

Date of Hearing: May 6, 2015

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Brian Maienschein, Chair
AB 313 (Atkins) – As Introduced February 12, 2015

SUBJECT: Enhanced infrastructure financing districts.

SUMMARY: Clarifies procedures for replacing dwelling units that are removed or destroyed within an Enhanced Infrastructure Financing District (EIFD) and makes other technical changes to EIFD law. Specifically, **this bill:**

- 1) Clarifies, in several sections of EIFD law, that provisions relating to persons of low- or moderate-income households also apply to very-low income, as defined.
- 2) Makes changes to EIFD law relating to the removal of existing dwelling units, and requires the infrastructure financing plan to contain provisions to do all of the following:
 - a) If the dwelling units to be removed or destroyed are or were inhabited by persons or families of very low-, low-, or moderate-income, as defined, at any time within five years prior to establishment of the EIFD, cause or require the construction or rehabilitation of an equal number of replacement dwelling units, within one-half mile of the location of the units to be removed or destroyed, that have an equal or greater number of bedrooms as those removed or destroyed units, within two years of the removal or destruction of the dwelling units. Requires the replacement dwelling units to be available for rent or sale to persons or families of very low-, low-, or moderate-income at affordable rent, as defined, or at affordable housing cost, as defined, to persons in the same or a lower-income category (extremely low-, very low-, low or moderate) as the persons displaced from, or who last occupied, the removed or destroyed dwelling units;
 - b) If the dwelling units to be removed or destroyed were not inhabited by persons of low- or moderate-income within the period of time specified in a), above, cause or require the construction or rehabilitation within one-half mile of the location of the units to be removed or destroyed of at least one unit but not less than 25% of the total dwelling units removed or destroyed, within two years of the removal or destruction of the dwelling units. Requires the units constructed or rehabilitated to be equivalent in size and type to the units to be removed or destroyed. An equal percentage of the replacement dwelling units constructed or rehabilitated shall be available for rent or sale at affordable rent, as defined, or affordable housing cost, as defined, to extremely low- and very low-income persons or families, as defined;
 - c) Comply with all relocation assistance requirements, for persons displaced from dwelling units by any public or private action occurring as a result of the infrastructure financing plan, and specifies that the displacement of any persons from a dwelling unit as a result of the plan shall be deemed to be the result of public action;
 - d) Ensure that removal or destruction of any dwelling units occupied by persons or families of low- or moderate-income not take place unless and until there has been full compliance with the relocation assistance requirements, as specified;

- e) The EIFD shall require, by recorded covenants or restrictions, that all dwelling units constructed or rehabilitated shall remain available at affordable rent or housing cost to, and occupied by, persons and families of the same income categories as required by a) and b), above, as applicable, for the longest feasible time, but for not less than 55 years for rental units and 45 years for owner-occupied units; and,
 - f) The EIFD may permit sales of owner-occupied units prior to the expiration of the 45-year period for a price in excess of that otherwise permitted pursuant to an adopted program which protects the EIFD's investment of moneys in the unit or units, including, but not limited to, an equity sharing program, not in conflict with another public funding source or law, which establishes a schedule of equity sharing that permits retention by the seller of a portion of those excess proceeds based on the length of occupancy. Specifies the terms of the equity sharing program, as specified.
- 3) Clarifies, in several sections of EIFD law, that it is the public financing authority, instead of the legislative body, that must take specified actions, in order to ensure that a public financing authority is separate and apart from the legislative body that created the EIFD.
 - 4) Specifies that the public financing authority may adopt a resolution abandoning the proceedings relating to the adoption of the infrastructure financing plan, and if the proceedings are abandoned, then the public financing authority shall cease to exist with no further action required of the legislative body. States that the legislative body may not enact a resolution of intention to establish an EIFD that includes the same geographic area within one year of the date of the resolution abandoning the proceedings.
 - 5) Repeals a section in EIFD law that allows the public financing authority to submit a proposition to establish or change the appropriations limit of an EIFD, and adds a new section that specifies that the allocation and payment to an EIFD of the portion of taxes, as specified, for the purpose of paying principal of, or interest on, loans, advances, or indebtedness incurred by the EIFD pursuant to EIFD law, shall not be deemed the receipt by an EIFD of proceeds of taxes levied by or on behalf of the EIFD within the meaning of the purposes of Article XIII B of the California Constitution, nor shall that portion of taxes be deemed receipts of proceeds of taxes by, or an appropriation subject to limitation of, any other public body within the meaning or for purposes of Article XIII B of the California Constitution or any statutory provision enacted in implementation of Article XIII B of the California Constitution.
 - 6) Makes other technical and conforming changes.

EXISTING LAW:

- 1) Allows an EIFD to finance only public capital facilities or other specified projects of communitywide significance that provide significant benefits to the EIFD or the surrounding community, including, but not limited to, all of the following:
 - a) Highways, interchanges, ramps and bridges, arterial streets, parking facilities, and transit facilities;
 - b) Sewage treatment and water reclamation plants and interceptor pipes;

- c) Facilities for the collection and treatment of water for urban uses;
 - d) Flood control levees and dams, retention basins, and drainage channels;
 - e) Child care facilities;
 - f) Libraries;
 - g) Parks, recreation facilities, and open space;
 - h) Facilities for the transfer and disposal of solid waste, including transfer stations and vehicles;
 - i) Brownfield restoration and other environmental mitigation;
 - j) 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;
 - k) The repayment of the transfer of funds to a military base reuse authority, pursuant to existing law that occurred on or after the creation of the EIFD;
 - l) The acquisition, construction, or repair of industrial structures for private use;
 - m) The acquisition, construction, or rehabilitation of housing for persons of low- and moderate-income, as defined, for rent or purchase;
 - n) Transit priority projects, as defined in existing law, that are located with a transit priority project area. For purposes of this bill, a transit priority project area may include a military base reuse plan that meets the definition of transit priority project area and it may include a contaminated site within a transit priority project area; and,
 - o) Projects that implement a sustainable communities strategy, when the State Air Resources Board has accepted a metropolitan planning organization's determination that the sustainable communities strategy or the alternative planning strategy would, if implemented, achieve the greenhouse gas emission reduction targets.
- 2) Specifies the requirements of the public financing authority membership.
- 3) Provides that the EIFD shall require, by recorded covenants or restrictions, that housing units built shall remain available at affordable housing costs to, and occupied by, persons and families of low- or moderate-income households for the longest feasible time, but not for less than 55 years for rental units and 45 years for owner-occupied units.
- 4) Allows the EIFD to finance mixed-income housing development, but may finance only those units in such a development that are restricted to occupancy by persons of low- or moderate-incomes, as specified, and those on-site facilities for child care, after-school care, and social services that are integrally linked to the tenants of the restricted units.

- 5) States the intent of the Legislature that the creation of EIFDs should not ordinarily lead to the removal of existing dwelling units. Provides, if, however, any dwelling units are proposed to be removed or destroyed in the course of private development or public works construction within the area of the EIFD, the adopted infrastructure financing plan shall contain provision to do all of the following:
- a) Within two years of the removal or destruction, cause or require the construction or rehabilitation, for rent or sale to persons or families of low- or moderate-income, of an equal number of replacement dwelling units at affordable housing costs, as defined, within the territory of the EIFD if the dwelling units removed were inhabited by persons or families of lower- or moderate-income, as defined;
 - b) Within two years of the removal or destruction, cause or require the construction or rehabilitation, for rent or sale to persons of low- or moderate-income, a number of dwelling units that is at least one unit but not less than 25% of the total dwelling units removed at affordable housing cost, as defined, within the territory of the EIFD if the dwelling units removed or destroyed were not inhabited by persons of low- or moderate-income, as defined;
 - c) Provide relocation assistance and make all the payments to persons displaced by any public or private development occurring within the territory of the EIFD. This displacement shall be deemed to be the result of public action;
 - d) Ensure that removal or destruction of any dwelling units occupied by persons or families of low- or moderate-income not take place unless and until there are suitable housing units, at comparable cost to the units from which the persons or families were displaced, available and ready for occupancy by the residents of the units at the time of their displacement. The housing units shall be suitable to the needs of these displaced persons or families, and shall be decent, safe, sanitary, and otherwise standard dwellings; and,
 - e) The EIFD shall require, by recorded covenants or restrictions, that housing units built, pursuant to the bill's provisions, shall remain at affordable housing costs to, and occupied by, persons and families of low- or moderate-income households for the longest feasible time, but for not less than 55 years for rental units and 45 years for owner-occupied units. In lieu of a 45-year covenant or restriction, the EIFD may subject owner-occupied units to an equity sharing agreement, as specified.
- 6) Requires the legislative body to conduct a public hearing prior to adopting the proposed infrastructure financing plan, as specified.
- 7) Requires the public financing authority to submit the proposal to issue the bonds to the voters, who reside within the EIFD, as specified, and provides for procedures for the election. Allows bonds to be issued if 55% of the voters voting on the proposition vote in favor of issuing the bonds.
- 8) Requires the public financing authority to proceed with the issuance of bonds, if the voters approve the issuance of bonds, as specified.

FISCAL EFFECT: None

COMMENTS:

- 1) **Bill Summary.** This bill adds provisions to EIFD law to clarify the procedures for replacing dwelling units that are removed or destroyed within an EIFD, and makes a number of other technical and clarifying changes to update EIFD law.

This bill is author-sponsored.

- 2) **Background on EIFDs.** SB 628 (Beall), Chapter, 785, Statutes of 2014, allowed a city or county to create an EIFD, in order to finance specified facilities and infrastructure projects, using tax increment. SB 628 expanded, as compared to existing IFD law, the public capital facilities or other projects of communitywide significance that could be financed by an EIFD, to include brownfield restoration and other environmental mitigation, the development of projects on a former military base, transit priority projects, and projects that implement a sustainable communities strategy, among other infrastructure projects. Once formed, the governing board of the EIFD (referred to as the public financing authority), would be subject to provisions of the Ralph M. Brown Act, the California Public Records Act, the Political Reform Act of 1974, and the members of the public financing authority would be subject to ethics training.

In order to create the EIFD, pursuant to SB 628, the legislative body of the city or county must adopt a resolution of intention to establish the proposed district, and mail a copy of that resolution to each owner of land within the EIFD, and fix a time and a place for a public hearing on the proposal. After adopting the resolution of intention to establish the EIFD, the city or county engineer or other appropriate official must develop an infrastructure financing plan to describe the public facilities, funding, an analysis of costs of the facilities, and the goals the EIFD hopes to achieve, among other requirements. A designated official is required to consult with each affected taxing entity, and any affected taxing entity may suggest revisions to the infrastructure financing plan.

SB 628 required that this infrastructure financing plan be sent to each owner of land and to each affected taxing entity in the boundaries of the proposed EIFD. The legislative body is required to conduct a public hearing prior to adopting the proposed infrastructure financing plan, after giving notice of the hearing. SB 628 prohibited the legislative body from enacting a resolution proposing the formation of the EIFD and providing for the division of taxes of any affected taxing entity unless a resolution approving the plan has been adopted by the governing body of each affected taxing entity which is proposed to be subject to division of taxes.

SB 628 allowed for the formation of the EIFD upon the legislative body's adoption of the resolution, at which point the infrastructure financing plan would take effect. If the EIFD wishes to incur bonded indebtedness, the bill specifies that a 55% vote of the voters in the EIFD is necessary, and prescribes the contents of the resolution that must be adopted by the public financing authority once voters approve the bond debt. An EIFD must contract for an independent financial and performance audit every two years after the issuance of debt, and must be provided to the Controller, the Department of Finance (DOF), and to the Joint Legislative Budget Committee. SB 628 provided that an EIFD will cease to exist not more than 45 years from the date on which the issuance of bonds is approved, or the issuance of a loan is approved by the governing board of a local agency.

The provisions of SB 628 prohibited a city or county that created an RDA from initiating the creation of an EIFD or participating in the governance or financing of an EIFD, until each of the following has occurred: a) The successor agency for the former RDA created by the city or county has received a finding of completion; b) The city or county certifies to DOF and to the public financing authority that no former RDA assets that are the subject of litigation involving the state, where the city or county, the successor agency, or the designated local authority are a named plaintiff, have been or will be used to benefit any efforts of an EIFD, unless the litigation and all possible appeals have been resolved in a court of law. The city or county shall provide this certification to DOF within 10 days of its legislative body's action to participate in an EIFD, as specified, or of its legislative body's action to form an EIFD; c) The office of the Controller has completed its review of RDA asset transfers pursuant to existing law; and, d) The successor agency and the entity that created the former RDA have complied with all of the office of the Controller's findings and orders stemming from the reviews, as specified in 3) above.

- 3) **Author's Statement.** According to the author, "Existing law, created by SB 628 (Beall), Chapter 785, Statutes of 2014, allows local agencies to create enhanced infrastructure financing districts (EIFDs) to fund specified infrastructure projects and facilities. SB 628, among other things: (1) Created a "public financing authority" to govern the EIFD; (2) Specified that housing paid for by the EIFD must be for low and moderate income housing; and, (3) Required that housing that is replacing units torn down during the course of work done by an EIFD must be done within two years after demolition and if none of the units removed were for affordable housing then replacement work must increase the number of replacement units with at least 25% affordable.

"However, after further review of the language, it was found that some clarification of the provisions related to replacement housing and a few other related issues were necessary. Also, ensuring that the EIFD public financing authority has its own separate legal standing and spending capacity requires more clarity as well.

"AB 313 provides the clarity needed in both of these issue areas and ensures that when this tool is used by local governments, the implementation requirements are clear. Moreover, AB 313 will ensure that any residents that are displaced by work done in an EIFD will receive adequate support and that any units lost will be replaced by those of a similar type of units and available to residents of the same income levels as before."

- 4) **Prior Legislation.** There have been numerous measures in the past few years to remove barriers and expand infrastructure financing district law, including the following bills:
- SB 33 (Wolk, 2013) would have expanded local officials' authority to create IFDs. The bill was amended into a different unrelated subject matter.
 - AB 229 (J. Pérez), Chapter 774, Statutes of 2014, created infrastructure and revitalization financing districts (IRFDs) modeled after infrastructure financing districts in existing law, authorized a military base reuse authority to form a district, and allowed these districts to finance a broader range of projects and facilities to clean-up and develop former military bases.

- AB 243 (Dickinson, 2013) would have created infrastructure and revitalization financing districts, (IRFDs) (modeled after infrastructure financing districts in existing law), broadened the range of projects and facilities they can finance, lowered the voter approval threshold necessary to form an IRFD and issue bonds to 55%, and extended the life of districts to 40 years. The bill was held at the Senate Desk.
- AB 471 (Atkins), Chapter 1, Statutes of 2014, repealed the prohibition against forming an IFD within a former redevelopment area.
- SB 628 (Beall), Chapter 785, Statutes of 2014, allowed local agencies to create enhanced infrastructure financing districts (EIFDs) to fund specified infrastructure projects and facilities.

5) **Arguments in Support.** Supporters argue that this bill will ensure that, should any housing be affected by the activities of an EIFD, relocation and replacement housing obligations would apply to protect lower-income households from displacement.

6) **Arguments in Opposition.** None on file.

REGISTERED SUPPORT / OPPOSITION:

Support

California Rural Legal Assistance Foundation
League of California Cities
Western Center on Law and Poverty

Opposition

None on file

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