SENATE COMMITTEE ON GOVERNANCE AND FINANCE
Senator Mike McGuire, Chair
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LOCAL FINANCE: PUBLIC INVESTMENT AUTHORITIES

Changes various statutory provisions governing Enhanced Infrastructure Financing Districts and Community Revitalization and Investment Authorities.

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 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 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 (TUTs). 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.

Community Revitalization and Investment Authorities. In 2015, the Legislature authorized local officials to establish a Community Revitalization and Investment Authority (CRIA) and use property tax increment revenues to finance the implementation of a community revitalization plan within a community revitalization and investment area (AB 2, Alejo). Unlike EIFDs, which can form anywhere, local officials may only establish a CRIA in an area where at least 80 percent of the area has an annual median household income that is less than 80 percent of the city, county, or statewide annual median income, and meets at least three of the following conditions:

- Nonseasonal unemployment in a community revitalization and investment area that is at least 3 percent higher than statewide median unemployment, as defined by a specified report on labor market information.
- Crime rates in a community revitalization and investment area that are 5 percent higher than the statewide median crime rate, as defined by a specified annual report on criminal justice statistics.
- Includes deteriorated or inadequate infrastructure, including streets, sidewalks, water supply, sewer treatment or processing, and parks.
- Includes deteriorated commercial or residential structures.

If the area does not meet these conditions, a CRIA can also form (1) on a former military base with deteriorated or inadequate infrastructure and structures, or (2) in a disadvantaged community.

A CRIA is governed by a public financing authority with a majority of each participating taxing entity's legislative body and a minimum of two public members. To create a CRIA, the legislative body of a city or county must adopt a resolution to establish the financing district and create the public financing authority. The public financing authority then provides public notice, as specified, and directs an official to prepare a community revitalization and investment plan that includes:

- A statement of the principal goals and objectives of the plan including territory to be covered by the plan.
- A description of the deteriorated or inadequate infrastructure within the area and a program for construction of adequate infrastructure or repair or upgrading of existing infrastructure.
- A housing plan that describes how the authority will comply CRIA housing requirements, including that no less than 25 percent of all taxes allocated to the CRIA must be used for

specified affordable housing purposes. This housing plan must include information on available funding sources, the number of units assisted and developed by those funds, and other specified information.
- A program to remedy or remove a release of hazardous substances, if applicable.
- A program to provide funding for or otherwise facilitate the economic revitalization of the area.
- A fiscal analysis setting forth the projected receipt of revenue and projected expenses over a five-year planning horizon.
- A limit on establishing loans, advances, and indebtedness of 30 years, and a date when the district will end not to exceed 45 years from its formation.

Similar to EIFDs, a CRIA considers the adoption of its plan over three public hearings. 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. Unlike EIFDs, CRIAs must repeat this protest process every ten years.

Upon formation, a CRIA can:

- Provide funding to rehabilitate, repair, upgrade, or construct infrastructure;
- Provide for low- and moderate-income housing;
- Remedy or remove a release of hazardous substances;
- Provide for seismic retrofits of existing buildings in accordance with all applicable laws and regulations; and
- Acquire and transfer real property, including through eminent domain under specified conditions.

Once approved by the initiating city or county, a CRIA can capture a portion of the property tax increment.

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.

The California Association for Local Economic Development wants to make various changes to EIFD and CRIA law to encourage their adoption.

Proposed Law

Senate Bill 780 makes changes that apply to both EIFDs and CRIAs, EIFD-specific changes, and CRIA-specific changes.

Changes that affect both EIFDs and CRIAs. SB 780 allows local agencies forming an EIFD or CRIA to:

- Appoint an alternate member of their legislative body to serve if an initial member is absent or cannot serve.
- If at least three taxing entities participate in the district, upon agreement of all taxing entities participating, reduce the district's governing board to one member and one alternate member of each legislative body and a minimum of two public members.
- Form "project areas" within a proposed CRIA or EIFD rather than create separate districts. Instead of having a 45-year time limit for the whole district, each individual project area would have 45 years from the date the project area receives $100,000 in property tax increment.

- Amend the district plan, including proposals to finance additional eligible projects included in the initial plan, by a majority vote of the EIFD or CRIA board at a public hearing following a 30-day mailed notice of the proposed changes to all property owners, residents, and affected taxing entities. Amendments that propose to add new territory, increase tax allocations to the district, or add a project that was not included in the initial plan must go through the full protest process.

EIFD-specific changes. SB 780 also makes several EIFD-specific changes:

- Clarifies that after the required public hearings, the local agency can adopt the EIFD plan by resolution, not ordinance;
- Requires EIFD plans to be consistent with a specific plan the local agency has adopted;
- Requires the EIFD to make the plan available to the public on its website;
- Clarifies that when a taxing entity joins an EIFD, its tax increment calculation is based on the last equalized assessment roll; and
- Allows the EIFD to consolidate existing requirements to mail the plan when complete and make the plan available at least 30 days before noticing the first public meeting. This allows the official responsible for these notices to mail each landowner, resident, and affected taxing entity at least 40 days prior to the first hearing and including: (1) a plan summary, (2) a website where the documents are available, (3) a contact person to receive requests for mailed materials, and (4) the location and time for the initial public meetings. The official must still notify interested parties of the second and third public protest meetings.

CRIA-specific changes. SB 780 also makes a few CRIA-specific changes:

- Adds sites identified in a city or county's housing element that are suitable for residential development, including parcels that allow transit priority projects, to the list of alternative locations where local agencies can establish CRIAs if they comply with specific planning strategies;
- Expands existing authority for CRIAs to provide direct assistance to businesses within the plan area in connection with new or existing facilities for industrial or manufacturing uses to also include the redevelopment or conversion of underutilized office or retail structures or parcels into housing; and
- Removes the requirement for CRIAs to conduct protest process every 10 years.

State Revenue Impact

No estimate.

Comments

1. Purpose of the bill. According to the author, "After the elimination of redevelopment agencies, the state has tried to find effective solutions to spur economic development and build affordable housing in local communities. Enhanced Infrastructure Finance Districts (EIFD's) and Community Revitalization Investment Authorities (CRIA's) have shown promise, yet have proven to be overly cumbersome to establish and operate. SB 780 will successfully revitalize these tools, empowering local agencies to leverage their tax increment to spur the development of affordable housing and public infrastructure in their communities."

2. 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 both EIFDs and CRIAs do not require voter approval to issue bonds, SB 780 does not grant them any funds beyond what would be otherwise available, making them significantly less attractive. SB 780 makes a slew of changes to streamline EIFD and CRIA formation: it allows for alternate board members, creates a plan amendment process, and allows districts to create project areas. While certain changes like consolidating boards with more than three tax entities seem to align with OPR's recommendation to encourage participation of other taxing entities, 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 SB 780 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 SB 780s proposed changes would make a meaningful impact on TIF district formation without resolving these other issues.

3. Alphabet soup. 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 further changes to existing TIF tools be made? 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?

4. Sins of the father. A number of factors contributed to the downfall of redevelopment. Chief among them were fiscal concerns: by 2009-10, the state paid over $2 billion a year to backfill property taxes that RDAs captured from K-14 schools. But examples of poor spending by redevelopment agencies also figured into legislators' decisions. Studies of redevelopment by the Legislative Analyst's Office, the State Controller, the Public Policy Institute of California, and others found that redevelopment often subsidized private development—such as car dealerships, large retail chain stores, and bars—with dubious public benefits. Seeking to enhance public scrutiny of redevelopment-like expenditures, the Legislature affirmatively required EIFDs to seek voter approval to issue bonds, which was later removed in favor of a robust protest process

that CRIAs, EIFDs, and NIFTIs now share to ensure that TIF bonding authority is not misused the same way some redevelopment funds were. SB 780 makes some changes that impact how the public interacts with TIF districts. For example, if more than three taxing entities opt in, CRIAs and EIFDs can reduce the size of their board so each taxing entity only has one member of their legislative body on the board, which could limit representation of certain voices in the debate over the district's plans. Additionally, SB 780 allows EIFDs and CRIAs to amend their plans by majority board approval in specified cases, instead of going through the more extensive public protest process. While the bill makes clear that more significant changes require the full public protest process, and all boards still require at least two public members, these changes open up opportunities for the board to make certain decisions without a more formal process for the public to weigh in. The Committee may wish to consider whether the public's role in these districts remains sufficient.

5. Putting the cart before the horse. Even if SB 780 does promote the formation of additional TIF districts, what happens next? We have little information available from the dozen TIF districts created as far as what they have built and how they have financed it. Rather than waiting to learn from these recently created districts, SB 780 makes further changes to TIF district powers. For example, SB 780 allows both CRIAs and EIFDs to create project areas within the TIF district, and allocate tax increment revenue and issue bonds specific to those project areas. The idea stems from SB 293 (Skinner, 2019), which created Oakland Infrastructure Financing Districts (Oakland IFDs) to help finance infrastructure related to the existing ballpark for the Oakland Athletics and the proposed new ballpark, which could be separate project areas. Since SB 293 was only recently enacted, information is not available showing the effectiveness of this approach. The Committee may wish to consider whether to expand the use of project areas, or other TIF district powers, before learning more from recently created districts.

6. Power to the people. AB 116 (Ting, 2019) required EIFDs to have the same robust public input process as CRIAs, but did not require EIFDs to repeat this process every ten years like CRIAs have to. This measure removes this 10-year requirement to align the CRIA process with EIFDs to address concerns from local economic development advocates that this could interfere with TIF districts' bonding authority. The California Association of Realtors expressed concerns with removing the 10-year requirement because they believe it eliminates a necessary check on local government bonding authorities. To help balance these concerns, the Committee may wish to consider amending the bill to repeat the protest process every 15 years and clarify that this process cannot interfere with a district's existing obligations.

7. Double referral. The Senate Rules Committee has ordered a double referral of SB 780: first to the Senate Governance and Finance Committee to hear issues of tax increment financing and then to the Senate Housing Committee, which has jurisdiction over housing issues.

8. Related legislation. 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. SB 563 is currently pending in the Senate Governance and Finance Committees.

Support and Opposition (4/5/21)

Support: California Association for Local Economic Development; California Forward Action Fund; City of West Sacramento; Edison International and Affiliates; Keyser Marston Associates, INC.; Rsg, INC.; S Squared Consulting; San Francisco Bay Area Planning and Urban Research Association.

Opposition: None submitted.

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