each project.

21) Defines, for the purpose of exempting small walkable communities from the California Environmental Quality Act (CEQA), the following terms:

    a) “Floor area ratio” as the ratio of gross building area (GBA) of development, exclusive of structured parking areas, proposed for the project divided by the total net lot area (NLA);

    b) “Gross building area” as the sum of all finished areas of all floors of a building included within the outside faces of its exterior walls; and

    c) "Net lot area” means the area of a lot excluding publicly dedicated land, private streets that meet local standards, and other public use areas as determined by the local land use authority.

22) Makes legislative findings.

EXISTING LAW:

1) Dissolves redevelopment agencies as of February 1, 2012 (Health and Safety Code Section 34170).

2) Establishes the Community Redevelopment Law (CRL), which governs the authority to establish a redevelopment agency and the authority for a redevelopment agency to function as an agency and to adopt and implement a redevelopment plan (Health and Safety Code Section 33000 *et seq*.).

3) Requires the California Law Revision Commission to draft a CRL clean-up bill for consideration by the Legislature no later than January 1, 2013 (Health and Safety Code 34189).

4) Defines a "small walkable community project" as a project that is in an incorporated city that is not within the boundaries of an MPO and that satisfies the following requirements:

   a) Has a project area of approximately one-quarter mile diameter of contiguous land completely within the existing incorporated boundaries of the city;

   b) Has a project area that includes a residential area adjacent to a downtown retail area; and

   c) The project has a density of at least eight dwelling units per acre or a floor area ratio for retail or commercial uses of not less than 0.50.

   (Public Resources Code Section 21094.5)

FISCAL EFFECT: Unknown

COMMENTS:

In 2011, the Legislature approved and the Governor signed two measures, ABX1 26 and ABX1 27 that together dissolved redevelopment agencies as they existed at the time and created a voluntary redevelopment program on a smaller scale. In response, the California Redevelopment Association (CRA), 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 redevelopment agencies were required to dissolve as of February 1, 2012.

Over the last sixty years, redevelopment agencies used tax increment to finance affordable housing, community development, and economic development projects. The dissolution of redevelopment agencies has created a void and an effort to create new tools that would support community and economic development activities. SB 1156 would allow cities and counties to establish Sustainable Communities Investment Authorities (Authorities) to use tax increment financing, on a limited scale, along with other financing tools to support the goals SB 375 (Steinberg), Chapter 728, Statutes of 2008.

SB 375 created a new procedure for land use planning that would require local governments to plan in a way that would accomplish the greenhouse gas reduction goals of AB 32: The California Global Greenhouse Gas Reduction Act of 2006. SB 375 required MPOs to adopt an SCS in their regional transportation plans for the purpose of reducing greenhouse gas emissions, aligning planning for transportation and housing, and creating specified incentives for the implementation of those strategies. This bill would authorize the use of tax increment as well as other funding sources to finance some of the projects—small walkable communities, transit priority areas and clean energy manufacturing --that would be part of the SCS.

Purpose of the bill: According to the author, "this bill sets forth a new vision of local economic development and housing policy for the 21st century, focused on building sustainable communities and creating the high skill, high wage jobs that are the key to our future prosperity.

The purpose of bringing together the cities and the counties as equal partners in an inclusive governance structure is to correct the old model of redevelopment that pitted cities against counties and schools for limited tax revenues. Both cities and counties have land use authority, and both share responsibility for directing growth toward infill and transit-oriented development consistent with SB 375 of 2008. This bill will encourage cooperation, not competition, between cities and counties in furtherance of sustainable economic development.

This bill recognizes that economic development requires investments both in the physical capital of our infrastructure and the human capital of our workforce, and therefore authorizes financial agreements with community colleges, K-12 school districts, and industry to advance career education and credentialing programs."

Financing tool: This bill relies upon tax increment financing, in addition to several other potential funding sources, including Mello Roos, capital investment from public pensions, and local transaction and use taxes, to support the development of transit priority areas, small walkable communities, and clean energy manufacturing. One of the challenges of using tax increment as a financing tool for community and economic development in the post-redevelopment world is carving out the schools portion of the tax increment. Section 16 of Article XVI of the California Constitution gives authority to reapportion property taxes among a city, city and county, and district or other public corporation (otherwise known as taxing agencies) for the purpose of redevelopment. SB 1156 excludes school district and special district from "district" and "affected taxing entity" for purposes of tax increment financing. This exclusion is intended to protect the general fund by excluding schools, but it could be unconstitutional to statutorily exclude schools and special districts since the Constitution includes them in the authorizing language for tax increment financing.

Application of Community Redevelopment Law (CRL): The author's intent is to apply the provisions of the CRL to sustainable communities investment authorities. However, this is not clear in the bill. The committee may wish to clearly state this intent.

Applying the CRL, to sustainable communities investment authorities presents challenges. Definitions and procedures in the CRL will not translate in all cases to the new sustainable communities investment authority. Although the bill makes an "authority" the same as an "agency" as defined in the CRL, that is the only definition that is included in the bill to coordinate the CLR and the new Authority. In order to apply the CRL to Authorities formed under this bill, there would need to be significant reworking of the CRL so that it could be

applied appropriately. For example, the CRL defines project areas as meeting certain requirements, including approval by a project area committee. It is not clear how this would translate to a sustainable communities investment authority and what role if any the project area committee would play.

Additionally, the CRL required redevelopment agencies to set aside 20% of tax increment generated in project areas for the creation, construction, and improvement of housing affordable to low- and moderate-income families and individuals. The CRL also contains inclusionary and production housing requirements (Health and Safety Code Section 33413). In redevelopment project areas, 15% of new and substantially rehabilitated dwellings developed must be available at affordable housing cost to persons of low or moderate-income. To fulfill this requirement, RDAs could cause to be available two units outside the project area, for every one unit within the project area. The committee may wish to consider how this requirement would apply to transit priority areas and small walkable communities financed by the Authority. By definition, transit priority areas and small walkable communities are smaller geographically than redevelopment project areas. The committee may wish to consider that this is an area where the inconsistency between the CRL and new model proposed in this bill needs to be a considered and addressed, otherwise this new tool will be unworkable.

No finding of blight: Post-World War II, redevelopment was created as a tool to combat urban decay and eradicate blight. Redevelopment agencies were given fundamental tools including the ability to acquire property through the power of eminent domain, the authority to finance their activities by issuing bonds and taking on debt, and the authority and obligation to relocate people who have interests in the property acquired by an agency. To establish redevelopment project areas, a redevelopment agency was required to identify both physical and economic blight in the project area that could not be mitigated without the use tax increment. SB 1156 would allow sustainable communities investment authority to establish a sustainable communities investment area without making a finding of blight. In order to eradicate blight, redevelopment agencies had authority to use eminent domain. SB 1156 would permit a sustainable communities investment authority to use eminent domain without a finding of blight. To avoid possible unintended consequences from broadly authorizing the use of the Community Redevelopment Law, the Committee may wish to consider amending SB 1156 to specify which Community Redevelopment Law powers a JPA can use without regard to blight.

Workability: According to the author, "SB 1156 would bring together cities and counties as equal partners in an inclusive governance structure to improve upon the old model of redevelopment that often pitted cities against counties and schools for limited tax revenues." In order to make a new tool for community and economic development work it needs to set reasonable and achievable standards for compliance. In order to use tax increment to finance projects in a sustainable communities investment area, this bill would require a city and or county to adopt a sustainable parking ordinance that encourages public transit and a jobs plan that would create careers that pay prevailing wage. The committee may wish to consider whether defining benchmarks for a sustainable parking plan would be useful in helping cities and counties comply with the requirements of the bill.

An Authority would be formed by a JPA between a city and county in an incorporated area, the city would for a governing body and establish the parameters of a sustainable communities investment area with the approval of the county. A separate board is then set up made up of three members representing the city and two representing the county. Although the board for the area

made up of city and county representatives is formed, it is never mentioned again in the bill. It's unclear what role the governing body of the sustainable communities investment area would play in the new financing tool, although it is defined and membership is detailed it does not have a role in implementing the authority or plan. The committee may wish to clarify the governing structure for the Authority detailed in the bill.

The bill requires counties to sign off on sustainable communities investment areas and projects, the bill does not provide cities with an option to create their own sustainable communities investment area to use only their portion of tax increment. It is unclear if counties and cities could agree to collaborate on a sustainable communities investment area and therefor if the new tool provided could be used by local governments.

Housing issues: As introduced this bill provided a financing tool for housing and economic development but has been amended to finance selected developments that would accomplish the planning goals of the SCS, including transit priority areas, small walkable communities, and clean energy manufacturing. Although housing is no longer specifically mentioned, the Authority would be required to comply with the housing provisions of the CRL. This raises some concerns.

- Last year, SB 450 (Lowenthal) proposed significant reforms to the CRL, including reforms to the housing provisions. SB 450 was vetoed by the Governor because he felt it was premature in light of the pending Supreme Court decision on ABX1 26 and ABX1 27 in *California Redevelopment Association v. Matosantos.* There is a reference in the intent language of SB 1156 to incorporate the changes the CRL made by SB 450, but SB 1156 does not do so. The committee may wish to consider that the SB 450 reforms were made to address abuses of the CRL and that in setting up a new community economic development entity that is subject to the CRL, it would be prudent to ensure that those reforms are made to the CRL so that the same abuses don't occur in the new sustainable communities investment authority.

- Redevelopment agencies were required to set aside 20% of tax increment generated in redevelopment project areas for the creation, improvement, and preservation of affordable housing. The committee may wish to consider whether a 20% set-aside is the appropriate amount in transit priority areas where there would need to be a higher concentration of residential units. Additionally, less money will be generated because the schools portion of tax increment will be excluded.

- Under the CRL, redevelopment agencies could fulfill their inclusionary housing requirements by causing to be available by regulation or agreement two affordable housing units outside the project area, for every one that would have been available in the project area. The committee may wish to consider that in the case of a transit priority area, the need for more residential units would argue against allowing the Authority to meet the inclusionary housing requirements of the CRL outside the transit priority area.

Committee amendments:

The committee has suggested the following amendments to clarify the bill and to require an Authority to set a-side 30% of tax increment generated in a sustainable communities investment area for housing affordable to low and moderate-income families:

- Clarify how the governing body of an Authority may be created.

- Make clear an Authority is required to comply with Community Redevelopment Law and the provisions of this bill.

- Require Authority to set aside 30% of tax increment for affordable housing for low and moderate income families and individuals.

Double referred: If SB 1156 passes this committee, the bill will be referred to the Committee on Local Government.

REGISTERED SUPPORT / OPPOSITION:

Support

American Federation of State, County and Municipal Employees
BRIDGE Housing
California Labor Federation
California Special Districts Association
California State Association of Counties
California Teamsters Public Affairs Council
City of Burbank
DMB Pacific Ventures
Los Angeles Alliance for a New Economy
Mission Bay Development Group
Natural Resources Defense Council
State Building and Construction Trades Council of California

Opposition

Associated Builders and Contractors of California
California Taxpayers Association
Plumbing-Heating-Cooling Contractors Association of California
Western Electrical Contractors Association

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