

Date of Hearing: July 15, 2015

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Brian Maienschein, Chair
SB 63 (Hall) – As Amended June 1, 2015

SENATE VOTE: 36-2

SUBJECT: Seaport infrastructure financing districts.

SUMMARY: Allows cities and counties to create Seaport Infrastructure Financing Districts (SIFDs), and allows SIFDs to finance port or harbor infrastructure, under specified conditions. Specifically, **this bill:**

- 1) Defines a "Seaport Infrastructure Financing District" (SIFD) to mean an Enhanced Infrastructure Financing District (EIFD) that finances port or harbor infrastructure.
- 2) Amends EIFD law, as follows:
 - a) Allows an EIFD to finance port or harbor infrastructure (SIFD);
 - b) Specifies that in the case of an SIFD, the legislative body shall designate and direct the harbor agency, except as provided, to prepare the infrastructure financing plan required in EIFD law;
 - c) Specifies that State Lands Commission (SLC) approval is needed to issue bonds to finance the infrastructure financing plan for an SIFD;
 - d) Expands the definition of "landowner" for the purpose of a vote to approve bonds for an SIFD, to include an entity that is paying possessory interest tax on state-owned land;
 - e) Requires, if the public financing authority (PFA) adopts a resolution proposing initiation of proceedings to issue bonds for port or harbor infrastructure, the PFA, before submitting the proposal to the voters, to submit the proposal, with specified information, to the affected harbor agency;
 - f) Requires the proposal to be considered by the SLC, if the harbor agency grants preliminary approval;
 - g) Requires, if the SLC votes in favor of the issuance of the bonds, the PFA to proceed with the submission of the proposal to the voters; and,
 - h) Requires a two-thirds vote of the voters voting on the proposition in favor of issuing the bonds, for an SIFD.
- 3) Expands the definition of "port or harbor infrastructure" in existing law contained in the Harbors and Navigation Code to include any capital improvement that improves environmental quality.
- 4) Adds, to the Harbors and Navigation Code, the following requirements for an SIFD:

- a) Specifies, upon receipt of a resolution from the PFA, that the harbor agency shall have 60 days to consider the proposal. Requires, during this time, that the harbor agency's governing body to act at a duly noticed meeting to either vote to give preliminary approval of the proposal, or disapprove the proposal and return it to the PFA;
- b) Allows a harbor agency to give preliminary approval only if it makes all of the following affirmative findings:
 - i) The harbor agency has prepared an infrastructure financing plan;
 - ii) The improvements to the harbor agency's property to be financed through the proceeds of an SIFD are solely for the support of port or harbor infrastructure;
 - iii) All publicly owned property that is leased to private parties within the boundaries of the SIFD has been reported by the harbor agency to the local county assessor to facilitate possessory interest taxation;
 - iv) If the harbor agency is acting on granted lands, all of the projects and uses proposed in the SIFD are consistent with the state tidelands trust and the conditions of the harbor agency grant; and,
 - v) If the harbor agency was formed pursuant to the bill's provisions, all of the projects and uses proposed in the SIFD are consistent with its charter and the statewide interests in the operation of harbors and ports.
- c) Prohibits the harbor agency from granting preliminary approval, unless both of the following apply:
 - i) The SIFD will operate independently of any other prior or concurrent agreements between the harbor agency and the PFA, or the local governments that make up the PFA; and,
 - ii) No transfers of funds or obligations, or future transfers of funds or obligations contingent on the approval of the SIFD, its financing, or projects within the SIFD, are created between the harbor agency and the PFA, or the local governments that make up the PFA.
- d) Defines "transfers of funds or obligations" to include any direct or indirect transfer of harbor agency resources to the PFA, or the local governments that make up the PFA, except for any of the following, if agreed to between the harbor agency and the PFA in writing:
 - i) Harbor agency reimbursements of a PFA for its direct administrative costs of establishing an SIFD;
 - ii) PFA expenses for underwriting the bond issuance for the identified projects in the SIFD; and,
 - iii) Any other administrative expenses or direct operating expenses that are incurred as the direct result of creating the SIFD that are identified by both parties at the time of preliminary approval and in advance of the expense being incurred by the PFA.

- e) Requires, if the harbor agency votes to give preliminary approval to the proposal, the harbor agency to immediately forward its preliminary approval to the SLC for its consideration. Requires the SLC to consider the proposal and either grant or deny final approval.
- f) Requires the SLC, prior to granting final approval, to do both of the following:
 - i) Review the infrastructure financing plan prepared by the harbor agency; and,
 - ii) Review the findings of the harbor agency made in its preliminary approval.
- g) Requires the SLC to make all of the following findings prior to granting final approval:
 - i) The state's interests in its tidelands and its ports and harbors are furthered by the funding of the SIFD;
 - ii) The principal purposes of the SIFD are to further port and harbor infrastructure;
 - iii) The execution of the financing section of the infrastructure finance plan is more likely than not to result in the outcomes proposed;
 - iv) No revenues shall be made available to local governments as a result of the approval of the SIFD from state revenues, revenues derived from granted lands, or from ports or harbors created, as specified;
 - v) The harbor agency and the PFA participating in the SIFD have each completed all procedural requirements, financial due diligence, and made all findings required, as specified;
 - vi) All of the projects and uses proposed in the SIFD are consistent with the state tidelands trusts and the conditions of any grants, if applicable, and the statewide interests in the operation of harbors and ports; and,
 - vii) No agreements by the harbor agency that may control the discretion of the harbor agency to maintain its port or harbor operations or to cede any such control to the discretion of a third party were made as a condition of participation in the SIFD.
- h) Requires the SLC to be reimbursed by the harbor agency for its direct administrative costs of considering an SIFD proposal from the proceeds of the bonds issued, if any, for the identified projects in the SIFD.
- i) Provides that all permanent fixtures and capital improvements to the real property of a harbor agency that administers public trust tidelands made pursuant to an SIFD's approved infrastructure financing plan shall be a trust asset once completed, and specifies that this provision does not apply to fixtures and improvements otherwise agreed as nonpermanent in a lease between the harbor agency and a private tenant.
- j) Requires, if a harbor agency administering granted public trust property is a department of a local governmental body, any negotiations between the two entities with respect to any infrastructure financing, operations, or any other activity requiring action by the

harbor agency to be undertaken at arm's length in recognition of the duties of the harbor agency to effectuate statewide interests.

- k) States that the SLC shall retain absolute discretion over the determination of whether or not investment of local resources in port or harbor infrastructure, the actions of a harbor agency, or any other action taken by an SIFD is consistent with the state's interests in its tidelands and submerged lands.
 - l) States that a harbor agency that manages granted state tidelands retains its status as a trustee whether or not it is located within an SIFD.
 - m) States that nothing grants any authority to any PFA, or the local governments that compose the PFA, in any manner whatsoever to manage, direct, control, or exercise jurisdiction over a harbor agency and its management of port or harbor infrastructure.
 - n) Specifies that the provisions of the bill do not apply to the Stockton Port District or to a river port district.
- 5) Makes a number of findings and declarations, including the intent of the Legislature to assert the state's plenary power over the financing of port or harbor infrastructure by harbor agencies as matters of statewide concern and to authorize the use of tax increment financing, to support investment of tax revenues in port and harbor infrastructure.

EXISTING LAW:

- 1) Defines "port or harbor infrastructure" to mean any of the following, if its primary or predominant use is of direct benefit to the port or harbor:
 - a) Streets, roads, highways, bridges, sidewalks, curbs, gutters, tunnels, subways, alleyways, viaducts, pipelines, rail lines, or other facilities for the transportation or movement of people, vehicles, equipment, or goods;
 - b) Piers, docks, wharves, slips, quays, platforms, decks, cranes, or other facilities for the mooring, docking, loading, or unloading of vessels;
 - c) Lands, tidelands, submerged lands, easements, port access routes, channel improvements, rights-of-way, dredge disposal sites, safety zones, breakwaters, levees, bulkheads, or walls of rock or other material to protect property or traffic;
 - d) Parking, warehouse, or storage facilities;
 - e) Parks, recreation, or open space facilities;
 - f) Remediation;
 - g) Water, wastewater, drainage, electric, or telecommunication systems or facilities;
 - h) Buildings, structures, facilities, improvements, or equipment necessary or convenient to any of paragraphs (a) to (g), inclusive, or to the operation of a port or harbor; and,

- i) Public improvements authorized, pursuant to the Improvement Act of 1911, the Improvement Bond Act of 1915, and the Mello-Roos Community Facilities Act of 1982.
- 2) Allows cities and counties to create IFDs and issue bonds to pay for community scale public works: highways, transit, water systems, sewer projects, flood control, child care facilities, libraries, parks, and solid waste facilities. To repay the bonds, IFDs can divert property tax increment revenues, which are revenues generated from increases in property values within the IFD above property values in the base-year when the IFD was formed. However, IFDs are not authorized to divert property tax increment revenues from schools.
- 3) Allows local officials to create EIFDs, which augment the tax increment financing powers that are available to local government under the IFD statutes. City or county officials can create an EIFD, which is governed by a public finance authority, to finance public capital facilities or other specified projects of communitywide significance that provide significant benefits to the district or the surrounding community.

FISCAL EFFECT: According to the Senate Appropriations Committee, this bill contains:

- Unknown administrative costs to the SLC. Costs for review and approval of SIFD bond issuance proposals could be absorbable but potentially up to \$150,000 in a given year depending on the number and complexity of the proposals submitted for consideration. These costs would be fully reimbursed by harbor agencies from the proceeds of bonds issued for SIFD proposals.
- There would be no state costs related to the diversion of property tax increment for SIFD purposes because the school share of tax increment cannot be redirected to fund enhanced infrastructure financing district projects. As such, there would be no backfill of property tax revenues from the General Fund.

COMMENTS:

- 1) **Background on IFDs and EIFDs.** Existing law allows cities and counties to create IFDs and issue bonds to pay for community scale public works: highways, transit, water systems, sewer projects, flood control, child care facilities, libraries, parks, and solid waste facilities. To repay the bonds, IFDs can divert property tax increment revenues, which are revenues generated from increases in property values within the IFD above property values in the base-year when the IFD was formed. However, IFDs are not authorized to divert property tax increment revenues from schools [SB 308 (Seymour), Chapter 1575, Statutes of 1990].

Local officials can also create EIFDs, which augment the tax increment financing powers that are available to local government under the IFD statutes. City or county officials can create an EIFD, which is governed by a public finance authority, to finance public capital facilities or other specified projects of communitywide significance that provide significant benefits to the district or the surrounding community [SB 628 (Beall), Chapter 785, Statutes of 2014].

- 2) **Bill Summary.** This bill allows cities and counties to create SIFDs in order to finance port or harbor infrastructure. The bill requires the PFA to submit the proposal to the affected harbor agency for its preliminary approval and requires the harbor agency to make a number of findings, and once approved by the harbor agency, requires the proposal to be considered

by the SLC. The SLC is required to review the infrastructure financing plan prepared by the harbor agency, and review the findings of the harbor agency made in its preliminary approval, and prior to the SLC granting final approval, the bill requires the SLC to make various findings, including that the state's interests in its tidelands and its ports and harbors are furthered by the funding of the SIFD, and that all of the projects and uses proposed in the SIFD are consistent with the state tidelands trust and conditions of any grants. Once the SLC gives its final approval, SLC will forward the approval to the PFA for further action.

The bill specifies that, for purposes of the vote necessary within the territory of the SIFD to approve the issuance of bonds, that an entity paying possessory interest tax on state-owned land, that the term "landowner" means that entity that is paying the possessory interest tax. SB 63 specifies that a two-thirds vote is necessary for an SIFD to issue bonds, and then makes a number of findings and declarations.

This bill is sponsored by the Pacific Merchant Shipping Association.

- 3) **Possessory Interest.** According to the "Assessment of Taxable Possessory Interests" manual contained in the Assessors' Handbook, published by the Board of Equalization in December 2002 (and reprinted in January 2015), "The most common example of a possessory interest is the interest created by a lease. The tenant's (or lessee's) right to possession of the property is called the leasehold interest. The landlord's (or lessor's) right to receive rents during the term of the lease and to regain possession of the property when the lease terminates is called the leased fee interest. In the case of privately owned real property, both the tenant's and the landlord's interest are taxable, and typically both interests are valued and assessed in the aggregate to the landlord or the fee owner. It is not necessary, or administratively feasible, for the assessor to separately assess the value of the leasehold (i.e. possessory) interest and the value of the leased fee (i.e. nonpossessory interest); instead, the assessor typically makes a single assessment of the entire taxable interest in the real property."

"A 'taxable possessory interest' is a possessory interest that is separately taxable to the possessor. For introductory purposes, a taxable possessory interest can be defined as the taxable interest held by a private possessor in publicly owner real property. The public owner may be the United States of America and its administrative instrumentalities; the state of California; or one of California's local jurisdictions, which include counties, cities, and special districts. With a taxable possessory interest, since the underlying fee simple interest held by the public owner is almost always tax exempt, it is necessary to separately value the possessory interest held by the private possessor.

"The legal basis for the taxation of taxable possessory interests is found in the general mandate of the California Constitution, article XIII, section 1, that all property is taxable unless otherwise proved by the California Constitution or federal law. 'Property' as defined in sections 103 and 104 of the Revenue and Taxation Code, includes 'all matters and things, real, personal and mixed, capable of private ownership,' and 'real estate,' or 'real property,' includes 'the possession of, claim to, ownership of, or right to possession of land and improvements.' There is also statutory, regulatory, and judicial authority for the assessment, under specified conditions, of the private, beneficial right to the possession of publicly owned real property."

Port and harbor facilities operate pursuant to long-term leases on state lands that are exempt from property taxes. Private use of public property may be taxed if those uses constitute possessory interest, so harbor and port tenants pay a possessory interest tax in lieu of a property tax. This bill allows local agencies to finance port and harbor improvements by capturing possessory interest tax increment revenues that are generated as a result of the financed improvements.

- 4) **Author's Statement.** According to the author, "California's ports and harbors are major contributors to the state's economy, employing tens of thousands of workers, investing billions in local and state businesses and creating hundreds of millions in state and local tax revenues. Currently, our ports are losing market share to competitors outside of the state partially because other jurisdictions are subsidizing their infrastructure improvements.

"Most of California's ports operate under a landlord-tenant model where the public agency leases a marine terminal to a private company to conduct business. As a result, port infrastructure is generally financed entirely through revenue bonds backed by private user fees and other lease revenues and there is local taxpayer participation. Port tenants do however pay possessory interest taxes on the value of their leases on public property.

"Last year the state of California revamped its public financing tools to provide for EIFDs, in the wake of the elimination of redevelopment agencies. EIFDs can provide reinvestment financing to projects which span a wide range of public infrastructure and private development projects, including highways and transit infrastructure. EIFDs are formed by local governments and their bond underwriting approvals are subject to local voter approvals. Unfortunately, seaports are not included in the listed categories of approved infrastructure for EIFD financing. SB 63 adds seaports to the list of EIFD-approved projects and allows for access to new and vital seaport infrastructure financing. This will enable California seaports to compete with competitors outside of the state, allowing them to continue to provide to California's economy."

- 5) **Arguments in Support.** Supporters argue that this bill will allow an important change to EIFDs that will allow ports to have access to new forms of financing to support critical infrastructure improvements.
- 6) **Arguments in Opposition.** None on file.
- 7) **Conflicting Legislation.** This bill conflicts with provisions in AB 313 (Atkins). Amendments may be needed to resolve the conflict.

REGISTERED SUPPORT / OPPOSITION:

Support

Pacific Merchant Shipping Association [SPONSOR]
Associated General Contractors
City of Los Angeles
Unified Port of San Diego

Opposition

None on file

Analysis Prepared by: Debbie Michel / L. GOV. / (916) 319-3958