

MONDAY, APRIL 20, 2015

## Filling the Void Left by Redevelopment Agencies: SB 628 Offers New Options for Funding Public Infrastructure

On September 26, 2014, Governor Jerry Brown signed into law Senate Bill No. 628 (“SB 628”). SB 628 creates Enhanced Infrastructure Financing Districts (“EIFDs”) which relax several of the requirements that constrain standard Infrastructure Financing Districts (“IFDs”). Standard IFDs allow cities and counties to use a portion of the property tax increment to fund public improvements, but IFDs are subject to several procedural and substantive requirements that make them inaccessible to many local agencies. Thus, although IFDs have existed in California since 1990, only two IFDs have ever been created. Redevelopment agencies (“RDAs”) were the preferred alternative because they had broader powers to leverage tax increment financing for a variety of public projects. With the dissolution of RDAs in 2011, local agencies needed a more flexible mechanism than IFDs to fund the construction and rehabilitation of public infrastructure projects. The changes made by SB 628 are expected to enable EIFDs to fill the void left by the dissolution of RDAs.

### Overview of Notable Statutory Changes

#### *Standard IFDs and Redevelopment Agencies*

Before the enactment of SB 628, two financing mechanisms were available to local agencies for funding public infrastructure projects: IFDs and RDAs. IFDs take advantage of property tax increments. Property tax increment financing is based on the concept that enhancing public structures boosts the value of nearby property. Higher property values produce higher property tax revenues. Tax increment financing captures these increases between the pre- and post-project tax revenues.

To form an IFD, a city or county must develop an infrastructure plan, send copies of the plan to every landowner in the district and all affected taxing entities, consult with each affected taxing entity, and hold a public hearing. Each taxing entity that will contribute tax increment revenue to the IFD must approve the infrastructure plan. Additionally, at least two-thirds of voters in the proposed district must approve formation of the IFD and any bonds that the IFD issues.

In addition to IFDs, redevelopment agencies provided a second mechanism to fund public projects. The Community Redevelopment Law, which was enacted in 1945, allowed public entities to set up RDAs, prepare and adopt redevelopment plans, and finance redevelopment activities. When AB x1 26 dissolved RDAs in 2011, they had been in existence for over 60 years, and California cities and counties had formed over 400 of such agencies. Like an IFD, a RDA is funded by tax increment financing which can be used to repay bonds and other debt used to finance an agency’s projects. Unlike an IFD, a RDA does not require an election for formation, nor does a RDA require voter approval to issue bonds.

#### *EIFDs and Changes Under Senate Bill No. 628*

SB 628 authorizes the legislative body of a city or county to create an EIFD to fund infrastructure projects through tax increment financing. EIFDs differ from IFDs in several significant ways, which bill proponents hope will enable EIFDs to, among other things, finance the reuse and revitalization of military bases, fund the creation of transit priority projects, and construct and rehabilitate affordable housing units.<sup>1</sup> The following paragraphs highlight a few notable changes made by SB 628. This list is not comprehensive, and you are encouraged to consult the bill text or California Government Code Section 53398.50 *et seq.* for a complete reading of specific sections.

---

<sup>1</sup> California Government Code § 53398.50.

MONDAY, APRIL 20, 2015

## 1. EIFD Creation

SB 628 requires cities and counties to establish a public financing authority before adopting an infrastructure financing plan to form an EIFD. The public financing authority may not compensate its members, and it must comply with applicable provisions of the Ralph M. Brown Act, California Public Records Act, and the Political Reform Act of 1974. A city or county forms an EIFD by adopting a resolution of intention to establish an EIFD.<sup>2</sup> After adoption of the resolution of intention, the city or county must provide public notice and direct an official to prepare an infrastructure financing plan.<sup>3</sup> The infrastructure financing plan is subject to a second hearing, where the city or county legislative body may abandon the proceeding or adopt a resolution proposing adoption of the infrastructure financing plan and formation of the EIFD.

If a city or county formerly had a redevelopment agency, it must satisfy four prerequisites before forming an EIFD:

- a) Any successor agency to the former redevelopment agency must have concluded its actions;
- b) Any former redevelopment agency assets that are the subject of litigation may not be used to benefit the EIFD;
- c) the State Controller must complete review of former redevelopment asset transfers; and
- d) the successor agency and the city or county must have complied with findings and orders following the Controller's review.

## 2. Allocation of property tax increment revenues

Under SB 628, the infrastructure financing plan may specify the manner and allocation of property tax increment revenues from taxes levied by the city or county that formed the EIFD, and any other affected taxing entity that has agreed to participate. Among other things, SB 628 also subordinates an EIFD's debts to any enforceable obligations of a former redevelopment agency and allows a city or county to dedicate any portion of its "net available revenue" to the district.<sup>4</sup> Notably, schools and other non-consenting taxing entities cannot divert their increment to the EIFD.

## 3. Voter approval for bond issuance

SB 628 requires the public financing authority to obtain approval of at least 55 percent of voters voting on the proposition prior to issuing bonds.<sup>5</sup> If the proposition fails to meet the approval threshold, the public financing authority must wait at least one year after the date of the election before submitting a similar proposition.

---

<sup>2</sup> The resolution of intention must state the time and place for a hearing on the proposal, the proposed district's boundaries, the types of facilities and development to be financed, the need for the district, the goals of the district, and that incremental property tax revenues may be used to finance the EIFD's activities. Gov. Code § 53398.59.

<sup>3</sup> The infrastructure financing plan must include 1) a map and legal description of the proposed district; a description of the development or financial assistant proposed within the EIFD; and a financing overview. For more detailed requirements, please refer to Section 53398.63.

<sup>4</sup> Gov. Code § 53398.75.

<sup>5</sup> Gov. Code § 53398.81.

MONDAY, APRIL 20, 2015

EIFD bonds are payable exclusively from the EIFD's funds or property. The bonds may be sold at a discount, but the discount may not exceed 5 percent of par value at a public sale.<sup>6</sup> The bonds may be sold privately to the federal government at par value.<sup>7</sup>

Cities, counties, or special districts with territory within an EIFD's boundaries may loan money to the EIFD to fund activities in an approved infrastructure financing plan, subject to interest rate limits and other repayment provisions.<sup>8</sup>

#### 4. Other Provisions

An EIFD may finance only public capital facilities or other specified projects of communitywide significance that provide significant benefits to the district or the surrounding community. The activities that an EIFD may finance include the purchase, construction, expansion, seismic retrofit, or rehabilitation of any real or tangible property with an estimated useful life of at least 15 years. An EIFD may not finance routine maintenance, repair, or the costs of an ongoing operation or providing services of any kind. Examples of eligible projects include, but are not limited to:

- Highways, interchanges, ramps and bridges, arterial streets, parking facilities and transit facilities;
- Sewage treatment and water reclamation plants;
- Flood control levees and dams, retention basins and drainage channels;
- Brownfield restoration and other environmental mitigation;
- The development of projects on a former military base or the repayment of the transfer of funds to a military base reuse authority; and
- Transit priority projects that are located within a transit priority project area.

#### Filling the Gap Left by the Dissolution of RDAs

The major benefits of EIFDs over standard IFDs include:

- Greater financing flexibility – EIFDs may use multiple funding streams in addition to tax increment financing, such as impact development fees, special assessments, and parking management or other user fees.
- Broader project eligibility – SB 628 allows EIFDs to fund not only public capital facilities, but also “other specified projects of communitywide significance that provide significant benefits to the district or the surrounding community.”
- Increased longevity – EIFDs have 45 years to receive funding support for their projects, as opposed to 30 years for IFDs.
- More rigorous agency involvement – SB 628 requires the public financing authority to include representatives from the legislative bodies of participating cities or counties. In addition, a taxing entity within the district must approve and elect to contribute its tax increment to an EIFD.
- Decreased voting requirement for bond issuance – Only 55 percent voter approval is required before an EIFD may issue tax-increment bonds. Unlike with a standard IFD, the formation of an EIFD does not require voter approval.

---

<sup>6</sup> Gov. Code § 53398.85.

<sup>7</sup> Gov. Code § 53398.85.

<sup>8</sup> Gov. Code § 53398.87.

MONDAY, APRIL 20, 2015

As California's local agencies struggle to improve and build new infrastructure to support a growing population, they are likely to look to SB 628 to obtain the necessary funding for public projects. The hope is that SB 628 will increase both public and private investment in a variety of new and existing infrastructure.

**About Smith LLP**

*Smith LLP is an Oakland-based general law practice with special focus and expertise in complex municipal and commercial transactions and litigation. More information is available at [www.smithllpgroup.com](http://www.smithllpgroup.com).*

*This alert provides a summary of recent legal developments which may affect or otherwise be of special interest to our clients. It is not intended to be and should not be relied upon as legal advice or opinion. Please seek professional advice for individual matters. For more information, please contact one of our attorneys:*

**Harold P. Smith**

Partner

Phone: (510) 273-8880

Email: [psmith@smithllpgroup.com](mailto:psmith@smithllpgroup.com)**Patricia M. Smith**

Partner

Phone: (510) 273-8880

Email: [patsmith@smithllpgroup.com](mailto:patsmith@smithllpgroup.com)**Kimberly L. Fong**

Counsel

Phone: (510) 273-8880

Email: [kfong@smithllpgroup.com](mailto:kfong@smithllpgroup.com)**Caroline Dickie**

Counsel

Phone: (510) 273-8880

Email: [cdickie@smithllpgroup.com](mailto:cdickie@smithllpgroup.com)