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**AB-1487 San Francisco Bay area: housing development: financing.** (2019-2020)

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**Assembly Bill No. 1487**

**CHAPTER 598**

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

[ Approved by Governor October 08, 2019. Filed with Secretary of State October 08, 2019. ]

**LEGISLATIVE COUNSEL'S DIGEST**

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

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

This bill, the San Francisco Bay Area Regional Housing Finance Act, would establish the Bay Area Housing Finance Authority (hereafter the authority) and would state that the authority's purpose is to raise, administer, and allocate funding for affordable housing in the San Francisco Bay area, as defined, and provide technical assistance at a regional level for tenant protection, affordable housing preservation, and new affordable housing production. The bill would provide that the governing board of the Metropolitan Transportation Commission serve as the governing board of the authority. The bill would require the authority board to provide for regular audits of the authority, including an independent financial and performance audit for bonds secured by ad valorem property taxes, and financial reports, as provided. The bill would include findings that the changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities within the San Francisco Bay area, including charter cities.

The bill would authorize the authority to, among other things, raise and allocate new revenue, incur and issue bonds and other indebtedness, and allocate funds to the various cities, counties, and other public agencies and affordable housing projects within its jurisdiction to finance affordable housing development projects, preserve and enhance existing affordable housing, and fund tenant protection programs, as specified, in accordance with applicable constitutional requirements. In this regard, the bill would authorize the entity to impose various special taxes, including a parcel tax, and certain business taxes, within its jurisdiction and to issue general obligation bonds secured by the levy of ad valorem property taxes, in accordance with applicable constitutional requirements, and revenue bonds payable from the revenues of the authority, other than revenues generated from ad valorem property taxes. The bill would also authorize the executive board of the Association of Bay Area Governments to impose a commercial linkage fee, as defined, in an amount not to exceed the equivalent of \$10, and require a city or county in the San Francisco Bay area that has jurisdiction over the approval of a commercial development project, as defined, to collect that fee as a condition of that approval and remit the amount of fee to the authority, as provided. The bill would require the authority to ratify the commercial linkage fee adopted by the executive board of the Association of Bay Area Governments. The bill would require that revenue generated by the authority pursuant to these provisions be used for specified housing purposes and require the authority to distribute those funds in accordance with specified requirements, including the adoption of a regional expenditure plan.

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

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

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

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

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

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

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

### **TITLE 6.8. San Francisco Bay Area Regional Housing Finance**

#### **PART 1. Formation of the Bay Area Housing Finance Authority and General Powers**

##### **CHAPTER 1. General Provisions**

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

**64501.** The Legislature finds and declares the following:

(a) The San Francisco Bay area is facing the most significant housing crisis in the region's history, as countless residents are facing insurmountable housing costs, spend hours driving every day, are one paycheck away from an eviction, or experience homelessness.

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

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

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

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

(f) Regional funding is necessary to help address the housing crisis in the San Francisco Bay area by reducing the severe imbalance between jobs and housing and delivering resources and technical assistance at a regional scale, including:

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

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

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

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

**64502.** For purposes of this title:

(a) "Affordable housing" is defined as housing that is restricted by recorded document to provide an affordable housing cost, as defined in Section 50052.5 of the Health and Safety Code.

(b) "Authority" means the Bay Area Housing Finance Authority established pursuant to Section 64510.

(c) "Board" means the governing board of the Bay Area Housing Finance Authority.

(d) "Executive board" means the executive board of the Association of Bay Area Governments.

(e) "Extremely low income households" has the same meaning as the term as defined in Section 50106 of the Health and Safety Code.

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

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

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

(i) "Very low income households" has the same meaning as the term as defined in Section 50105 of the Health and Safety Code.

**64503.** The Legislature finds and declares that providing a regional financing mechanism for affordable housing production, preservation, and tenant protections in the San Francisco Bay area, as described in this section and Section 64501, is a matter of statewide concern and is not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, this title applies to all cities within the San Francisco Bay area, including charter cities.

## **CHAPTER 2. The Bay Area Housing Finance Authority and Governing Board**

**64510.** (a) (1) The Bay Area Housing Finance Authority is hereby established with jurisdiction extending throughout the San Francisco Bay area.

(2) The authority shall be governed by the same board that governs the Metropolitan Transportation Commission. The authority shall be a separate legal entity from the Metropolitan Transportation Commission.

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

(c) The authority's purpose is to raise, administer, and allocate funding and provide technical assistance at a regional level for tenant protection, affordable housing preservation, and new affordable housing production.

(d) The authority shall be staffed by the existing staff of the Metropolitan Transportation Commission or any successor agency, with the understanding that additional staff with expertise in affordable housing finance will be needed to administer the funding authorized in this chapter.

(e) It is the intent of the Legislature that the powers granted to the authority and the executive board under this title shall be transferred to a future regional agency if an agency, under one governing board, is established to replace the Metropolitan Transportation Commission and the Association of Bay Area Governments and integrate regional transportation and housing funding and policy decisions within the San Francisco Bay area, subsequent to a robust public engagement process at the regional level.

**64511.** (a) (1) The executive board shall review and approve the regional expenditure plan required pursuant to paragraph (5) of subdivision (d) of Section 64650 and projects authorized by this chapter before review, approval, and allocation by the authority.

(2) (A) The executive board and the authority board shall form an advisory committee composed of nine representatives with knowledge and experience in the areas of affordable housing finance and development, tenant protection, and housing preservation. The advisory committee shall assist in the development of funding guidelines and the overall implementation of the program.

(B) Consistent with the provisions of this chapter, the advisory committee shall provide consultation and make recommendations to the executive board and the authority board. The advisory committee will meet as necessary to fulfill their roles and responsibilities.

(b) (1) A member of the authority board may receive a per diem for each board meeting that the member attends. The authority board shall set the amount of that per diem for a member's attendance, but that amount shall not exceed one hundred dollars (\$100) per meeting. A member shall not receive a payment for more than two meetings in a calendar month.

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

(c) (1) Five years after the voters approve an initial ballot measure pursuant to Section 64521, the authority and the executive board shall review the implementation of the measure. The review shall include the following:

(A) An analysis of the expenditures to date.

(B) The number of affordable housing units produced and preserved at different household income levels.

(C) The tenant protection services provided, and the roles of the executive board and the authority.

(2) The executive board and the authority board may, upon mutual concurrence, as a part of the review described in this subdivision elect to transfer or delegate a responsibility authorized in this title to the executive board or the authority, as applicable, except for the provisions of Article 3 (commencing with Section 64630) of Chapter 2 of Part 2.

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

(2) The authority shall be 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)).

(e) In addition to the requirements under subdivision (d), the authority shall engage in public participation processes, which shall include the following:

(1) Outreach efforts to encourage the active participation of a broad range of stakeholder groups in the planning process, including, but not limited to, affordable housing and homelessness advocates, nonprofit developers, neighborhood and community groups, environmental advocates, equity organizations, home builder representatives, and business organizations.

(2) Holding at least one public meeting regarding any relevant plan or proposals being considered by the authority. The authority shall hold any such meeting at a time and a location convenient for members of the public. The authority shall place each plan or proposal under consideration on a meeting agenda of the authority board for discussion at least 30 days before the authority board takes action.

(3) A process for enabling members of the public to provide a single request to receive authority notices, information, and updates.

**64512.** A member of the authority board shall exercise independent judgment on behalf of the interests of the residents, the property owners, and the public in furthering the intent and purposes of this title.

**64513.** (a) The authority board shall hold its first meeting at a time and place within the San Francisco Bay area fixed by the chair of the authority board.

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

**64514.** (a) The authority board may make and enforce rules and regulations necessary for governing the authority, the preservation of order, and the transaction of business.

(b) In exercising the powers and duties conferred on the authority by this title, the authority board may act by resolution.

### **CHAPTER 3. Powers of the Bay Area Housing Finance Authority**

**64520.** In implementing this title, the authority may do all of the following:

(a) Subject to the approval of the executive board, place a measure on the ballot to raise revenue and allocate funds throughout the San Francisco Bay area, as provided in Part 2 (commencing with Section 64600).

(b) Apply for and receive grants or loans from public and private entities.

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

(d) Deposit or invest moneys of the authority in banks or financial institutions, as provided in Chapter 4 (commencing with Section 53600) of Part 1 of Division 2 of Title 5, including the investment of any money that is not required for the immediate necessities of the authority, as determined by the authority.

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

(f) Engage counsel and other professional services.

(g) Enter into and perform all necessary contracts.

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

- (i) Hire staff, define their qualifications and duties, and provide a schedule of compensation for the performance of their duties.
- (j) Utilize staff employed by the Metropolitan Transportation Commission.
- (k) Allocate and deploy capital and generated fees or income in the form of grants, loans, equity, interest rate subsidies, and other financing tools to the cities, counties, other public agencies within the San Francisco Bay area, and private affordable housing developers to finance affordable housing development, preserve and enhance existing affordable housing, and fund tenant protection programs, pursuant to this title, in accordance with applicable constitutional requirements.
- (l) Establish and modify the terms of potential capital investments deployed by the authority, including waiving or forgiving interest or principal payments.
- (m) Collect data on housing production and monitor progress on meeting regional and state housing goals.
- (n) Provide support and technical assistance to local governments in relation to producing and preserving affordable housing and providing tenant protections.
- (o) Provide public information about the authority's housing programs and policies.
- (p) Incur and issue bonds and other indebtedness, and otherwise incur liabilities or obligations in accordance with Article 3 (commencing with Section 64630) of Chapter 2 of Part 2.
- (q) Any other express or implied powers necessary to carry out the intent and purposes of this title.

**64521.** (a) Subject to the initial approval of the executive board, if the authority proposes a measure pursuant to Part 2 (commencing with Section 64600) that will generate revenues and that requires voter approval pursuant to the California Constitution, the board of supervisors of the county or counties in which the authority has determined to place the measure on the ballot shall call a special election on the measure. The special election shall be consolidated with the next regularly scheduled statewide election and the measure shall be submitted to the voters in the appropriate counties, consistent with the requirements of Articles XIII A, XIII C, and XIII, or Article XVI of the California Constitution, as applicable.

(b) (1) For the purpose of placement of a measure on the ballot, the authority is a district, as defined in Section 317 of the Elections Code. Except as otherwise provided in this section, a measure proposed by the authority that requires voter approval shall be submitted to the voters of the counties, as determined by the authority, in accordance with the provisions of the Elections Code applicable to districts, including the provisions of Chapter 4 (commencing with Section 9300) of Division 9 of the Elections Code.

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

(c) The authority shall file with the board of supervisors of each county in which the measure shall appear on the ballot a resolution of the authority board requesting consolidation and setting forth the exact form of the ballot question, in accordance with Section 10403 of the Elections Code.

(d) Notwithstanding Section 9313 of the Elections Code, the legal counsel for the authority shall prepare an impartial analysis of the measure. The impartial analysis prepared by the legal counsel for the authority shall be subject to review and revision by the county counsel of the county that contains the largest population, as determined by the most recent federal decennial census, among those counties in which the measure will be submitted to the voters.

(e) (1) Each county included in the measure shall use the exact ballot question, impartial analysis, and summary of the expenditure plan provided by the authority. The summary of the expenditure plan shall be prepared by the authority and include all of the following:

- (A) A description of the purpose and goals of the measure.
- (B) A description of the categories of eligible expenditures to be funded.
- (C) An estimate of the number of affordable housing units to be built or preserved by household income category served, and a description of any specific projects planned to be funded.
- (D) An estimate of minimum funding levels to be provided to different expenditure categories by county.
- (E) An overview of decisionmaking and oversight provisions applicable to the funds.

(2) If two or more counties included in the measure are required to prepare a translation of ballot materials into the same language other than English, the county that contains the largest population, as determined by the most recent federal decennial census, among those counties that are required to prepare a translation of ballot materials into the same language other than English shall prepare the translation, or authorize the authority to prepare the translation, and that translation shall be used by the other county or counties, as applicable.

(f) Notwithstanding Section 13116 of the Elections Code, the elections officials of the counties where the measure proposed by the authority is placed on the ballot shall mutually agree to use the same letter designation for the measure.

(g) The county clerk of each county shall report the results of the special election to the authority. If two-thirds of all voters voting on the question at the special election vote affirmatively, or a different approval threshold required by the California Constitution at the time the election is achieved, the measure shall take effect in the counties in which the measure appeared on the ballot within the timeframe specified in the measure.

(h) (1) Notwithstanding Section 10520 of the Elections Code, for any election at which the authority proposes a measure pursuant to subdivision (a) of Section 64520 that would generate revenues, the authority shall reimburse each county in which that measure appears on the ballot only for the incremental costs incurred by the county elections official related to submitting the measure to the voters with proceeds from the measure, or if the measure fails, with any eligible funds transferred to the authority from the Association of Bay Area Governments or the Metropolitan Transportation Commission or other public or private entity.

(2) For purposes of this subdivision, "incremental costs" include all of the following:

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

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

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

(i) The printing and mailing of ballot materials.

(ii) The canvass of the vote regarding the measure pursuant to Division 15 (commencing with Section 15000) of the Elections Code.

**64522.** The executive board and the authority shall not do either of the following:

(a) Regulate or enforce local land use decisions.

(b) Acquire property by eminent domain.

#### **CHAPTER 4. Financial Provisions**

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

**64531.** The authority board shall provide for annual financial reports. The authority board shall make copies of the annual financial reports available to the public.

### **PART 2. Financing Activities of the Bay Area Housing Finance Authority**

#### **CHAPTER 1. General Provisions**

**64600.** The authority, subject to prior approval by the executive board, may raise and allocate new revenue through both of the following funding mechanisms:

(a) (1) Special taxes, subject to voter approval, as provided in Article 1 (commencing with Section 64610) of Chapter 2, as follows:

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

(B) A gross receipts business license tax, as provided in Section 64611.

(C) A special business tax, as provided in Section 64612.

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

(b) Any funding mechanism or combination of funding mechanisms authorized pursuant to paragraph (1) that requires voter approval pursuant to the California Constitution or this part may be placed on the ballot in all or a subset of the nine counties in the San Francisco Bay area, but in no case shall it be placed on the ballot in fewer than four counties. A measure placed on the ballot in a subset of those nine counties shall apply only in those counties in which the measure was submitted to the voters.

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

## **CHAPTER 2. Revenue**

### **Article 1. Special Taxes**

**64610.** (a) Subject to Section 4 of Article XIII A of the California Constitution, and approval by the executive board before the authority takes action to approve the placement of a measure on the ballot, the authority may impose, by resolution, a parcel tax within the San Francisco Bay area pursuant to the procedures established in Article 3.5 (commencing with Section 50075) of Chapter 1 of Part 1 of Division 1 of Title 5, Section 64521, and any other applicable procedures provided by law.

(b) For purposes of this section, "parcel tax" means a special tax imposed upon a parcel of real property at a rate that is determined without regard to that property's value and that applies uniformly to all taxpayers or all real property within the jurisdiction of the local government. "Parcel tax" does not include a tax imposed on a particular class of property or taxpayers.

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

(d) The parcel tax shall be collected in the same manner as ordinary ad valorem property taxes are collected and shall be subject to the same penalties and the same procedure, sale, and lien priority in case of delinquency as is provided for ad valorem taxes.

**64611.** (a) (1) The authority may impose, subject to approval by the executive board before the authority takes action to approve the placement of a measure on the ballot, by resolution, a special tax, measured by gross receipts, for the privilege of engaging in any kind of lawful business transacted in the San Francisco Bay area pursuant to the procedures established in Article 3.5 (commencing with Section 50075) of Chapter 1 of Part 1 of Division 1 of Title 5, Section 64521, and any other applicable procedures provided by law.

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

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

(B) Exemptions for small businesses.

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

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

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

**64612.** (a) (1) The authority may impose, subject to approval by the executive board before the authority takes action to approve the placement of a measure on the ballot, by resolution, a special tax measured by the number of employees employed by the taxpayer for the privilege of engaging in any kind of lawful business activity transacted in the San Francisco Bay area pursuant to the procedures established in Article 3.5 (commencing with Section 50075) of Chapter 1 of Part 1 of Division 1 of Title 5, Section 64521, and any other applicable procedures provided by law.

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

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

(c) A special tax levied pursuant to subdivision (a) shall not apply to any nonprofit organization that is exempted from taxes by Chapter 4 (commencing with Section 23701) of Part 11 of Division 2 of the Revenue and Taxation Code or Subchapter F

(commencing with Section 501) of Chapter 1 of Subtitle A of the Internal Revenue Code of 1986, or the successor of either, or to any minister, clergyman, Christian Science practitioner, rabbi, or leader of any religious organization that has been granted an exemption from federal income tax by the United States Commissioner of Internal Revenue as an organization described in Section 501(c)(3) of the Internal Revenue Code or a successor to that section.

**64613.** (a) Taxes levied pursuant to Section 64611 and Section 64612 shall be collected in the following manner:

- (1) County tax collectors shall be responsible for collecting the tax revenue.
- (2) Each county levying the tax shall prepare a tax return.
- (3) Each county shall create policies and procedures necessary to collect tax revenue, including, but not limited to, policies that achieve both of the following:
  - (A) Ensure adequate enforcement of taxes levied pursuant to Section 64611 and Section 64612.
  - (B) Provide subjects of a tax with an opportunity to appeal the amount of tax owed.

**64614.** All special taxes levied pursuant to this article shall be administered in the following manner:

- (a) Taxes collected shall be deposited in a separate fund, which shall be established in the treasury of each county and used only as prescribed by this section.
- (b) The county shall transfer moneys intended for regional projects pursuant to Section 64650 from the fund to the authority periodically as promptly as feasible. The transmittals shall be made at least twice in each calendar quarter.
- (c) The county may deduct incremental costs associated with administering any taxes approved pursuant to this article from the portion transferred to the authority pursuant to subdivision (b).

**Article 2. Commercial Linkage Fee**

**64620.** As used in this article:

- (a) "Commercial development project" means any project involving the issuance of a permit by an underlying land use jurisdiction for construction, not including remodeling of an existing property, that is undertaken within the San Francisco Bay area for the development of land for commercial use, but does not include any project involving solely a permit to operate.
- (b) "Commercial linkage fee" means a monetary exaction, other than a tax or special assessment, established for a broad class of projects by legislation of general applicability that is charged to an applicant in connection with the approval of a commercial development project by an underlying land use jurisdiction for the purpose of addressing the need for additional housing development necessitated by that commercial development project, as determined pursuant to the nexus study undertaken pursuant to subdivision (b) of Section 64621.
- (c) "Underlying land use jurisdiction" means any of the following entities, as applicable, that has jurisdiction over the approval of a commercial development project:
  - (1) The following counties:
    - (A) The County of Alameda.
    - (B) The County of Contra Costa.
    - (C) The County of Marin.
    - (D) The County of Napa.
    - (E) The County of San Mateo.
    - (F) The County of Santa Clara.
    - (G) The County of Solano.
    - (H) The County of Sonoma.
  - (2) A city that is located within the territorial boundaries of any of the counties specified in paragraph (1).
  - (3) The City and County of San Francisco.



**64621.** (a) (1) Subject to paragraph (4), the executive board may establish, increase, or impose a commercial linkage fee, in an amount not to exceed ten dollars (\$10) per square foot, within the San Francisco Bay area by enactment of a resolution, in accordance with the requirements of this article, that is in addition to any fee, as defined in Section 66000, that is levied by an underlying land use jurisdiction.

(2) The fee shall be adjusted on July 1 of each year, in accordance with the California Construction Cost Index. The annual adjustment may increase the fee to be greater than the ten-dollar (\$10) maximum imposed by paragraph (1).

(3) The authority board shall ratify, by resolution, any commercial linkage fee or modification to a commercial linkage fee adopted by the executive board.

(4) The executive board shall not establish a commercial linkage fee pursuant to paragraph (1) until after the voters approve a parcel tax pursuant to Section 64610 or a general obligation bond pursuant to Section 64631.

(5) (A) The executive board may establish, increase, or impose a commercial linkage fee pursuant to this article by a resolution that provides for a fee assessed on commercial development projects within the San Francisco Bay area.

(B) A resolution establishing or revising the fee shall provide that the amount of the fee required to be paid shall be reduced by the amount that the applicant is required to pay, if any, for a commercial linkage fee for affordable housing imposed by the relevant underlying land use jurisdiction.

(b) Before establishing, increasing, or imposing a commercial linkage fee, the executive board shall prepare a regional jobs and housing nexus study in order to support the necessity and amount of the fee. The study, or separate study conducted before the establishment of a commercial linkage fee, shall examine the factors listed in paragraph (5) of subdivision (d), may consider other potential consequences, and shall take into consideration the potential impact of the fee on the creation of high-paying jobs for people without four-year degrees.

(c) Expenditures of proceeds from a commercial linkage fee shall be limited to affordable housing production, preservation, and tenant protection, as described in subparagraphs (A) and (B) of paragraph (2) of subdivision (b) of Section 64650.

(d) In any action to establish, increase, or impose a commercial linkage fee, the executive board shall do all of the following:

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

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

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

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

(5) (A) Adopt findings that, based upon the executive board's analysis and the regional nexus study, the commercial linkage fee:

(i) Would concentrate jobs near transit.

(ii) Would not reduce commercial development and space for jobs, particularly in economically disadvantaged areas.

(iii) Would not exacerbate intraregional job-to-housing imbalances.

(iv) Would not disincentivize mixed-use development.

(B) The executive board shall provide analysis to support the findings and consider other potential consequences of the fee.

(e) The executive board and the authority shall suspend the imposition of a commercial linkage fee after two consecutive quarters of negative gross domestic product growth within the San Francisco Bay area. The fee may be reinstated after two consecutive quarters of positive gross domestic product growth within the San Francisco Bay area. The executive board and the authority board may reinstate the fee by resolution that states the condition in the previous sentence is met but shall not be subject to subdivisions (b), (c), or (d) of this section.

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

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

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

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

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

**64624.** (a) Except as otherwise provided in subdivision (c), if the executive board adopts a resolution or other legislative enactment establishing or imposing a new commercial linkage fee or approving an increase in an existing commercial linkage fee and the authority board adopts a resolution concurring with the establishment, imposition, or increase of the fee consistent with subdivision (a) of Section 64621, each underlying land use jurisdiction shall, as a condition of approving a commercial development project for which it receives an application for a conditional use permit or other discretionary or ministerial approval, require an applicant to pay the amount of commercial linkage fee established, imposed, or increased by the executive board and the authority board pursuant to this article. The underlying land use jurisdiction shall provide notice to the applicant that does all of the following:

(1) Notifies the applicant that the executive board and the authority board have established, increased, or imposed a commercial linkage fee pursuant to this article.

(2) States the amount of commercial linkage fee established, increased, or imposed by the executive board and the authority board.

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

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

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

**64625.** (a) Any party may protest the imposition of a commercial linkage fee imposed on a commercial development project by the executive board and the authority pursuant to this article as follows:

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

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

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

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

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

(c) (1) A protest filed pursuant to subdivision (a) shall be filed at the time of approval or conditional approval of the commercial development project or within 90 days after the date of the imposition of the commercial linkage fee to be imposed on a commercial development project.

(2) Any party who files a protest pursuant to subdivision (a) may file an action to attack, review, set aside, void, or annul the imposition of the commercial linkage fee imposed on a commercial development project within 60 days after the delivery of the notice required by subdivision (a) of Section 64624. Thereafter, notwithstanding any other law, all persons shall be barred from any action or proceeding or any defense of invalidity or unreasonableness of the imposition. Any proceeding brought pursuant to this subdivision shall take precedence over all matters of the calendar of the court except criminal, probate, eminent domain, forcible entry, and unlawful detainer proceedings.

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

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

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

**64626.** (a) In any judicial action or proceeding to validate, attack, review, set aside, void, or annul any resolution providing for the establishment, increase, or imposition of a commercial linkage fee pursuant to this article in which there is an issue whether the fee is a special tax within the meaning of Section 50076, the executive board and the authority shall have the burden of producing evidence to establish that the commercial linkage fee does not exceed the reasonable cost of providing the housing necessitated by the commercial development project for which the commercial linkage fee is imposed, as determined in the regional nexus study pursuant to subdivision (b) of Section 64621.

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

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

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

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

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

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

(c) The authority shall retain an independent auditor to conduct an audit only if the person who requests the audit deposits with the authority the amount of the executive board's and the authority's reasonable estimate of the cost of the independent audit. At the conclusion of the audit, the authority shall reimburse unused sums, if any, or the requesting person shall pay the authority the excess of the actual cost of the audit over the sum which was deposited.

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

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

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

### **Article 3. Bonds**

**64630.** The authority board may, by majority vote, initiate proceedings to issue general obligation bonds pursuant to this chapter by adopting a resolution stating its intent to issue the bonds. The authority board shall not adopt a resolution to initiate proceedings until after the executive board has adopted a resolution in support of the issuance of the general obligation bonds.

**64631.** (a) The authority may incur general obligation bonded indebtedness, secured by the levy of ad valorem property taxes, pursuant to paragraph (2) of subdivision (b) of Section 1 of Article XIII A of the California Constitution, for the acquisition or improvement of real property or for funding or refunding of any outstanding indebtedness in connection with the acquisition or improvement of that real property.

(b) For purposes of incurring general obligation bonded indebtedness pursuant to this subdivision, the authority shall comply with the requirements of Chapter 3 (commencing with Section 53400) of Part 1 of Division 2 of Title 5.

**64632.** (a) (1) For purposes of this section, "authority revenues" includes, without limitation, revenues generated by any special tax, fee, or charge imposed by the authority, other than ad valorem property taxes.

(2) The authority may issue revenue bonds, payable from authority revenues, in accordance with the Revenue Bond Law of 1941 (Chapter 6 (commencing with Section 54300) of Part 1 of Division 2 of Title 5), for the purposes set forth in this title and in any resolution adopted by the authority, or measure adopted by voters, in connection with the generation of authority revenues or imposition of those special taxes, fees, or other charges. For purposes of issuing revenue bonds pursuant to this section, the special taxes, fees, or other charges described in the previous sentence shall constitute an "enterprise" within the meaning of Section 54309.

(3) To exercise the powers described in this section, the authority shall ensure that any expenditure plan summary prepared pursuant to Section 64521 related to voter approval of a special tax under this title notifies the voters that proceeds from the special tax may be used as payment for revenue bonds.

(4) For purposes of this section, the authority shall be deemed to be a local agency within the meaning of Section 54307. Article 3 (commencing with Section 54380) of Chapter 6 of Part 1 of Division 2 of Title 5 and the limitations on the rate of interest set forth in subdivision (b) of Section 54402 do not apply to the issuance and sale of bonds pursuant to this section. Instead, the authority shall authorize the issuance of bonds by resolution at any time, and from time to time, which shall specify all of the following:

(A) The purposes for which the bonds are to be issued.

(B) The maximum principal amount of the bonds.

(C) The maximum term for the bonds.

(D) (i) The maximum rate of interest to be payable upon the bonds, which shall not exceed the maximum rate permitted for bonds of the authority by Section 53531 or any other applicable provisions of law.

(ii) In the case of bonds bearing a variable interest rate, the variable rate shall not, on any day, exceed the maximum rate permitted for bonds of the authority by Section 53531 or any other applicable provisions of law. However, the variable interest rate may, on any day, exceed that maximum rate in subparagraph (A), if the interest paid on the bonds from their date of original issuance to that day does not exceed the total interest that would have been permitted if the bonds had borne interest at all times from the date of issuance to that day at the maximum rate permitted from time to time by Section 53531 or any other applicable provisions of law.

(E) The maximum original issue premium or discount on the sale of the bonds.

(F) The denomination or denominations of the revenue bonds, which shall not be less than five thousand dollars (\$5,000).

(b) The resolution may also contain any other matters authorized by this chapter or any other law.

(c) The revenue bonds may be sold at public or private sale or on a negotiated sale basis and at the prices, above or below par, as determined by the authority board.

(d) The revenue bonds, or each series thereof, shall be dated and numbered consecutively and shall be signed by the executive director of the authority, whose signature may be printed, lithographed, or mechanically reproduced. If any officer whose signature appears on the revenue bonds ceases to be that officer before the delivery of the bonds, the officer's signature is as effective as if the officer had remained in office.

(e) This section provides a complete, additional, and alternative method for the issuance of revenue bonds by the authority. An issuance does not need to comply with the procedures specified elsewhere in this article or other laws, but shall instead be issued in accordance with the procedures specified in this article.

**64633.** (a) The authority or any person executing the bonds issued pursuant to this title shall not be personally liable on the bonds by reason of their issuance.

(b) The bonds and other obligations of the authority are not a debt of any city or county, the Association of Bay Area Governments, the Metropolitan Transportation Commission or any of its affiliated entities, or of the state or of any of its political subdivisions, other than the authority, and neither a city or county nor the state or any of its political subdivisions, other than the authority, shall be liable on the bonds, and the bonds or obligations shall be payable exclusively from funds or properties of the authority, as specified in the applicable bond or other security document. Bonds issued pursuant to this title shall contain a statement to this effect on their face.

(c) If the signature of any member of the authority or staff member of the authority appears on bonds issued pursuant to this title, and that individual ceases to be a member of the authority or staff member of the authority before delivery of the bonds, that member's signature shall be as effective as if the member had remained in office.

**64634.** (a) Every two years after the issuance of bonds pursuant to this section, the authority shall contract for an independent financial and performance audit. The audit shall be conducted according to guidelines established by the Controller. A copy of the completed audit shall be provided to the Controller, the Director of Finance, and the Joint Legislative Budget Committee.

(b) Upon the request of the Governor or the Legislature, the Bureau of State Audits may conduct a financial and performance audit of the authority. The results of any audit shall be provided to the authority board, the Controller, the Director of Finance, and the Joint Legislative Budget Committee.

**64635.** Bonds issued pursuant to this article are fully negotiable.

**64636.** Any action to determine the validity or adoption of any tax, fee, or other charge provided for in, or the validity of bonds issued pursuant to, this title, or any of the proceedings, contracts, agreements, or other arrangements or matters entered into, shall be commenced within 60 days from date of the election or the adoption of the resolution approving such matters, as applicable, pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure. After that date, the adoption of such tax, fee, or other charge, the issuance of the bonds, and all proceedings in relation thereto, shall be held valid and incontestable in every respect.

### **CHAPTER 3. Expenditures**

**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 subject to this paragraph that is derived from a bond issued pursuant to Section 64631 shall be expended solely to purchase or improve real property, consistent with paragraph (2) of subdivision (b) of Section 1 of Article XIII A of the California Constitution.

(iii) Funding provided pursuant to this paragraph 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 shall 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. Therefore, 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) Providing relocation assistance for lower income households beyond what is legally required of landlords according to local or state law.

(iv) 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, down payment 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).

(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 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 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) 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.

(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) 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:

(I) 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.

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

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

(IV) 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) 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.

(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.

**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.

**64652.** To ensure oversight and accountability, the authority shall prepare and submit an annual report to the Legislature, in conformance with Government Code 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.

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

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