

ENVIRONMENT

Enhanced Infrastructure Financing Districts (SB 628, Beall)

A New Power Tool for Growth in California

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HIGHLIGHTS:

Now signed into law, SB 628 offers new promise for redevelopment agencies hoping to kick-start more productive uses for dormant projects and land.

The statute authorizes municipalities and counties to create Enhanced Infrastructure Financing Districts (EIFDs), which can fund infrastructure development and community revitalization.

Gov. Jerry Brown signed SB 628 on Sept. 29, 2014, ushering in a long-promised heir to redevelopment agencies.¹ The enrolled statute is now available online and offers much promise for kick-starting dormant projects and land into more productive uses.²

The statute authorizes municipalities and counties to create a powerful new tool, Enhanced Infrastructure Financing Districts (EIFDs), which can fund infrastructure development and community revitalization. However, unlike redevelopment agencies, EIFDs cannot reduce the funding available for public schools. In fact, counties and schools stand to benefit from the increased property values and accelerated home sales that targeted infrastructure investments can catalyze. EIFDs do not levy new taxes or divert revenue from any nonconsenting municipality or special district. Instead, they provide a streamlined new tool for multiple layers of government to allocate existing and anticipated new tax revenue toward realizing shared goals.

EIFDs can:

- be created and adopt an infrastructure financing plan, by act of a county or city legislative body, instead of requiring a vote by 2/3 of the electorate

- issue bonds based on tax increment financing (TIF), contingent on a vote of 55 percent of the electorate instead of a 2/3 majority; if less than 12 persons are registered to vote in the EIFD, the vote is held by the landowners of the district, with one vote for each acre (or portion of an acre) owned

- establish a bond period of up to 45 years from the date of bonding approval – at least 15 years longer than traditional Infrastructure Financing Districts (IFDs)

- serve a broader range of purposes than traditional IFDs (e.g., funding transit priority projects, low- and moderate-income housing, actions under Sustainable Communities Strategies, environmental remediation and more)

- be layered with Community Facility Districts (CFDs) so that operating costs in addition to capital costs can be covered

- exercise full Polanco Redevelopment Act (environmental cleanup) powers and liability protections, including the exercise of eminent domain

- be jointly governed by representatives of multiple taxing entities (e.g., counties, municipalities and special districts), all of whom must consent to the EIFDs' use of property taxes they would otherwise collect

While SB 628 does not revive the era of redevelopment agencies, EIFDs give local governments a promising new tool for tax-increment financing, with significantly greater flexibility for investment and substantially streamlined procedures than exist under current law.

Background

Until 2011, California's Community Development Law authorized local redevelopment agencies (RDAs) to capture a broad range of tax revenue to fund infrastructure and revitalization projects designated as "blighted." Citing the cost to the State General Fund, Gov. Brown successfully urged the California Legislature to deauthorize and defund RDAs, actions which were later affirmed by the California Supreme Court. While successor agencies were proposed in companion legislation, the state supreme court found this aspect of the RDA dissolution statutory framework unconstitutional.³

In the absence of redevelopment agencies, some local governments turned to other development tools such as Mello-Roos CFDs and traditional IFDs. Many local governments find these options insufficient, since they require super-majority voter approvals (i.e., a two-thirds threshold) and can only finance a limited range of investments with a limited range of funding sources.

Gov. Brown proposed a new tool, Enhanced Infrastructure Financing Districts, in his 2014 budget, and the proposal was later carried by Sen. Jim Beall (D-San Jose) through SB 628. The legislature passed SB 628 on the last day of the 2014 legislative session and the governor signed the bill into law on Sept. 29.

A Closer Look at SB 628's Provisions

EIFDs provide several powerful financing tools that offer flexibility to local governments seeking to invest in infrastructure and community revitalization. Benefits include:

Lower threshold for voter approval: Under existing law, local governments must achieve multiple voter approvals before they can create IFDs or CFDs and begin using them to fund infrastructure. Local governments cannot create traditional IFDs or adopt infrastructure finance plans until they obtain two-thirds voter approval.⁴ Under SB 628, local governments can vote to form an EIFD and to adopt infrastructure development plans, without also having to hold an election.⁵ Voter approval is still required before an EIFD can issue tax-increment bonds, but the threshold for approval has been reduced to 55 percent rather than two-thirds.⁶ If less than 12 persons are registered to vote in the district, the vote is held by the landowners of the district, with one vote for each acre (or portion of an acre) owned (i.e., same as with traditional IFDs).

Wider range of infrastructure investments: Traditional IFDs could only fund "public capital facilities," but the new enhanced districts would be able to fund "other specific projects of communitywide significance," specifically including brownfield restoration and other environmental mitigation; transit priority projects; projects that implement a sustainable communities strategy; and the acquisition, construction, or rehabilitation of industrial structures and low- and moderate-income housing.⁷ Facilities need not be physically located in the district as long as they have a tangible connection to the district and provide significant benefits to it.⁸

Expanded financing authority: Local governments can choose to dedicate significantly more revenue sources to the funding of infrastructure than is permitted under IFD law.⁹ Specifically, local governments can elect to devote portions of their periodic distributions from the Redevelopment Property Tax Trust Fund, funds received from the Mello-Roos Community Facilities Act of 1982 and funds from the Benefit Assessment Act of 1982, among other revenue streams.

Enhanced collaboration among agencies: To facilitate regional and local collaboration, SB 628 allows the multiple taxing entities that contribute revenue to an EIFD as well as members of the public to have a seat on the EIFD governing board.¹⁰

Increased longevity: EIFDs can exist and devote taxes to supporting their investments for up to 45 years from the date bonds are issued or loans are approved.¹¹ IFDs can only exist for 30 years after their initial formation.

Restoration of the Polanco Redevelopment Act: The authority to clean up stalled and other brownfield sites and provide immunities from "regulatory reopeners" was largely lost with the dissolution of RDAs and only restored, to a limited extent, under AB 440 (Gatto). SB 628 fully revives the Polanco Redevelopment Act for EIFD, allowing them to "utilize any powers ... and finance any action necessary to implement that act."¹² This authority seats EIFDs with the authority to

either order or actually undertake the investigation and cleanups. It also provides EIFDs, owners and occupants, and downstream buyers with immunity from being required by state or local environmental agencies to do further environmental work on properties that have been cleaned up under the Polanco Redevelopment Act's environmental oversight process.

Exercise of eminent domain: EIFDs can exercise eminent domain powers under the Polanco Redevelopment Act associated with the cleanup of environmentally impacted properties. This authority can also be used, incidentally, to consolidate properties for redevelopment.

Limitations and Preconditions to Establishing EIFDs

SB 628 establishes several "but-for" limits on EIFDs and the authority of local governments to create them, such as the following:

Winding down of redevelopment: Before creating an EIFD, any local government that previously created a redevelopment agency must have completed the process of winding down the affairs of the RDA and received a notice of completion from the Department of Finance.¹³

Affordable housing: If any dwelling units are destroyed by private development or public works projects within an EIFD, SB 628 requires the EIFD's infrastructure finance plan to replace all affordable housing units occupied by low- to moderate-income households and replace 25 percent of all affordable units not occupied by low- to moderate-income households within two years of the units' destruction.¹⁴ Housing units occupied by low- and moderate-income households may not be destroyed unless replacement units are available and ready for occupancy, and relocation assistance must be provided to all displaced residents.¹⁵

Tax-increment limitations: As with IFDs – but unlike the former redevelopment agencies – any taxing entity contributing a tax increment to an EIFD must consent and opt into participating in an EIFD.¹⁶ EIFDs cannot divert property tax revenues from schools or from any non-consenting taxing entity.¹⁷

Procedural requirements: EIFDs will be subject to many of the same procedural requirements of traditional IFDs. The creation of an EIFD and the implementation of an infrastructure finance plan can only be approved by the county or municipal government after it has published the proposed plan, provided notice to landowners and the affected taxing entities, and conducted a public hearing.¹⁸ EIFDs are also subject to biennial independent financial and performance audits.¹⁹

Going Forward

Some policymakers continue to advocate for the broader tax increment financing and specific affordable housing set-asides that were features of redevelopment law. These proposals are unlikely to receive the support of the governor. On the same day he signed SB 628, Gov. Brown vetoed the most recent of these proposals, AB 2280 (Alejo), because it was "unnecessarily vest[ed] ... in redevelopment law."

Some housing preservation advocates who opposed SB 628 have vowed to seek cleanup legislation beginning in January 2015, which would provide greater anti-displacement protections and limit EIFDs' authority to proceed with redevelopment without creating new affordable housing.²⁰

The California League of Cities supported SB 628 but noted that it was not a complete replacement for the authority local governments lost with the demise of RDAs. While SB 628 lowers existing voter approval thresholds, the need for electoral approval may still have the effect of pushing development to occur in more isolated areas with fewer potential opponents, instead of in more environmentally appropriate infill locations. This issue may also be addressed in subsequent legislative sessions.

However, SB 628 is the law and takes effect on Jan. 1, 2015. Especially for local governments with specific proposals for infrastructure investment, EIFDs are a promising tool for spurring revitalization, implementing sustainable community

strategies, and cleaning up brownfields and getting them back into productive use.

SB 628 was supported by the California Infill Builders Association, the California Economic Summit, the California Park and Recreation Society, the California Special Districts Association, the California State Association of Counties, the League of California Cities, and the State Building and Construction Trades Council of California.

Holland & Knight's team is available to consult with public agencies and other interested parties who are interested in exploring this or other tools to finance infrastructure and development.

Notes

¹ Beall, codified as Ch. 785, Stats. 2014

² https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB628&search_keywords

³ See Holland & Knight alert, [California Governor's Budget Zeros Out All Redevelopment Agency Funding](#) (January 6, 2012).

⁴ Cal. Gov. Code §53395.23.

⁵ Cal. Gov. Code §53398.69(a).

⁶ Cal. Gov. Code §53398.81(a).

⁷ Cal. Gov. Code §53398.52(b).

⁸ Cal. Gov. Code §53398.52(a)(2), (b).

⁹ Cal. Gov. Code §53398.75(c)-(f).

¹⁰ Cal. Gov. Code §53398.51.1.

¹¹ Cal. Gov. Code §53398.63(d)(5).

¹² Gov Code §53398.52(e).

¹³ Cal. Gov. Code §53398.54.

¹⁴ Cal. Gov. Code §53398.56(a)-(b).

¹⁵ Gov. Code §§53398.56(c)-(d), 53398.63(e).

¹⁶ Cal. Gov. Code §53398.68.

¹⁷ Cal. Gov. Code §§53398.51(a), 53398.68.

¹⁸ Cal. Gov. Code §§53398.59-53398.69.

¹⁹ Cal. Gov. Code §53398.88.

²⁰ <http://www.cp-dr.com/node/3563>

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