# SENATE COMMITTEE ON GOVERNANCE AND FINANCE

**Senator Mike McGuire, Chair**
**2021 - 2022 Regular**

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| **Bill No:** | AB 336 | **Hearing Date:** | 6/10/21 |
| **Author:** | Villapudua | **Tax Levy:** | No |
| **Version:** | 1/27/21 | **Fiscal:** | No |
| **Consultant:** | Peterson | | |

***ENHANCED INFRASTRUCTURE FINANCING DISTRICTS: PUBLIC FINANCING AUTHORITY: MEMBERS: JOINT POWERS AUTHORITIES***

*Allows any member of a taxing entity's legislative body serving on an enhanced infrastructure financing district board to concurrently serve as a board member of a joint powers authority where the taxing entity is a member.*

## Background

**Redevelopment agencies.** From the early 1950s until they were dissolved in 2011, California redevelopment agencies (RDAs) used property tax increment financing to pay for economic development projects in blighted areas pursuant to the provisions of the Community Redevelopment Law. Generally, property tax increment financing involves a local government forming a tax increment financing (TIF) district to issue bonds and use the bond proceeds to pay project costs within the boundaries of a specified project area. To repay the bonds, the district captures increased property tax revenues that are generated when projects financed by the bonds increase assessed property values within the project area. To calculate the increased property tax revenues captured by the district, the amount of property tax revenues received by any local agency participating in the district is "frozen" at the amount it received from property within a project area prior to the project area's formation. In future years, as the project area's assessed valuation grows above the frozen base, the resulting additional property tax revenues—the so-called property tax "increment" revenues—flows to the TIF district instead of other local agencies. After the bonds have been fully repaid using the incremental property tax revenues, the district is dissolved, ending the diversion of tax increment revenues from participating local agencies.

Citing a significant State General Fund deficit, Governor Brown's 2011-12 budget proposed eliminating RDAs and diverting billions of dollars of property tax revenues back to schools, cities, and counties to fund core services. Among the statutory changes that the Legislature adopted to implement the 2011-12 budget, AB X1 26 (Blumenfield, 2011) dissolved all RDAs. The California Supreme Court's 2011 ruling in *California Redevelopment Association v. Matosantos* upheld AB X1 26, but invalidated AB X1 27 (Blumenfield, 2011), which would have allowed most RDAs to avoid dissolution.

RDAs' dissolution deprived many local governments of the primary tool they used to eliminate physical and economic blight, finance new construction, improve public infrastructure, rehabilitate existing buildings, and increase the supply of affordable housing.

**Enhanced Infrastructure Financing Districts.** After RDAs were dissolved in 2011, local officials sought other ways to use tax increment financing to raise the capital they need to fund public works projects. In response, the Legislature enacted SB 628 (Beall, 2014) to allow local officials to create Enhanced Infrastructure Financing Districts (EIFDs), which augment the tax increment financing powers available to local agencies under existing infrastructure financing district statutes. City or county officials can create an EIFD to finance public capital facilities or other specified projects of communitywide significance that provide significant benefits to the district or the surrounding community. An EIFD is governed by a public financing authority (PFA) with three members of each participating taxing entity's legislative body and a minimum of two public members.

To create an EIFD, the legislative body of a city or county must adopt a resolution of intention to establish the financing district. The resolution must state a time and place for a hearing on the proposal, the proposed district's boundaries, the types of facilities and development to be financed, the need for the district, the goals the district proposes to achieve, and that incremental property tax revenues may be used to finance the EIFD's activities. The city or county must create the PFA at the same time it adopts the resolution of intention. The PFA then provides public notice, as specified, and directs an official to prepare an infrastructure financing plan that includes:

- A map and legal description of the proposed district, including a requirement that the plan be consistent with the local agency's general plan;
- A description—including location, timing, and costs—of the public facilities and other forms of development or financial assistance that is proposed in the district, including those to be provided by the private sector, by governmental entities, or jointly; and
- If funding from affected taxing entities is incorporated into the financing plan, a finding that the development and financial assistance are of communitywide significance and provide significant benefits to an area larger than the area of the district.

The plan must also include a financing section that includes the following information:

- The maximum annual tax revenues contributed to the EIFD;
- A plan for financing the public facilities to be assisted by the district, including a detailed description of any intention to incur debt;
- A limit on the total amount of taxes that may be allocated to the district pursuant to the plan, and;
- A date on which the district will cease to exist, by which time all tax allocation to the district will end no more than 45 years from the date the EIFD issues bonds.

Once complete, the official must send the plan to: (1) each landowner, (2) each taxing entity, (3) the public financing authority, (4) the planning commission, and (5) each legislative body within the proposed district, along with any reports it must complete pursuant to the California Environmental Quality Act, and must make the report available for public inspection.

Once approved by the initiating city or county, an EIFD receives funding from three revenue streams to fund its infrastructure financing plan. Similar to RDAs, EIFDs can use a portion of the property tax increment, if the local agencies approve it. They may also use revenue that the infrastructure project generates, such as money generated from user fees, public-private partnerships, loans, and grants. Finally, an EIFD may receive the local share of sales and use taxes (SUT) and transactions and use taxes (TUT). Like an RDA, an EIFD may issue bonds backed by these revenues to pay for projects.

Until the Legislature enacted AB 116 (Ting, 2019), EIFDs required 55 percent voter approval to issue bonds. AB 116 replaced voter approval with a protest process. This process requires the PFA to make the draft-enhanced infrastructure financing plan available to the public and to each landowner within the area at least 30 days before noticing the first public hearing. The PFA must hold three public hearings to hear and comment on all public comments to consider the EIFD infrastructure plan. It requires the PFA terminate the EIFD infrastructure plan if there is a majority protest. A majority protest exists if protests have been filed representing over 50 percent of the combined number of landowners and residents in the area who are at least 18 years of age. Finally, it requires an election if between 25 percent and 50 percent of the combined number of landowners and residents in the area who are at least 18 years of age file a protest.

**Office of Planning and Research reports.** SB 961 (Allen, 2018) required the Governor's Office of Planning and Research (OPR) to complete a study and make recommendations on (1) the effectiveness of tax increment financing, (2) the relative advantages and disadvantages of different types of tax increment financing tools, and (3) the impacts of extending certain TIF districts to areas around major transit stops on or before January 1, 2021,.

The first report identified several key limitations current TIF districts share:

- They have limited revenue potential to make district formation worthwhile;
- Unlike redevelopment where taxing entity participation was mandatory, current TIF districts rely on voluntary participation;
- They have limited powers compared to RDAs; and
- Some technical challenges interfere with their development.

Additionally, the report found TIF district formation is most common in jurisdictions that share the following factors:

- Relatively strong real estate market;
- Ability to capture a significant portion of property tax revenue;
- Ability to partner with other taxing entities;
- Availability of other funding sources;
- A limited number of property owners;
- Community support for development;
- A local champion who can advocate for the project; and
- An adopted specific plan that identifies infrastructure needs required to enable development.

The three reports found that despite the multitude of TIF tools available for local agencies to choose from, only five EIFDs have been created by the end of 2020: Otay Mesa (San Diego County), Placentia (Orange County), La Verne (Los Angeles County), West Sacramento (Yolo County), and Sacramento (Sacramento County). Of these five, only the Placentia and La Verne EIFDs include County participation. Three additional TIF districts are under consideration in the cities of Fresno, Ontario, and Redondo Beach.

To overcome these challenges and encourage the creation of more TIF districts, OPR made several recommendations, including:

- To address limited understanding of TIF tools, online resources and technical assistance should be made available to practitioners understand their application;
- Explore ways to encourage participation of multiple taxing entities and leverage state resources to increase TIF district revenue potential;
- Explore changes to TIF districts to encourage their adoption in alignment with state affordable housing and location efficiency goals; and
- Make various technical changes to resolve potential confusion with TIF statutes.

**Joint Powers Authorities.** The Joint Exercise of Powers Act allows two or more public agencies to use their powers in common if they sign a joint powers agreement. Sometimes an agreement creates a new, separate government called a joint powers agency or joint powers authority (JPA). Agencies that can exercise joint powers include federal agencies, state departments, counties, cities, special districts, school districts, federally recognized Indian tribes, and even other joint powers authorities.

Public agencies can also use the JPA law and the related Marks-Roos Local Bond Pooling Act to form bond pools to finance public works, working capital, insurance needs, and other public benefit projects. JPAs can issue one large Marks-Roos Act bond and then loan the capital to local agencies, thus creating a "bond pool." Bond pooling saves money on interest rates and finance charges. It also lets smaller local agencies enter the bond market. Because JPAs are entities separate from its members, voters need not approve bonds issued by JPAs.

**Incompatible offices.** SB 274 (Romero, 2005) codified the common law rule against public officials holding incompatible offices. Incompatible office law generally prohibits a public officer, including, but not limited to, an appointed or elected member of a governmental board, commission, committee, or other body from simultaneously holding two public offices that are incompatible. A public office is incompatible when any of the following circumstances are present, unless simultaneous holding of the particular offices is compelled or expressly authorized by law:

- Either of the offices may audit, overrule, remove members of, dismiss employees of, or exercise supervisor powers over the other office or body;
- Based on the powers and jurisdiction of the offices, there is a possibility of a significant clash of duties or loyalties between the offices; or
- Public policy considerations make it improper for one person to hold both offices.

When a public officer takes on a second office that is incompatible, state law deems they forfeit the first office.

To avoid conflicts with incompatible office law, the author wants to ensure that members of JPAs boards can also serve on EIFD boards.

## Proposed Law

Assembly Bill 336 allows any member of the legislative body of a participating affected taxing entity who serves as a member of the PFA of an EIFD, to serve as a member of the governing body of a JPA where the taxing entity is a member.

## State Revenue Impact

No estimate.

## Comments

1. Purpose of the bill. According to the author, "Assembly Bill 336 will eliminate potential conflicts in current law that may result in invalidating actions taken by a Joint Powers Authority Board. AB 336 will clarify that members from the legislative bodies of the participating agencies who serve as public financing authority members can also serve as Board members of a Joint Powers Authority implementing the financed project."

2. Slippery slope? State law prevents public officials from holding incompatible offices to avoid potential clashes between the two offices. California Attorney General Edmund G. Brown Jr. issued an opinion (10-506, 2010) on exemptions to the incompatible office requirements generally stating:

> "As we have noted on many occasions, the incompatibility rule does not require an actual occurrence of divided loyalties, but looks to whether the circumstances may reasonably be said to present a substantial latent tension between the two offices. And a single possible clash suffices: Only one potential clash of duties or loyalties is necessary to make offices incompatible. Nor does the incumbent's record or reputation or integrity cure the problem. Regardless of the motives or integrity of the office holder, he or she cannot hold two incompatible offices at once; for it is the nature of the offices, not the individuals, that determines the rule's application. When two offices are inherently incompatible, an incumbent holding both can only perform the duties of one office by neglecting to perform the duties of the other. It is not for him to say in particular instance which he will perform and which he will not. The public has a right to know with certainty."

AB 336 exempts members of an EIFD PFA who also serve on a JPA board from incompatible office law to eliminate any potential conflicts between members who serve on both the EIFD PFA board and the JPA board. According to the San Joaquin Area Flood Control Agency (SJAFCA), it "… is advancing a flood protection project to protect the Mossdale Tract at a cost of hundreds of millions of dollars. SJAFCA and its member agencies plan to use the EIFD as a financing mechanism. Unfortunately, without the passage of AB 336, SJAFCA and its member agencies would be precluded from using the same [elected] officials on the Board of SJAFCA and the Board of the EIFD. This limitation would increase the transactional costs of the project and subject this effort to greater inefficacies." While serving in these two capacities may not appear to violate incompatible office law because neither EIFD boards nor JPA boards supervise each other, or pose an inherent risk for a significant clash of duties, the possibility of such a conflict could increase if more EIFDs form. The Committee may wish to consider if creating a statutory exemption to incompatible office law is appropriate.

3. Sure, but will it work? RDAs were widely adopted for two reasons. First, they allowed cities and counties to take increment from the school share of the property tax, which the state backfilled from the General Fund in many cases. This generated billions of dollars in additional funds that cities and counties could only access through redevelopment. Second, they allowed cities and counties to skirt voter approval requirements on debt issuance. While clarifying that members serving on a JPA board can also serve on a EIFD PFA board could eliminate one barrier local agencies have faced when considering whether to set up EIFDs, they do not address other recommendations such as leveraging state funding, or finding a way for TIF districts to be successful in areas that do not receive a significant share of property tax revenue. There may also be additional barriers to establish TIF districts that AB 336 does not fix. Some observers suggest that TIF formation has been slow due to legal uncertainty over their bonding capacity. They suggest that there is concern over whether making payments to a TIF counts as a debt obligation for participating cities or counties, which would require two-thirds voter approval. The Committee may wish to consider whether AB 336's proposed change would make a meaningful impact on TIF district formation without resolving these other issues.

4. Related legislation. AB 336 is among a few bills members have introduced to revise EIFD law:

- SB 563 (Allen, 2021) makes various changes to the laws governing Neighborhood Infill Finance and Transit Improvements Districts, or NIFTI-2s, which are a subset of EIFDs. The Committee approved SB 563 at its April 8th hearing on a vote of 5-0 but the bill was held on the Senate Appropriations suspense file.
- SB 780 (Cortese, 2021) changes various statutory provisions governing EIFDs and Community Revitalization and Investment Authorities. The Committee approved SB 780 at its April 8th hearing on a vote of 5-0, and is currently pending in the Assembly Local Government Committee.
- AB 464 (Mullin, 2021) expands the types of facilities and projects EIFDs may fund to include small business structures impacted by the COVID-19 pandemic and facilities in which nonprofit community organizations provide health, youth, homeless, and social services. AB 464 is also scheduled for the Committee's June 10th hearing.

## Assembly Actions

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| Assembly Local Government Committee: | 8-0 |
| Assembly Floor: | 74-0 |

## Support and Opposition (6/7/21)

Support: California Central Valley Flood Control Association; City of Lathrop; City of Stockton; County of San Joaquin; San Joaquin Area Flood Control Agency.

Opposition: None received.

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