



**CITY OF MARTINEZ**

**CITY COUNCIL AGENDA  
December 17, 2014**

**TO:** Mayor and City Council  
**FROM:** Alan Shear, Acting City Manager  
**SUBJECT:** Enhanced Infrastructure Financing District  
**DATE:** December 10, 2014

**RECOMMENDATION:**

Consider and discuss the Enhanced Infrastructure Financing District and provide direction to staff.

**BACKGROUND:**

Senate Bill (SB) 628 (Beall) authorizes a city or county to establish an Enhanced Infrastructure Financing District (EIFD). An EIFD is a governmental entity established by a city or county that carries out a plan within a defined area to construct, improve, and rehabilitate infrastructure or other projects of communitywide significance. One or more of these districts may be created with a city or county and used to finance the construction or rehabilitation of a wide variety of public infrastructure and private facilities.

Although Infrastructure Financing Districts (IFDs) have been allowed by law for years, they have seldom been used. In comparison to IFDs, EIFDs can be formed without voter approval, have longer terms (30 years after formation versus 45 years after issuance of bonds), and EIFDs can finance a greater range of projects. EIFDs are governed by a Public Financing Authority (PFA), who can issue bonds based upon a reduced percentage of voter approval (55% versus 66.67% for an IFD). An EIFD utilizes a tax-increment financing model while also allowing for the inclusion of other sources of funding to finance the plan. EIFDs offer additional flexibility as districts are able to have non-contiguous boundaries.

An EIFD can be used to purchase, construct, expand, improve, seismic retrofit, or rehabilitate any real or tangible property with an estimated useful life of 15 years or longer that is either a public facility or project of communitywide significance providing significant benefits to the district or surrounding community. The potential project list includes, but is not limited to, the following:

- Highways, interchanges, ramps and bridges, arterial streets, parking facilities, and transit facilities
- Sewage treatment and water reclamation plants and interceptor pipes
- Facilities for the collection and treatment of water for urban uses
- Flood control levees and dams, retention basins, and drainage channels

- Child care facilities
- Libraries
- Parks, recreational facilities, and open space
- Facilities for the transfer and disposal of solid waste, including transfer stations and vehicles
- Brownfield restoration and other environmental mitigation
- Development of projects on a former military base
- Repayment of the transfer of funds to a military base reuse authority
- Acquisition, construction, or rehabilitation of housing for persons of low and moderate income
- Acquisition, construction, or repair of industrial structures for private use
- Transit priority projects
- Projects that implement a sustainable communities strategy (part of a plan to achieve greenhouse gas emission reduction targets)

In order to create an EIFD, the legislative body must establish the PFA) that will serve as the governing board of the EIFD. The PFA is comprised of members of the legislative body (three members if only one affected taxing entity is involved) and two members of the public chosen by the legislative body. The legislative body then would consider adopting a resolution stating the intention to establish an EIFD, the boundaries of the district, the type of public facilities and development proposed to be financed or assisted by the district, the need for the district, and the goals the district proposes to achieve. An infrastructure financing plan must also be developed and reviewed at a public hearing before being adopted. The PFA may then issue bonds from designated funds or properties of the district with 55% voter approval of either voters or landowners within the district. The EIFD can remain in effect for up to 45 years from the date on which the issuance of the bonds is approved.

### **FISCAL IMPACT:**

If an EIFD is established, only the district is liable for the issuance of bonds. However, a city that contains territory within the district may choose to loan moneys to the district to fund the activities of the plan. Therefore, it is unclear at this time what the fiscal impact would be to the General Fund.

### **ACTION:**

Provide direction to staff.

Attachments:

California Legislature Information EIFD  
EIFD How to Create a New District  
SB 628 (Beall) EIFD



California  
LEGISLATIVE INFORMATION

**SB-628 Enhanced infrastructure financing districts.** (2013-2014)

**Senate Bill No. 628**

CHAPTER 785

An act to add Chapter 2.99 (commencing with Section 53398.50) to Part 1 of Division 2 of Title 5 of the Government Code, relating to local government.

[ Approved by Governor September 29, 2014. Filed with Secretary of State  
September 29, 2014. ]

LEGISLATIVE COUNSEL'S DIGEST

SB 628, Beall. Enhanced infrastructure financing districts.

Existing law authorizes a legislative body of a city, defined to mean a city or a city and county, to establish an infrastructure financing district, adopt an infrastructure financing plan, and issue bonds, for which only the district is liable, to finance specified public facilities upon approval by 2/3 of the voters. Existing law authorizes an infrastructure financing district to fund infrastructure projects through tax increment financing, pursuant to the infrastructure financing plan and the agreement of affected taxing entities, as defined. Existing law requires an infrastructure financing plan to include the date on which an infrastructure financing district will cease to exist, that may not be more than 30 years from the date on which the ordinance forming the district is adopted.

This bill would additionally authorize the legislative body of a city or a county, defined to include a city and county, to establish an enhanced infrastructure financing district, adopt an infrastructure financing plan, and issue bonds, for which only the district is liable, upon approval by 55% of the voters; 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; the repayment of the transfer of funds to a military base reuse authority; the acquisition, construction, or rehabilitation of housing for persons of low and moderate income for rent or purchase; the acquisition, construction, or repair of industrial structures for private use; transit priority projects; and projects to implement a sustainable communities strategy. The bill would also authorize an enhanced infrastructure financing district to utilize any powers under the Polanco Redevelopment Act.

This bill would require the legislative body to establish a public financing authority, defined as the governing board of the enhanced infrastructure financing authority, comprised of members of the legislative body of the participating entities and of the public, prior to the adoption of a resolution to form an enhanced infrastructure district and infrastructure financing plan. This bill would require proceedings for the establishment of a district to be instituted by the adoption of a resolution of intention that, among other things, states the boundaries of the district, the type of public facilities and development proposed to be financed or assisted by the district, and the need for the district and the goals the district proposes to achieve.

If the resolution is adopted by the legislative body after a public hearing, the bill would prohibit the public financing authority from implementing the infrastructure financing plan until specified events occur. This bill would authorize the public financing authority to initiate proceedings to issue bonds, and would require the proposal to issue bonds to be submitted to qualified electors of the proposed district, as specified. By requiring electors to make specified declarations on ballots under penalty of perjury, this bill would expand circumstances under which a person may be convicted of a crime and thereby, would impose a state-mandated local program.

This bill would authorize an enhanced infrastructure financing district to fund infrastructure projects through tax increment financing, pursuant to the infrastructure financing plan and the agreement of affected taxing entities, as defined. This bill would authorize the creation of an infrastructure financing district for up to 45 years from the date on which the issuance of bonds is approved, as specified. This bill would require an infrastructure financing district to contract for the performance of an independent financial and performance audit every 2 years, as specified. This bill would authorize a city, county, or special district that contains territory within the boundaries of an infrastructure financing district, upon approval of its governing body, to loan moneys to the infrastructure financing district to fund the activities described in the infrastructure financing plan, as specified.

This bill would authorize an enhanced infrastructure financing district to finance a project or portion of a project that is located in, or overlaps with, a redevelopment project area or former redevelopment project area, as specified. This bill would prohibit a city or county that created a redevelopment agency from creating a district until specified conditions related to the wind down of the former redevelopment agency have been satisfied. This bill would provide that any debt or obligation of an enhanced infrastructure financing district is subordinate to an enforceable obligation of a former redevelopment agency. This bill would additionally authorize the legislative body of the city forming an enhanced infrastructure financing district to choose to dedicate any portion of its net available revenue, as defined, to the enhanced infrastructure financing district through the infrastructure financing plan, as specified.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

#### THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** Chapter 2.99 (commencing with Section 53398.50) is added to Part 1 of Division 2 of Title 5 of the Government Code, to read:

**CHAPTER 2.99. Enhanced Infrastructure Financing District**  
**Article 1. General Provisions**

**53398.50.** The Legislature finds and declares that with the dissolution of redevelopment agencies, public benefits will accrue if local agencies, excluding schools, are provided a means to finance the reuse and revitalization of former military bases, fund the creation of transit priority projects and the implementation of sustainable communities plans, construct and rehabilitate affordable housing units, and construct facilities to house providers of consumer goods and services in the communities served by these efforts.

**53398.51.** Unless the context otherwise requires, the definitions contained in this article shall govern the construction of this chapter.

(a) "Affected taxing entity" means any governmental taxing agency which levied or had levied on its behalf a property tax on all or a portion of the property located in the proposed district in the fiscal year prior to the designation of the district, but not including any county office of education, school district, or community college district.

(b) "County" means a county or a city and county.

(c) "Debt" means any binding obligation to repay a sum of money, including obligations in the form of bonds, certificates of participation, long-term leases, loans from government agencies, or loans from banks, other financial institutions, private businesses, or individuals.

(d) "Designated official" means the city or county engineer or other appropriate official designated pursuant to Section 53398.62.

(e) (1) "District" means an enhanced infrastructure financing district.

(2) An enhanced infrastructure financing district is a district within the meaning of Section 1 of Article XIII A of the California Constitution.

(f) "Enhanced infrastructure financing district" means a legally constituted governmental entity separate and distinct from the city or county that established it pursuant to this chapter for the sole purpose of financing

public facilities or other projects as authorized by this chapter. An enhanced infrastructure financing district shall be a local agency for purposes of Chapter 9 (commencing with Section 54950).

(g) "Landowner" or "owner of land" means any person shown as the owner of land on the last equalized assessment roll or otherwise known to be the owner of the land by the legislative body. The legislative body has no obligation to obtain other information as to the ownership of land, and its determination of ownership shall be final and conclusive for the purposes of this chapter. A public agency is not a landowner or owner of land for purposes of this chapter, unless the public agency owns all of the land to be included within the proposed district.

(h) "Legislative body" means the city council or board of supervisors.

(i) "Public financing authority" means the governing board of the district established pursuant to this chapter.

**53398.51.1.** (a) The public financing authority shall have a membership consisting of one of the following, as appropriate:

(1) If a district has only one participating affected taxing entity, the public financing authority'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. The appointment of the public members shall be subject to the provisions of Section 54974.

(2) If a district has two or more participating affected taxing entities, the public financing authority'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. The appointment of the public members shall be subject to the provisions of Section 54974.

(b) The legislative body shall ensure the public financing authority is established prior to adopting a resolution pursuant to Section 53398.69 to adopt an infrastructure financing plan and to form a district.

(c) Members of the public financing authority established pursuant to this chapter shall not receive compensation but may receive reimbursement for actual and necessary expenses incurred in the performance of official duties pursuant to Article 2.3 (commencing with Section 53232) of Chapter 2.

(d) Members of the public financing authority are subject to Article 2.4 (commencing with Section 53234) of Chapter 2.

(e) The public financing authority created pursuant to this chapter shall be a local public agency subject to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950)), the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and the Political Reform Act of 1974 (Title 9 (commencing with Section 81000)).

**53398.52.** (a) (1) A district may finance any of the following:

(A) The purchase, construction, expansion, improvement, seismic retrofit, or rehabilitation of any real or other tangible property with an estimated useful life of 15 years or longer that satisfies the requirements of subdivision (b).

(B) The planning and design work that is directly related to the purchase, construction, expansion, or rehabilitation of property.

(C) The costs described in Sections 53398.56 and 53398.57.

(2) The facilities need not be physically located within the boundaries of the district. However, any facilities financed outside of a district must have a tangible connection to the work of the district, as detailed in the infrastructure financing plan adopted pursuant to Section 53398.69.

(3) A district may not finance routine maintenance, repair work, or the costs of an ongoing operation or providing services of any kind.

(b) The district shall finance only public capital facilities or other specified projects of communitywide significance that provide significant benefits to the district or the surrounding community, including, but not limited to, all of the following:

(1) Highways, interchanges, ramps and bridges, arterial streets, parking facilities, and transit facilities.

- (2) Sewage treatment and water reclamation plants and interceptor pipes.
- (3) Facilities for the collection and treatment of water for urban uses.
- (4) Flood control levees and dams, retention basins, and drainage channels.
- (5) Child care facilities.
- (6) Libraries.
- (7) Parks, recreational facilities, and open space.
- (8) Facilities for the transfer and disposal of solid waste, including transfer stations and vehicles.
- (9) Brownfield restoration and other environmental mitigation.
- (10) The development of projects on a former military base, provided that the projects are consistent with the military base authority reuse plan and are approved by the military base reuse authority, if applicable.
- (11) The repayment of the transfer of funds to a military base reuse authority pursuant to Section 67851 that occurred on or after the creation of the district.
- (12) The acquisition, construction, or rehabilitation of housing for persons of low and moderate income, as defined in Section 50093 of the Health and Safety Code, for rent or purchase.
- (13) Acquisition, construction, or repair of industrial structures for private use.
- (14) Transit priority projects, as defined in Section 21155 of the Public Resources Code, that are located within a transit priority project area. For purposes of this paragraph, a transit priority project area may include a military base reuse plan that meets the definition of a transit priority project area and it may include a contaminated site within a transit priority project area.
- (15) Projects that implement a sustainable communities strategy, when the State Air Resources Board, pursuant to Chapter 2.5 (commencing with Section 65080) of Division 2 of Title 7, has accepted a metropolitan planning organization's determination that the sustainable communities strategy or the alternative planning strategy would, if implemented, achieve the greenhouse gas emission reduction targets.
- (c) The district shall require, by recorded covenants or restrictions, that housing units built pursuant to this section shall remain available at affordable housing costs to, and occupied by, persons and families of low- or moderate-income households for the longest feasible time, but for not less than 55 years for rental units and 45 years for owner-occupied units.
- (d) The district may finance mixed-income housing developments, but may finance only those units in such a development that are restricted to occupancy by persons of low or moderate incomes as defined in Section 50093 of the Health and Safety Code, and those onsite facilities for child care, after-school care, and social services that are integrally linked to the tenants of the restricted units.
- (e) A district may utilize any powers under the Polanco Redevelopment Act (Article 12.5 (commencing with Section 33459) of Chapter 4 of Part 1 of Division 24 of the Health and Safety Code), and finance any action necessary to implement that act.

**53398.53.** Notwithstanding subdivision (b) of Section 53398.52, a district may reimburse a developer of a project that is located entirely within the boundaries of that district for any permit expenses incurred and to offset additional expenses incurred by the developer in constructing affordable housing units pursuant to the Transit Priority Project Program established in Section 65470.

**53398.54.** A city or county that created a redevelopment agency, as defined in Section 33003 of the Health and Safety Code, shall neither initiate the creation of a district, nor participate in the governance or financing of a district, until each of the following has occurred:

- (a) The successor agency for the former redevelopment agency created by the city or county has received a finding of completion, as specified in Section 34179.7 of the Health and Safety Code.
- (b) The city or county certifies to the Department of Finance and to the public financing authority that no former redevelopment agency assets that are the subject of litigation involving the state, where 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 enhanced infrastructure financing district formed under this chapter, unless the litigation and all possible appeals have been resolved in a court of law. The city or county shall provide this certification to the Department of Finance within 10 days of its legislative body's action to participate in an enhanced infrastructure financing district pursuant to Section 53398.68, or of its legislative body's action to form an enhanced infrastructure financing district pursuant to Section 53398.69.

(c) The office of the Controller has completed its review as specified in Section 34167.5 of the Health and Safety Code.

(d) The successor agency and the entity that created the former redevelopment agency have complied with all of the office of the Controller's findings and orders stemming from the reviews as specified in subdivision (c).

**53398.55.** (a) A district may include any portion of a former redevelopment project area that was previously created pursuant to Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code, provided that the city or county that created the former redevelopment agency has met the requirements of Section 53398.54.

(b) A district may finance only the facilities authorized in this chapter to the extent that the facilities are in addition to those provided in the territory of the district before the district was created. The additional facilities may not supplant facilities already available within that territory when the district was created but may supplement, rehabilitate, upgrade, or make more sustainable those facilities.

(c) A district may include areas which are not contiguous.

**53398.56.** It is the intent of the Legislature that the creation of the districts should not ordinarily lead to the removal of existing dwelling units. If, however, any dwelling units are proposed to be removed or destroyed in the course of private development or public works construction within the area of the district, the infrastructure financing plan adopted pursuant to Section 53398.69 shall contain provisions to do all of the following:

(a) Within two years of the removal or destruction, cause or require the construction or rehabilitation, for rent or sale to persons or families of low or moderate income, of an equal number of replacement dwelling units at affordable housing cost, as defined in Section 50052.5 of the Health and Safety Code, within the territory of the district if the dwelling units removed were inhabited by persons or families of low or moderate income, as defined in Section 50093 of the Health and Safety Code.

(b) Within two years of the removal or destruction, cause or require the construction or rehabilitation, for rent or sale to persons of low or moderate income, a number of dwelling units that is at least one unit but not less than 25 percent of the total dwelling units removed at affordable housing cost, as defined in Section 50052.5 of the Health and Safety Code, within the territory of the district if the dwelling units removed or destroyed were not inhabited by persons of low or moderate income, as defined in Section 50093 of the Health and Safety Code.

(c) Provide relocation assistance and make all the payments required by Chapter 16 (commencing with Section 7260) of Division 7 of Title 1, to persons displaced by any public or private development occurring within the territory of the district. This displacement shall be deemed to be the result of public action.

(d) Ensure that removal or destruction of any dwelling units occupied by persons or families of low or moderate income not take place unless and until there are suitable housing units, at comparable cost to the units from which the persons or families were displaced, available and ready for occupancy by the residents of the units at the time of their displacement. The housing units shall be suitable to the needs of these displaced persons or families, and shall be decent, safe, sanitary, and otherwise standard dwellings.

(e) (1) The district shall require, by recorded covenants or restrictions, that housing units built pursuant to this section shall remain available at affordable housing costs to, and occupied by, persons and families of low- or moderate-income households for the longest feasible time, but for not less than 55 years for rental units and 45 years for owner-occupied units.

(2) In lieu of a 45-year covenant or restriction, the district may subject owner-occupied units to an equity sharing agreement described in paragraph (2) of subdivision (c) of Section 65915.

**53398.57.** Any action or proceeding to attack, review, set aside, void, or annul the creation of a district, adoption of an infrastructure financing plan, including a division of taxes thereunder, or an election pursuant to this chapter shall be commenced within 30 days after the enactment of the resolution creating the district pursuant to Section 53398.69. Consistent with the time limitations of this section, such an action or proceeding with

respect to a division of taxes under this chapter may be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure, except that Section 869 of the Code of Civil Procedure shall not apply.

**53398.58.** An action to determine the validity of the issuance of bonds pursuant to this chapter may be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure. However, notwithstanding the time limits specified in Section 860 of the Code of Civil Procedure, the action shall be commenced within 30 days after adoption of the resolution pursuant to Section 53398.81 providing for issuance of the bonds if the action is brought by an interested person pursuant to Section 863 of the Code of Civil Procedure. Any appeal from a judgment in that action or proceeding shall be commenced within 30 days after entry of judgment.

#### **Article 2. Preparation and Adoption of Infrastructure Financing Plan**

**53398.59.** A legislative body of a city or county may designate one or more proposed enhanced infrastructure financing districts pursuant to this chapter. Proceedings for the establishment of a district shall be instituted by the adoption of a resolution of intention to establish the proposed district and shall do all of the following:

(a) State that an enhanced infrastructure financing district is proposed to be established under the terms of this chapter and describe the boundaries of the proposed district, which may be accomplished by reference to a map on file in the office of the clerk of the city or in the office of the recorder of the county, as applicable.

(b) State the type of public facilities and development proposed to be financed or assisted by the district in accordance with Section 53398.52.

(c) State the need for the district and the goals the district proposes to achieve.

(d) State that incremental property tax revenue from the city or county and some or all affected taxing entities within the district, if approved by resolution pursuant to Section 53398.68, may be used to finance these activities.

(e) Fix a time and place for a public hearing on the proposal.

**53398.60.** The legislative body shall direct the city clerk or county recorder, as applicable, to mail a copy of the resolution of intention to create the district to each owner of land within the district.

**53398.61.** The legislative body shall direct the city clerk or county recorder, as applicable, to mail a copy of the resolution to each affected taxing entity.

**53398.62.** After adopting the resolution pursuant to Section 53398.59, the legislative body shall designate and direct the city or county engineer or other appropriate official to prepare an infrastructure plan pursuant to Section 53398.63.

**53398.63.** After receipt of a copy of the resolution of intention to establish a district, the official designated pursuant to Section 53395.62 shall prepare a proposed infrastructure financing plan. The infrastructure financing plan shall be consistent with the general plan of the city or county within which the district is located and shall include all of the following:

(a) A map and legal description of the proposed district, which may include all or a portion of the district designated by the legislative body in its resolution of intention.

(b) A description of the public facilities and other forms of development or financial assistance that is proposed in the area of the district, including those to be provided by the private sector, those to be provided by governmental entities without assistance under this chapter, those public improvements and facilities to be financed with assistance from the proposed district, and those to be provided jointly. The description shall include the proposed location, timing, and costs of the development and financial assistance.

(c) If funding from affected taxing entities is incorporated into the financing plan, a finding that the development and financial assistance are of communitywide significance and provide significant benefits to an area larger than the area of the district.

(d) A financing section, which shall contain all of the following information:

- (1) 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. The portion need not be the same for all affected taxing entities. The portion may change over time.
  - (2) A projection of the amount of tax revenues expected to be received by the district in each year during which the district will receive tax revenues, including an estimate of the amount of tax revenues attributable to each affected taxing entity for each year.
  - (3) A plan for financing the public facilities to be assisted by the district, including a detailed description of any intention to incur debt.
  - (4) A limit on the total number of dollars of taxes that may be allocated to the district pursuant to the plan.
  - (5) A date on which the district will cease to exist, by which time all tax allocation to the district will end. The date shall not be more than 45 years from the date on which the issuance of bonds is approved pursuant to subdivision (a) of Section 53398.81, or the issuance of a loan is approved by the governing board of a local agency pursuant to Section 53398.87.
  - (6) An analysis of the costs to the city or county of providing facilities and services to the area of the district while the area is being developed and after the area is developed. The plan shall also include an analysis of the tax, fee, charge, and other revenues expected to be received by the city or county as a result of expected development in the area of the district.
  - (7) An analysis of the projected fiscal impact of the district and the associated development upon each affected taxing entity.
  - (8) A plan for financing any potential costs that may be incurred by reimbursing a developer of a project that is both located entirely within the boundaries of that district and qualifies for the Transit Priority Project Program, pursuant to Section 65470, including any permit and affordable housing expenses related to the project.
- (e) If any dwelling units occupied by persons or families are proposed to be removed or destroyed in the course of private development or public works construction within the area of the district, a plan providing for replacement of those units and relocation of those persons or families consistent with the requirements of Section 53398.56.
- (f) The goals the district proposes to achieve for each project financed pursuant to Section 53398.52.

**53398.64.** The infrastructure financing plan shall be sent to each owner of land within the proposed district and to each affected taxing entity together with any report required by the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) that pertains to the proposed public facilities or the proposed development project for which the public facilities are needed, and shall be made available for public inspection. The report shall also be sent to the planning commission and the legislative body.

**53398.65.** The designated official shall consult with each affected taxing entity, and, at the request of any affected taxing entity, shall meet with representatives of an affected taxing entity. Any affected taxing entity may suggest revisions to the plan.

**53398.66.** The legislative body shall conduct a public hearing prior to adopting the proposed infrastructure financing plan. The public hearing shall be called no sooner than 60 days after the plan has been sent to each affected taxing entity. In addition to the notice given to landowners and affected taxing entities pursuant to Sections 53398.60 and 53398.61, notice of the public hearing shall be given by publication not less than once a week for four successive weeks in a newspaper of general circulation published in the city or county in which the proposed district is located. The notice shall state that the district will be used to finance public facilities or development, briefly describe the public facilities or development, briefly describe the proposed financial arrangements, including the proposed commitment of incremental tax revenue, describe the boundaries of the proposed district and state the day, hour, and place when and where any persons having any objections to the proposed infrastructure financing plan, or the regularity of any of the prior proceedings, may appear before the legislative body and object to the adoption of the proposed plan by the legislative body.

**53398.67.** At the hour set in the required notices, the legislative body shall proceed to hear and pass upon all written and oral objections. The hearing may be continued from time to time. The legislative body shall consider

the recommendations, if any, of affected taxing entities, and all evidence and testimony for and against the adoption of the plan. The legislative body may modify the plan by eliminating or reducing the size and cost of proposed facilities or development, by reducing the amount of proposed debt, or by reducing the portion, amount, or duration of incremental tax revenues to be committed to the district.

**53398.68.** (a) The legislative body shall not enact a resolution proposing formation of a district and providing for the division of taxes of any affected taxing entity pursuant to Article 3 (commencing with Section 53398.75) unless a resolution approving the plan has been adopted by the governing body of each affected taxing entity which is proposed to be subject to division of taxes pursuant to Article 3 (commencing with Section 53398.75) and has been filed with the legislative body at or prior to the time of the hearing.

(b) Nothing in this section shall be construed to prevent the legislative body from amending its infrastructure financing plan and adopting a resolution proposing formation of the enhanced infrastructure financing district without allocation of the tax revenues of any affected taxing entity that has not approved the infrastructure financing plan by resolution of the governing body of the affected taxing entity.

**53398.69.** (a) At the conclusion of the hearing, the legislative body may adopt a resolution proposing adoption of the infrastructure financing plan, as modified, and formation of the enhanced infrastructure financing district in a manner consistent with Section 53398.68, or it may abandon the proceedings.

(b) The infrastructure financing plan and the formation of the enhanced infrastructure financing district shall take effect upon the legislative body's adoption of the resolution. The infrastructure financing plan shall specify if the district shall be funded solely through the district's share of tax increment, governmental or private loans, grants, bonds, assessments, fees, or some combination thereof. However, the public financing authority may not issue bonds or levy assessments or fees that may be included in the infrastructure financing plan prior to one or more of the following:

(1) An affirmative vote, pursuant to subdivision (a) of Section 53398.81, to issue bonds to finance the infrastructure financing plan.

(2) Without compliance with the procedures required in subdivision (f) of Section 53398.75, to levy assessments or fees to finance the infrastructure financing plan.

(c) In addition the district may expend up to 10 percent of any accrued tax increment in the first two years of the effective date of the enhanced infrastructure financing district on planning and dissemination of information to the residents within the district's boundaries about the infrastructure financing plan and planned activities to be funded by the district.

**53398.70.** (a) Except as otherwise provided in this chapter, the provisions of law regulating elections of the local agency that calls an election pursuant to this chapter, insofar as they may be applicable, shall govern all elections conducted pursuant to this chapter. Except as provided in subdivision (b), there shall be prepared and included in the ballot material provided to each voter, an impartial analysis pursuant to Section 9160 or 9280 of the Elections Code, arguments and rebuttals, if any, pursuant to Sections 9162 to 9167, inclusive, and Section 9190 of the Elections Code or pursuant to Sections 9281 to 9287, inclusive, and Section 9295 of the Elections Code.

(b) If the vote is to be by the landowners of the proposed district, analysis and arguments may be waived with the unanimous consent of all the landowners and shall be so stated in the order for the election.

**53398.71.** (a) If the election is to be conducted by mail ballot, the election official conducting the election shall provide ballots and election materials pursuant to subdivision (d) of Section 53326 and Section 53327, together with all supplies and instructions necessary for the use and return of the ballot.

(b) The identification envelope for return of mail ballots used in landowner elections shall contain the following:

(1) The name of the landowner.

(2) The address of the landowner.

(3) A declaration, under penalty of perjury, stating that the voter is the owner of record or the authorized representative of the landowner entitled to vote and is the person whose name appears on the identification envelope.

(4) The printed name and signature of the voter.

- (5) The address of the voter.
- (6) The date of signing and place of execution of the declaration pursuant to paragraph (3).
- (7) A notice that the envelope contains an official ballot and is to be opened only by the canvassing board.

**53398.74.** The public financing authority may submit a proposition to establish or change the appropriations limit, as defined by subdivision (h) of Section 8 of Article XIII B of the California Constitution, of a district to the qualified electors of a proposed or established district. The proposition establishing or changing the appropriations limit shall become effective if approved by the qualified electors voting on the proposition and shall be adjusted for changes in the cost of living and changes in populations, as defined by subdivisions (b) and (c) of Section 7901, except that the change in population may be estimated by the legislative body in the absence of an estimate by the Department of Finance, and in accordance with Section 1 of Article XIII B of the California Constitution. For purposes of adjusting for changes in population, the population of the district shall be deemed to be at least one person during each calendar year. Any election held pursuant to this section may be combined with any election held pursuant to Section 53398.80 in any convenient manner.

### Article 3. Division of Taxes

**53398.75.** (a) Any infrastructure financing plan may contain a provision that taxes, if any, levied upon taxable property in the area included within the enhanced infrastructure financing district each year by or for the benefit of the State of California, or any affected taxing entity after the effective date of the ordinance adopted pursuant to Section 53398.69 to create the district, shall be divided as follows:

(1) That portion of the taxes that would be produced by the rate upon which the tax is levied each year by or for each of the affected taxing entities upon the total sum of the assessed value of the taxable property in the district as shown upon the assessment roll used in connection with the taxation of the property by the affected taxing entity, last equalized prior to the effective date of the ordinance adopted pursuant to Section 53398.69 to create the district, shall be allocated to, and when collected shall be paid to, the respective affected taxing entities as taxes by or for the affected taxing entities on all other property are paid.

(2) That portion of the levied taxes each year specified in the adopted infrastructure financing plan for the city or county and each affected taxing entity that has agreed to participate pursuant to Section 53398.68 in excess of the amount specified in subdivision (a) shall be allocated to, and when collected shall be paid into a special fund of, the district for all lawful purposes of the district. Unless and until the total assessed valuation of the taxable property in a district exceeds the total assessed value of the taxable property in the district as shown by the last equalized assessment roll referred to in subdivision (a), all of the taxes levied and collected upon the taxable property in the district shall be paid to the respective affected taxing entities. When the district ceases to exist pursuant to the adopted infrastructure financing plan, all moneys thereafter received from taxes upon the taxable property in the district shall be paid to the respective affected taxing entities as taxes on all other property are paid.

(b) Notwithstanding subdivision (a), where any district boundaries overlap with the boundaries of any former redevelopment project area, any debt or obligation of a district shall be subordinate to any and all enforceable obligations of the former redevelopment agency, as approved by the Oversight Board and the Department of Finance. For the purposes of this chapter, the division of taxes allocated to the district pursuant to subdivision (a) of this section or of subdivision (b) of Section 53396 shall not include any taxes required to be deposited by the county auditor-controller into the Redevelopment Property Tax Trust Fund created pursuant to subdivision (b) of Section 34170.5 of the Health and Safety Code.

(c) The legislative body of the city or county forming the district may choose to dedicate any portion of its net available revenue to the district through the financing plan described in Section 53398.63.

(d) For the purposes of this section, "net available revenue" means periodic distributions to the city or county from the Redevelopment Property Tax Trust Fund, created pursuant to Section 34170.5 of the Health and Safety Code, that are available to the city or county after all preexisting legal commitments and statutory obligations funded from that revenue are made pursuant to Part 1.85 (commencing with Section 34170) of Division 24 of the Health and Safety Code. "Net available revenue" shall not include any funds deposited by the county auditor-controller into the Redevelopment Property Tax Trust Fund or funds remaining in the Redevelopment Property Tax Trust Fund prior to distribution. Net available revenues shall not include any moneys payable to a school district that maintains kindergarten and grades 1 to 12, inclusive, community college districts, county office of education, or to the Educational Revenue Augmentation Fund, pursuant to paragraph (4) of subdivision (a) of Section 34183 of the Health and Safety Code.

(e) (1) That portion of any ad valorem property tax revenue annually allocated to a city or county pursuant to Section 97.70 of the Revenue and Taxation Code that is specified in the adopted infrastructure financing plan for the city or county that has agreed to participate pursuant to Section 53398.68, and that corresponds to the increase in the assessed valuation of taxable property shall be allocated to, and when collected shall be apportioned to a special fund of the district for all lawful purposes of the district.

(2) When the district ceases to exist pursuant to the adopted infrastructure financing plan, the revenues described in this subdivision shall be allocated to, and when collected, shall be apportioned to the respective city or county.

(f) This section shall not be construed to prevent a district from utilizing revenues from any of the following sources to support its activities provided that the applicable voter approval has been obtained, and the infrastructure financing plan has been approved pursuant to Section 53398.69:

(1) The Improvement Act of 1911 (Division 7 (commencing with Section 5000) of the Streets and Highways Code).

(2) The Municipal Improvement Act of 1913 (Division 12 (commencing with Section 10000) of the Streets and Highways Code).

(3) The Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500) of the Streets and Highways Code).

(4) The Landscaping and Lighting Act of 1972 (Part 2 (commencing with Section 22500) of Division 15 of the Streets and Highways Code).

(5) The Vehicle Parking District Law of 1943 (Part 1 (commencing with Section 31500) of Division 18 of the Streets and Highways Code).

(6) The Parking District Law of 1951 (Part 4 (commencing with Section 35100) of Division 18 of the Streets and Highways Code).

(7) 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).

(8) The Mello-Roos Community Facilities Act of 1982 (Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of this title).

(9) The Benefit Assessment Act of 1982 (Chapter 6.4 (commencing with Section 54703) of Part 1 of Division 2 of this title).

(10) 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.

**53398.76.** All costs incurred by a county in connection with the division of taxes pursuant to Section 53398.75 for a district shall be paid by that district.

#### **Article 4. Tax Increment Bonds**

**53398.77.** The public financing authority may, by majority vote, initiate proceedings to issue bonds pursuant to this chapter by adopting a resolution stating its intent to issue the bonds.

**53398.78.** The resolution adopted pursuant to Section 53398.77 shall contain all of the following information:

- (a) A description of the facilities or developments to be financed with the proceeds of the proposed bond issue.
- (b) The estimated cost of the facilities or developments, the estimated cost of preparing and issuing the bonds, and the principal amount of the proposed bond issuance.
- (c) The maximum interest rate and discount on the proposed bond issuance.
- (d) The date of the election on the proposed bond issuance and the manner of holding the election.
- (e) A determination of the amount of tax revenue available or estimated to be available, for the payment of the principal of, and interest on, the bonds.

(f) A finding that the amount necessary to pay the principal of, and interest on, the proposed bond issuance will be less than, or equal to, the amount determined pursuant to subdivision (e).

**53398.79.** The clerk of the public financing authority shall publish the resolution adopted pursuant to Section 53398.77 once a day for at least seven successive days in a newspaper published in the city or county at least six days a week, or at least once a week for two successive weeks in a newspaper published in the city or county less than six days a week.

If there are no newspapers meeting these criteria, the resolution shall be posted in three public places within the territory of the district for two succeeding weeks.

**53398.80.** (a) The public financing authority shall submit the proposal to issue the bonds to the voters who reside within the district. If the public financing authority adopts a resolution proposing initiation of proceedings to issue bonds pursuant to Section 53398.77, it shall then submit that proposal, together with the information specified in subdivisions (a) to (c), inclusive, of Section 53398.78, to the qualified electors of the district in the next general election or in a special election to be held, notwithstanding any other requirement, including any requirement that elections be held on specified dates, contained in the Elections Code, at least 90 days but not more than 180 days following the adoption of the resolution of bond issuance. The public financing authority shall provide the resolution of bond issuance, a certified map of sufficient scale and clarity to show the boundaries of the district, and a sufficient description to allow the election official to determine the boundaries of the district to the official conducting the election within three business days after the adoption of the resolution of bond issuance. The assessor's parcel numbers for the land within the district shall be included if it is a landowner election or the district does not conform to an existing district's boundaries and if requested by the official conducting the election. If the election is to be held less than 125 days following the adoption of the resolution of bond issuance, the concurrence of the election official conducting the election shall be required. However, any time limit specified by this section or requirement pertaining to the conduct of the election may be waived with the unanimous consent of the qualified electors of the proposed district and the concurrence of the election official conducting the election.

(b) If at least 12 persons have been registered to vote within the territory of the district for each of the 90 days preceding the close of the hearing, the vote shall be by the registered voters of the district, who need not necessarily be the same persons, with each voter having one vote. Otherwise, the vote shall be by the landowners of the district and each landowner who is the owner of record at the close of the protest hearing, or the authorized representative thereof, shall have one vote for each acre or portion of an acre of land that he or she owns within the district. The number of votes to be voted by a particular landowner shall be specified on the ballot provided to that landowner.

(c) Ballots for the special election authorized by subdivision (a) may be distributed to qualified electors by mail with return postage prepaid or by personal service by the election official. The official conducting the election may certify the proper mailing of ballots by an affidavit, which shall be exclusive proof of mailing in the absence of fraud. The voted ballots shall be returned to the election officer conducting the election not later than the hour specified in the resolution calling the election. However, if all the qualified voters have voted, the election shall be closed.

**53398.81.** (a) The bonds may be issued if 55 percent of the voters voting on the proposition vote in favor of issuing the bonds.

(b) If the voters approve the issuance of the bonds as provided by subdivision (a), the public financing authority shall proceed with the issuance of the bonds by adopting a resolution that shall provide for all of the following:

- (1) The issuance of the bonds in one or more series.
- (2) The principal amount of the bonds that shall be consistent with the amount specified in subdivision (b) of Section 53398.78.
- (3) The date the bonds will bear.
- (4) The date of maturity of the bonds.
- (5) The denomination of the bonds.
- (6) The form of the bonds.
- (7) The manner of execution of the bonds.

(8) The medium of payment in which the bonds are payable.

(9) The place or manner of payment and any requirements for registration of the bonds.

(10) The terms of call or redemption, with or without premium.

**53398.82.** If any proposition submitted to the voters pursuant to this chapter is defeated by the voters, the public financing authority shall not submit, or cause to be submitted, a similar proposition to the voters for at least one year after the first election.

**53398.83.** The public financing authority may, by majority vote, provide for refunding of bonds issued pursuant to this chapter. However, refunding bonds shall not be issued if the total net interest cost to maturity on the refunding bonds plus the principal amount of the refunding bonds exceeds the total net interest cost to maturity on the bonds to be refunded. The public financing authority may not extend the time to maturity of the bonds.

**53398.84.** The public financing authority or any person executing the bonds shall not be personally liable on the bonds by reason of their issuance. The bonds and other obligations of a district issued pursuant to this chapter are not a debt of the city, county, or state or of any of its political subdivisions, other than the district, and none of those entities, other than the district, shall be liable on the bonds and the bonds or obligations shall be payable exclusively from funds or properties of the district. The bonds shall contain a statement to this effect on their face. The bonds do not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation.

**53398.85.** The bonds may be sold at discount not to exceed 5 percent of par at public sale. At least five days prior to the sale, notice shall be published, pursuant to Section 6061, in a newspaper of general circulation and in a financial newspaper published in the City and County of San Francisco and in the City of Los Angeles. The bonds may be sold at not less than par to the federal government at private sale without any public advertisement.

**53398.86.** If any member of the public financing authority whose signature appears on bonds ceases to be a member of the public financing authority before delivery of the bonds, his or her signature is as effective as if he or she had remained in office. Bonds issued pursuant to this chapter are fully negotiable.

**53398.87.** Upon the approval of its governing board, a city, county, or special district that contains territory within the boundaries of a district, may loan moneys to the district to fund those activities described in the infrastructure financing plan approved and adopted pursuant to Section 53398.69. Moneys loaned pursuant to this provision may be repaid at an interest rate that does not exceed the Local Agency Investment Fund rate that is in effect on the date that the loan is approved by the governing board. Notwithstanding any other provision of law it is the intent of the Legislature that any loan issued to a public financing authority by a governmental entity shall be repaid fully unless agreed to otherwise between the authority and the governmental entity.

**53398.88.** (a) Every two years after the issuance of debt pursuant to Section 53398.81, the district shall contract for an independent financial and performance audit. The audit shall be conducted according to guidelines established by the Controller. A copy of the completed audit shall be provided to the Controller, the Director of Finance, and to the Joint Legislative Budget Committee.

(b) Upon the request of the Governor or of the Legislature, the Bureau of State Audits shall be authorized to conduct financial and performance audits of districts. The results of the audits shall be provided to the district, the Controller, the Director of Finance, and the Joint Legislative Budget Committee.

**SEC. 2.** No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.



# ENHANCED INFRASTRUCTURE FINANCING DISTRICT: HOW TO CREATE A NEW DISTRICT AND FINANCE PROJECTS

## **Step 1: Identify what needs to be done**

To create an EIFD, a city or county—or a group of cities, counties, and special districts—should identify one or more needed investments and their desired outcomes.

## **Step 2: Locate available funding streams appropriate to the project**

Once created, the district can determine the mix of funding streams available to fund these investments. These include:

- **Assessment revenues:** The new EIFD authority allows local agencies to conduct benefit assessments of each property—determining how much property owners would directly benefit from the infrastructure investment—and then access these resources using existing Integrating Investment Act (IIA) authority. This will require only a simple majority vote of the properties within the district.
- **Fee revenues:** The EIFD can also fund investments by levying user fees under the Infrastructure Financing Authority Act (IFAA). These fees, in turn, can leverage further private investment. The IFAA is governed by vote requirements under Prop 26 (2010).
- **Capturing economic growth:** To the extent the investment will increase economic value, the growth in property tax revenues can be used as security for the issuance of tax allocation bonds or used as “availability payments” to attract private investment.

## **Step 3: Establish a link between payer and beneficiary**

While all of these funding streams can be used in conjunction with each other, a final strategic plan combining these resources must include one last consideration: For each project and property involved, a link must be established between the payer and the beneficiary.

This is a potentially complex task, one that has caused local governments for years to turn to sales tax measures and state bonds to support infrastructure projects. But planning innovations are making this approach more feasible. In the “Blueprint” growth-visioning process used by the Southern California Association of Governments, for example, planners relied on geographic informational systems analysis and modeling to identify when specific land parcels experienced a “tipping point” in value as a result of public infrastructure and land-use investments. A modification of this analysis under development will allow the same approach to be used for water infrastructure—giving planners a way to determine how geomorphology within an EIFD, for example, determines how water runoff impacts individual land parcels.

By using these tools, the proportionality analysis needed to satisfy Prop 218 and Prop 26 can be established—and an EIFD can tap into a wealth of new revenue streams directly linking infrastructure beneficiaries with taxpayers. This will empower local leaders to address local infrastructure issues—and give California a way to take on one of its preeminent fiscal challenges.



## FUNDING SUSTAINABLE COMMUNITIES: A GUIDE TO SB 628'S ENHANCED INFRASTRUCTURE FINANCING DISTRICTS

While California's economic outlook is beginning to brighten, the state still faces some imposing fiscal challenges in the years ahead, especially in finding ways to meet the infrastructure needs of its growing population.

With state resources unable to close funding gaps expected to rise into the hundreds of billions of dollars over the next decade, the California Economic Summit's Infrastructure Action Team has been working with the Administration and Legislature to provide communities with an array of financing tools they can use to take on these challenges themselves.

SB 628 (Beall), signed by the governor in September, accomplishes this by expanding an existing local financing authority that will allow cities and other local agencies to create new "Enhanced Infrastructure Financing Districts" (EIFDs) that will be able to invest in everything from long-neglected roads and water systems to the mass-transit, affordable housing, and sustainable communities upon which California's long-term prosperity depends.

### HOW NEW EIFDs WILL IMPROVE LOCAL INFRASTRUCTURE DEVELOPMENT

- **Reduce vote requirement:** While current law requires a two-thirds vote to form an Infrastructure Financing District, a new EIFD can be formed—and can use a range of existing financial tools—without a vote. Only issuing bonds supported by growth in the property tax would require a vote, with a vote threshold of 55 percent.
- **Expand financing authority:** The new EIFDs will allow one or more local agencies to support infrastructure projects through multiple funding streams, including a full complement of existing public mechanisms (assignment of growth in the property tax, benefit assessments, and fees), as well as private investment.
- **Increase investment in different types of infrastructure:** The enhanced districts will be able to build every type of infrastructure: transportation, water, flood control and storm water quality management, transportation, energy, public facilities, energy, and environmental mitigation—so long as a direct connection can be established between the needed infrastructure and its users.
- **Allow more flexible institutional collaborations:** The EIFD statute gives communities more flexibility to accommodate sub-regional and regional growth by making infrastructure investments across jurisdictions.



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## **SB 628 (Beall)** **Enhanced Infrastructure Financing District (EIFD)<sup>1</sup>**

SB 628 (Beall) authorizes the creation of a new governmental entity called an Enhanced Infrastructure Financing District (EIFD). One or more<sup>2</sup> of these districts may be created within a city or county<sup>3</sup> and used to finance the construction or rehabilitation of a wide variety of public infrastructure and private facilities. An EIFD may fund these facilities and development with the property tax increment of those taxing agencies (cities, counties, special districts, but not schools) that consent. EIFD's are also authorized to combine tax increment funding with other permitted funding sources including:

- Property tax revenue distributed to a city, county or special district after payment of a successor agency's debts<sup>4</sup>.
- Revenues dedicated by a city or county to the EIFD from property tax corresponding to the increase in assessed valuation of taxable property attributed to those property tax shares received by a city or county pursuant to in lieu of VLF<sup>5</sup>.
- Fee or assessment revenues derived from one of 10 specified existing sources.<sup>6</sup>
- Loans from a city, county or special district, that must be repaid at no more than the LAIF interest rate that is in effect on the date the loan is approved by the governing board of the city, county or special district making the loan<sup>7</sup>.

Facilities financed<sup>8,9</sup> by an EIFD may include *but are not limited to*:

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<sup>1</sup> This document is intended to be an initial explanation for city officials of the key elements of SB 628 (Beall). It is expected that there will be clean up legislation in the 2015 legislative session to address several technical issues. The League will be working with city attorneys to carefully review this law and propose various clarifications.

<sup>2</sup> Having the option to have more than one district provides significant flexibility for cities and counties. The ability to have non-contiguous areas within a district, pursuant to Sec. 53398.54 (c), provides additional flexibility. For instance, a city could create several districts within its territory, each with a different focus. Two cities could form a district with a county to fund new or upgraded infrastructure to attract a major employer. A county or more than one county could form a much larger IFD in conjunction with cities and special districts that focuses on improving projects of larger or regional benefit such as improving water systems, sanitation, or stormwater systems.

<sup>3</sup> Given the definition of "legislative body" which is authorized to create a district is restricted to cities and counties, it appears that only a city or county may initiate the creation of a district. Special districts have the option of participating in the financing of a district as an "affected taxing entity."

<sup>4</sup> This option provides flexibility to dedicate some or all of these additional funds to a district.

<sup>5</sup> Section 97.70 of the Revenue and Taxation Code. This option significantly expands the revenue that could be dedicated to a district.

<sup>6</sup> The EIFD may utilize revenues that are dedicated to it from benefit assessments under the 1911 Act, the 1913 Act and other laws providing for financing of public improvements through special benefit assessments; or special taxes as part of a Mello-Roos Community Facilities District. In addition, the Public Financing Authority of an EIFD, Sec. 53398.69 (b), may also impose those assessments and fees subject to the applicable requirements in the authorizing statutes. Proposition 218 includes certain procedural and substantive requirements that apply to benefit assessments and special taxes.

<sup>7</sup> Presumably these loans can be made either early on to help establish an EIFD, or over time via a dedicated revenue stream.

<sup>8</sup> Activities that may be financed by an EIFD include the purchase, construction, expansion, improvement, seismic retrofit or rehabilitation of any real or other tangible property with a useful life of 15 years or longer;

### **Public Infrastructure and Facilities:**

- Highways, interchanges, ramps and bridges, arterial streets, parking and transit facilities.
- Sewage treatment, water reclamation plants and interceptor pipes.
- Facilities for the transfer and disposal of solid waste, including transfer stations and vehicles.
- Facilities to collect and treat water for urban uses.
- Flood control levees and dams, retention basins, and drainage canals.
- Parks, recreational facilities, open space and libraries.
- Brownfield restoration and other environmental mitigation. A district may use any powers of the Polanco Redevelopment Act to remediate property.
- Projects on a closed military base consistent with approved base reuse plans. Funds may also be used to repay loans made pursuant to Section 67851 to a military base reuse authority on or after the creation of the district.

### **Private Facilities:**

- Acquisition, construction and repair of industrial structures for private use.
- Transit priority projects as defined under Section 21155 of the Public Resources Code.
- Projects which implement a sustainable communities strategy.
- Mixed-income housing developments (An EIFD may fund only those units dedicated to low or moderate income housing, and child care, after-school care and social services integrally linked to the tenant of the restricted.
- Reimbursement of a developer located within the boundaries of a district for permit and other expenses incurred when constructing affordable housing pursuant to the Transit Priority Project Program under Section 65470 of the Government Code.
- Facilities constructed to house providers of consumer goods and services.<sup>10</sup>
- Child care facilities.

### **Summary of Key Terms**

- **Enhanced Infrastructure Financing District:** An EIFD is a governmental entity established by a city or a county that carries out a plan within a defined area (boundaries of which do not need to be contiguous) to construct, improve and rehabilitate infrastructure; construct housing, libraries, and parks; remediate brownfields, etc.
- **Public Financing Authority:** The PFA is legislative body that governs the EIFD. It is comprised of 3 members of the legislative body of the

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associated planning and design work, costs associated with any removal and required replacement of affordable housing units, and costs associated with any legal challenge to an adopted plan.

<sup>9</sup> Facilities financed need not be located within the boundaries of a district, but must have a “tangible connection” to the work of the district as detailed in the infrastructure financing plan adopted by the EIFD.

<sup>10</sup> While this authorization is not contained in the long list of possible facilities and projects contained in Section 53398.52, it is specifically listed as an illustrative example in Section 53398.50.

participating affected taxing entity plus two members of the public. If more than one taxing entity agrees to participate in the EIFD, then the majority of the body must be members of the legislative bodies<sup>11</sup> of the taxing entities with at least two public members.

- **Infrastructure Financing Plan:** The EIFD, governed by the PFA, implements an Infrastructure Financing Plan adopted by the city or county<sup>12</sup> that describes the type of public facilities and development that will be financed by the EIFD.

## Process for Creating an EIFD

SB 628<sup>13</sup> provides that a city or county that created a redevelopment agency may not create an EIFD or participate on the PFA until each of the following has occurred<sup>14</sup>:

- The successor agency receives a finding of completion from DOF;
- The city/county certifies<sup>15</sup> to DOF that no former redevelopment agency assets are the subject of litigation involving the state, where the city, successor agency or designated local authority are a named plaintiff, have been or will be used to benefit any efforts on an EIFD until the legal process has concluded<sup>16</sup>;
- The State Controller has completed its review of agency-city/county asset transfers after January 1, 2011, pursuant to section 34167.5; and the successor agency has complied with the findings and orders of the State Controller stemming from those reviews.

If an EIFD is created within a former redevelopment project area, property tax within the area must first be used for payment of the successor agency's enforceable obligations.

## Adoption of Infrastructure Financing Plan

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<sup>11</sup> The definition of "legislative body" is limited to cities and counties. Clarifying those special districts that consent to participating in the financing of an EIFD must serve on the governing body of the Public Finance Authority may be a subject for legislative clean up.

<sup>12</sup> The League believes that a clean-up amendment is needed to this structure to provide for the adoption of the plan by the Public Financing Authority rather than the city or county that initiated the EIFD.

<sup>13</sup>. An EIFD may include any portion of a former redevelopment project area. However while alternative mechanisms such as an EIFD are discussed, enacted, and utilized, property tax continues to be the primary source of funding for former redevelopment agency debts. To make sure that the dissolution process continues uninterrupted in territory of a former RDA property tax flow to and EIFD is subordinate to all enforceable obligations of the former RDA.,

<sup>14</sup> It is likely that most cities considering the possible creation of on EIFD would conduct preliminary outreach to their property owners and residents as well as have exploratory discussions with other taxing entities about possible uses of the tool. All of these preliminary activities could occur before any decision by a city to initiate the creation of a district or decide to participate in its financing.

<sup>15</sup> Certification must be sent to DOF within 10 days of a legislative body's decision to form an EIFD or participate in the financing of and EIFD.

<sup>16</sup> This means that an EIFD may be created and begin to collect tax increment (if available after payment of successor agency enforceable obligations), provided that no assets of a former RDA that is the subject of pending litigation is or will be affected by the EIFD.

Once any certification associated with the dissolution of a former redevelopment agency is completed, the initiating city or county may establish one or more districts by resolution<sup>17</sup>. Following that, the city or county directs the preparation of an infrastructure financing plan<sup>18</sup> that includes the details of the public facilities and other forms of development that is proposed within the area of the district and how those facilities and development will be funded.<sup>19</sup>

A variety of funding sources are available. The legislation envisions the main funding source will be property tax increment generated within the area encompassed by the EIFD. The preparation of an infrastructure financing plan will include discussions with other taxing entities (county, special districts) to determine whether they consent to transferring their share of the property tax increment or other eligible revenue to the EIFD for the purpose of financing facilities and development. Amounts contributed to the district by other taxing entities need not be the same for all taxing entities. There is flexibility for amounts contributed to vary and change over time.

Prior to approving a plan, the legislative body shall hold a public hearing with ample notice provisions to provide an opportunity for comments from landowners within the district, taxing agencies, and members of the public. Upon adoption, the plan is transferred to the PFA for implementation.

## **Housing Replacement Requirements**

- *Replacement housing*<sup>20</sup>: If housing within the District will be removed or destroyed because of private development or public works construction initiated by the PFA, then the Infrastructure Financing Plan must include a plan to replace the units removed on a (1) 1 for 1 basis if they were occupied by low or moderate income families; and (2) 1:4 basis if they were not occupied by low or moderate income families. Relocation benefits must also be paid to displaced tenants.
- *Affordability*: Affordable housing constructed to replace removed or destroyed units or otherwise financed by the district must be affordable to and occupied by low or moderate income households. Covenants must be recorded to ensure continued affordability for not less than 55 years for rental units and 45 years for owner-occupied units.

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<sup>17</sup> The drafting requires that the city or county ensure that the public financing authority is established prior to adopting a resolution to adopting a plan or forming a district. Sec. 53398.51.1. This sequencing issue may also need to be addressed in clean up legislation.

<sup>18</sup> League proposed clean-up amendments would have the preparation of the plan performed by the Public Financing Authority

<sup>19</sup> The process for developing and adopting a plan is detailed in Sections 53398.59- 53398.76. While the process is quite detailed, it is fairly logical, and reflects the expected public process for developing such a plan.

<sup>20</sup> Local agencies that plan for the District to finance affordable housing should review the provisions applicable to housing replacement and relocation carefully.

## Provisions Affecting Issuing Bonds, Loans and Audits

The PFA may issue bonds payable from funds<sup>21</sup> or properties of the district with 55% voter approval of either voters or landowners within the District.<sup>22</sup> If at least 12 persons are registered to vote within the District, then the vote is by registered voters. If fewer than 12 persons are registered, then the vote is by landowners within the District. Each landowner has one vote for each acre or portion of an acre of land that s/he owns. A public agency is not considered a “landowner” unless all of the land in the district is owned by the public agency.

A city, county, or special district that contains territory within the District may loan moneys to the District to fund the activities described in the Plan at the LAIF rate of interest in effect at the time of the loan.

Every two years after the issuance of bonds, the District must contract for an independent financial and performance audit conducted according to guidelines established by the Controller. A copy of the audit is provided to the Controller, DOF, and to the Joint Legislative Budget Committee.

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<sup>21</sup> Clearly property tax increment from the district can be dedicated to the repayment of bonds. However, other revenue sources referenced in this statute could be used to augment a bond issuance by the District such as net revenue received by affected taxing entities from redevelopment dissolution, property tax allocations received by cities and counties in lieu of VLF, and potentially assessment or fee revenue dedicated to the District, or long-term loans from an affected taxing entity pursuant to Section 53398.7 that may be repaid from bond proceeds at LAIF rates when the District concludes its work.

<sup>22</sup> Note: this vote requirement applies to the issuance of “bonds.” Additional language added to Section 53398.74) related to appropriations limits states that the PFA *may* submit an appropriations limit for voter approval when it asks for their approval for the issuance of bonds. From the League’s initial legal review it does not appear –similar to how this issue did not apply to redevelopment agencies—that an EIFD is required to adopt an appropriations limit. Clarifying clean-up language similar to that which was adopted for redevelopment agencies is under consideration.