February 16, 2016

SB 628 (Beall)[1]
Enhanced Infrastructure Financing District (EIFD)

SB 628 (Beall) authorizes the creation of a new governmental entity called an Enhanced Infrastructure Financing District (EIFD). One or more[2] of these districts may be created within a city or county[3] 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[4].
- 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[5].
- Fee or assessment revenues derived from one of 10 specified existing sources.[6]
- 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[7].

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[1] This document is intended to be an explanation for city officials of the key elements of Enhanced Infrastructure Finance District Law (EIFD). This document also reflects amendments made to EIFD Law by AB 313 (Atkins), Chapter 320, Statutes of 2015.

[2] 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 EIFD 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.

[3] Given the definition of "legislative body" which is authorized to create a district is restricted to cities and counties, only a city or county may initiate the creation of a district. Special districts that receive property tax revenues have the option of participating in the financing of a district as an "affected taxing entity."

[4] This option provides flexibility to dedicate some or all of these additional funds to a district.

[5] Section 97.70 of the Revenue and Taxation Code. This option significantly expands the revenue that could be dedicated to a district.

[6] 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.

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

Facilities financed[8][9] by an EIFD may include:[10]

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 under the Polanco Redevelopment Act or Hazardous Material Release Cleanup Law[11] 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.

Public capital facilities do not need to be physically located within the boundaries of the district but must be of "communitywide significance" and provide "significant benefits" to the district or the surrounding community.

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 very low, 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.[12]

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[8] 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; 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.

[9] 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.

[10] There is additional flexibility in what the tool can be used for. The listing of 16 different categories in Section 53398.52(b) is prefaced by the phrase "including but not limited to."

[11] Health & Safety Code 25403 and following

[12] 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.

- 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 the governing body of the EIFD. It is comprised of 3 members of the city council or county board of supervisors that established the EIFD plus two members of the public. If more than one taxing entity agrees to participate in the EIFD, then the majority of the PFA must be members of the legislative bodies of the participating taxing entities with at least two public members. After the city or county creates the EIFD, the PFA is tasked with adopting and implementing the infrastructure financing plan.
- **Infrastructure Financing Plan**: The EIFD, governed by the PFA, implements an Infrastructure Financing Plan adopted by the PFA that describes the type of public facilities and development that will be financed by the EIFD.

Process for Creating an EIFD

SB 628[13] 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[14]:

- The successor agency receives a finding of completion from DOF;
- The city/county certifies[15] 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[16];

[13]. 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 enforceable obligations of the successor agency. To make sure that the dissolution process continues uninterrupted in territory of a former RDA property tax flow to an EIFD is subordinate to all enforceable obligations of the former RDA.,

[14] 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.

[15] 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.

[16] 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.

- 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

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[17]. Following that, the PFA directs the preparation of an infrastructure financing plan 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.[18]

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 PFA 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.

Housing Replacement Requirements

- *Replacement housing*[19]: If housing within the District will be removed or destroyed because of public works construction or private development subject to a written agreement with the district or financed by the district, then the Infrastructure Financing Plan must include a plan to replace the units removed within one-half mile and within two years on a (1) 1 for 1 basis if they were occupied by very low, low or moderate income families if

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[17] The PFA must be established at the same time the resolution of intention to establish an EIFD is adopted. Section 53398.51.1(b).

[18] 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.

[19] Local agencies that plan for the District to finance affordable housing should review the provisions applicable to housing replacement and relocation carefully. Significant replacement requirements apply should be carefully reviewed.

they were occupied by those households within five years prior to the creation of the district; and (2) 1:4 basis if they were not occupied by low or moderate income families. Replacement housing must be affordable to persons in the income categories displaced. 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 very low, 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.

Provisions Affecting Issuing Bonds, Loans and Audits

The PFA may issue bonds payable from funds[20] or properties of the district with 55% voter approval of either voters or landowners within the District.[21] 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.

[20] 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.

[21] Note: this vote requirement applies to the issuance of "bonds" by a District. As an alternative to incurring debt through the issuance of bonds, a District may opt to borrow funds from other sources and pledge its tax increment revenues for repayment. Additional language added to Section 53398.74 by AB 313 clarifies that the Constitutional appropriations limit does not apply.