

Date of Hearing: April 6, 2016

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Susan Talamantes Eggman, Chair

AB 2514 (Brown) – As Introduced February 19, 2016

**SUBJECT:** Local government: redevelopment: successor agencies to redevelopment agencies: enforceable obligations.

**SUMMARY:** Allows federal base reuse obligations for the former Norton Air Force Base as confirmed by the 1990 Joint Powers Agreement providing for member contributions, and by the 1990 cooperation agreement with a state water contractor, to be deemed enforceable obligations, for purposes of the law related to redevelopment dissolution.

**EXISTING LAW:**

- 1) Creates infrastructure and revitalization financing districts, authorizes a military base reuse authority to form a district, and allows these districts to finance a broader range of projects and facilities to clean-up and develop former military bases.
- 2) Allows local agencies to establish an Enhanced Infrastructure Financing District which provides broad authorities for local agencies to use tax increment to finance a wide variety of projects including infrastructure, such as roads, bridges and wastewater and groundwater facilities; affordable housing, mixed-use development and sustainable development; transit-oriented development; light rail; industrial structures; parks and open space; libraries; child care facilities; military base reuse; and brownfields remediation.
- 3) Authorizes local governments to create a Community Revitalization and Investment Authority to use tax increment revenue to improve infrastructure, assist businesses, and support affordable housing in disadvantaged communities and allows a plan within an area that is within a former military base that is principally characterized by deteriorated or inadequate infrastructure and structures.
- 4) Allows, pursuant to the Joint Exercise of Powers Act, two or more public agencies by agreement, to jointly exercise any power common to the contracting parties, as specified, if authorized by their legislative or other governing bodies.
- 5) Allows the legislative bodies for communities having territory within, adjacent to or in proximity to a military facility or installation, as specified, to create a separate joint powers agency (JPA) to have and exclusively exercise powers of an agency in furtherance of the redevelopment of a project area approved by the JPA and makes a number of findings and declarations, including:
  - a) The closure of two or more military facilities or installations within the County of San Bernardino will cause serious economic hardship in that county, including loss of jobs, increased unemployment, deterioration of properties and land utilization and undue disruption of the lives and activities of the people; and,

- b) It is the policy of the Legislature to assist communities within the County of San Bernardino in their attempt to preserve the military facilities and installations for their continued use as airports and aviation-related purposes.
- 6) Dissolves Redevelopment Agencies (RDAs) and establishes a process for winding down their activities.
  - 7) Defines "enforceable obligations" and requires successor agencies to make payments due to enforceable obligations, as specified.
  - 8) Requires successor agencies to prepare a Recognized Obligation Payment Schedule (ROPS), before each six-month fiscal period, in accordance with specified requirements, and requires the schedule to identify one or more of the following sources of payment:
    - a) Low- and Moderate-Income Housing Fund;
    - b) Bond proceeds;
    - c) Reserve balances;
    - d) Administrative cost allowance;
    - e) The RDA Property Tax Trust Fund (RPTTF), as specified; and,
    - f) Other revenue sources, including rents, concessions, asset sale proceeds, interest earnings, and any other revenues derived from the former redevelopment agency, as approved by the oversight board.
  - 9) Requires each successor agency to have an oversight board of seven members to approve certain actions of the successor agency and requires the Department of Finance (DOF) to review the actions of an oversight board.

**FISCAL EFFECT:** This bill is keyed fiscal.

**COMMENTS:**

- 1) **Bill Summary.** This bill allows federal base reuse obligations for the former Norton Air Force Base as confirmed by the 1990 Joint Powers Agreement providing for member contributions, and by the 1990 cooperation agreement with a state water contractor, to be deemed enforceable obligations, for purposes of the law related to redevelopment dissolution.

This bill is sponsored by the Inland Valley Development Agency (IVDA).

- 2) **Author's Statement.** According to the author, "As a result of limitations created by the redevelopment dissolution law, the Department of Finance has been unable to confirm that the pledge of tax revenues under a JPA contract is an enforceable obligation to the IVDA. Each member of the JPA pledged a portion of its tax rate to satisfy the requirements of the Department of Defense to enter into a federally-approved military base reuse agreement.

IVDA had state RDA authority and its formation and funding is unique. IVDA is the only military base reuse entity in California organized as a JPA. IVDA has complied with RDA dissolution requirements and today the Agency includes the on-going base reuse JPA and a Successor Agency. However, the RDA dissolution statutes caused a disruption in the local funding agreements pursuant to the federal contracts executed when the JPA was formed 26 years ago. Since 2012, IVDA has lost \$24 million in revenues pledged to the JPA, limiting base reuse initiatives. That revenue is being redistributed to other agencies.”

- 3) **Background on IVDA.** IVDA is a joint powers authority (JPA) comprised of the Cities of San Bernardino, Colton, and Loma Linda, and the County of San Bernardino. In 1989, AB 419 (Eaves), Chapter 545, Statutes of 1989, added a new section to the Health and Safety Code to specifically authorize the legislative bodies of these local agencies to form a JPA for purposes of redevelopment of Norton Air Force Base and George Air Force Base, thus granting IVDA the powers to act as a redevelopment agency. AB 419 contained a number of findings, including the need for a JPA to assist communities within the County of San Bernardino in their attempt to preserve the military facilities and installations because of their closure and the serious economic hardship and accompanying blight that would follow.

Thus, pursuant to the enabling legislation (AB 419) and the Joint Exercise of Powers Act, IVDA was formed in 1990 with the authority and power to plan for the use and reuse of the Norton AFB, to acquire, maintain and operate an airport for the economic benefit of the East Valley, and to serve as a federal base re-use authority. IVDA is specifically designated by the United States Department of Defense as the officially recognized Local Redevelopment Authority under 32 CFR Part 175, Section 175.3 and under Public Law 100-526 (also known as the Base Realignment and Closure Act).

**Agreements and Tax Increment Contributions.** As part of the joint powers agreement in 1990, the local agency members agreed to provisions requiring tax contributions from each member agency to fund IVDA. The agreement required “Tax Increment Revenues attributable to the project area shall be allocated for Agency use from each Member’s percentage share of the one percent (1%) tax rate as follows: (i) each member which is an incorporated city shall have allocated for Agency use one-half (1/2) of their percentage share of the one percent (1%) tax rate for property taxes generated upon the incremental assessed value of property located within their municipal boundaries of the project area; (ii) the County shall have allocated for Agency use one-half (1/2) of the County General Fund share of the one percent (1%) tax rate for property taxes generated upon the incremental assessed value of property which is within the County unincorporated areas of the project area.”

There was also an agreement in 1990 between IVDA and the San Bernardino Valley Municipal Water District (SBVMWD) to “cooperatively provide for the redevelopment of certain areas within the territorial limits of the Agency.” The agreement specifies that SBVMWD would continue to receive tax revenues resulting from increases in the District debt services tax levies and the two percent (2%) annual escalation in assessed values, and that IVDA would receive all other tax increment revenues attributable to the District had the redevelopment plan not been adopted, and would remit 50% to the District.

**2012 Binding Settlement.** On February 27, 2014, the IVDA entered into a binding settlement agreement with the State of California, DOF and others to resolve prior litigation matters regarding the IVDA’s unique formation and operation under federal and state law.

That settlement ensured that going forward, IVDA had a Successor Agency function that served to address the post-dissolution functions related to IVDA's exercise of California redevelopment powers. It further established that IVDA's existence and operation as a military base reuse JPA was not dissolved and continues to function for the purposes for which it was originally established. The Successor Agency and the Joint Powers Authority are separate and distinct legal entities.

- 4) **Post-Dissolution.** DOF, in a letter dated December 17, 2014, to IVDA, denied Base Reuse Joint Powers Authority Obligations in the amount of \$3.9 million, noting that "it is our understanding that this item relates to the revenue contribution to be made by members of the IVDA JPA for the continued operation of IVDA JPA...Finance initially denied this item because it does not fall within the meaning of an enforceable obligation as defined by HSC Section 34171 (d)(1). During the Meet and Confer process, the Agency contends that this item is the IVDA JPA's revenues that should be passed through the Agency for payment to the IVDA JPA. However the Agency has not provided any documents to show that an enforceable obligation, pursuant [to] HSC section 34171 (d)(1), exists that requires the payment of these revenues to the IVDA JPA to be listed on the ROPS. Therefore, this item is not eligible for RPTTF funding."

In another letter from DOF to IVDA dated November 16, 2015, pass-through agreements totaling \$3.9 million were not allowed with DOF stating that "The Agency was unable to provide sufficient documentation to support the amounts claimed, and pursuant to HSC section 34183 (a)(1) the County Auditor Controller (CAC) is required to make the necessary pass-through payments..."

In a letter dated May 13, 2014, to DOF from the Department of the Air Force (Air Force Civil Engineer Center), regarding IVDA's recognized obligations, the Department of the Air Force notes that "conveyance of all properties to four surrounding cities and San Bernardino County from the DOD (Department of Defense) was accomplished under representations from the joint powers authority that revenues from reuse activities, including the commitment of member revenues and redevelopment tax increment from the economically impacted area around the former base, would be directed to the reuse and operation of the former base property."

- 5) **Policy Considerations.** The Committee may wish to consider the following:
- a) **End Date.** Is there an end anticipated for the member contributions and pass through that the bill would be allowing? If not, that runs contrary to the point of RDA dissolution which is to wind down RDA activities, not allow them to continue into perpetuity.
  - b) **IVDA Obligations.** Are the member contributions and water district pass through revenues pledged to pay off bond debt pre June 28, 2011, in accordance with RDA dissolution law, or are these revenues anticipated to be used to fund ongoing base reuse projects into the future? If it is to continue funding base reuse projects going forward, then this runs contrary to RDA dissolution laws.
  - c) **Different Approaches and Options.** While the bill allows the member contributions and pass through agreements to continue to exist, the Committee may wish to ask the author and sponsor whether the following options were contemplated, and if so, to discuss why these options (none of which require state legislation) are not feasible:

- i) **Local Agreement.** If all the cities and the County agree that they should put in tax increment to fund IVDA's ongoing activities, why not do it through a separate local agreement?
  - ii) **Infrastructure and Revitalization Financing District (IRFD).** AB 229 (John Perez), Chapter 775, Statutes of 2014, created infrastructure and revitalization financing districts, modeled after infrastructure financing districts. AB 229 specifically allowed a military base reuse authority to form an IRFD in order to finance a broad range of projects and facilities to clean-up and redevelop former military bases.
  - iii) **Enhanced Infrastructure Financing District (EIFD).** SB 628 (Beall), Chapter 785, Statutes of 2014, provided broad authorities for local agencies to use tax increment to finance a wide variety of projects, including infrastructure, such as roads, bridges and wastewater and groundwater facilities; affordable housing, mixed-use development and sustainable development; transit-oriented development; light rail; industrial structures; parks and open space; libraries; child care facilities; military base reuse; and brownfields remediation. EIFDs provide broad flexibility in funding and no public vote is required to establish an authority, although a 55% vote is required to issue bonds. EIFDs can cross jurisdictional boundaries and involve multiple cities and a county and there are no geographic limitations where it can be used.
  - iv) **Community Revitalization and Investment Authority (CRIA).** AB 2 (Alejo and E. Garcia), Chapter 319, Statutes of 2015, authorized local governments to create CRIAs to use tax increment revenue to improve infrastructure, assist businesses, and support affordable housing in disadvantaged communities. AB 2 specifically allowed a CRIA to carry out a plan within an area that is within a former military base that is principally characterized by deteriorated or inadequate infrastructure and structures.
- d) **Vague Language.** Language in the bill that adds to the definition of enforceable obligations, specifically, "including, but not limited to, federal base reuse obligations for the former Norton Air Force Base as confirmed by the 1990 Joint Powers Agreement providing for member contributions and by the 1990 cooperation agreement pass with a state water contractor" is vague and confusing. Should the bill move forward, the author may wish to strengthen this language by striking "including, but not limited to" and more specifically defining both the 1990 Joint Powers Agreement and the cooperation agreement with the San Bernardino Valley Municipal Water District so that the intent is clear.
- 6) **Arguments in Support.** Supporters argue that the bill will once again allow tax revenues pledged in 1990 to flow to IVDA, and is important to maximize job creation and economic development activities in and around the former base, ensuring that the original federal obligations and base reuse plan are realized.
  - 7) **Arguments in Opposition.** None on file.
  - 8) **Double-Referral.** This bill is double-referred to the Housing and Community Development Committee.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Cities of Colton, Loma Linda, and San Bernardino  
Highland Area Chamber of Commerce  
Hillwood  
Inland Empire Economic Partnership  
Matich Corporation  
San Bernardino Area Chamber of Commerce  
San Bernardino City Unified School District  
San Bernardino Community College District  
San Bernardino County Superintendent of Schools

**Opposition**

None on file

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