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|------|------------------|----------------|--------------|-----------------|------------------|--------------|
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|------|------------------|----------------|--------------|-----------------|------------------|--------------|

**AB-1598 Affordable housing authorities.** (2017-2018)

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**Assembly Bill No. 1598**

**CHAPTER 764**

An act to add Division 5 (commencing with Section 62250) to Title 6 of the Government Code, relating to housing.

[ Approved by Governor October 13, 2017. Filed with Secretary of State October 13, 2017. ]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 1598, Mullin. Affordable housing authorities.

Existing law authorizes certain local agencies to form a community revitalization authority (authority) within a community revitalization and investment area, as defined, to carry out provisions of the Community Redevelopment Law in that area for purposes related to, among other things, infrastructure, affordable housing, and economic revitalization. Existing law provides for the financing of these activities by, among other things, the issuance of bonds serviced by property tax increment revenues, and requires the authority to adopt a community revitalization and investment plan for the community revitalization and investment area that includes elements describing and governing revitalization activities. Existing law requires a community revitalization and investment plan to include a 30-year limit for establishing loans, advances, and indebtedness by the authority.

This bill would authorize a city, county, or city and county to adopt a resolution creating an affordable housing authority with power limited to providing low- and moderate-income housing and affordable workforce housing, as defined, funded through a low- and moderate-income housing fund, as specified. The bill would prohibit certain local government entities from participating in the authority. The bill would authorize an authority created pursuant to those provisions to have boundaries that are identical to the boundaries of the city, county, or city and county that created the authority. The bill would require the authority to adopt, after holding a noticed public hearing, an affordable housing investment plan that includes, among other things, an affordable housing program. The bill would require an authority created pursuant to these provisions to include a 45-year limit for establishing loans, advances, and indebtedness by the authority. The bill would authorize specified local entities to adopt a resolution to provide property tax increment revenues to the authority. The bill would also authorize specified local entities to adopt a resolution allocating other tax revenues to the authority, subject to certain requirements. The bill would provide for the financing of the activities of the authority by, among other things, the issuance of bonds serviced by funds received pursuant to those property tax increment revenues or other tax revenues allocated to the authority.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

**THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:**

**SECTION 1.** Division 5 (commencing with Section 62250) is added to Title 6 of the Government Code, to read:

**DIVISION 5. Affordable Housing Authorities**

**62250.** For purposes of this division, the following terms have the following meanings:

(a) "Affordable workforce housing" means housing with an affordable housing cost, as defined in Section 50052.5 of the Health and Safety Code, or affordable rent, as defined in Section 50053 of the Health and Safety Code, for households whose gross income does not exceed 120 percent of the area median income.

(b) "Authority" means an affordable housing authority created pursuant to this division.

(c) "Consenting local agency" means a local agency that has adopted a resolution of its governing body consenting to the affordable housing investment plan.

(d) "Plan" means an affordable housing investment plan adopted pursuant to Section 62252. The plan shall be deemed to be the plan described in Section 16 of Article XVI of the California Constitution.

(e) "Real property" means any of the following:

(1) Land, including land under water and waterfront property.

(2) Buildings, structures, fixtures, and improvements on the land.

(3) Any property appurtenant to or used in connection with the land.

(4) Every estate, interest, privilege, easement, franchise, and right in land, including rights-of-way, terms for years, and liens, charges, or encumbrances by way of judgment, mortgage, or otherwise and the indebtedness secured by those liens.

**62251.** (a) A city, county, or city and county may adopt a resolution creating an affordable housing authority that shall be limited to providing low- and moderate-income housing and affordable workforce housing pursuant to this division. An authority created pursuant to this division is a public body, corporate and politic. The authority shall be deemed to be the "agency" described in subdivision (b) of Section 16 of Article XVI of the California Constitution for purposes of receiving property tax increment revenues.

(b) (1) A school entity, as defined in subdivision (f) of Section 95 of the Revenue and Taxation Code, may not participate in an authority created pursuant to this section.

(2) A successor agency, as defined in subdivision (j) of Section 34171 of the Health and Safety Code, may not participate in an authority created pursuant to this part, and an entity created pursuant to this part shall not receive any portion of the property tax revenues or other moneys distributed pursuant to Section 34188 of the Health and Safety Code.

(3) An authority formed by a city or county that created a redevelopment agency that was dissolved pursuant to Part 1.85 (commencing with Section 34170) of Division 24 of the Health and Safety Code shall not become effective until the successor agency or designated local authority for the former redevelopment agency has adopted findings of fact stating all of the following:

(A) The agency has received a finding of completion from the Department of Finance pursuant to Section 34179.7 of the Health and Safety Code.

(B) Former redevelopment agency assets that are the subject of litigation against the state, where the city or county or its successor agency or designated local authority are a named plaintiff, have not been or will not be used to benefit any efforts of an authority formed under this part unless the litigation has been resolved by entry of a final judgment by any court of competent jurisdiction and any appeals have been exhausted.

(C) The agency has complied with all orders of the Controller pursuant to Section 34167.5 of the Health and Safety Code.

(c) The governing board of an authority created pursuant to this division shall be an odd number of members with at least five or seven members in total, as follows:

(1) (A) At least three members of the city council or the board of supervisors appointed by the city council or the board of supervisors.

(B) In the case of an authority created by a city and county authority jointly, at least three members of the city council and three members of the board of supervisors.

(2) At least one member of the public who lives or works within the boundaries of the city or county that created the authority.

(d) The boundaries of an authority created pursuant to this division may be identical to the boundaries of the city or county that created the authority.

**62252.** (a) An authority created pursuant to this division shall, by resolution, create a Low and Moderate Income Housing Fund and adopt an affordable housing investment plan that may include either or both of the following:

- (1) A provision for the receipt of property tax increment funds generated within the area.
- (2) A provision for the receipt of any tax revenues allocated to the authority pursuant to subdivision (b) of Section 62253.

(b) The plan shall include each of the following elements:

- (1) A statement of the principal goals and objectives of the plan.
- (2) An affordable housing program that describes how the authority will fulfill its objective and if duties and activities will be assigned to a city or county housing department or public housing authority.
- (3) The estimated amount that will be deposited in the Low and Moderate Income Housing Fund during each of the next five years.
- (4) Estimates of the number of new, rehabilitated, or price restricted residential units to be assisted during each of the five years and estimates of the expenditures of moneys from the Low and Moderate Income Housing Fund during each of the five years.
- (5) A description of how the program will implement the requirements for expenditures of funds in the Low and Moderate Income Housing Fund over a 10-year period at various income levels.
- (6) Estimates of the number of units, if any, to be developed by the authority for very low, low-, and moderate-income households during the next five years.
- (7) A fiscal analysis setting forth the projected receipt of revenue and projected expenses over a five-year planning horizon, including the potential issuance of bonds backed by property tax increment revenues pursuant to subdivision (a) of Section 62253 during the term of the plan. Bonds shall be issued in conformity with Article 4.5 (commencing with Section 53506) and Article 5 (commencing with Section 53510) of Chapter 3 of Part 1 of Division 2 of Title 5.
- (8) Time limits as follows:
  - (A) Forty-five years for the establishing of loans, advances, and indebtedness.
  - (B) Forty-five years for repayment of all of the authority's debts and obligations, and fulfilling all of the authority's housing obligations. The plan shall specify that an authority shall dissolve as a legal entity in no more than 45 years, and that no further taxes shall be allocated to the authority thereafter. Nothing in this subparagraph shall be interpreted to prohibit an authority from refinancing outstanding debt solely to reduce interest costs.
- (9) A feasible method or plan for relocation of families and persons to be temporarily or permanently displaced from housing facilities in the plan area. The method or plan shall be consistent with the requirements of Section 62256.

(c) The authority shall hold a public hearing before adopting an affordable housing investment plan. The authority shall provide notice of that hearing in accordance with Section 6062. The authority shall consider any comments made on the plan at that hearing before adopting the plan.

**62253.** (a) At any time before or after adoption of the plan, any city, county, or special district, other than a school entity as defined in subdivision (n) of Section 95 of the Revenue and Taxation Code or a successor agency as defined in subdivision (j) of Section 34171, that receives ad valorem property taxes from property located within an area may adopt a resolution directing the county auditor-controller to allocate its share of property tax increment funds within the area covered by the plan to the authority. The resolution adopted pursuant to this subdivision may direct the county auditor-controller to allocate less than the full amount of the property tax increment, and to establish a maximum amount of time in years that the allocation takes place. A resolution adopted pursuant to this section for an affordable housing authority may be repealed and be of no further effect by giving the county auditor-controller 90 days' notice; provided, however, that the county auditor-controller shall continue to allocate to the authority the taxing entity's share of ad valorem property taxes that have been pledged to the repayment of debt issued by the authority until the debt has been fully repaid. Before adopting a resolution pursuant to this subdivision, a city, county, or special district shall approve a memorandum of understanding with the authority governing the authority's use of property tax increment funds for administrative and overhead expenses.

(b) At any time before or after the adoption of the plan, a city, county, or special district, other than a school entity as defined in subdivision (n) of Section 95 of the Revenue and Taxation Code or a successor agency as defined in subdivision (j) of Section 34171, may adopt a resolution to allocate tax revenues of that entity to the authority, including revenues derived from local sales and use taxes imposed pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section

7200) of Division 2 of the Revenue and Taxation Code) or transactions and use taxes imposed pursuant to the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251) of the Revenue and Taxation Code), provided that both of the following apply:

(1) The use of those revenues by the authority for purposes of this division is consistent with the purposes for which that tax was imposed.

(2) The boundaries of the authority are coterminous with the city or county that established the authority.

(c) A minimum of 95 percent of the allocated property tax increment revenues pursuant to subdivision (a), and allocated tax revenues pursuant to subdivision (b), shall be used to increase, improve, and preserve the community's supply of housing for low, very low, and moderate-income households. Not more than 5 percent of allocated revenues may be used for administration.

(d) Housing funds expended by an authority shall be spent in proportion to the share of the regional housing need allocated to the city, county, or city and county for each income category pursuant to Section 65584 for low, very low, and moderate-income housing.

**62254.** An authority may do all of the following:

(a) Provide for low- and moderate-income housing and affordable workforce housing in accordance with this division.

(b) Remedy or remove a release of hazardous substances pursuant to the Polanco Redevelopment Act (Article 12.5 (commencing with Section 33459) of Chapter 4 of Part 1 of Division 24 of the Health and Safety Code) or Chapter 6.10 (commencing with Section 25403) of Division 20 of the Health and Safety Code.

(c) Provide for seismic retrofits of existing buildings in accordance with all applicable laws and regulations.

(d) Acquire and transfer real property in accordance with Section 62260. The authority shall retain controls and establish restrictions or covenants running with the land sold or leased for private use for the periods of time and under the conditions as provided in the plan. The establishment of these controls is a public purpose under this division.

(e) Issue bonds in conformity with Article 4.5 (commencing with Section 53506) and Article 5 (commencing with Section 53510) of Chapter 3 of Part 1 of Division 2 of Title 5.

(f) (1) Borrow money, receive grants, or accept financial or other assistance or investment from the state or the federal government or any other public agency or private lending institution for any project within its area of operation, and comply with any conditions of a loan or grant. An authority may qualify for funding as a disadvantaged community pursuant to Section 79505.5 of the Water Code or as defined by Section 56033.5. An authority may also enter into an agreement with a qualified community development entity, as defined by Section 45D(c) of the Internal Revenue Code, to coordinate investments of funds derived from the New Markets Tax Credit with those of the authority in instances where coordination offers opportunities for greater efficiency of investments to improve conditions described in subdivisions (c) and (d) within the territorial jurisdiction of the authority.

(2) Receive funds allocated to it pursuant to a resolution adopted by a city, county, or special district to transfer these funds from a source described in subdivision (d), (e), or (f) of Section 53398.75, subject to any requirements upon, or imposed by, the city, county, or special district as to the use of these funds.

(g) Adopt an affordable housing plan pursuant to Section 62252.

(h) Make loans or grants for owners or tenants to improve, rehabilitate, or retrofit buildings or structures within the plan area.

(i) Construct foundations, platforms, and other like structural forms necessary for the provision or utilization of air rights sites for buildings to be used for purposes of providing affordable housing pursuant to this division.

**62255.** Every five years, beginning in the calendar year in which the authority has allocated a cumulative total of more than one million dollars (\$1,000,000) in property tax increment revenues pursuant to subdivision (a) of Section 62253 or other revenues pursuant to subdivision (b) of Section 62253, including any proceeds of a debt issuance, the authority shall contract for an independent audit conducted in accordance with generally accepted governmental auditing standards.

**62256.** (a) An authority shall prepare a feasible method or plan for relocation of any families and persons to be temporarily or permanently displaced from housing facilities in the area affected by the affordable housing investment plan. The method or plan adopted pursuant to this section shall be incorporated into the affordable housing investment plan pursuant to subdivision (b) of Section 62252.

(b) The city, county, or city and county that created the authority shall ensure that the method or plan of the authority for the relocation of families or single persons to be displaced by a rehabilitation or retrofitting project within the affordable housing investment plan area shall provide that no persons or families of low and moderate income shall be displaced unless and until there is a suitable housing unit available and ready for occupancy by the displaced person or family at rents comparable to those at the time of their displacement and that all other requirements of Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 of the Government Code are met. The housing units shall be suitable to the needs of those displaced persons or families and must be decent, safe, sanitary, and otherwise standard dwellings. The authority shall not displace the person or family until the housing units are available and ready for occupancy.

(c) The authority shall require in the recorded covenants for those units that the housing be made available to the persons and families of low or moderate income displaced by a rehabilitation or retrofitting project. Those persons and families shall be given priority in renting or buying those units in advance of marketing the units to the general public. Failure to give that priority shall not affect the validity of title to real property; however, a unit may not be counted as a replacement or production unit in the event of noncompliance with this provision. The authority shall keep a list of persons and families of low and moderate income displaced by the rehabilitation or retrofitting project who are to be given priority, and may establish reasonable rules for determining the order or priority on the list. The list shall be provided to the owner of those properties at or before any certificate of occupancy is issued.

(d) If insufficient suitable housing units are available in the affordable housing investment plan area for low- and moderate-income persons and families to be displaced from a rehabilitation or retrofitting project, the city council or board of supervisors that created the authority shall assure that sufficient land be made available within its territorial jurisdiction for suitable housing for rental or purchase by low- and moderate-income persons and families. If insufficient suitable housing units are available in the community for use by persons and families of low and moderate income displaced by the rehabilitation or retrofitting project, the authority may, to the extent of that deficiency, direct or cause the development, rehabilitation, or construction of housing units within the community, both inside and outside of the affordable housing investment plan area.

(e) Permanent housing facilities shall be made available within two years from the time occupants are displaced and pending the development of those facilities there will be available to those displaced occupants adequate temporary housing facilities at rents comparable to the units from which the displaced occupants were displaced.

(f) (1) Whenever dwelling units housing persons and families of low or moderate income are destroyed or removed from the low- and moderate-income housing market as part of a rehabilitation or retrofitting project that is subject to a written agreement with the authority or where financial assistance has been provided by the authority, the authority shall, within two years of the destruction or removal, rehabilitate, develop, or construct, or cause to be rehabilitated, developed, or constructed, for rental or sale to persons and families of low or moderate income, an equal number of replacement dwelling units that have an equal or greater number of bedrooms as those destroyed or removed units at affordable housing costs within the territorial jurisdiction of the authority. One hundred percent of the replacement dwelling units shall be available at an affordable housing cost to persons in the same or a lower income category (extremely low, low, very low, or moderate), as the persons displaced from those destroyed or removed units.

(2) The authority shall require all replacement dwelling units and other dwelling units rehabilitated, retrofitted, developed, constructed, or price restricted to remain available at affordable housing cost to, and occupied by, persons and families of extremely low income, low-income, moderate-income, and very low income households, respectively, for not less than 55 years for rental units or 45 years for owner-occupied units.

(3) Notwithstanding subdivision (a), the authority may replace, destroy, or remove dwelling units with a fewer number of replacement dwelling units if the replacement dwelling units meet both of the following criteria:

(A) The total number of bedrooms in the replacement dwelling units equals or exceeds the number of bedrooms in the destroyed or removed units. Destroyed or removed units having one or no bedroom are deemed for this purpose to have one bedroom.

(B) The replacement units are affordable to, and occupied by, the same income level of households as the destroyed or removed units.

(g) (1) An authority shall provide relocation assistance and shall make all of the payments required by Chapter 16 (commencing with Section 7260) of Division 7 of Title 1, including the making of those payments financed by the federal government.

(2) This subdivision shall not be construed to limit any other authority which an authority may have to make other relocation assistance payments, or to make any relocation assistance payment in an amount which exceeds the maximum amount for that payment authorized by Chapter 16 (commencing with Section 7260) of Division 7 of Title 1.

**62257.** An authority shall receive a priority for assistance in housing programs administered by the Department of Housing and Community Development, and other state agencies and departments.

**62258.** An authority may transfer its housing responsibilities to a housing authority or city or county housing department if it determines that combining funding streams will reduce administrative costs or expedites the construction of affordable housing.

**62259.** (a) All housing assisted by an authority created pursuant to this division shall remain affordable for at least 55 years for rental units and 45 years for owner-occupied units.

(b) The authority shall execute an enforceable and verifiable agreement with a public agency, a recorded deed restriction, or other legal document that restricts the project's usage and that provides that the units designated for use by lower income households are continuously available to or occupied by lower income households at rents that do not exceed those prescribed by Section 50053 of the Health and Safety Code, or, to the extent that the terms of federal, state, or local financing or financial assistance conflicts with Section 50053 of the Health and Safety Code, rents that do not exceed those prescribed by the terms of the financing or financial assistance.

**62260.** Within the area of the authority, an authority may:

(a) Purchase, lease, obtain an option upon, acquire by gift, grant, bequest, devise, or otherwise, any real or personal property, any interest in property, and any improvements on it, including repurchase of developed property previously owned by the authority. The authority shall obtain an appraisal from a qualified independent appraiser to determine the fair market value of property before the authority acquires or purchases real property.

(b) Accept, at the request of the legislative body of the community, a conveyance of real property, located either within or outside the plan area, owned by a public entity and declared surplus by the public entity, or owned by a private entity. The authority may dispose of that property to private persons or to public or private entities, by sale or long-term lease for development. All or any part of the funds derived from the sale or lease of that property may, at the discretion of the legislative body of the community, be paid to the community, or to the public entity from which any of that property was acquired.

(c) Sell, lease, grant, or donate real property owned or acquired by the authority in a plan area to a housing authority or to any public agency for public housing projects.

(d) Offer for resale property acquired by an authority for rehabilitation and resale within one year after completion of rehabilitation. Properties held by the authority in excess of a one-year period shall be listed in the authority's annual report with information conveying the reasons that property remains unsold and indicating plans for its disposition.

**62261.** (a) The authority shall retain controls and establish restrictions or covenants running with land sold or leased for private use for those periods of time and under those conditions as are provided in the plan. The establishment of those controls is a public purpose under this division.

(b) An authority shall obligate lessees or purchasers of property acquired in an affordable housing project to:

(1) Use the property for the purpose designated in the affordable housing plan.

(2) Begin the project within a period of time which the authority fixes as reasonable.

(3) Comply with the covenants, conditions, or restrictions that the authority deems necessary to prevent speculation or excess profit-taking in undeveloped land, including right of reverter to the authority. Covenants, conditions, and restrictions imposed by an authority may provide for the reasonable protection of lenders.

(4) Comply with other conditions that the authority deems necessary to carry out the purposes of this division.

**62262.** An authority created pursuant to this division shall be a local public agency subject to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5), the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and the Political Reform Act of 1974 (Title 9 (commencing with Section 81000)).

**SEC. 2.** The Legislature finds and declares that the allocation of revenues derived from a sales and use tax or a transactions and use tax to an affordable housing authority pursuant to Division 5 (commencing with Section 62250) of Title 6 of the Government Code, as added by this act, is not subject to Section 29 of Article XIII of the California Constitution because an authority is not a city, county, or city and county within the meaning of that provision, but is rather a separate political entity as described in subdivision (a) of Section 62251 of the Government Code, as added by this act.