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TITLE 6.8. San Francisco Bay Area Regional Housing Finance [64500 - 64652] (Title 6.8 added by Stats. 2019, Ch. 598, Sec. 1.)

PART 2. Financing Activities of the Bay Area Housing Finance Authority [64600 - 64652] (Part 2 added by Stats. 2019, Ch. 598, Sec. 1.)

CHAPTER 3. Expenditures [64650 - 64652] (Chapter 3 added by Stats. 2019, Ch. 598, Sec. 1.)

64650. (a) (1) Revenue generated pursuant to this part shall be used for the construction of new affordable housing, affordable housing preservation, tenant protection programs, planning and technical assistance related to affordable housing, and for infrastructure to support housing and other purposes, as provided for in this section.

(2) For purposes of this section:

(A) "County housing revenue" are those funds distributed pursuant to subparagraph (A) of paragraph (1) of subdivision (d) and subparagraph (A) of paragraph (2) of subdivision (d).

(B) "Regional housing revenues" are those revenues described in subparagraph (B) of paragraph (1) of subdivision (d) and subparagraph (B) of paragraph (2) of subdivision (d).

(b) (1) The allocation of regional housing revenues to projects and programs shall be first approved by the executive board and subsequently by the authority. If the authority takes an action different from the executive board, the executive board must subsequently approve the action.

(2) Subject to funding eligibility and adjustment pursuant to paragraph (3), the authority shall distribute regional housing revenue in the form of a grant, loan, or other financing tool pursuant to subdivision (k) of Section 64520 in a manner that achieves the following minimum shares over five-year periods commencing after revenue is approved by voters as follows:

(A) (i) A minimum of two-thirds for production and preservation of affordable housing as follows:

(I) A minimum of 52 percent for the production of rental housing that is restricted by recorded document to be affordable to lower income households for at least 55 years, including, but not limited to, housing serving specific populations such as veterans, seniors, people with disabilities, current or former foster youth, victims of abuse, and people experiencing or at risk of homelessness. "Eligible expenses," for purposes of this paragraph, include, but are not limited to, development costs, as defined in Section 50065 of the Health and Safety Code.

(II) A minimum of 15 percent for preservation of housing that is restricted by recorded document to be affordable to low- or moderate-income households for 55 years. Funding pursuant to this clause for preservation programs may be used to acquire, rehabilitate, and preserve existing housing units restricted for affordability, as well as housing from the private market, including residential hotels, as defined in paragraph (1) of subdivision (b) of Section 50519 of the Health and Safety Code, in order to prevent the loss of affordability. Funding provided pursuant to this clause shall be subject to both of the following conditions:

(ia) Existing residents of buildings acquired for the purpose of affordable housing preservation shall not be displaced, even if the resident's household income exceeds the moderate-income limits in Section 50093 of the Health and Safety Code.

(ib) Buildings acquired for the purpose of affordable housing preservation shall achieve 100 percent occupancy by low- or moderate-income households over time through unit turnover.

(ii) Funding provided pursuant to this subparagraph shall be subject to the following conditions in the event that demolition or rehabilitation of housing units is required:

(I) If the housing units are occupied at the date of acquisition, the housing development shall provide at least the same number of units of equivalent number of bedrooms to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as those households in occupancy.

(II) If existing residents must be relocated due to demolition or rehabilitation needs, the developer must provide relocation benefits to the occupants of those housing rental units subject to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1. This subclause does not supersede any provision of a locally adopted ordinance that requires greater relocation assistance to displaced households.

(III) If existing residents must be relocated due to demolition or rehabilitation needs, the developer shall provide a right of first refusal for a comparable unit available in the new or rehabilitated housing development that is affordable to the household at an affordable rent, as defined in Section 50053 of the Health and Safety Code, or an affordable housing cost, as defined in Section 50052.5 of the Health and Safety Code.

(B) A minimum of 5 percent for tenant protection programs for low- and moderate-income households. However, regional housing revenues derived from a bond authorized in Section 64631 shall not be spent for these purposes unless, and only to the extent, permitted by law. The executive board and the authority board shall prioritize the use of revenue sources that are eligible for tenant protection programs in order to meet the minimum requirement of this subparagraph, or as that requirement is modified pursuant to paragraph (3), to the extent feasible. Eligible expenses provided pursuant to this paragraph may only be spent on the following:

(i) Preeviction and eviction legal services, counseling, advice and consultation, training, renter education, and representation, and services to improve habitability that protect against displacement of tenants.

(ii) Providing emergency rental assistance for lower income households. Rental assistance provided pursuant to this clause shall not exceed 48 months for each assisted household, except that for severely rent-burdened seniors on fixed incomes, rental assistance may be renewed for successive 48-month terms. For purposes of this clause, a "severely rent-burdened senior" is a senior that pays more than 50 percent of their pretax income on rent.

(iii) Homelessness prevention services, including, but not limited to, emergency financial assistance, supportive services, and housing problem solving.

(iv) Providing relocation assistance for lower income households beyond what is legally required of landlords according to local or state law.

(v) Collection and tracking of information related to displacement and displacement risk, rents, and evictions in the region.

(C) A maximum of 10 percent for a grant program for local governments that qualify based on criteria established in funding guidelines adopted by the executive board and the authority board, in consultation with the advisory committee. Subject to any limitations on the funding source, eligible expenditures pursuant to this subparagraph must support housing and related uses, including, but not limited to, grants for the following purposes:

(i) Technical assistance, preparation, and adoption of planning documents and process improvements to accelerate and support housing production, preservation, and tenant protections.

(ii) Infrastructure needs associated with increased housing production, including, but not limited to, transportation, schools, and parks.

(iii) One-time uses that address homelessness, including, but not limited to, homeless shelters and infrastructure to support those shelters, and homeless prevention programs.

(iv) Programs to enable low- or moderate-income households to become or remain homeowners, including, but not limited to, below market rate ownership programs, downpayment assistance programs, residential rehabilitation loan programs, and grants or loans to assist in the rehabilitation or replacement of existing mobilehomes located in a mobilehome or manufactured home community.

(v) Tenant protection programs, as described in subparagraph (B).

(D) Funding subject to this paragraph that is derived from a bond issued pursuant to Section 64631 shall be expended consistent with Article XIII A of the California Constitution and any amendment thereto.

(3) No earlier than five years after approval of a funding measure under Chapter 2 (commencing with Section 64610) and subject to consultation with the advisory committee, the executive board and the authority board may change any of the minimum requirements in subparagraph (A) or (B) of paragraph (2) if the executive board and the authority board each adopt a finding that the region's needs in a given category differ from those requirements. The executive board must approve the finding by a two-thirds vote, which must be subsequently approved by the authority board by a two-thirds vote. Approval of the finding shall be subject to the public participation requirements provided in subdivision (e) of Section 64511.

(4) The authority shall distribute the revenues derived from a commercial linkage fee established, increased, or imposed pursuant to Article 2 (commencing with Section 64620) of Chapter 2, net of related administrative costs of the authority, to each city or county in a manner that is consistent with the regional nexus study adopted by the executive board and the authority board. A city or county that receives revenues pursuant to this paragraph shall use that revenue solely for affordable housing necessitated by a commercial development project on which the fee was imposed, as determined by the executive board and the authority board pursuant to Section 64621.

(c) Except as otherwise provided in paragraph (4) of subdivision (b), the executive board and the authority board may approve funds for a project or program directly to a city, a county, a public entity, or a private project sponsor.

(d) (1) The authority shall distribute funds received through the funding measures authorized in Sections 64610 and 64611 and Article 3 (commencing with Section 64630) of Chapter 2 as follows:

(A) At least 80 percent of the revenue received shall be allocated to the county of origin for expenditure in that county, consistent with the county expenditure plan adopted pursuant to paragraph (6). Each county board of supervisors shall determine the appropriate entity or entities within their county to administer the funds. Counties may use up to 5 percent of these funds for administrative purposes to assist with the development and implementation of the expenditure plan in their county.

(B) Up to 20 percent of the revenue received shall be collected by the authority for expenditures consistent with the regional expenditure plan adopted pursuant to paragraph (5) and for the purposes set forth in subdivision (a), and shall be eligible to be spent in any county in which the measure is in effect.

(2) The authority shall distribute funds received through the funding measure authorized in Section 64612 as follows:

(A) At least 50 percent of the revenue received shall be allocated to the county of origin for expenditure in the county, consistent with the county expenditure plan adopted pursuant to paragraph (6). Each county board of supervisors shall determine the appropriate entity within their county to administer the funds allocated to their county. Counties may use up to 5 percent of these funds for administrative purposes to assist with the development and implementation of the expenditure plan in their county.

(B) Up to 50 percent of the revenue received shall be collected by the authority for expenditures consistent with the regional expenditure plan adopted pursuant to paragraph (5) and for the purposes set forth in subdivision (a), and shall be eligible to be spent in any county in which the measure is in effect.

(3) No earlier than five years after approval of a funding measure under Chapter 2 (commencing with Section 64610), the executive board and the authority board may review and adjust the minimum requirements regarding the distribution of funds in paragraphs (1) and (2). After consultation with the advisory committee and subject to the public participation requirements of subdivision (e) of Section 64511, the executive board and the authority board may adopt a finding that it is in the best interest of the region to modify the distribution of funds and adopt a revised policy. A vote in support of modifying the distribution of funds in paragraphs (1) and (2) must be approved first by a two-thirds vote of the executive board, followed by a subsequent two-thirds vote of the authority.

(4) County housing revenue may be spent on affordable housing production, affordable housing preservation, and tenant protection programs, as described in subparagraphs (A) and (B) of paragraph (2) of subdivision (b), provided that the expenditures are consistent with the county expenditure plan and the California Constitution.

(A) A county, including a city and county, shall provide a direct allocation to a city in their county if it is one of the three largest cities, including a city and county, in the San Francisco Bay area, as determined by the most recent population estimate by the Department of Finance. The direct allocation shall be based on the city's share of the county's regional housing need allocation pursuant to Section 65584 for lower income households. A city described in this subparagraph may use up to 5 percent of its direct allocation for administrative purposes to assist with the development and implementation of its expenditure plan.

(B) A county receiving funds from this chapter that does not include one of the three largest cities, including a city and county, in the region shall provide an option for a direct allocation to a city that has been allocated more than 30 percent of that county's regional housing need allocation for lower income households during that regional housing need allocation period. The direct allocation shall be based on the city's share of the county's regional housing need allocation for lower income

households. A city described in this subparagraph may use up to 5 percent of its direct allocation for administrative purposes to assist with the development and implementation of its expenditure plan.

(C) A city that receives a direct allocation shall prepare, adopt, and transmit to the county in which it is located an expenditure plan consistent with the provisions in paragraph (6) and prioritize projects that help the city achieve its regional housing need allocation. A city receiving a direct allocation shall be subject to the same minimum shares applicable to counties in clause (i) of subparagraph (B) of paragraph (6), unless the executive board and the authority each adopt a finding, based on a thorough review and after consultation with the advisory committee, that the minimum allocation requirements are not the best use of the funds to address the city's affordable housing needs. The executive board must approve the finding by a two-thirds vote, which must be subsequently approved by the authority board by a two-thirds vote.

(5) (A) The executive board and the authority board shall, in consultation with the advisory committee, adopt a regional expenditure plan for the use of housing revenue by July 1 of each year, except the executive board and the authority board shall select the deadline to adopt the first regional expenditure plan. The regional expenditure plan may cover multiple years, as determined by the executive board and the authority board. The authority may take action on the regional expenditure plan only after it has been approved by the executive board. If the authority adopts changes to the regional expenditure plan, the changes must be subsequently approved by the executive board.

(B) (i) The regional expenditure plan shall set forth the share of revenue and estimated funding amount to be spent on each of the categories established in subdivision (b), indicate the household income levels to be served within each category of expenditures, and estimate the number of affordable housing units to be built or preserved and the number of tenants to be protected. To the extent feasible, the regional expenditure plan shall include a description of any specific project or program proposed to receive funding, including the location, amount of funding, and anticipated outcomes, as well as the estimated funding level for each of the categories listed in subparagraph (A) or (B) of paragraph (2) of subdivision (b). Beginning the second year, the authority shall include a report in the regional expenditure plan that provides its allocations and expenditures to date of projects and programs funded and the extent to which the minimum targets in subparagraph (A) or (B) of paragraph (2) of subdivision (b) were achieved.

(ii) (I) The regional expenditure plan shall not render projects ineligible for funding based on the presence or absence of any city, county, or city and county land use or housing policies.

(II) Notwithstanding subclause (I), the authority may use project-specific conditions to prioritize projects for funding.

(C) The regional expenditure plan shall include the following information for any specific project that has received an allocation of regional housing revenue during the prior year:

(i) Whether the project proponent has requested a building permit for the project, and if so, the date when it was requested.

(ii) Whether the project proponent is eligible to request a building permit for the project, and if so, the date when it became eligible.

(iii) Whether the project proponent has obtained final approval or certification that the housing development is habitable, such as a certificate of occupancy, and if so, the date when it was obtained.

(6) Each county shall adopt a county expenditure plan applicable to county housing revenue no sooner than 30 days after a draft of the plan has been placed on an agenda of the governing body for discussion. Each county shall transmit the county expenditure plan to the executive board and the authority as follows:

(A) The expenditure plan shall be transmitted by July 1 of each year, except the executive board and the authority board shall select the deadline for the transmission of the first expenditure plan. The deadline for the transmission of the first expenditure plan shall provide at least 90 days for a county to prepare the expenditure plan after the election approving a tax or bond pursuant to this part is certified. An expenditure plan may cover multiple years, as determined by the county.

(B) (i) To be deemed complete, the expenditure plan shall specify the proposed allocation of funds as follows:

(I) The proposed share of revenues that will be allocated to the construction of new affordable housing, affordable housing preservation, and tenant protection programs. Except as provided in subclause (IV), the expenditure plan shall demonstrate that over a five-year period the county will meet the following allocations:

(ia) A minimum allocation of 52 percent towards construction of new affordable housing that prioritizes projects that help achieve regional housing need allocation targets for housing affordable to extremely low income, very low income, and lower income households.

(ib) A minimum allocation of 15 percent towards affordable housing preservation.

(ic) A minimum allocation of 5 percent towards tenant protection programs.

(id) A county expenditure plan may deviate from the minimum shares required by this clause if the executive board and the authority board each adopt a finding, based on a thorough review and after consultation with the advisory committee, that the minimum allocations are not the best use of the funds to address the county's affordable housing needs. The executive board must adopt the finding by a two-thirds vote, which must be subsequently approved by the authority board by a two-thirds vote.

(II) To the extent feasible, the plan shall include a description of any specific project or program proposed to receive funding, including the location, amount of funding, and anticipated outcomes, as well as the estimated funding level for each of the categories listed in clause (i).

(III) The plan shall demonstrate the county has consulted with each city in the county, excluding cities that receive a direct allocation.

(IV) Commencing with the second year, each county shall include in its expenditure plan a report on its allocations and expenditures to date of projects and programs funded and the extent to which the minimum targets in clause (i) were achieved.

(ii) (I) The authority shall not impose any other conditions for a county expenditure plan to be deemed complete to allocate funds.

(II) Notwithstanding subclause (I), the authority may enter into an agreement with a county or city that receives an allocation of county housing revenue to ensure that the authority or the county, city, or city and county take the actions necessary or incidental to implementing the purpose of this section.

(7) If the executive board and the authority board each determine by a majority vote that a county has not submitted a complete expenditure plan pursuant to the requirements of subparagraph (B) of paragraph (6), the authority may withhold allocation of revenues to that county until the county submits a complete expenditure plan.

(8) The authority shall post each completed expenditure plan on its internet website.

(9) A county may request the executive board and the authority to administer all or a portion of its county housing revenue. If the executive board and the authority board agree to administer the funds, they shall develop and adopt an annual expenditure plan applicable to that portion of the funds that shall be jointly approved by the executive board and the authority board, in consultation with the county, and projects allocated according to that plan shall be subject to the same timelines described in paragraph (10).

(10) After county housing revenues are committed to a specific project, they shall remain available for expenditure for three years. A county may authorize expenditures beyond three years pursuant to guidelines that shall be reviewed and adopted by the executive board and the authority board, in consultation with the advisory committee.

(11) (A) Funds allocated to a city pursuant to paragraph (3) shall be committed to a specific project within five years of receipt.

(B) Once committed to a specific project, funds shall remain available for expenditure for an additional five years, unless an extension is authorized pursuant to subparagraph (C).

(C) If the funds have not been expended within five years of receipt as required in subparagraph (B), the city shall show that it has made adequate progress towards completing the project. If the county in which the city is located finds that adequate progress has been made, the county shall authorize an additional 24 months to grant entitlements to the remainder of the project. If the county in which the city is located does not find that adequate progress has been made, the funds shall be transferred to the county. The county shall hold the funds until the city submits a plan satisfactory to the county to move forward with the project or allocate funds to another qualified project consistent with the city's expenditure plan.

(D) For purposes of this paragraph, "adequate progress" means the project has received the land use approvals or entitlements necessary for at least 75 percent of the project's units.

(e) Before the distribution of funds each year in accordance with subdivision (d), the authority shall be entitled to up to 5 percent of the funds of any measure approved pursuant to this part for general administration and overhead.

(Amended by Stats. 2024, Ch. 671, Sec. 1. (AB 598) Effective January 1, 2025.)

64651. The executive board and the authority shall monitor expenditures in coordination with local jurisdictions. At least once every five years, the monitoring shall include a review of county housing revenue expenditures and a review of revenues allocated to cities pursuant to subparagraphs (A) and (B) of paragraph (4) of subdivision (d) of Section 64650. The authority board and executive

board may adopt guidelines applicable to such funds as deemed necessary to ensure they are spent in a timely manner consistent with the goals of this chapter.

(Added by Stats. 2019, Ch. 598, Sec. 1. (AB 1487) Effective January 1, 2020.)

64652. To ensure oversight and accountability, the authority shall prepare and submit an annual report to the Legislature, in conformance with Sections 9795 and 53411 on allocations and expenditures under its control, and those controlled by counties pursuant to subdivision (d) of Section 64650. The report shall include a description of projects funded and their status, the households served by income level, and the extent to which the minimum targets in paragraph (2) of subdivision (b) and paragraph (6) of subdivision (d) of Section 64650 were achieved.

(Amended by Stats. 2020, Ch. 370, Sec. 167. (SB 1371) Effective January 1, 2021.)