SENATE COMMITTEE ON GOVERNANCE AND FINANCE
Senator Mike McGuire, Chair
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Author:	Mullin	**Tax Levy:**	No
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ENHANCED INFRASTRUCTURE FINANCING DISTRICTS: ALLOWABLE FACILITIES AND PROJECTS

Expands the types of facilities and projects EIFDs may fund to include small business structures impacted by the COVID-19 pandemic and nonprofit community organizations' facilities.

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. An EIFD is governed by a public financing authority with three members of each participating taxing entity's legislative body and a minimum of two public members. 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, including, but not limited to:

- Highways, interchanges, ramps and bridges, arterial streets, parking facilities, and transit facilities;
- Sewage treatment and water reclamation plants and interceptor pipes;
- Facilities for the collection and treatment of water for urban uses;
- Flood control levees and dams, retention basins, and drainage channels;
- Child care facilities;
- Libraries;
- Parks, recreation facilities, and open space;
- Facilities for the transfer and disposal of solid waste, including transfer stations and vehicles;
- Brownfield restoration and other environmental mitigation;
- The development of projects on a former military base, provided that the projects are consistent with the military base authority reuse plan and are approved by the military base reuse authority, if applicable;
- The repayment of the transfer of funds to a military base reuse authority pursuant to the Military Base Reuse Authority Act, as specified, that occurred on or after the creation of the district;
- Housing for persons of very low, low, and moderate income;
- Industrial structures for private use; and
- Transit priority projects that are located within a transit priority project area.

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 public financing authority at the same time it adopts the resolution of intention. The public financing authority 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 public financing authority 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 public financing authority must hold three public hearings to hear and comment on all public comments to consider the EIFD infrastructure plan. It requires the public financing authority 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, on or before January 1, 2021, 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.

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.

COVID-19 pandemic. The COVID-19 pandemic, also known as the coronavirus pandemic, is an ongoing, widespread outbreak of the disease caused by a strain of the coronavirus. This severe, acute respiratory syndrome was first identified in Wuhan, China in late December 2019. The first cases in the United States occurred in early 2020 and the first California case was confirmed in late January. To control the spread of the disease, California, and other states, issued mandatory “stay-at-home” orders. This pandemic left thousands out of work and struggling to pay for necessities, and businesses struggling to stay in business. California’s unemployment was 10.1 percent in 2020 and total nonfarm jobs decreased by 1,350,500 (a 7.7 percent decrease) from March 2020 to March 2021.

The author wants to expand the public facilities EIFDs can finance to include small business and nonprofit facilities that COVID-19 has affected.

Proposed Law

Assembly Bill 464 authorizes EIFDs to fund the acquisition, construction, or repair of commercial structures, if such acquisition, construction, or repair is for purposes of fostering economic recovery from the COVID-19 pandemic and of ensuring the long-term economic sustainability of small businesses.

AB 464 defines "small business" as an independently owned and operated business that is not dominant in its field of operation, the principal office of which is located in California, the officers of which are domiciled in California, and together with affiliates, has 100 or fewer employees, and average annual gross receipts of $15 million or less over the previous three years, or is a manufacturer with 100 or fewer employees. The measure specifies that an "independently owned and operated business" includes independently owned franchises.

Additionally, AB 464 authorizes EIFDs to fund facilities in which nonprofit community organizations provide health, youth, homeless, and social services.

State Revenue Impact

No estimate.

Comments

1. Purpose of the bill. According to the author, "Locally-established EIFDs were authorized by State legislation in 2014 [SB 628 (Beall) 2014] to make up for the loss of former Redevelopment Agency "tax increment" bond financing for civic infrastructure projects and affordable housing development. Tax-exempt 30-year EIFD bonds can be sold up-front and then paid off gradually from future increases in annual local property tax revenues. EIFD districts can be authorized by city legislation, and then bond issues can be issued.

"It is generally recognized that economic and community recovery from the devastating impacts of the COVID pandemic on local employment, small businesses, and disadvantaged communities depends on public investment as soon as possible in order to restart local economies. Local communities have few alternatives to raise significant funding on their own. They cannot borrow large amounts via long-term loans. Revenue bonds and assessment districts can be utilized only in very limited circumstances.

"Enhanced Infrastructure Finance Districts can solve this civic investment crisis quickly, when it is most needed. Tax-exempt bond interest rates are rock bottom today – well under 4% – and will stay that way until the American economy recovers fully. This is exactly the right time to leverage civic financial capabilities to the maximum.

To date EIFD's have only been used for small individual projects in only a few cities. Widening the scope and authority of EIFDs would allow for more access to capital to address large and pressing needs at the local level. Under AB 464, funding for counties, school districts, transit districts, etc. would not be affected, but access to funding for needed new infrastructure projects could now be made available. The current crisis-level needs for affordable housing, homeless and community facilities, and small business capital could finally be addressed at sufficient scale to have a real impact."

2. The right tool in the toolbox? AB 464 expands the facilities eligible to receive EIFD funding to include two types of facilities the COVID-19 pandemic has significantly affected: small business facilities and facilities run by nonprofit community organizations. Many small businesses closed during the pandemic. Because of these business closures, many community-based organizations that provide services for health, youth, homeless, and social services, have found innovative ways to transform their facilities to accommodate unprecedented demand for their services. AB 464 expands EIFD-eligible facilities to include these facilities. However,

EIFDs are not set up to provide immediate support for pandemic-affected facilities. First, local agencies have to set up an EIFD, which requires significant planning resources. Once set up, the EIFD must generate sufficient tax increment to issue bonds, or otherwise finance eligible facilities. This can take several years. Additionally, the EIFD will have to assess which facilities foster economic recovery from the COVID-19 pandemic and ensure the long-term economic sustainability of small businesses. Given the planning and time commitment required, should local agencies look to EIFDs to finance these facilities?

3. <u>Sure, but will it work</u>? 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 expanding the types of facilities EIFDs can finance may encourage further district formation, it does 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 464 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 464's proposed changes would make a meaningful impact on TIF district formation without resolving these other issues.

4. <u>Alphabet soup</u>. After the Supreme Court's 2011 *Matosantos* decision dissolved all RDAs, legislators enacted a slew of measures creating new tax increment financing tools to pay for local economic development. In 2014, the Legislature authorized the creation of EIFDs, quickly followed by Community Revitalization and Investment Authorities (CRIAs) in 2015 (AB 2, Alejo). Four years ago, the Legislature authorized the formation of Affordable Housing Authorities (AHAs), which may use tax increment financing exclusively for rehabilitating and constructing affordable housing and also do not require voter approval to issue bonds (AB 1598, Mullin). Three years ago, SB 961 (Allen) removed the vote requirement for a subset of EIFDs focused on areas near transit called Neighborhood Infill Finance and Transit Improvement Districts (NIFTIs) to issue bonds and required these EIFDs to go through a similar public protest process. OPR's reports evaluating the effectiveness of these TIF tools have only been available for a few months. One finding across TIF tools was that many local agencies have limited understanding of the different tools, and could benefit from online resources and technical assistance to better understand their application. In light of the recent creation of numerous TIF tools, and the little time local agencies have had to understand their application, should the Legislature expand the types of facilities EIFDs can finance? Or, should the Legislature assess the TIF tools it has, identify the successful elements of each TIF tool, and focus efforts behind creating TIF legislation that is clear, easy to use, accountable, and allows local agencies across the state to promote stronger economic development?

5. <u>Related legislation</u>. AB 464 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 336 (Villapudua, 2021) allows any member of a taxing entity's legislative body serving on an EIFD PFA board to concurrently serve as a member of the governing body of a JPA where the taxing entity is a member. AB 336 is also scheduled for the Committee's June 10th hearing.

Assembly Actions

Assembly Local Government Committee:	8-0
Assembly Floor:	77-0

Support and Opposition (6/7/21)

Support: Alameda County Democratic Party; Better Way CA; Build Affordable Faster CA; Non-profit Housing Association of Northern California; San Francisco Bay Area Planning and Urban Research Association (SPUR); Wellstone Democratic Renewal Club.

Opposition: None received.

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