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## SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair  
2021 - 2022 Regular Session

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### **SB 563 (Allen) - Second Neighborhood Infill Finance and Transit Improvements Act: housing developments: homelessness prevention programs: enhanced infrastructure financing plan review and amendment process**

**Version:** May 3, 2021

**Policy Vote:** GOV. & F. 5 - 0, HOUSING 7  
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**Urgency:** No

**Mandate:** Yes

**Hearing Date:** May 17, 2021

**Consultant:** Mark McKenzie

**Bill Summary:** SB 563 would make changes to the Second Neighborhood Infill Finance and Transit Improvements Act (NIFTI-2), and require the Department of Housing and Community Development (HCD) to administer a program that provides matching funds to local NIFTI-2 districts for specified homelessness prevention programs and affordable housing projects, subject to the appropriation of funds by the Legislature.

#### **Fiscal Impact:**

- HCD estimates ongoing administrative costs of approximately \$2.6 million annually (General Fund) for 13.5 PY of staff as follows:
  - 7.0 PY to develop, implement, and review program guidelines, create program documentation, provide technical assistance, develop and review applications, review infrastructure plans, administer the program, review compliance issues, and interface with local NIFTI-2 districts.
  - 4.0 PY to complete research, audit findings, and conduct outreach to districts in order to develop a corrective action plan for noncompliance based on annual reports, and to issue findings.
  - 2.5 PY to review the ongoing annual resubmission and recertification of housing elements, including defining, tracking, and reporting progress.
- Unknown, major annual cost pressures to provide HCD with matching grant funding for qualifying NIFTI-2 districts to use for specified homelessness prevention programs or specified affordable housing projects. (General Fund)
- Unknown, likely minor costs for the Homeless Coordinating and Financing Council (HCFC) and the Strategic Growth Council (SGC) to consult with HCD in the administration of the matching grant program. (General Fund)

**Background:** Historically, the Community Redevelopment Law has allowed a local government to establish redevelopment agencies (RDAs) and capture all of the increase in property taxes that is generated within the project area beyond the base year value (referred to as “tax increment”) over a period of decades. Prior to their dissolution pursuant to ABx1 26 (Blumenfield) Chap 5/2011, RDAs used tax increment financing, oftentimes issuing long-term debt in the form of tax allocation bonds, to address issues of blight, construct affordable housing, rehabilitate existing buildings, and finance development and infrastructure projects.

Following the dissolution of RDAs, numerous state laws have been enacted to provide local agencies with various tax increment financing (TIF) tools to raise capital needed to fund public infrastructure projects. One primary distinction between RDA statutes and the more recent TIF tools is that the latter all require voluntary participation by affected taxing agencies, and none are authorized to involve the participation of the local school share of revenues. In 2014, the Legislature authorized the creation of Enhanced Infrastructure Financing Districts (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 (AB 1598, Mullin). That same year, AB 1568 (Bloom) created the first NIFTIs to provide additional incentives for the formation of EIFDs. The following year, SB 961 (Allen) created NIFTI-2s with yet another incentive to form by removing voter approval to issue bonds in areas near transit.

SB 961 required the Governor's Office of Planning and Research (OPR) to complete a study by January 1, 2021 and make recommendations on: the effectiveness of various tax increment financing tools used by local agencies in the wake of RDA dissolution, the relative advantages and disadvantages of different types of TIF tools, and the impacts of extending NIFTI-2s to areas around bus stops, including segregated bus lanes. 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 volunteer participation;
- They have limited powers compared to RDAs; and
- Some technical challenges interfere with their development.

The reports found that despite the multitude of TIF tools available for local agencies to choose from, only five EIFDs had been created by the end of 2020, with an additional three under consideration. To overcome these challenges and encourage the creation of more TIF districts, OPR recommended the following:

- Make online resources and technical assistance available to practitioners to better 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.
- Make various technical changes to resolve potential confusion with TIF statutes.

**Proposed Law:** SB 563 would make various changes to the NIFTI-2 Act, including: (1) changing its formation process, as specified; (2) recasting eligible expenditures to focus on homelessness prevention programs and affordable housing for households earning under 60% of AMI; (3) expanding housing anti-displacement provisions; and (4) creating a state matching grant program at HCD.

Among the numerous changes to the NIFTI-2 Act, and most relevant to the fiscal impacts, this bill would do the following:

- Require HCD to administer a matching fund program in consultation with HCFC and the SGC, as specified.

- Require a NIFTI-2 district to comply with all of the following as conditions of eligibility for state matching funding:
  - Require a city and county to have a housing element that HCD determines to be in substantial compliance with state law, and to annually submit their housing element to HCD to ensure the housing element remains in compliance.
  - No city or county within a district shall have been found to be in violation of the Housing Accountability Act or Density Bonus Law within the last five years.
  - No city or county within a district shall have taken any actions to pass measures that cap population or place limits on growth, enacted housing moratoria, required voter-approval for housing-related zoning decisions, or engaged in downzoning, as specified.
- Require HCD, upon appropriation, to disburse matching funds each year to a NIFTI-2 district for use only in qualifying homelessness prevention programs and affordable housing projects, as specified.
- Specify that the maximum state matching contribution to a district each year would be equal to  $\frac{1}{2}$  of the total amount of tax revenues, real property, or other in-kind resources contributed by the city and county to the NIFTI-2 district since its formation that have only been used for homelessness prevention programs or the development of housing affordable to households with an income below 60% of the AMI, as specified.
- Require at least 12% of the overall amount of state funding to be set aside for counties with a population of less than 200,000 and districts formed within those counties, as specified.
- Require a district requesting matching state funds to submit to HCD one or more plans that include all of the following information:
  - A description of the proposed program or programs and project or projects to be completed and the funding necessary for each requested.
  - Information demonstrating that the NIFTI-2 district is or will be entitled to state matching funds in the amounts requested.
  - Information demonstrating that each program or project complies with all the statutory requirements of this bill.
  - Information identifying the source of any additional funds necessary to conduct each proposed program or complete each proposed project.
  - The amount of administrative costs associated with the plan.
  - Certification that any affordable housing projects that receive funding shall comply with specified labor requirements.
  - Any further information required by HCD.
- Require HCD to provide an applicant with a written statement within 30 days that identifies any questions about the plan. If HCD denies approval of a plan, it must provide the district with written reasons for denying the plan within 30 days of the decision.
- Require HCD to approve all plans for qualifying homelessness prevention programs and affordable housing projects.
- Require HCD, in consultation with the DGC and HCFC, to develop guidelines for allocating state matching funds in any year when the funds available is less than the matching funds requested by all NIFTI-2s.

- Require each NIFTI-2 district that receives funds to provide an annual report to the SGC that includes all the following information for the prior year:
  - The amount of funds received.
  - The purposes for which state funds were used, including number of households served and the number of units constructed, with the number of bedrooms and income levels.
  - The actions taken to implement each program or project.
  - The total number of funds expended for planning and general administrative costs.
- Require HCD to direct a district to develop a corrective action plan based on HCD's recommendations within one year of notification, if HCD determines, based on annual reports, that any of the following has occurred:
  - The applicant is not on track to produce the number of housing units included in the plan.
  - The applicant is not on track to provide homeless prevention programs to the number of persons included in the plan.
  - The applicant is on track to exceed the 5% limit on administrative expenses.
  - The applicant is found to have used state matching funds for unauthorized purposes, including subsidizing market rate housing.
  - The district has violated prohibitions against displacement and "no net loss" provisions, as specified.
  - The district is not on track to complete all of the projects included in the plan according to the plan's timelines.
- Require HCD to issue a finding that the district is out of compliance with funding requirements if it finds that any of the following apply:
  - The district has not complied with a corrective action plan.
  - The district has not provided an adequate corrective action plan to HCD within one year of HCD's direction to develop a plan.
  - The annual report provided to HCD does not demonstrate that the district has taken adequate steps to implement the corrective action plan.
- Require HCD to stop transferring state matching funds to the district, and prohibit the district from applying for additional state funds for five years, if HCD finds that the district is out of compliance with funding requirements.

**Related Legislation:** SB 961 (Allen), Chap. 559/2018, enacted the NIFTI-2 Act, which allowed certain EIFDs to issue debt for affordable housing near transit without voter approval.

AB 1598 (Mullin), Chap. 764/2017, allowed a city or county to create an AHA to fund affordable housing and affordable workforce housing, similar to a CRIA.

AB 1568 (Bloom), Chap. 562/2017, established the NIFTI Act in EIFD law and allows EIFDs to receive sales and use and transaction and use taxes for affordable housing purposes.

AB 2 (Alejo), Chap. 319/2015, authorized local governments to create CRIA to use tax increment revenue to improve the infrastructure, assist businesses, and support affordable housing in disadvantaged communities.

AB 229 (Perez), Chap. 775/2014, created IRFDs, modeled after IFDs in existing law, and authorized a military base reuse authority to form a district to finance a broader range of projects and facilities to clean-up and develop former military bases.

SB 628 (Beall), Chap. 785/2014, authorized the creation of EIFDs, as specified.

**END --**