

Date of Hearing: March 24, 2021

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
AB 336 (Villapudua) – As Introduced January 27, 2021

SUBJECT: Enhanced infrastructure financing districts: public financing authority: members: joint powers authorities.

SUMMARY: Specifies who may serve as a member of the governing body of an enhanced infrastructure financing district's (EIFD's) public financing authority (PFA). Specifically, **this bill:**

- 1) Provides that notwithstanding any other law, any member of the legislative body of a participating affected taxing entity who serves as a member of the PFA of an EIFD, may also serve as a member of the governing body of an agency formed pursuant to an agreement for the joint exercise of power that the participating affected taxing entity has entered into in accordance with the Joint Exercise of Powers Act.

FISCAL EFFECT: None.

EXISTING LAW:

- 1) Establishes the Joint Exercise of Powers Act, which generally allows two or more public agencies to jointly use their powers in common through a joint powers agreement. Many times, a joint powers agreement creates a new, separate governmental agency called a JPA.
- 2) Specifies that an EIFD's PFA shall have a membership consisting of one of the following, as appropriate:
 - a) If an EIFD has only one participating affected taxing entity, the PFA's membership shall consist of three members of the legislative body of the participating entity, and two members of the public chosen by the legislative body.
 - b) If an EIFD has two or more participating taxing entities, the PFA's membership shall consist of a majority of members from the legislative bodies of the participating entities, and a minimum of two members of the public chosen by the legislative bodies of the participating entities.
- 3) Prohibits members of the PFA from receiving compensation but may receive reimbursement for actual and necessary expenses incurred in the performance of official duties.
- 4) Provides that members of the PFA are subject to existing ethics training requirements.
- 5) Specifies that the PFA shall be a local public agency subject to existing open meetings requirements, the California Public Records Act, and the Political Reform Act of 1974.

COMMENTS:

- 1) **Bill Summary and Author's Statement.** This bill provides that any member of the legislative body of a participating affected taxing entity who serves as a member of the PFA of an EIFD, may also serve as a member of the governing body of a JPA. The San Joaquin Area Flood Control Agency is the sponsor of this bill.

According to the author, "Assembly Bill 336 will eliminate potential conflicts in current law that may result in invalidating actions taken by a Joint Powers Authority Board. AB 336 will clarify that members from the legislative bodies of the participating agencies who serve as public financing authority members can also serve as Board members of a Joint Powers Authority implementing the financed project."

- 2) **Joint Powers Authorities.** JPAs have existed in California for nearly 100 years, and were originally created to allow multiple local governments in a region to pool resources to meet common needs. The Act authorizes state and local public agencies to create and use a joint powers agreement, which is a legal document that allows the contracting parties to exercise powers that are common to all of the contracting parties. A joint powers agreement can be administered by one of the contracting agencies, or it can be carried out by a new, separate public entity. Joint powers agreements are an attractive tool for local governments because they facilitate more efficient service provision through collaboration.
- 3) **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). 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.

- 4) **Previous 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

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, with two big differences: CRIAs may only be formed in economically depressed areas, but do not require voter approval. 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 one significant aspect, which is not having access to the school's share of property tax revenue.

- 5) **Incompatible Offices.** Incompatible office law generally prohibits a public officer, including, but not limited to, an appointed or elected member of a governmental board, commission, committee, or other body from simultaneously holding two public offices that are incompatible. A public office is incompatible when any of the following circumstances are present, unless simultaneous holding of the particular offices is compelled or expressly authorized by law:
- a) Either of the offices may audit, overrule, remove members of, dismiss employees of, or exercise supervisor powers over the other office or body;
 - b) Based on the powers and jurisdiction of the offices, there is a possibility of a significant clash of duties or loyalties between the offices; or,
 - c) Public policy considerations make it improper for one person to hold both offices.
- 6) **Policy Consideration.** California Attorney General Edmund G. Brown Jr. issued an opinion (10-506, 2010) on exemptions to the incompatible office requirements generally stating:

“As we have noted on many occasions, the incompatibility rule does not require an actual occurrence of divided loyalties, but looks to whether the circumstances may reasonably be said to present a substantial latent tension between the two offices. And a single possible clash suffices: Only one potential clash of duties or loyalties is necessary to make offices incompatible. Nor does the incumbent's record or reputation or integrity cure the problem. Regardless of the motives or integrity of the office holder, he or she cannot hold two incompatible offices at once; for it is the nature of the offices, not the individuals, that determines the rule's application. When two offices are inherently incompatible, an incumbent holding both can only perform the duties of one office by neglecting to perform the duties of the other. It is not for him to say in particular instance which he will perform and which he will not. The public has a right to know with certainty.”

In response to the Attorney General's opinion, the Committee may wish to consider if creating a statutory exemption to incompatible office law is appropriate.

- 7) **Arguments in Support.** According to the sponsors, “This bill has the potential to have broad application to help finance many different types of infrastructure projects around the State, from transportation and water supply, to flood protection and drainage. Under Government Code section 53398.51.1, a taxing entity or a collection of taxing entities may create an EIFD. The EIFD dedicates an increment of property tax growth to a specific infrastructure project and is governed by a PFA. Unfortunately, the Legislature’s passage of the EIFD legislation inadvertently failed to consider Government Code section 1099’s rule on incompatibility of offices for cases involving JPAs which are partnering with their underlying tax entities to finance projects. The failure to exempt PFA boards from section 1099 will make application of the EIFD legislation costlier and inefficient for EIFDs created to fund the work of a JPA.

“The San Joaquin Area Flood Control Agency (SJAFCA) is advancing a flood protection project to protect the Mossdale Tract at a cost of hundreds of millions of dollars. SJAFCA and its member agencies plan to use the EIFD as a financing mechanism. Unfortunately, without the passage of AB 336, SJAFCA and its member agencies would be precluded from using the same election officials on the Board of SJAFCA and the Board of the EIFD. This limitation would increase the transactional costs of the project and subject this effort to greater inefficacies. For these reasons we strongly support this legislation as a sponsor, and we believe that others will also discover the challenges that AB 336 is meant to address.”

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

REGISTERED SUPPORT / OPPOSITION:

Support

San Joaquin Area Flood Control Agency [SPONSOR]
California Central Valley Flood Control Association
City of Lathrop

Opposition

None on file

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