

Date of Hearing: June 20, 2018

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT  
Cecilia Aguiar-Curry, Chair  
SB 961 (Allen) – As Amended May 7, 2018

**SENATE VOTE:** 38-0

**SUBJECT:** Enhanced infrastructure financing districts.

**SUMMARY:** Enacts the Second Neighborhood Infill Finance and Transit Improvement Act (NIFTI-2) in enhanced infrastructure financing district (EIFD) law, and allows a NIFTI-2 to issue bonds without voter approval. Specifically, **this bill:**

- 1) Allows for the formation of a NIFTI-2, which can issue bonds to finance affordable housing developments near transit stations, without voter approval.
- 2) Allows a city or county to adopt a resolution to allocate its tax revenues to a NIFTI-2, including Local Sales and Use Taxes (SUTs) or transactions and use taxes (TUTs), if all of the following apply:
  - a) The area to be financed with funds received pursuant to this bill is within one-half mile of a major transit stop, as defined in existing law;
  - b) The infrastructure financing plan requires at least 40% of the total funds received by the district to be used for the acquisition, construction, or rehabilitation of housing, including the costs of predevelopment and land acquisition, for households with incomes below 60% area median income for rent or purchase. Specifies what predevelopment costs include;
  - c) The infrastructure financing plan requires that 50% of the housing funds are used to develop affordable housing for households with incomes between 30% and 60% of area median income, and the remaining half are used for either affordable housing for households with incomes below 30% of area median income or permanent supportive housing to help homeless persons;
  - d) The infrastructure financing plan gives first priority for occupancy of housing funded through the plan to income-qualified households displaced from the district through no fault of their own, and secondary priority for occupancy of housing funded through this program is given to households with a member or members employed within two miles of the district;
  - e) The boundaries of the EIFD are coterminous with the associated city or county; and,
  - f) The use of SUTs and TUTs received by the district are consistent with the purposes for which those taxes were imposed.
- 3) Allows the remaining tax increment funds to be used for any of the following:

- a) Multi-family affordable housing projects or mixed-use projects with an affordable multifamily housing and ground floor commercial uses that support infill and compact development;
  - b) Transit capital projects, including transit stations and programs supporting transit ridership, including waterborne transit;
  - c) Active transportation capital projects that qualify under the Active Transportation Program, including pedestrian and bicycle facilities and supportive infrastructure, including connectivity to transit stations;
  - d) Transit-oriented development (TOD) projects, including affordable housing and infrastructure at or near transit stations or connecting those developments to transit stations;
  - e) Capital projects that implement local complete streets programs;
  - f) Capital costs of parks, urban forestry, and permanent greening improvements along boulevards, streets, and other public areas within a district;
  - g) Parking, including detached and decoupled parking structures that provide parking for residents, businesses, or visitors in lieu of onsite parking for proposed developments, as specified; and,
  - h) Other projects or programs designed to reduce greenhouse gas emissions and other criteria air pollutants by reducing automobile trips and vehicle miles traveled.
- 4) Requires the infrastructure financing plan to ensure that the requirements in the bill are met every 10 years, and prohibits revenues that fund the EIFD from being used for highway or highway interchange improvements.
  - 5) Requires an EIFD to ensure that any affordable housing units that it funds remain permanently available at affordable housing costs to, and occupied by, very low income households, persons and families of low income, or persons and families of low or moderate income for the longest feasible time, but for not less than 55 years for rental units and 45 years for owner-occupied units. A city or county cannot terminate a NIFTI-2 before the district has complied with its affordable housing obligations.
  - 6) Deems projects financed by the NIFTI public works, even if they are built by private developers on private property.
  - 7) Requires the Office of Planning and Research (OPR), by January 1, 2021, to complete a study on the effectiveness of tax increment financing tools for increasing housing production, including a comparison of the relative advantages and disadvantages of infrastructure financing districts, EIFDs, affordable housing authorities (AHAs), use of NIFTIs, and the use of NIFTI-2s, as specified. The study must also include an analysis of the impacts of extending NIFTI-2s to areas around bus stops, including segregated bus rapid transit, and make recommendations to the Legislature.

**EXISTING LAW:**

- 1) Allows a city or county to form an EIFD to pay for community scale public works, including: highways, transit, water systems, sewer projects, flood control, child care facilities, libraries, parks, and solid waste facilities.
- 2) Allows EIFDs to divert property tax revenues from consenting local governments, excluding schools, to directly pay for those projects or to issue bonds to fund those projects.
- 3) Allows certain EIFDs to form under the Neighborhood Infill Finance and Transit Improvements Act, known as “NIFTIs,” which:
  - a) Allows NIFTIs to receive a portion of the local share of sales and use taxes (SUT) and transactions and use taxes (TUTs) contributed by participating entities in exchange for spending 20 percent of the NIFTI’s total funds on housing affordable to lower income households;
  - b) Requires a NIFTI to also reserve 20 percent of any new housing units for persons or families of lower or moderate income, including at least six percent for very low-income households and at least nine percent for low-income households, and the infrastructure financing plan for the NIFTI must provide for a way to verify compliance with these requirements every 10 years;
  - c) Requires a NIFTI to be coterminous with the city boundaries, but the area to be financed must be an infill site; and,
  - d) Deems projects financed by the NIFTI public works, even if they are built by private developers on private property.
- 4) Requires 55 percent voter approval to issue bonds backed by the property tax increment or other revenues.

**FISCAL EFFECT:** According to the Senate Appropriations Committee, OPR estimates total one-time costs of approximately \$185,000 to conduct the study and make recommendations to the Legislature, including \$100,000 for a consultant contract, and ½ PY of staff costs. (General Fund)

**COMMENTS:**

- 1) **Bill Summary.** This bill allows for the formation of a NIFTI-2, which can issue bonds to finance affordable housing developments near transit stations, without voter approval. Pursuant to the bill, a city or county can adopt a resolution to allocate its tax revenues to a NIFTI-2, including SUTs or TUTs, if all of the following apply:
  - a) The area to be financed with funds received pursuant to this bill is within one-half mile of a major transit stop, as defined in existing law;
  - b) The infrastructure financing plan requires at least 40% of the total funds received by the district to be used for the acquisition, construction, or rehabilitation of housing, including

the costs of predevelopment and land acquisition, for households with incomes below 60% area median income for rent or purchase;

- c) The infrastructure financing plan requires that 50% of the housing funds are used to develop affordable housing for households with incomes between 30% and 60% of area median income, and the remaining half are used for either affordable housing for households with incomes below 30% of area median income or permanent supportive housing to help homeless persons;
- d) The infrastructure financing plan gives first priority for occupancy of housing funded through the plan to income-qualified households displaced from the district through no fault of their own, and secondary priority for occupancy of housing funded through this program is given to households with a member or members employed within two miles of the district;
- e) The boundaries of the EIFD are coterminous with the associated city or county; and,
- f) The use of SUTs and TUTs received by the district are consistent with the purposes for which those taxes were imposed.

This bill is sponsored by MoveLA.

- 2) **Author's Statement.** According to the author, "SB 961, the Second Neighborhood Infill Finance and Transit Improvements Act, provides a voluntary tool for local governments that are committed to expediting transit improvements and incentivizing middle and low-income housing near transit. The legislation adds to the list of tax increment financing options available to local governments under California's enhanced infrastructure financing district law, most notably providing the option for a district to bond against future sales and property tax increments without necessarily requiring voter approval.

"SB 961 requires that participating districts devote at least 40% of tax increment funds they collect to building affordable housing close to transit. The bill is also focused on enhancing transit systems and service: qualifying districts are defined by immediate proximity to a transit system, including rail transit and transit-rich boulevards, and funds can be used for direct investment in rail or bus rapid transit stations. Direct investment in new transit stations will allow acceleration or extension of approved projects. Direct investments in existing transit stations will allow important station upgrades and facilitate state of good repair on older systems."

- 3) **March 2018 Informational Hearing.** This Committee held a joint informational hearing on March 14, 2018, entitled "A Review and Analysis of Current Community Development Tools" with the Housing and Community Development Committee. The goal of this hearing was to review the status of current community development tools for local agencies, specifically tax-increment tools like Enhanced Infrastructure Financing Districts (EIFDs), Community Revitalization and Investment Authorities (CRIAs), Affordable Housing Authorities (AHAs), and Neighborhood Infill and Transit Improvement Act (NIFTIs), all tools that were created after redevelopment agencies (RDAs) were dissolved. The hearing sought to answer whether the new tools were being used, and if so, where and for what types of projects. At that hearing, Committee members heard from multiple witnesses and stakeholders that these new tools have not been used very much yet and that

several reasons exist for this, including that many cities no longer have knowledgeable staff on hand to help set up these new tools at the local level, and that some cities are just starting to look at these tools and figure out which one would best fit their needs.

- 4) **Background on Tax Increment Tools for Local Agencies.** 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 following:
- a) **EIFDs.** SB 628 (Beall), Chapter 785, Statutes of 2014, authorized 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. Several cities have formed EIFDS: West Sacramento, La Verne, and San Diego.
  - b) **CRIs.** AB 2 (Alejo and Garcia), Chapter 319, Statutes of 2015, allowed local government entities, excluding schools, to form a CRIA to collect tax increment and issue debt. The CRIA could use its powers to invest in disadvantaged communities with a high crime rate, high unemployment, and deteriorated and inadequate infrastructure, commercial, and residential buildings. Three of these four conditions would constitute blight. The area where the CRIA could invest would also be required to have an annual median household income that is less than 80% of the statewide annual median income. This is different from redevelopment agencies that were required to conduct a study and make a finding that blight existed in a project area before they could use their powers, like eminent domain, to eradicate blight.

Like redevelopment agencies, AB 2 allows CRIs to freeze the property taxes at the time the plan for revitalizing the area is approved. The CRIA will collect all the tax increment or the increase in property taxes that is generated after that point and use it on specified activities. CRIA law requires the taxing entities in the area, including the county, city, special districts, or a military base, to agree to divert tax increment to the CRIA. Local government entities that initially participate can opt out by giving the auditor-controller sixty days' notice; however, the auditor-controller will continue to collect the local government entities' portions of tax increment until any debts issued up until they have been repaid. No portion of the local schools' share of tax increment may go to the authority. To date, no cities have formed a CRIA.

- c) **AHAs.** AB 1598 (Mullin), Chapter 764, Statutes of 2017, authorizes a city or county to create an AHA, modeled after CRIA law, to fund activities related to the promotion and development of affordable housing. The bill's provisions specify that the AHA can capture property tax increment, or revenues from a local sales and use tax or transactions and use tax, provided that the use of those revenues by the authority is consistent with the

purposes for which the tax was imposed. The bill also contains the process for forming the AHA, the governance structure of the AHA, and requires the AHA to adopt an affordable housing investment plan and what that plan must contain, as well as a requirements to comply with the Ralph M. Brown Act, Public Records Act, and the Political Reform Act. To date, no cities have formed an AHA.

- d) **NIFTI.** AB 1568 (Bloom), Chapter 764, Statutes of 2017, establishes the NIFTI Act, in existing EIFD law, and specifically allows an EIFD to capture sales and use tax or transactions and use tax revenues, should a city or county decide to allocate such revenues to the EIFD. The revenues would be used specifically to fund an area that is an infill site, and the bill requires that 20% of the funds be used for housing purposes. AB 1568 specifies that only an EIFD that is coterminous with the city or county that formed the EIFD can use taxes in this manner. The bill also requires that the legislative body of the city or county that elects to make an allocation of local sales and use tax to establish the procedures that will be used to calculate the revenues, the decision process that that city or county will determine the amount that will be dedicated to the proposed district, and fix a time and place for public hearing on the proposal. To date, no cities have formed at NIFTI.

5) **Policy Considerations.** The Committee may wish to consider the following:

- a) **No Voter Approval on Bonds.** The author and sponsor argue that this bill should not contain a voter approval requirement to issue bond debt because redevelopment bonds were secured by a specific revenue stream, the growth in property tax increment, and these bonds were secure because over time, property values will rise. This bill, however, creates a NIFTI-2, which similarly to NIFTI-1, allows for additional revenue streams beyond just property tax increment to be used, including sales and use tax and transactions and use tax. The Committee may wish to consider whether bonds backed by sales and use tax or transactions and use tax have the same level of security that bonds backed by property tax increment do.

6) **Committee Amendments.** The author previously agreed to adopt amendments suggested by the Senate Governance and Finance Committee that add in a protest process similar to CRIA law into the bill. Due to timing these amendments will be adopted in the Housing and Community Development Committee.

7) **Arguments in Support.** Supporters argue that this bill will enable local governments and the private sector to work together to create mixed-use, mixed-income, transit-oriented neighborhoods with both market-rate and deed-restricted affordable housing.

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

7) **Double-referral.** This bill is double-referred to the Housing and Community Development Committee.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

MoveLA [SPONSOR]  
American Society of Civil Engineers, Region 9  
BASE  
Los Angeles Federation of Labor  
Transform (if amended)

**Opposition**

None on file

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