

Date of Hearing: May 10, 2017

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 1568 (Bloom) – As Amended May 1, 2017

SUBJECT: Enhanced infrastructure financing districts.

SUMMARY: Allows an enhanced infrastructure financing district (EIFD) to capture sales tax increment collected by a consenting local agency to be used on an infill site for specific purposes. Specifically, **this bill:**

- 1) Establishes the Neighborhood Infill and Transit Improvements Act, or NIFTI, in EIFD law, and allows the infrastructure financing plan (plan) of an EIFD to contain a provision for the receipt of any increase of the total receipts of local sales and use tax or transactions and use tax from one year to the next collected by a consenting local agency and attributable to the area of the district, if all of the following apply:
 - a) The area to be financed with funds is an infill site, as defined in SB 375 (Steinberg), Chapter 728, Statutes of 2008;
 - b) The plan provides for the allocation of at least 20 % of the funds received by the district pursuant to this section to be used to finance projects meeting the requirements of existing EIFD law for the acquisition, construction, or rehabilitation of housing for persons of very low-, low-, and moderate-income, as specified, for rent or purchase;
 - c) The plan includes requirements that at least 20 % of any new production in the area to be financed with funds received pursuant to this section be affordable housing, as follows:
 - i) At least 6% of any new production be very low-income units;
 - ii) At least 9% of any new production be low-income units;
 - iii) At least 5% be affordable housing units for low incomes at any level, including, but not limited to, low- and very low-income units.
- 2) Adds, to the proceedings for the establishment of an EIFD to be instituted by the adoption of a resolution of intention to establish the proposed EIFD, the requirement to state that any increase of the total receipts of local sales and use tax or transactions and use tax will be collected pursuant to 1), above, if applicable.

EXISTING LAW:

- 1) Defines “infill site” to mean a site in an urbanized area that meets either of the following criteria:
 - a) The site has not been previously developed for urban uses and both of the following apply:
 - i) The site is immediately adjacent to parcels that are developed with qualified urban uses, or at least 75 % of the perimeter of the site adjoins parcels that are developed

with qualified urban uses, and the remaining 25 % of the site adjoins parcels that have previously been developed for qualified urban uses; and,

- ii) No parcel within the site has been created within the past 10 years, unless the parcel was created as a result of the plan of a redevelopment agency.
- b) The site has been previously developed for qualified urban uses.
- 2) Allows a legislative body of a city or county to designate one or more proposed EIFDs pursuant to EIFD law, and requires the establishment of a district to be instituted by the adoption of a resolution of intention to establish the proposed district, and include the following:
- a) State that an EIFD is proposed and describe the boundaries of the proposed district, as specified;
 - b) State the type of public facilities and development proposed to be financed or assisted by the EIFD in accordance with existing EIFD law;
 - c) State the need for the EIFD and the goals the district proposes to achieve;
 - d) State the incremental property tax revenue from the city or county and some or all affected taxing entities within the EIFD, if approved by resolution of the affected agencies, may be used to finance these activities; and,
 - e) Fix a time and place for a public hearing on the proposal.
- 2) Requires, after the resolution of intention to establish a district, the designated official to prepare a proposed infrastructure financing plan, which shall be consistent with the general plan of the city or county within which the district is located. Requires the plan to include a financing section, containing the following information:
- a) A specification of the maximum portion of the incremental tax revenue of the city or county and of each affected taxing entity proposed to be committed to the district for each year during which the district will receive incremental tax revenue, as specified;
 - b) A projection of the amount of tax revenues expected to be received by the district for each year during which the district will receive incremental tax revenues, including an estimate of the amount of tax revenues attributable to each affected taxing entity for each year;
 - c) A plan for financing the public facilities to be assisted by the district, including a detailed description of any intention to incur debt;
 - d) A limit on the total number of tax dollars that may be allocated in the district pursuant to the plan; and,
 - e) A date on which the district will cease to exist, by which time all tax allocation to the district will end. Requires the date to not be 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.

- 3) Requires the plan to be sent to each owner of land within the proposed district and to each affected taxing entity together with any report required by CEQA.
- 4) Allows the legislative body of the city or county forming the district to choose to dedicate any portion of its net available revenue to the district through the financing plan.
- 5) Provides, in EIFD law, that provisions shall not be construed to prevent a district from utilizing revenues from the following sources to support its activities that the applicable voter approval has been obtained, and the infrastructure financing plan has been approved, as specified:
 - a) The Improvement Act of 1911 (Division 7 (commencing with Section 5000) of the Streets and Highways Code);
 - b) The Municipal Improvement Act of 1913 (Division 12 (commencing with Section 10000) of the Streets and Highways Code);
 - c) The Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500) of the Streets and Highways Code);
 - d) The Landscaping and Lighting Act of 1972 (Part 2 (commencing with Section 22500) of Division 15 of the Streets and Highways Code);
 - e) The Vehicle Parking District Law of 1943 (Part 1 (commencing with Section 31500) of Division 18 of the Streets and Highways Code);
 - f) The Parking District Law of 1951 (Part 4 (commencing with Section 35100) of Division 18 of the Streets and Highways Code);
 - g) The Park and Playground Act of 1909 (Chapter 7 (commencing with Section 38000) of Part 2 of Division 3 of Title 4 of this code);
 - h) The Mello-Roos Community Facilities Act of 1982 (Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of this title);
 - i) The Benefit Assessment Act of 1982 (Chapter 6.4 (commencing with Section 54703) of Part 1 of Division 2 of this title); and,
 - j) The so-called facilities benefit assessment levied by the charter city of San Diego or any substantially similar assessment levied for the same purpose by any other charter city pursuant to any ordinance or charter provision.

FISCAL EFFECT: None

COMMENTS:

- 1) **Bill Summary.** This bill establishes the NIFTI Act, in existing EIFD law, and specifically allows an EIFD to capture the increase in total receipts of local sales and use tax or transactions and use tax from one year to the next, collected by a consenting local agency and attributable to the area of the district. This sales and use tax increment or transactions and use tax increment would be used specifically to fund an area that is an infill site, and requires that 20% of the funds be used for housing purposes.

This bill is author-sponsored.

- 2) **Author's Statement.** According to the author, "Local governments have been without a reliable financing mechanism to invest in economically depressed, transit-rich areas since the demise of redevelopment agencies in 2011. Many of these neighborhoods lack sufficient resources to spur private investment, economic development and affordable housing. In addition, many communities do not have sufficient property tax increment to form EIFDs to self-fund their needed infrastructure costs.

"NIFTI provides local jurisdictions with the authority to finance infrastructure and affordable housing using new sales and use taxes in addition to property tax increment within qualifying districts. NIFTI will usher in new opportunities for local governments and the private sector to work together to revitalize communities, create good jobs, and build affordable homes while meeting the state's landmark greenhouse gas reduction targets (AB 32 Núñez, 2006/ SB 32 Pavley, 2016)."

- 3) **Background on EIFDs.** After the dissolution of redevelopment agencies in 2011, the Legislature worked on the creation of several new tools to help cities and counties finance infrastructure improvements, including the creation of EIFDs. SB 628 (Beall), Chapter 785, Statutes of 2014, authorizes the legislative body of a city or county to establish an EIFD to capture property tax increment, adopt an infrastructure financing plan, and issue bonds upon approval by 55% of the voters, in order to finance public capital facilities or other specified projects of communitywide significance, including, but not limited to, brownfield restoration and other environmental mitigation, the development of projects on a former military base, transit priority projects, and projects to implement a sustainable communities strategy.

SB 628 also allowed other affected taxing entities to participate in the EIFD by contributing their property tax increment revenues to the EIFD, and provided the method for this division and allocation of taxes. Provisions in SB 628 specify that the allocation of tax increment revenues to an EIFD must not be construed to prevent an EIFD from using revenues authorized by other specified statutes, subject to applicable voter approval requirements.

- 4) **Background on Sales and Use Taxes and Transactions and Use Taxes.** All cities and counties in California impose a sales and use tax under the Bradley-Burns Uniform Local Sales and Use Tax law. A portion of the tax is a state tax and a portion is locally imposed. On average, the local sales tax provides around 30% of city general purpose revenues; however, this source of revenue is among the most volatile from year to year depending on the nature of the sales tax base in the city or county. The Board of Equalization (BOE) administers California's sales and use taxes – the BOE collects the revenue, enforces compliance, and allocates revenue among local jurisdictions and the state. BOE charges for these services.

Transactions and Use Taxes are locally enacted taxes that may be levied as general taxes (unrestricted taxes, majority vote required), or special taxes (restricted for a specific use, two-thirds vote required). Local agencies are authorized under the law to adopt add-on rates to the combined state and local sales tax rate, with voter approval. BOE also administers, collects, and allocates transactions and use taxes back to the city or county.

5) **Policy Considerations.** The Committee may wish to consider the following, with respect to creating the opportunity for a consenting local agency to share its sales and use tax increment or transactions and use tax increment with an EIFD:

a) **Redevelopment reform in 1993.** According to a publication entitled “The 2012-13 Budget: Unwinding Redevelopment” by the Legislative Analyst’s Office (LAO) published in February of 2012, AB 1290 (Isenberg), Chapter 942, Statutes of 1993, sought to address long-standing concerns about the misuse of redevelopment and to refocus the program on eradicating urban blight. [AB 1290]: (1) Defined a “blighted area” as one that is predominately urbanized and where certain problems are so substantial that they constitute a serious physical and economic burden to a community that cannot be reversed by private or government actions, absent redevelopment; (2) Replaced the process whereby local agencies and RDAs negotiated the amount of pass-through revenues on a case-by-case-basis with a statutory formula for sharing tax increment revenues; and, (3) *Limited RDA ability to provide subsidies and assistance to auto dealerships, large volume retailers, and other sales tax generators.*

These reforms moved RDAs away from the potential to choose sales-tax generating projects as did other bills in the 1990s and beyond.

b) **Appropriateness of using sales tax increment.** The fundamental premise behind property tax increment (used previously to fund RDA activities) is that investment in a blighted area will increase property values, and thus the “increment” of that increase would go to the RDA while other jurisdictions continue to get the same property tax amount (or “base”), over the life of the RDA. In this manner there was, with RDAs, and with the new EIFD tool, a nexus between the use of property tax increment for the RDA or the EIFD’s purposes.

The Committee may wish to consider whether using sales tax increment to fund an EIFD’s activities meets this same nexus and whether there may be implications for the fiscalization of land use (aka, jurisdictions preferring to site big box-type sales tax generating stores over other projects like affordable housing).

c) **Could undermine the will of the voters.** Some sales and use taxes and transactions and use taxes are adopted by voters for a dedicated purpose with a two-thirds voter approval requirement under the Constitution, and can only be spent for the purpose in which the voters approved (like a countywide transactions and use tax that is specifically earmarked for transportation purposes). This bill does not differentiate between general taxes and sales and use taxes and transactions and use taxes that are dedicated for a certain purpose.

d) **Implementation and technical issues.** There are numerous technical issues with the sales and use tax and transactions and use tax increment provisions in the bill. The bill specifies that an infrastructure financing plan can contain a provision for the receipt of any increase of the total receipts of locals sales and use tax or transactions and use tax

from one year to the next *collected by a consenting local agency and attributable to the area of the EIFD*, in specified conditions. This section of the bill contains a number of problems:

- i) Sales and use taxes and transactions and use taxes are not collected by a local agency.
- ii) The BOE administers sales and use taxes and transactions and use taxes according to jurisdictional boundaries (city boundaries, or county boundaries). EIFDs can be established in parts of a city or county, and do not need to follow jurisdictional boundaries.
- iii) Who determines the “increment” that is attributable to the area of the EIFD? There is no process contained in existing law for determination of sales tax increment like there is for property tax increment.
- iv) Existing EIFD law contains a process for the division of taxes (in this case property tax increment) for the EIFD for any taxing entity, as long as the governing body of that taxing entity has adopted a resolution approving the plan (meaning that the taxing entity has “opted-in” to participating in the EIFD). This division of taxes is based on the assessed valuation of property. Under this bill, there is no process for a “consenting local agency” to opt-in to the EIFD.
- v) How would the issuance of debt work if the debt is backed by sales and use/transactions and use tax increment, rather than property tax?

- 6) **Related Legislation.** This Committee previously heard AB 1598 (Mullin) on April 19, 2017, which would allow a city or county to create an affordable housing authority to fund affordable housing, similar to a Community Revitalization and Investment Authority (CRIA). The version of the bill heard by the Committee would have allowed an affordable housing authority to use sales and use tax increment or transactions and use tax increment of a consenting local agency.

The bill was amended coming out of this Committee to remove the sales and use tax increment provisions, and instead, allow the authority to capture local sales and use taxes that are approved by voters for uses that are consistent with the work of the affordable housing authority.

- 7) **Committee Amendments.** In order to address some of the considerations raised previously, and to maintain consistency with AB 1598 (Mullin), the Committee may wish to consider amending the bill as follows:

- Allow the EIFD, if its boundaries are coterminous with the city or county, to use its own sales and use tax increment, provided that the use of those revenues by the EIFD is consistent with the purposes for which that tax is imposed.
- Require BOE to administer the sales and use tax increment or transactions and use tax increment.

- 8) **Arguments in Support.** Supporters argue that this bill will usher in new opportunities for local governments and the private sector to work together to revitalize communities.
- 9) **Arguments in Opposition.** None on file.

REGISTERED SUPPORT / OPPOSITION:

Support

American Planning Association, California Chapter
California League of Conservation Voters
California Rural Legal Assistance Foundation
California State Association of Counties
Council of Infill Builders
Housing California
Natural Resources Defense Council
Planning and Conservation League
Public Advocates
SF Council of Community Housing Organizations
State Building and Construction Trades Council
Western Center on Law & Poverty

Opposition

None on file

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