SENATE COMMITTEE ON GOVERNANCE AND FINANCE

Senator Anna M. Caballero, Chair

2021 - 2022 Regular

Bill No:	SB 1105	**Hearing Date:**	4/20/22
Author:	Hueso	**Tax Levy:**	No
Version:	4/18/22	**Fiscal:**	Yes
Consultant:	Peterson		

SAN DIEGO REGIONAL EQUITABLE AND ENVIRONMENTALLY FRIENDLY AFFORDABLE HOUSING FINANCE AGENCY

Creates the San Diego Regional Equitable and Environmentally Friendly Affordable Housing Finance Agency, and grants it the authority to impose specified taxes and fees.

Background

Local agencies use various tools to finance affordable housing production and preservation, as well as to protect tenants currently living in those affordable housing units. These include special taxes, impact fees, and bonds.

Special taxes. The California Constitution states that taxes local governments levy are either general taxes, subject to majority voter approval, or special taxes, subject to 2/3 vote (Article XIII C), which local agencies use for specified purposes. Proposition 13 (1978) required a 2/3 vote of each house of the Legislature for state tax increases, and 2/3 vote of local voters for local special taxes. One of the most common forms of a special tax is a parcel tax. Parcel taxes are not ad valorem or assessed based on the value of a property; instead they are generally a flat rate assessed per parcel regardless of its size, or on a per square foot rate. Agencies can use revenues in almost any way that serves local needs, such as ongoing expenses, programs, or buildings. Counties collect parcel taxes with property taxes, and then remit funds to the agency imposing the tax. Property tax law generally guides parcel tax collection.

Bonds. When public agencies issue bonds, they borrow money from investors, who provide cash in exchange for the agencies' commitment to repay the principal amount of the bond plus interest. Bonds are usually either revenue bonds, which repay investors out of revenue generated from the project the agency buys with bond proceeds, or general obligation bonds, which the public agency pays out of general revenues and the agency guarantees with its full faith and credit. Since bonds produce interest costs, they are generally used for financing projects with useful lives that correspond to the bond's term, such as an affordable housing project. Public agencies generally do not use bonds to fund services, such as procuring legal services. Generally, issuing bonds requires a 2/3 voter approval. However, some types of revenue bonds do not require a 2/3 vote, or any vote at all. For example, the Revenue Bond Law of 1941 only requires majority voter approval.

Private activity bonds (PABs) are a third type of bonds. PABs are tax-exempt bonds public agencies issue on behalf of private businesses allowing for lower borrowing costs than those private entities pay when financing projects at market rates. Local agencies can issue PABs for a variety of purposes, including low-income and multi-family housing, industrial development, or facilities that treat water, sewage, or hazardous material. Unlike other bonds, the obligation to pay principal and interest on PABs is not the local agency's responsibility, but the responsibility of the private entity receiving bond proceeds. Since these bonds are federally tax-exempt, the federal government limits the number of PABs each state can issue in a given year. The California Debt Limit Allocation Committee (CDLAC) monitors the cap. Local agencies need an allocation from this amount approved by CDLAC to issue PABs.

To provide financing for decent, safe, and sanitary housing that people in the lower income ranges can afford to purchase, existing law allows a city or county to issue mortgage revenue bonds, a type of PABs to defray the costs of acquiring home mortgages, to sell or otherwise dispose of any home mortgages, or make loans to lending institutions to enable them to make home mortgages. The local agency must adopt regulations establishing criteria for families to qualify for a home financing program based on:

- Income available for housing needs;
- Size of household;
- Costs and condition of available housing, and
- Eligibility for federal housing assistance.

Mortgagors must certify that the individuals remain in the home for at least two years, unless they have a hardship, and the program must comply with the land use and housing elements of the local agency's general plan. Bonds issued to help finance these mortgages must not have maturity dates beyond 45 years.

Bay Area Housing Finance Authority. In 2019, the Legislature enacted AB 1487 (Chiu, 2019), which established the Bay Area Housing Finance Authority (BAHFA) to raise, administer, and allocate funding and provide technical assistance in the nine-county Bay Area region for tenant protection, affordable housing preservation, and new affordable housing production. Two governmental entities provide region-wide housing planning: the Metropolitan Transportation Commission (MTC) and the Association of Bay Area Governments (ABAG). These entities govern the authority. Among its powers, the bill allows its board to place various types of revenue-generating measures on the ballot in all nine Bay Area counties. Specifically, the bill allows the authority to approve:

- Various types of special taxes, including parcel taxes;
- A regional commercial linkage fee; and
- General obligation and revenue bonds.

If approved, the authority retains 20% of revenue raised for the authority to spend, and distributes remaining funds directly to counties and specified cities for specified housing projects, programs, and related infrastructure. If BAHFA approves a regional commercial linkage fee, it must spend funds according to the regional nexus study, and can only impose the commercial linkage fee if voters first approve a tax. BAHFA planned to put a regional financing measure on the November 2020 ballot, but the COVID-19 pandemic force the agency to delay its plans. The Budget Act of 2021 (SB 129, Skinner, 2021) allocated $20 million to BAHFA to fund five BAHFA pilot programs.

Los Angeles County Affordable Housing Solutions Agency. Building off the Bay Area model, SB 679 (Kamlager, 2021) creates the Los Angeles County Affordable Housing Solutions

Agency (LACAHSA). A 19-member board of local government elected officials and housing experts govern the agency. Similar to BAHFA, LACAHSA can also put approve special taxes and bonds, but it does not have the authority to approve a regional commercial linkage fee. LACAHSA retains 30% of the revenue it raises for regional priorities. The bill is currently pending in the Assembly Housing and Community Development Committee.

San Diego housing challenges. San Diego County's 3.3 million residents live in 18 cities and unincorporated areas throughout the county. The San Diego Association of Governments (SANDAG) is a joint powers authority, independent of county government, which addresses long-range transportation and other regional planning issues. AB 805 (Gonzalez Fletcher, 2017) revised SANDAG's voting structure to strike the previous requirement that any action be approved by both tally and weighted vote, and instead provides that a majority vote of the members of the board is necessary to take any action, but that a weighted vote may be called by the members of any two jurisdictions. SANDAG is split into subregions: east county, north county coastal, north county inland, south county, and the City of San Diego.

One of the greatest challenges facing San Diego is housing affordability. To lead discussions to identify voluntary, innovative, and incentive-based housing approaches that address housing needs throughout the San Diego region, the SANDAG board created the Regional Equitable Housing Subcommittee. At its March 30, 2022 meeting, the subcommittee highlighted the fact that the San Diego region needs to permit an additional 90,000 homes to meet its needs. While the region has produced 92% of its need for above moderate-income housing, the region has only produced 9% of its moderate-income housing need, 19% of its low-income housing need, and 10% of its very low-income housing need. The subcommittee discussed the possibility of creating a regional housing authority to help address these housing needs.

Building off the recent Bay Area and Los Angeles County efforts, the author wants to create a San Diego regional housing authority to help address San Diego's housing challenges.

Proposed Law

Senate Bill 1105 enacts the San Diego Regional Equitable and Environmentally Friendly Housing Act (the Act) to raise, administer, allocate funding, and provide technical assistance at a regional level for tenant protection, affordable housing preservation, and new affordable housing production. The Act:

- Creates the San Diego Regional Equitable and Environmentally Friendly Affordable Housing Agency (SD REEF);
- Establishes SD REEF's governance structure;
- Gives SD REEF certain powers;
- Allows SD REEF to place measures on the ballot;
- Outlines SD REEF revenue generating tools;
- Establishes how SD REEF spends money; and
- Includes certain accountability provisions.

Governance structure. A six-member board of directors governs SD REEF, as follows:

- The Mayor of San Diego appoints one member and one alternate;
- The San Diego County Board of Supervisors appoints one member and one alternate; and

- One member and one alternate collectively from the SANDAG east county, north county coastal, north county inland, and south county subregions. Each city in a subregion votes to select a candidate for appointment.

The agency does not have any powers until these agencies appoint board members, which must occur by April 1, 2023. These members must select a Chair and Vice Chair of the SD REEF board, who can be primary or alternate members of the SANDAG board, but must be primary members of the SD REEF board. Members serve a four-year term, but appointing entities can remove their appointee at any time. The board can shorten the initial terms to ensure staggered terms.

Primary and alternate members of the SD REEF board receive compensation of $100 per meeting, adjusted periodically as the Board directs to keep pace with inflation. A member may waive their per diem. The board member's home city or county must compensate out-of-state travel and conference travel. To ensure a quorum is present and full participation, members must be present for at least half of the time set for the meeting or the duration of the meeting, whichever is less, to receive compensation. SD REEF must hold meetings at least once per month, and must follow the same voting procedures as SANDAG.

The SD REEF board may also decide to include SANDAG chairs and vice chairs, as well as executive directors of housing authorities in each SANDAG region as nonvoting, ex officio members if it decides that their membership is appropriate. If an organization with voting rights or a subregion is unrepresented at three Committee meetings during the term, a letter will be sent to the applicable appointing entity.

The board may appoint a chief executive officer, general counsel, inspector general, and board secretary, or any other officers it deems necessary to serve renewable four-year terms, but the board can remove these officers with a 2/3 vote, or if the officer violates certain laws and regulations.

The board must form an advisory committee of 12 members that the board appoints based on applications that board members and the inspector general receive from San Diego County residents with knowledge and experience in affordable housing finance and development, tenant protection, housing preservation, and homelessness. The advisory committee provides consultation and makes recommendations to the board, including providing feedback on annual expenditures, performance monitoring, and program implementation. Members of the committee must meet specified conflict of interest requirements. These members serve three-year terms, and no member can serve more than three terms on the committee.

SD REEF powers. SB 1105 provides SD REEF with various agency powers, including to:

- Place a measure on the ballot to raise revenue;
- Apply for grants and other financial support;
- Engage professional services and enter into contracts;
- Enter into a joint powers agreement;
- Hire and utilize staff;
- Collect data, provide technical assistance, and engage in public participation processes;
- Acquire, sell, or dispose of land or assets; and
- Incur debt, and establish and modify terms of capital investments.

The board may delegate any powers it deems necessary to SD REEF officers including contracting authority. SB 1105 also deems SD REEF a local public entity for the purposes of receiving notification of surplus property disposal under the Surplus Lands Act. SB 1105 also prohibits SD REEF from regulating or enforcing local land use decisions and acquiring property by eminent domain.

Placing measures on ballot. SD REEF can propose a measure to be placed on the ballot with a statewide election. For the purposes of elections, the bill defines SD REEF as a district and allows it to place measures on the San Diego County ballot. SB 1105 sets SD REEF's appropriations limit based on receipts from the initial measure that would generate revenue. The legal counsel for the board prepares an impartial analysis of the measure, which is subject to review by the county counsel. SD REEF must also prepare, and submit to voters, a summary of how it plans to spend funds it raises, which must include specific information such as an estimate of the number of equitable and environmentally friendly housing units to be built or preserved, and a description of any specific projects planned to be funded. SD REEF must reimburse counties for the incremental costs associated with placing a measure on the ballot.

Generating revenue. SB 1105 provides SD REEF the authority to raise revenue from (1) special taxes, (2) commercial linkage fees, and (3) bonds.

Special taxes. SB 1105 allows SD REEF to levy the following types of special taxes, including:

- *Parcel tax.* SD REEF can levy a parcel tax upon each parcel of real property at a rate that is determined without regard to that property's value and applies uniformly to all taxpayers within the jurisdiction. The measure provides that a parcel tax applies uniformly even if a different rate is applied to property zoned for residential purposes and nonresidential purposes.
- *Gross receipts tax*. SD REEF can levy a tax on the gross receipts of a business for the privilege of engaging in lawful business within the area. It allows for variable rates and exemptions for small businesses and nonprofit organizations.
- *Head tax.* SD REEF can levy a tax on employers based on the number of employees that employer employs in San Diego County.
- *Documentary transfer tax.* SD REEF can levy a documentary transfer tax (DTT) that applies to deeds, instruments, and writings that convey or transfer interests in property within the County. The SD REEF DTT must be in addition to any city or county DTT and not count against their DTT tax limit.
- *Vacant property tax.* SD REEF can levy a tax on properties that are vacant for 50 days or more per year. It allows for different rates based on property type, and exempts certain properties from the tax, including for individuals with financial hardships, and properties under construction.
- *Land value windfall tax.* SD REEF can levy a tax on the land value increment value, as measured by the change in assessed unimproved land value between property purchase and sale.
- *Multifamily property tax.* SD REEF can levy a tax on large multifamily rental properties with 50 or more units owned by entities located outside San Diego County.

The bill assigns the county tax collector with the responsibility to administer taxes. The tax collector collects and enforce the parcel tax in the same manner they collect other property taxes. For the gross receipts tax, the county tax collector must create policies and procedures to collect tax revenue, including how to ensure adequate enforcement and provide taxpayers with an opportunity to appeal. The measure does not provide specific details for the administration of the head tax. For the remaining taxes, the county tax collector must establish a methodology for assessing the tax, develop guidelines for property owners to file for exemptions, and for the multifamily property tax must establish guidelines and procedures for appeals. The county tax collector must remit funds to the agency to distribute to its member agencies.

Commercial linkage fee. SB 1105 allows the board to impose a commercial linkage fee, not to exceed $10 per square foot on projects involving the issuance of a permit by an underlying land use jurisdiction within San Diego County. SD REEF would charge the fee to an applicant in connection with the approval of a commercial development project. Before the board imposes the fee, it must prepare a nexus study to support the necessity and amount of the fee, as well as make findings that the commercial linkage fee would concentrate jobs near transit, would neither exacerbate imbalances between jobs created and housing units built, nor negatively impact commercial or mixed-use development. If the applicant already pays a commercial linkage fee in their jurisdiction, SB 1105 also requires SD REEF to reduce the fee commensurately. The underlying land use jurisdictions must collect the fee and can deduct administrative costs from the revenue collected. If the board determines that San Diego County has experienced two consecutive quarters of negative gross domestic product growth, SD REEF must suspend the fee.

Before adopting a resolution to impose a commercial linkage fee, the board must conduct a public hearing to consider the fee. SB 1105 allows taxpayers to protest the fee within 90 days after the imposition of the fee. Any party who protests can file an action to not pay the fee within 60 days after delivery of notice of the fee. The burden of proof to show the fee is reasonable falls on SD REEF, not the taxpayer. If the court invalidates the fee, SD REEF must refund the unlawful amount charged plus interest. If an individual protests the fee on the grounds of whether it is considered a fee or a tax for the purposes of requiring a vote of the people, SD REEF must demonstrate the appropriateness of the fee. A party protesting on these grounds may only do so if the fee was directly imposed upon them and that party requests a copy of all documents related to the fee's appropriateness. Any person may request an audit from SD REEF demonstrating the fee to be appropriate, but SD REEF may charge for the preparation of associated materials. If the audit deems the fee is not appropriate, SD REEF must adjust the fee.

Bonds. SB 1105 allows SD REEF to issue four different types of bonds: general obligation bonds, revenue bonds, mortgage revenue bonds, and PABs. To issue general obligation bonds secured by ad valorem property taxes for the acquisition or improvement of real property, the board must adopt a resolution in support of the issuance. After adopting a resolution and noticing the bonds in newspapers, the decision whether to issue bonds is placed before voters. If 2/3 of voters approve bond issuances, SD REEF can proceed to issue bonds. Second, SD REEF may issue revenue bonds secured by revenues from the special taxes or fees the bill authorizes the board to submit to voters. To issue revenue bonds, the special tax revenue measure submitted to voters must explain SD REEF's intention to use revenue bonds. If the revenue measure is successful the board must approve a resolution describing the terms of the bonds it intends to issue. SD REEF can only spend revenue bond proceeds on capital projects, not other agency activities or operating expenses. For mortgage revenue bonds and private activity bonds, SD REEF must follow the same procedures as other public agencies. The bill states that such bonds are to be considered debt of SD REEF, not its member agencies. Every two years after the issuance of bonds, the authority must contract for an independent financial and performance audit conducted according to guidelines the State Controller establishes. SD REEF must submit the audit to the State Controller, the Department of Finance, and the Joint Legislative Budget

Committee. The Bureau of State Audits can also conduct a financial and performance audit of SD REEF.

Expending funds. Of the revenue generated, 50% goes to SD REEF, and 50% goes to eligible jurisdictions, which the measure defines as the County of San Diego and the incorporated cities in the county, based on their share of the overall regional target for very-low income, low-income, and moderate-income units, as determined in the most recent regional housing needs assessment. A local jurisdiction may request SD REEF to administer all or a portion of its allocated funds. If the agency agrees to administer the funds, it must develop and adopt an annual expenditure plan the board must approve in consultation with the jurisdiction.

SD REEF's must spend its funds as follows:

- Minimum of 50% for equitable housing production;
- Minimum of 15% for equitable housing preservation;
- Minimum of 15% for strategic priorities and innovation identified in the annual expenditure plan;
- Maximum of 10% on agency administrative and operations expenses;
- Minimum of 5% for rental and tenant protection programs; and
- Minimum of 5% for technical assistance to local jurisdictions, research and policy development, and data collection and analysis.

Local jurisdictions must spend their share of funds as follows:

- Minimum 60% for equitable housing production;
- Minimum 15% for equitable housing preservation;
- Maximum 10% for agency administrative and operations expenses; and
- Minimum of 5% for rental and tenant protection programs.

Regardless of these categories, SB 1105 requires SD REEF and local jurisdictions to spend between 10% and 35% on first-time homebuyer programs. SB 1105 defines these programs to include programs that provide grants, loans, financial counseling, subsidies, or other forms of assistance in connection with homeownership opportunities for households at or below 120% area median income (AMI). Purchasers must occupy the property as their primary residence. If the property receives a subsidy, it is subject to a deed restriction or covenant in perpetuity that limits future sale prices to no more than 10% annualized appreciation above the purchase price. These properties cannot allow temporary subleases, except for military families.

Production funds can be used for acquisition, financing, and home ownership programs. Preservation funds for preservation can be used for acquisition, rehabilitation, placing affordability restricts on existing housing units, grants to nonprofit entities, and financing programs to enable existing residents to become homeowners. Preservation funding must not permanently displace existing residents, achieve 100% occupancy by extremely low- or very low-income households over time through turnover, and meet specified anti-displacement and relocation assistance requirements. SD REEF's expenditures for strategic priorities and innovation only need to follow the affordability parameters.

SB 1105 requires SD REEF to establish project eligibility and prioritization criteria based on affordability, sustainability, project feature priorities, and livability.

Affordability. SD REEF and local jurisdictions must ensure that funds received from SD REEF are allocated as follows:

- Between 20%-40% must go to households earning between 0%-50% AMI;
- Between 20%-40% must go to households earning between 50%-80% AMI; and
- Between 20%-40% must go to households earning between 80%-120% AMI.

SD REEF must develop a prioritization framework that gives priority to projects that have secured, or are seeking, state and/or federal funding, as well as mixed-income projects that incorporate multiple income tiers.

Sustainability. All projects must meet be within 1.5 miles of a transit stop, meet certain vehicle miles traveled standards, meet specified energy efficiency and renewable generation standards, and replace landscape with native plant specifies by following the state Model Water Efficient landscape ordinance unless a local ordinance has been determined to be at least as stringent.

Project feature priorities. SD REEF must create a framework to prioritize projects with certain features, including proximity to transit, project density, electricity efficiency, water efficiency, sustainable flooring and roofing, and meet certain federal air standards.

Livability. SD REEF must prioritize projects with certain livability features. First priority goes to projects that meet any of the following: (1) within 1/3 mile of public transit; (2) density exceeding 25 units per acre; (3) mixed-use developments with certain quality of life features; or (4) are within certain distances of transit, grocery stores, commercial corridors, and schools. Second priority goes to projects located within certain distances to medical clinics, libraries, childcare centers, pharmacies, and senior centers.

For the purposes of SB 1105 expenditures, transit stops include transit stations with service at least every 30 minutes, or at least two departures during each weekday, peak commute period. This includes planned transit stops identified in regional or state transportation plans scheduled for completion within one year of the proposed residential development's completion and occupancy.

No earlier than five years after approval of a funding measure, and only after consulting with the advisory committee, SD REEF can change minimum allocation percentages with a 2/3 vote of its board at a public meeting.

Projects receiving SD REEF funding are public works for the purposes of paying prevailing wages. Additionally, SD REEF projects must include an enforceable commitment to use a skilled-and-trained workforce for all work on a project, unless the local agency has entered into a project labor agreement that requires the use of such a workforce.

The SD REEF board must develop an annual regional expenditure plan that describes how they intend to spend regional funds, including the portion of funds dedicated to each household income category the funding will serve, and beginning in the second year, information regarding project progress. Once SD REEF commits funds to a project, a project sponsor has five years to spend them. If the project sponsor shows that it has made adequate progress, which the measure defines to mean at least 75% of the project's units have received necessary entitlements or land use approvals, the board must authorize an additional 24 months to grant entitlements to the remainder of the project. If the project sponsor cannot demonstrate adequate progress, funds are transferred back to SD REEF who holds the funds until the project sponsor submits a satisfactory plan to move forward.

For local agencies to remain eligible to receive funding, they must:

- Agree to adopt and adhere to SD REEF's policies and guidelines;
- Ensure all funded projects are in compliance with eligible uses and affordability requirements;
- Agree to allocate its funding within 12 months; and
- Be in compliance with Affirmatively Further Fair Housing in California Guidelines.

If a local agency is found out of compliance with affordability targets at the end of a three-year period, the board can limit the agency's funding to just extremely low- and very low-income housing units, administer the funding on the local agency's behalf, or increase funding incentives as needed to meet project and programmatic targets.

Accountability provisions. SD REEF, led by the inspector general, and in partnership with the advisory committee, must conduct biennial performance reviews of all projects and programs implemented under the expenditure plan. The review must evaluate project and program performance, outcome metrics, and make recommendations to improve plan performance, based on current practices and best practices, and organizational changes that could improve coordination.

The board must also provide for regular audits of the agency's accounts and records, and annual financial and performance reports. The board must also monitor expenditures in coordination with local agencies. At least once every five years, the monitoring shall include a review of revenues allocated to cities to ensure they continue spend funds in a timely manner and consistent with SD REEF's goals.

The bill also contains findings and declarations to further its intent, and defines its terms.

State Revenue Impact

No estimate.

Comments

1. Purpose of the bill. According to the author, "Just as the entirety of California is facing a housing crisis, the San Diego region is struggling to meet its housing demand. For the past decades, this has been driving up living costs, and forcing people to make the decision to live farther away from urban centers and commuting longer distances to work every day. With more congestion, increased traffic has only exacerbated pollution concerns, emphasizing the fact that our housing and climate crises are interconnected. These issues require sensible approaches that consider how we can best manage our need to increase housing with making sure that we are equitably distributing resources, because unfortunately, our lowest income residents and people of color are bearing the highest burdens associated with these crises. By establishing a regional housing agency in San Diego, we can make sure that we are doing our best to address these concerns on a larger scale, by coordinating efforts between cities to allocate resources more

efficiently and more equitably. Everyone deserves a place to call home, and our goal is to help make that priority a reality for more San Diegans across the county."

2. Recreating the wheel? Many of the tools that SB 1105's sponsors are considering, including special taxes and bonds, are tools that the county and its cities already have. SB 1105 creates another regional body on top of the work that cities, the county, and other local agencies are already doing. While it is clear that the San Diego region has not met its regional housing needs, is creating another agency to tackle these problems the best approach, when considering the additional burden it could put on taxpayers in the form of higher taxes and bond debt service? Would a regional board provide the same level of access and accountability as individual city councils and the county's board of supervisors?

3. An alternative approach. Existing law already provides San Diego County and its cities with the ability to create a regional JPA to exercise powers these local governments share. The beauty of the Joint Exercise of Powers Act is its flexibility: local agencies can come together to form an agreement of its own design to carry out any power common to each of its members. Agreements specify a JPA's mission, structure, governing board, each member's financial obligations, and provisions for members to enter and exit the JPA, among other items. As such, local agencies do not need legislative authority for a JPA unless it requires powers not common to all its members, or when statutory certainty and specificity is preferable to the agreement's details. On the one hand, coming to agreement on a JPA can take time, especially when it involves San Diego County and all 18 cities in the county. On the other hand, the JPA route puts the final decision in the hands of local decision makers, not legislators in Sacramento.

4. Taxation without representation. SB 1105 creates a new regional authority that covers San Diego County and all the cities in the county. The cities and the county do not get to choose whether to participate in SD REEF. If SD REEF imposes a new tax, a city or the county cannot elect to waive the tax in their jurisdiction. The only choice they get to make is whether to spend their allocation from SD REEF or allow the agency to spend it on their behalf. The SD REEF board only has six members, so many cities may not have a spot on the board that decides how to allocate the funds. This means that SD REEF could use tax dollars raised in one city for projects located in another. SB 1105 requires 50% of any revenue the measure generates to go to SD REEF. Previous regional housing finance authorities considered by the Legislature required lower percentages to go to regional projects. Specifically, when the Legislature created BAHFA, the regional agency only retained 20% for regional priorities. Similarly, SB 679 only dedicates 30% of funds for regional priorities. The Committee may wish to consider whether cities should have to participate in the agency if they do not have a guaranteed spot on the SD REEF board, especially when a significant portion of revenue remains with the regional authority.

5. To boldly go… While SB 1105 gives SD REEF many of the same revenue generating tools as its Bay Area and Los Angeles predecessors, it also authorizes SD REEF to venture into uncharted territory and impose taxes that local agencies have not relied upon before: the vacant property tax, the land value windfall tax, and the multifamily property tax. Of these taxes, only the City of Oakland has imposed one of these taxes: the vacancy tax. However, property owners were only scheduled to receive vacancy notices late February, so the tax remains largely untested. The problem with untested local taxes is that local agencies do not have clear administrative procedures to rely on, and there is legal uncertainty regarding the agency's authority to impose the tax, including whether it conflicts with state or federal constitutional jurisprudence. For example, SB 1105 allows SD REEF to impose a tax on multifamily properties owned by entities located outside San Diego County. Such a tax could run into

questions regarding constitutional protections against the regulation of interstate commerce and equal protection claims. Similarly, SB 1105 allows SD REEF to impose land value windfall tax measured by the change in assessed unimproved land value between property purchase and sale. However, Section 4 of Article XIII A of the State Constitution does not allow local agencies to impose ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property. It is unclear how a tax based on change in assessed land value could escape this prohibition. SB 1105 does not provide clear direction to SD REEF to avoid these legal challenges when imposing the tax, and instead leaves the tax administration to the county tax collector to figure out. Given the lack of administrative detail and potential for legal challenges, the Committee may wish to consider amending the bill to remove the vacant property tax, land value windfall tax, and multifamily property tax from the taxes that SD REEF can impose.

6. Timing is everything. SB 1105 creates SD REEF but does not give it powers until the formation of its board, which must occur by April 1, 2023. Since nearly all of the revenue tools require voter approval, SD REEF would not likely start receiving revenue until after the November 2024 election and the county tax collector has time to set up the administration of a new tax. How will the agency function until revenue starts to come in? Who will pay for the board members' compensation every meeting? Who will pay for staff to carry out the authority's functions until then? The Committee may wish to consider amending the bill to provide that the agency does not have any powers until the board forms, the agency receives dedicated funding from the state or local agencies, the agency reaches an agreement with SANDAG to utilize their staff during formation, or voters approve a revenue-generating measure.

7. Commercial linkage fee mechanics. The commercial linkage fee is the only financing mechanism in the bill that does not require voter approval. If the nexus study cannot effectively show there is a reasonable relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the local agency imposes the fee, then it may be subject to protests and legal challenges. Generally, regional entities, like SD REEF, do not impose commercial linkage fees, but rather the underlying land use jurisdiction that permits the commercial development imposes the fee. It is unclear whether a regional entity has ever imposed a commercial linkage fee for local agencies to administer. AB 1487 prohibited BAHFA from imposing its commercial linkage fee until voters approve a parcel tax or general obligation bond, which both residential and commercial property owners pay, and limited commercial linkage fee expenses to those the regional nexus study authorizes. SB 1105 includes no such provisions for SD REEF. The Committee may wish to consider amending the bill to prohibit SD REEF from imposing its commercial linkage fee until voters approve a parcel tax or general obligation bond, and tie expenses to the regional nexus study.

8. Let's be clear. The drafting of SB 1105 obscures many of the goals of the bill. To ensure that the bill achieves its purposes, the Committee may wish to consider the following amendments to SB 1105:

- Clarify that board members are members of the SANDAG board, remove compensation for alternate members, and help clarify board appointment procedures;
- Clarify that debt issuance procedures and expenditures must be consistent with constitutional requirements;
- Clarify board powers to utilize SANDAG staff if the agency agrees, and help make sure that powers align with BAHFA and LACAHSA;

- Clarify special tax administration procedures;
- Clarify that a local agency can use up to 10% of their funds for their own administrative and operating expenses, not pay for the regional agency's costs;
- Clarify that all funds have to be spent on households 120% area median income and below;
- Remove requirement that projects must follow local state model landscape ordinance unless local agencies have a more stringent ordinance to avoid any confusion over land use authority; and
- Clarify agency monitoring takes place over not just the cities that receive funds, but the county as well.

9. Let's get technical. The Committee may wish to consider the following technical amendments to SB 1105:

- In subdivision (d) of Section 62817, change "paragraphs" to "paragraph."
- Replace the existing title of Part II with "San Diego Regional Equitable and Environmentally Friendly Affordable Housing Agency."
- In subdivision (b) of Section 62851, delete the text in paragraph (1) that paragraph (2) repeats.
- In paragraph (1) of subdivision (a) of Section 62864, change "have" to "has."
- In subdivision (e) of Section 62871, change "or" to "for."
- In clause (i) of subparagraph (B) of paragraph (4) of subdivision (d) of Section 62880, add "mile" after "one-half."

10. Charter city. The California Constitution allows cities that adopt charters to control their own "municipal affairs." In all other matters, charter cities must follow the general, statewide laws. Because the Constitution doesn't define "municipal affairs," the courts determine whether a topic is a municipal affair or whether it's an issue of statewide concern. SB 1105 says that its statutory provisions apply to charter cities. To support this assertion, the bill includes a legislative finding that the school start times are a matter of statewide concern.

11. Special legislation. The California Constitution prohibits special legislation when a general law can apply (Section 16 of Article IV). SB 1105 contains findings and declarations explaining the need for legislation that applies only to housing crisis within San Diego County.

12. Mandate. The California Constitution requires the state to reimburse local governments for the costs of new or expanded state mandated local programs. Because SB 1105 imposes additional duties on local agencies, Legislative Counsel says that it imposes a new state mandate. SB 1105 says that if the Commission on State Mandates determines that it creates a state-mandated local program, the state must reimburse local agencies by following the existing statutory process for mandate claims.

13. Incoming! The Senate Committee on Housing approved SB 1105 on a vote of 6-1. The Senate Committee on Governance and Finance is hearing it as the committee of second reference.

<u>Support and Opposition</u> (4/18/22)

<u>Support</u>:
Mayor Lesa Heebner, City of Solana Beach
Mayor Todd Gloria, City of San Diego
Vice Mayor Jack Shu, City of La Mesa
Councilmember Joe LaCava, City of San Diego
Councilmember Jose Rodriguez, City of National City
AARP
Business for Good San Diego
Center on Policy Initiatives
City Heights Community Development Corporation
City of Imperial Beach
Climate Action Campaign
Connect Foundation
Encinitas4equality
Endangered Habitats League
Faith in Action Ministry of St. Andrew's Episcopal Church, Encinitas
IBEW Local Union 569
Keys4homes, Robert Kent
Legal Aid Society of San Diego
Lisc San Diego
San Diego & Imperial Counties Labor Council
San Diego County Bicycle Coalition
San Diego Regional Economic Development Corporation
San Diego Workforce Partnership, INC.
Sandiego350
State Building & Construction Trades Council of California
2 Individuals

<u>Opposition</u>:
Southern California Rental Housing Association

-- END --