

Date of Hearing: May 3, 2023

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 1259 (Soria) – As Amended March 16, 2023

SUBJECT: Dissolution of redevelopment agencies: enhanced infrastructure financing districts: City of Merced.

SUMMARY: Allows the City of Merced to initiate, participate in, govern or finance an enhanced infrastructure financing district (EIFD) if it meets specified conditions. Specifically, **this bill:**

- 1) Specifies that the City of Merced may initiate, participate in, govern, or finance an EIFD if the City of Merced, acting as the successor agency to the former Merced County Redevelopment Agency, is in compliance with specified requirements.
- 2) Finds and declares that a special statute is necessary and that a general statute cannot be made applicable because of the unique circumstances in the City of Merced and the city's need to participate in an EIFD to give it additional tools to fund housing construction, social services centers, and climate resilience projects.

EXISTING LAW limits a city or county that created a RDA, as defined, from initiating the creation of an EIFD, nor participating in the governance or financing of an EIFD, until each of the following has occurred (Government Code § 53398.53):

- 1) The successor agency for the former RDA created by the city or county has received a Finding of Completion, as specified.
- 2) The city or county certifies to the Department of Finance (DOF) and to the public financing authority that no former RDA assets that are the subject of litigation involving the state, if 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 or form an EIFD, as specified.
- 3) The office of the State Controller has completed its review as required by existing law.
- 4) The successor agency and the entity that created the RDA have complied with all of the State Controller's findings and orders stemming from the reviews specified in 3), above.

FISCAL EFFECT: None.

COMMENTS:

- 1) **Bill Summary and Author's Statement.** This bill allows the City of Merced to initiate, participate in, govern or finance an EIFD if certain conditions are met. The City of Merced is the sponsor of this bill.

According to the author, “The City of Merced has made great strides since 2015 and is on track to receive its Pro-Housing Designation from the State and is considered a good actor in increasing the supply of housing.

“The City is working to establish an Enhanced Infrastructure Financing District (EIFD) to *fund projects* which will further the City’s affordable housing goals and is in alignment with the State’s priorities such as transit oriented development and respective local rail projects as well as High Speed Rail.

“Additionally, establishing an EIFD will support efforts to fund necessary infrastructure improvements to support a growing UC Merced campus.”

- 2) **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.

- 3) **RDA Dissolution.** AB X1 26 (2011) established successor agencies to manage the process of unwinding former RDA affairs. With the exception of seven cities, the city or county that created each former RDA now serves as that RDA's successor agency. One of a successor agency's primary responsibilities is to make payments for the enforceable obligations RDAs entered into. These payments are supported by property tax revenues that would have gone to RDAs, but are instead deposited in a Redevelopment Property Tax Trust Fund (RPTTF). Enforceable obligations include bonds, bond-related payments, some loans, payments required by the federal government, obligations to the state or imposed by state law, payments to RDA employees, judgements or settlements, and other legally binding and enforceable agreements or contracts. Any remaining property tax revenues that exceed these enforceable obligations return to cities, counties, special districts, and school and community college districts to support core services.

Each successor agency has an oversight board responsible for supervising and approving its actions. DOF can review and request reconsideration of an oversight board's decision. Once a successor agency takes over for an RDA, it reviews the RDA's outstanding assets and obligations, and develops a plan to resolve those obligations, also known as a Recognized Obligation Payment Schedule (ROPS). To obtain required DOF approval, a successor agency submits a series of ROPS to DOF. If DOF agrees with the plan, it issues a Finding of Completion acknowledging their progress towards paying off their obligations. Successor agencies issued a Finding of Completion can submit a Last and Final ROPS, meaning that (1) the remaining debt is limited to administrative costs and payments pursuant to enforceable obligations with defined payment schedules, (2) all remaining obligations have been previously listed on the ROPS and approved by DOF, and (3) the agency is not a party to outstanding or unresolved litigation. Successor agencies had until December 31, 2015 to receive their Finding of Completion from DOF. RDA dissolution law states that successor agencies that did not receive their Finding of Completion by this date, or did not enter into a written installment payment plan with DOF, were to never receive a Finding of Completion. Approximately nine successor agencies did not receive a Finding of Completion by the deadline.

If a successor agency receives a Finding of Completion, loan agreements made between the RDA and the local agency that created it can become enforceable obligations. Without a Finding of Completion, these loans cannot become enforceable obligations and the successor agency cannot repay the loans with property tax revenue. Additionally, successor agencies with a Finding of Completion can spend a greater portion of bond proceeds in excess of what is necessary to pay off enforceable obligations provided they remain consistent with bond covenants, not just to cancel or defease the bonds. When bond proceeds are defeased or cancelled, property tax revenue used to pay off bonds returns to the local agencies that generated the property tax revenue, not the RPTTF. Due to outstanding disputed funds, the City of Merced did not receive a Finding of Completion by the December 21, 2015, deadline.

- 4) **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 EIFDs [SB 628 (Beall), Chapter 785, Statutes of 2014] quickly followed by CRIAs [AB 2 (Alejo), Chapter 319, Statutes of 2015]. Similar to EIFDs, CRIAs use tax increment financing to fund

infrastructure projects. CRIs 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 issue bonds in favor of a formal protest process. 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.

Cities that did not receive a Finding of Completion are prohibited from forming, or participating in, an EIFD.

- 5) **City of Merced.** The City of Merced is located in the Central Valley of California, approximately 110 miles southeast of San Francisco and 310 miles northwest of Los Angeles. The City has a population of about 87,000, according to the most recent census, and serves as the county seat. Merced was incorporated in 1889 and operates under the Council-Manager form of government. Merced was one of the few cities that chose not to serve as the successor agency to its former Merced RDA. Instead, the Merced Designated Local Authority (DLA) serves as the successor agency for the City's former RDA.

Following the dissolution of the Merced RDA, the Merced DLA submitted its Due Diligence Review (DDR) for other funds and accounts on January 15, 2015, and its DDR for the Low and Moderate Income Housing Fund on May 15, 2015. According to the settlement agreement between the City of Merced and DOF, "Finance issued letters dated December 4, 2015, identifying a balance of over \$13,158,141 in the two DDRs combined. After a meet and confer about the determinations, Finance issued letters dated January 8, 2016, revising but largely upholding the determinations, and calculating a new balance of \$13,035,007 for the two DDRs. The City of Merced DLA subsequently remitted \$3,014,796.17 to the Auditor-Controller [of Merced County] leaving a \$10,020,210.83 balance.

"After an extensive meet and confer about Finance's determinations, Finance issued a letter dated August 25, 2016, requiring the City and Merced DLA to either remit the full \$10,020,210.83 balance or agree to a payment plan with Finance by October 24, 2016. Neither the City nor Merced DLA remitted the DDR balance or reached agreement with Finance on a payment plan. Finance filed a Petition for Writ of Mandate on November 15, 2016, entitled *California Department of Finance v. City of Merced, et al.*, Sacramento County Superior Court Case No. 34-2016-80002485 ("Action"), alleging that the City and Merced DLA had a clear, present, and ministerial duty to remit the \$10,020,210.83 balance in accordance with California Health and Safety Code sections 34179.6 and 34179.9.

"The superior court granted the petition, and on September 15, 2017, Finance filed notice of entry of the superior court's order, the peremptory writ of mandate, and the judgement. In the course of this litigation, the Parties agreed that the \$10,020,210.83 balance should be reduced to reflect that the City had remitted \$491,815 in unencumbered bond proceeds. The remaining balance is \$9,528,395.83. The City appealed the judgment on October 12, 2017.

The Third Appellate District of the Court of Appeal issued an opinion on March 22, 2019, directing the superior court to recall the writ and modify the judgement to specify the exact dollar amount of the unencumbered bond proceeds within the DDR balance. The Third Appellate District affirmed the judgement as modified. The California Supreme Court denied the City’s petition for review on June 19, 2019, and the Third Appellate District issued a remittitur to the superior court on June 27, 2019. On July 15, 2019, the superior court directed the parties to prepare a modified proposed judgement.”

After the Court’s determinations, The City and DOF entered into a settlement agreement where the City of Merced will pay more than \$9 million dollars in accordance with the following schedule:

- a) \$2 million by no later than October 1, 2019.
 - b) \$2 million by no later than July 1, 2020.
 - c) \$1.25 million by no later than July 1, 2021.
 - d) \$1.25 million by no later than July 1, 2022.
 - e) \$1.25 million by no later than July 1, 2023.
 - f) \$1.25 million by no later than July 1, 2024.
 - g) \$528,395.83 by no later than July 1, 2025.
- 6) **Previous Legislation.** AB 2780 (Arambula), Chapter 598, Statutes of 2022, authorized the City of Selma to initiate, participate in, govern, or finance an EIFD if certain conditions are met.
- 7) **Committee Amendment.** The author has agreed to the following amendment to correct a drafting error:

53398.54 (f) Notwithstanding subdivision (a), the City of Merced may initiate, participate in, govern, or finance an enhanced infrastructure financing district if the City of Merced, **and the Merced Designated Local Authority** acting as the successor agency to the former **Merced County Redevelopment Agency, is Redevelopment Agency of the City of Merced, are** in compliance with subdivisions (b), (c), and (d), and **has have** paid in full the amount outstanding specified in subdivision (b) of Section 34183.5 of the Health and Safety Code.

- 8) **Arguments in Support.** According to the city of Merced, “Successor agencies had until December 31, 2015, to receive their Finding of Completion from DOF. RDA dissolution law states that successor agencies that did not receive their Finding of Completion by this date or that did not enter into a written installment payment plan with DOF were to never receive a Finding of Completion. Due to outstanding disputed funds, the City of Merced did not receive a Finding of Completion by the December 21, 2015, deadline. However, (1) the City has been in good faith negotiations with DOF and has a settled defined payment plan with the last payment due to DOF on July 1, 2025, (2) remaining obligations have been approved by

DOF, (3) the City is not a party to any outstanding litigation.

“The City is looking to form an EIFD to fund projects that will further the City’s affordable housing goals and align with the State’s priorities, such as transit-oriented development and respective rail projects. The EIFD will also fund necessary infrastructure improvements around a growing UC Merced campus. Without this funding, these projects will not come to fruition. The City of Merced is on track to receive its Pro-Housing Designation from the State and is a good actor. Limiting local ability to create an EIFD has a chilling effect on the community and the City’s ability to address its residents’ needs. AB 1259 will allow the City of Merced to form or participate in an enhanced infrastructure financing district if it meets specified conditions, just as AB 2780 did for the City of Selma.”

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

REGISTERED SUPPORT / OPPOSITION:

Support

City of Merced [SPONSOR]
League of California Cities

Opposition

None on file

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