

Date of Hearing: June 12, 2024

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Juan Carrillo, Chair

SB 1140 (Caballero) – As Amended March 21, 2024

SENATE VOTE: 32-7

SUBJECT: Enhanced infrastructure financing district.

SUMMARY: Makes numerous changes to enhanced infrastructure financing district (EIFD) law and specifies that an eligible project for climate resilience districts (CRDs) includes a project that intends to improve air quality. Specifically, **this bill:**

- 1) Specifies that projects that are intended to improve air quality may be financed by an EIFD.
- 2) Allows the legislative body proposing the formation of an EIFD to direct the city or county official, as applicable, selected by the legislative body, to electronically submit its resolution of intention to form the EIFD to each affected taxing entity instead of mailing it.
- 3) Reduces the required number of EIFD formation meetings from four to three, as specified.
- 4) Revises and recasts alternative mailing and noticing process to include all EIFD formation meetings, annual reports, and potential amendments, and requires specified information to be included in the notice, as applicable.
- 5) Requires additional notice procedures if a public hearing is rescheduled for a later date than provided in the notice, as specified.
- 6) Specifies that, in regards to the alternative mailing and noticing process, the designated contact person, as specified, shall assemble and maintain an email contact list of all landowners, residents, and other interested parties who have an interest in receiving information.
- 7) Provides that specified notices shall be provided in English and in all other languages jointly spoken by 20% or more of the population in the jurisdiction of the county of the proposed EIFD that speaks a language other than English according to data from the most recent American Community Survey or data from an equally reliable source.
- 8) Removes the requirement that notices regarding annual reports shall be mailed first class, as specified.
- 9) Specifies that an eligible project, as defined, for CRDs includes a project that intends to improve air quality.
- 10) Makes numerous additional technical and conforming changes.
- 11) Makes changes to the findings and declarations in EIFD law.

FISCAL EFFECT: None.

COMMENTS:

- 1) **Redevelopment.** Article XVI, Section 16 of the California Constitution authorizes the Legislature to provide for the formation of RDAs to eliminate blight in an area by means of a self-financing schedule that pays for the redevelopment project with tax increment derived from any increase in the assessed value of property within the redevelopment project area (or tax increment). Generally, property tax increment financing involves a local government forming a tax increment financing 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 government 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 — flow to the tax increment financing district instead of other local governments. 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 governments.

Prior to Proposition 13, very few RDAs existed; however, after its passage, RDAs became a source of funding for a variety of local infrastructure activities. Eventually, RDAs were required to set aside 20% of funding generated in a project area to increase the supply of low and moderate income housing in the project areas. At the time RDAs were dissolved, the Controller estimated that statewide, RDAs were obligated to spend \$1 billion on affordable housing. At the time of dissolution, over 400 RDAs statewide were diverting 12% of property taxes, over \$5.6 billion yearly.

In 2011, facing a severe budget shortfall, the Governor proposed eliminating RDAs in order to deliver more property taxes to other local agencies. Ultimately, the Legislature approved and the Governor signed two measures, ABX1 26 (Blumenfield), Chapter 5 and ABX1 27 (Blumenfield), Chapter 6 that together dissolved RDAs as they existed at the time and created a voluntary redevelopment program on a smaller scale. In response, the California Redevelopment Association (CRA) and the League of California Cities, along with other parties, filed suit challenging the two measures. The Supreme Court denied the petition for peremptory writ of mandate with respect to ABX1 26. However, the Court did grant CRA’s petition with respect to ABX1 27. As a result, all RDAs were required to dissolve as of February 1, 2012.

- 2) **Attempts to Replace RDAs.** After the Supreme Court’s 2011 Matosantos decision dissolved all RDAs, legislators enacted several measures creating new tax increment financing tools to pay for local economic development. The Legislature authorized the creation of Enhanced Infrastructure Financing Districts (EIFDs) [SB 628 (Beall), Chapter 785, Statutes of 2014] quickly followed by Community Revitalization and Investment Authorities (CRIAs) [AB 2 (Alejo), Chapter 319, Statutes of 2015]. Similar to EIFDs, CRIAs use tax increment financing to fund infrastructure projects. CRIAs may currently only be formed in

economically depressed areas.

The Legislature has also 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), Chapter 764, Statutes of 2017]. SB 961 (Allen), Chapter 559, Statutes of 2018, removed the vote requirement for a subset of EIFDs to issue bonds and required these EIFDs to instead solicit public input, and AB 116 (Ting), Chapter 656, Statutes of 2019, removed the voter requirement for any EIFD to issues bonds in favor of a formal protest process. SB 852 (Dodd), Chapter 266, Statutes of 2022, created climate resilience districts (CRDs), which can also utilize tax-increment financing. CRDs were also given the authority to issue general obligation bonds and impose special taxes. While these entities share fundamental similarities with RDAs in terms of using various forms of tax-increment financing, they differ in two significant aspects, 1) not having access to the school's share of property tax increment, and 2) not automatically including the tax increment of other taxing entities.

- 3) **Governor's Office of Planning and Research (OPR) Report.** SB 961 (Allen), Chapter 559, Statutes of 2018, required OPR to, on or before January 1, 2021, complete a study and make recommendations on (1) the effectiveness of tax increment financing tools, (2) the relative advantages and disadvantages of different types of tax increment financing tools, and (3) the impacts of extending the Second Neighborhood Infill Finance and Transit Improvement Act (NIFTI-2s) to areas around bus stops, including segregated bus lanes. The first report identified several key limitations current tax increment financing districts share:
 - a) They have limited revenue potential to make district formation worthwhile.
 - b) Unlike redevelopment, where taxing entity participation was mandatory, current tax increment financing districts rely on volunteer participation.
 - c) They have limited powers compared to RDAs.
 - d) Some technical challenges interfere with their development.
- 4) **EIFD Governance.** To create an EIFD, the legislative body of a city or county must adopt a resolution of intention to establish the EIFD. 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.

An EIFD is governed by a public financing authority (PFA) with three members of each participating taxing entity's legislative body and a minimum of two public members. Member agencies can also appoint an alternate member from their legislative body. If at least three taxing entities participate in the district, they can agree to reduce the district's governing board to one member and one alternate member of each legislative body and a minimum of two public members.

- 5) **EIFD Formation and Plan Adoption.** The city or county must create the PFA at the same time it adopts the resolution of intention. The PFA then provides public notice and directs an official to prepare an infrastructure financing plan (IFP). This process requires the PFA to make the draft infrastructure financing plan available to the public and to each landowner within the area at least 30 days before noticing the first public meeting. The PFA must hold four meetings to consider an EIFD's formation:
- a) One meeting to present the IFP to the public and answer questions.
 - b) One public hearing to hear all written and oral comments, but take no action.
 - c) One public hearing to consider any additional written and oral comments and take action to modify or reject the IFP.
 - d) If the IFP is not rejected at the second hearing, the PFA must hold a third public hearing where it must hold a protest proceeding.

These meetings must be at least 30 days apart and noticed in an easily identifiable and accessible location on the EIFD's website. The PFA must mail a written notice of the meeting or public hearing to each landowner, each resident, and each taxing entity at least 10 days before the meeting. Before the PFA holds each public meeting, it must meet certain noticing requirements. All notices must describe the:

- a) EIFD's boundaries.
- b) Purpose of the IFP.
- c) Time, place, and location where people can provide written and oral comments.

The notice of the second hearing must include a summary of the changes made to the IFP to respond to public comments, and identify a publicly accessible location where the public can review the revised IFP. The notice for the third public hearing must contain a copy of the IFP, and inform landowners and residents of their right to protest.

To reduce mailing costs, SB 780 (Cortese), Chapter 391, Statutes of 2021, allowed the PFA to consolidate mailing and meeting notice requirements for the first two meetings. Under this alternative process, the official responsible mails each landowner, resident, and affected taxing entity a notice at least 40 days prior to the first meeting with: (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 first two public meetings.

In addition to mailing out notices, the PFA must also publish notices for the final three meetings in a newspaper of general circulation in the county. At the final hearing, the PFA must hold a public protest process. The PFA must review the IFP annually, make any amendments that are necessary, and prepare an annual independent financial audit. The PFA can approve amendments with a majority vote of its board at a public hearing, which must take place after mailing a 30-day notice describing the changes to all property owners, residents, and affected taxing entities. Amendments that add territory, increase the limit of the total number of dollars in local taxes allocated to the plan, or approve a public facility not

proposed in the initial plan must go through the same notice and hearing process applicable to an initial IFP.

- 6) **What can EIFDs Finance?** EIFDs can finance public capital facilities or other specified projects of communitywide significance that provide significant benefits to the district or the surrounding community with an estimated useful life of 15 years or more. This includes projects that enable communities to adapt to the impacts of climate change, including higher average temperatures, decreased air and water quality, the spread of infectious and vector-borne diseases, other public health impacts, extreme weather events, sea level rise, flooding, heat waves, wildfires, and drought [AB 733 (Berman), Chapter 657, Statutes of 2017]. Additionally, EIFDs may also finance projects that include:
- 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, recreational facilities, and open space.
 - h) The acquisition, construction, or rehabilitation of housing for persons of very low, low, and moderate income for rent or purchase, and more.

The EIFD must not use bond proceeds to finance maintenance of any kind, and must not finance costs for ongoing operations or providing services.

- 7) **Climate Resilience Districts.** SB 852 (Dodd), Chapter 266, Statutes of 2022, authorized a city, county, city and county, or a combination of these to form a CRD for the purpose of raising and allocating funding for eligible projects to address climate change mitigation, adaptation, or resilience and the operating expenses of these projects. The bill required the agency forming the CRD to adopt a resolution describing the intent, boundaries, projects, and goals for the district, as well as whether it intends to use property tax increment to finance projects. SB 852 also prohibited the agency forming the CRD from enacting a resolution providing for the division of taxes of any participating entity unless it follows the procedures for the preparation and adoption of an infrastructure financing plan in EIFD law.

SB 852 provided that CRDs can only use bond proceeds to finance eligible projects that meet the requirements for capital projects EIFDs can finance and granted CRDs specific powers, and requires each CRD to adopt an annual expenditure plan and operating and capital improvement budget that, adopted after a public hearing, are subject to review and revision at least annually. While SB 852 does not grant CRDs access to a greater share of property tax increment, it did give CRDs substantial new powers that other tax increment financing

districts do not have. For example, EIFDs cannot issue general obligation bonds or revenue bonds, or impose special taxes or property-related fees as CRDs can.

At least 26 EIFDs have formed the PFA and adopted their IFP, with others at various stages of the formation process. SB 852 made the Sonoma County Regional Climate Protection Authority a CRD, which is the only CRD in operation.

- 8) **Bill Summary.** This bill makes a number of changes to EIFD law, including:
- a) Reducing the required number of EIFD formation meetings from four to three.
 - b) Expanding the alternative mailing and noticing process to include all EIFD formation meetings, annual reports, and potential amendments.
 - c) Requiring the alternative notice to include specified information and would require additional notice procedures, if a public hearing is rescheduled for a later date than provided in the notice, due to unanticipated circumstances.
 - d) Allowing the forming agency to electronically submit its resolution of intention to form the district to other taxing entities instead of mailing it.
 - e) No longer requiring notices regarding annual reports to be mailed first class.
 - f) Require notices to be provided in English and in all other languages spoken jointly by 20% or more of the population in the jurisdiction of the county of the proposed district that speaks English less than “very well” and jointly speaks a language other than English according to data from the most recent American Community Survey or data from an equally reliable source, except as specified.

This bill also expands the type of projects that EIFDs and CRDs can finance to include projects that improve air quality. The author is the sponsor of this bill.

- 9) **Author’s Statement.** According to the author, “Enhanced Infrastructure Financing Districts (EIFDs) and Climate Resilience Districts (CRDs) are vital tax increment financing (TIF) tools used to fund and finance public facilities or other specified projects of communitywide significance to provide benefits to the district or the surrounding community. Unfortunately, cities and counties have insufficient staff and resources needed to form these districts and may miss important economic development and climate resilience opportunities. SB 1140 will reform EIFD and CRD law to streamline the formation process and expand the types of projects these tools can finance. These streamlined benefits will significantly improve the ability for EIFDs and CRDs to advance their mission to support economic development and spur climate change resiliency in communities across the state.”
- 10) **Policy Consideration.** This bill makes changes to the EIFD formation procedures while some local agencies are currently going through the formation process. It is currently unclear how this bill may affect those EIFDs already undergoing formation. Should this bill only affect those EIFDs where the formation process begins after its effective date? The Committee may wish to consider if clarification is needed to avoid potentially disrupting

formation processes that are already underway.

- 11) **Committee Amendment.** In response to policy consideration above, the Committee may wish to consider adding the following finding and declaration:

The Legislature finds and declares that among the purposes of this measure is to consolidate and streamline the notice and hearing requirements associated with the formation of Enhanced Infrastructure Finance Districts. The changes made to the formation process and the timing of the effective date of this Act, however, shall not be interpreted in a manner to disrupt or delay the formation process for a district that commenced prior to the effective date of this Act. Districts that have initiated the formation process when this Act takes effect as evidenced by the adoption of the resolution of intention pursuant to Section 53398.59, may choose to complete the formation process in accordance with the requirements and timelines in effect on the date that said resolution of intention was adopted.

- 12) **Technical Amendment:** In order to fix an incorrect cross-reference, the Committee may wish to amend the bill as follows:

53398.66(f). At the hour set in the notices required by **subparagraph (B) of paragraph (1) of subdivision (b)(a)**, the public financing authority shall consider all written and oral comments.

- 13) **Arguments in Support.** According to the American planning Association, California Chapter, “SB 1140 will improve the creation of EIFDs by streamlining the formation process and noticing requirements, which can delay or create burdens to their development. Many local governments lack the resources and capacity needed to successfully form these type of districts and APA California encourages the Legislature to continue to look at ways to refine and build on existing financing tools, like EIFDs. These important noticing changes that SB 1140 provides will assist local governments who are interesting in forming districts to provide desperately needed financing for infrastructure maintenance, housing development, economic development, infrastructure, and climate adaptation, among other financing opportunities. Removing these burdens, in addition to expanding the types of projects that EIFDs can finance to include those that improve air quality are important changes that will help grow the success of these types of local financing programs.”

- 14) **Arguments in Opposition.** None on file.

- 15) **Double-Referral.** This bill is double-referred to the Assembly Committee on Natural Resources.

REGISTERED SUPPORT / OPPOSITION:

Support

American Planning Association, California Chapter
California Association for Local Economic Development
Central Valley Community Foundation
CivicWell (Formerly the Local Government Commission)

Opposition

None on file

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