Date of Hearing: January 10, 2018

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
AB 962 (Travis Allen) – As Amended March 28, 2017

SUBJECT: State infrastructure financing for seaports.

SUMMARY: Creates a process for a harbor agency to receive funding from the California Infrastructure and Economic Development Bank (I-Bank) for infrastructure development or equipment purchases, upon an appropriation by the Legislature. Specifically, **this bill**:

1) Finds and declares that the primary purpose of this bill is to encourage the development and growth of, and to encourage and help finance the further investment in, and subsequent increased use of, California's public port facilities and the introduction of equipment and supporting infrastructure at California's public port facilities.

2) Authorizes the I-Bank to do all things necessary and convenient to carry out its duties associated with the requirements of this bill.

3) Requires the I-Bank, after consulting with the appropriate state and local agencies, to establish criteria, priorities, and guidelines for the selection of projects to receive assistance from the I-Bank, as specified, and requires projects to comply with these criteria, priorities, and guidelines.

4) Requires the I-Bank to notify the Governor, the appropriate fiscal and policy committees of the Legislature that exercise oversight of the I-Bank, and the appropriate state and local agencies when it establishes or makes changes to the criteria, priorities, and guidelines specified above.

5) Allows the I-Bank to accept applications from harbor agencies for a proposed project valuation and outlines the information that the application must contain, as specified.

6) Requires a harbor agency to adopt a resolution setting forth estimates of the state fiscal and economic impacts that will result from the proposed project, including, but not limited to, the following:

    a) The total direct and indirect state tax revenues generated by the impact of the infrastructure development or equipment purchase;

    b) The total direct and indirect state General Fund and special fund expenditure savings generated by the impact of the infrastructure development or equipment purchase;

    c) The total local tax and user fee revenues generated by the infrastructure development or equipment purchase;

    d) The total jobs created by the infrastructure development or equipment purchase, including the specific impact of the financing on the employment of residents; and,

e) The total direct and indirect public health savings generated by the infrastructure development or equipment purchase.

7) Requires the estimates of the state fiscal and economic impacts to be based on an economic impact report that, among other criteria that may be established by the I-Bank, shall be completed by an economist not in the direct employment of the harbor agency and be based on a nationally recognized economic impact methodology.

8) Requires the economic impact report and the methodology specified above to be peer-reviewed and evaluated by an independent party who is without any financial association with the economist who completed the economic impact report and developed the economic methodology.

9) Requires the peer review to evaluate the adequacy of the economic impact report and make specific recommendations regarding the methodologies, which shall be either incorporated into the economic impact report or submitted as additional information in the application to the I-Bank.

10) Allows a harbor agency, consistent with the criteria, priorities, and guidelines approved by the I-Bank, to adopt guidelines to be used by a tenant, another harbor agency, or other public or private entity for submitting information that may be used in the development of the estimates in the resolution adopted pursuant to this bill or the economic impact report developed pursuant to this bill.

11) Provides that participation in the proposed project valuation program established by this bill is voluntary on the part of a harbor agency and the submission of an application to the I-Bank is a discretionary act.

12) Requires the I-Bank, upon the receipt of a proposed project valuation, to approve, require a modification of, or deny the proposed project valuation.

13) Requires the I-Bank, when considering the approval of a proposed project valuation submitted pursuant to this bill, to do both of the following:

   a) Review the proposed project valuation prepared by the harbor agency; and,

   b) Review the economic impact report and the economic methodology prepared for or by the harbor agency pursuant to this bill.

14) Requires the I-Bank to approve a proposed project valuation if, after conducting its own evaluation of a harbor agency's application, including the economic impact report and methodology, it can make the finding that the execution of the project is more likely than not to result in the outcomes projected by the harbor agency pursuant to this bill's requirements.

15) Prohibits the I-Bank from approving a proposed project valuation if the State Lands Commission (Commission) objects to a finding made by a harbor agency that the project to be financed is consistent with the state tidelands trust and the terms and conditions of any grant of trust lands to the harbor agency.

16) Requires the I-Bank to provide notice to the Department of Finance (DOF) within 30 days of approving a proposed project valuation, and requires the notice to include, at a minimum, the dollar amount of the valuation and any other information requested by DOF.

17) Requires DOF to include an amount equal to the approved project valuation in the appropriation for the I-Bank Fund, as specified, in the Governor's proposed annual budget.

18) Requires the I-Bank to remit funding to the harbor agency only upon an appropriation by the Legislature of moneys for that purpose.

19) Allows the I-Bank to require the harbor agency to demonstrate it has sufficient resources to complete the infrastructure development project or install the equipment purchase.

20) Requires the I-Bank to prepare a report on its activities related to this bill and post that report in its Internet Web site.

21) Requires the harbor agency to reimburse the administrative expenses or direct operating expenses incurred by the I-Bank as the direct result of the review and processing of the proposed financing of a project pursuant to this bill.

22) Provides that, to the extent that any provision of this bill conflicts with any provision of specified existing law governing Seaport Infrastructure Financing Districts, this bill shall prevail.

23) Requires all permanent fixtures and capital improvements to the real property of a harbor agency that administers public trust tidelands financed pursuant to the bill's provisions to be a trust asset of the state once completed, except for fixtures and improvements otherwise agreed as nonpermanent in a lease between the harbor agency and a private tenant.

24) Provides that nothing in this bill shall prohibit a harbor agency from submitting a proposed project valuation for a project on behalf of a tenant or for the purchase of equipment to be owned and operated by a tenant, if the assets are owned, maintained, and used exclusively in California and, upon the cessation of the lease, ownership and control of the assets revert to the harbor agency on terms enforceable by contract between the harbor agency and the tenant.

25) Defines applicable terms.

26) Makes a number of findings and declarations regarding the economic value and infrastructure needs of California's public ports and the state's interest in: reducing emissions from the freight sector and supply chain; creating incentives for the industry to invest in the newest generation of equipment and supporting infrastructure at marine terminals and port facilities; and, public financing mechanisms and the implementation of public-private partnerships to support this new investment.

EXISTING LAW:

1) Authorizes the formation of Port Infrastructure and Financing Authorities, which allow two or more local agencies that operate ports or harbors (harbor agencies) to form a joint powers authority to finance specified port and harbor infrastructure projects.

2) Authorizes cities and counties to create infrastructure financing districts (IFDs) and issue bonds to pay for community scale public works and repay the bonds by diverting property tax increment revenues.

3) Authorizes cities and counties to create Enhanced Infrastructure Financing Districts (EIFDs), which augment the tax increment financing powers that are available to local governments under the IFD statutes.

4) Authorizes cities and counties to establish Seaport Infrastructure Financing Districts, which are similar to an EIFD, for the purpose of financing port or harbor infrastructure.

5) Establishes the I-Bank within the Governor's Office of Business and Economic Development and authorizes it to undertake a variety of infrastructure-related financial activities, including, but not limited to, the administration of a revolving loan fund, oversight of the Small Business Finance Center, and the issuance of tax-exempt and taxable revenue bonds.

FISCAL EFFECT: This bill is keyed fiscal.

COMMENTS:

1) **Bill Summary.** This bill authorizes harbor agencies to apply for funding from the I-Bank for infrastructure development or equipment purchases after completing a specified project valuation process, which requires a harbor agency to submit a peer-reviewed economic impact report to the I-Bank. This bill grants the I-Bank the authority to establish criteria, priorities, and guidelines for the selection of projects to receive assistance from the I-Bank and requires projects to comply with these criteria, priorities, and guidelines.

   This bill requires the I-Bank to approve or deny a proposed project valuation submitted by a harbor agency, or require a modification of the valuation. The I-Bank must approve the valuation if it can make a finding that the project is more likely than not to result in the outcomes projected by the harbor agency in its project valuation application. The I-Bank then must provide notice to DOF, which must include an amount equal to the project valuation in the Governor's proposed annual budget appropriation for the I-Bank Fund. This bill requires the I-Bank to remit this funding to the harbor agency only upon an appropriation by the Legislature. This bill is sponsored by the author.

2) **Background**. The public trust doctrine is common law doctrine that protects the public's right to use California's waterways and waterfronts for commerce, navigation, fishing, boating, natural habitat protection, and other water-oriented activities. In general, the public trust doctrine provides that filled and unfilled tide and submerged lands and the beds of lakes, streams, and other navigable waterways (i.e. public trust lands) are to be held in trust by the state for the benefit of the people of California. The Commission administers public trust lands not granted to local agencies and oversees the activities of local grantees, such as harbor agencies.

   California has 11 public ports and one private port, and the Commission administers the activities of seven harbor district grantees. 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 a possessory interest, so harbor and port tenants pay a possessory interest tax in lieu of a property tax.

Seaports and harbors in California generally do not levy or expend any funds generated by local taxes, as most of their operations are funded directly through fees, tariffs, leases, and other revenue the seaports and harbors generate from their users and tenants, in addition to the occasional state or federal grant.

3) **Local Infrastructure Financing for Ports and Harbors**. Existing law authorizes the formation of Port Infrastructure and Financing Authorities, which allow two or more local agencies that operate ports or harbors (harbor agencies) to form a joint powers authority to finance specified port and harbor infrastructure projects. These authorities are intended to improve access to ports by allowing for the financing of roads and rail lines, piers, docks, channel improvements, breakwaters, warehouses and storage facilities, parks and recreation facilities, remediation, drainage, wastewater and electric facilities, and other projects. Port or harbor infrastructure projects may be privately operated, but all projects must have a primary or predominant use that is of direct benefit to the port or harbor.

   Existing law also authorizes cities and counties to form IFDs and divert property tax increment revenues from participating local agencies to finance public capital facilities of communitywide significance. IFDs retain property tax increment revenues from participating local taxing agencies to directly finance projects or to pay debt service on bonds issued to finance projects. School district property tax revenues may not be diverted for IFD purposes, and each local agency in the IFD must agree to divert property tax increment to the IFD. Formation of a district and issuance of IFD bonds requires approval by two-thirds of affected voters in an election.

   After the dissolution of RDAs, SB 628 (Beall), Chapter 785, Statutes of 2014, was enacted to allow local officials to create EIFDs. SB 628 removed the voter approval that was required to form an IFD, authorized an EIFD public finance authority to issue bonds upon the approval of 55 percent of the voters, and expanded the types of projects that could be financed. EIFDs can finance public capital facilities or other specified projects of communitywide significance that provide significant benefits to the district or the surrounding community.

   SB 63 (Hall), Chapter 793, Statutes of 2015, authorized cities and counties to establish Seaport Infrastructure Financing Districts and allowed these districts to finance certain port or harbor facilities, including any capital improvement that improves environmental quality if the improvement's primary or predominant use directly benefits a port or harbor.

4) **Author's Statement.** According to the author, "California's major commercial seaports in Long Beach, Los Angeles, Oakland, Port Hueneme, Richmond, and San Diego are either 'trust grant' ports, meaning that they are operating on state-owned property, which has been granted to a local governmental entity who must manage the property as a trustee for the benefit of the state, or they are special districts set up under the state Harbors & Navigation Code to achieve state purposes. The real property at these ports are publicly owned assets, but are not supported with state or local tax revenues, rather they are operated as enterprises with private revenue streams and their primary form of infrastructure development funding is in the form of revenue bonds backed against future operations or lease revenues.

"In the wake of the elimination of redevelopment and other economic development tools which were not universally believed to be effective, the State revamped its public financing tools to provide for EIFDs (by enacting) SB 628 (Beall), Chapter 785, Statutes of 2014. SB 63 (Hall), Chapter 793, Statutes of 2015, added seaports to the EIFD statute, and allowed for access to new seaport infrastructure and environmental improvement financing."

5) **Committee Amendments**. This bill contains a number of inadvertent references to tax increment financing in its findings and declarations, which the Committee may wish to ask the author to remove.

6) **Prior Legislation.** AB 2841 (Travis Allen) of 2016 was substantially similar to this bill. AB 2841 was held in the Assembly Appropriations Committee.

7) **Arguments in Support.** None on file.

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

9) **Double-Referral.** This bill is double-referred to the Jobs, Economic Development, and the Economy Committee and will be heard on January 9, 2018.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Opposition

None on file

Analysis Prepared by: Angela Mapp / L. GOV. / (916) 319-3958