

## AGENDA

### Mono County and Town of Mammoth Lakes Liaison Committee Regular Meeting

September 19, 2019  
2:00 p.m.

Town/County Conference Room

**Members:** TOML: *Dan Holler, Kirk Stapp, Cleland Hoff*  
Mono County: *Steven Barwick, Fred Stump, Stacy Corless (Jennifer Halferty, alternate)*

1. Call to order
2. Public comment
3. Introductions of members and staff
4. Update discussion and potential direction on Solid Waste management systems and services planning for closure of Benton Crossing Landfill
5. Update discussion and potential direction on meeting with Representatives from Madera on MOU development
6. Update discussion and potential direction on flavored Tobacco Ban in Mono County and potential ban in Mammoth Lakes
7. Update discussion and potential direction on Town's Housing Planning process for the PARCEL. You may access the Conceptual Land Use Design Alternative Package via this link: [https://www.townofmammothlakes.ca.gov/DocumentCenter/View/9802/MLP\\_Final\\_EML-All\\_090619](https://www.townofmammothlakes.ca.gov/DocumentCenter/View/9802/MLP_Final_EML-All_090619)
8. Update discussion and potential direction on potential joint/separate funding options for community housing programs, construction, and/or purchase
9. Update on Town and County capital projects
10. Update discussion and potential direction on future Joint meeting between County and Town – Dates & Topics
11. Next Liaison Meeting Date and Topics
12. Discuss meeting schedule for 2020
13. Adjournment to next meeting (which date will be set under Agenda Item 11)

## **ITEM # 8 - Background**

**Attached are write ups on tax increment Town/County joint funding options for affordable Housing.**

**A. Enhanced Infrastructure Financing Districts (EIFD)**

**B. Tax increment financing option for a Housing Authority**

A.

# Client Alert



Real Estate

Public-Private Partnerships

April 13, 2015

## Enhanced Infrastructure Districts: A Flexible New Tool for Local Governments

By Glenn Snyder and Matthew Valdez

*This article was published in Law360 on April 17, 2015.*

*After the dissolution of California redevelopment agencies (RDAs) in 2011, many local governments desired a tool to raise capital to invest in infrastructure and community revitalization. On September 29, 2014 SB 628 was signed into law by Gov. Jerry Brown. SB 628 grants cities and counties the power to create Enhanced Infrastructure Financing Districts (EIFDs) in order to finance public capital facilities or other specified projects of communitywide significance that provide significant benefits to the district or the surrounding community. SB 628 expands on the powers granted to cities and counties pursuant to Infrastructure Financing Districts (IFDs) and Community Facility Districts (CFDs). EIFDs provide greater flexibility to local governments seeking to invest in infrastructure and community revitalization, including a lower voter approval threshold to issue bonds and a wider range of infrastructure investments.*

### Formation

In order to form an EIFD a city or county must: (1) establish a Public Financing Authority (PFA); (2) adopt a resolution of intention to establish an EIFD and Infrastructure Financing Plan (IFP); and (3) conduct a public hearing before approving the adoption of the IFP and formation of the EIFD. A city or county that created an RDA is prohibited from creating an EIFD unless:

- I. The Successor Agency of the former RDA (SARA) has received a finding of completion (FOC) (Cal. Health and Safety Code §34179.7). (Most, if not all, SARA's have received a FOC. This requirement should not pose a significant barrier to the creation of a EIFD<sup>1</sup>.)
- II. The city or county certifies to the Department of Finance (DOF) that no RDA assets subject to litigation have been or will be used to benefit an EIFD.
- III. The State Controller has completed a review of RDA asset transfers and the SARA and the city or county have complied with any review requirements.

## Governance

The PFA is the governing board of the EIFD and implements the approved IFP. The PFA is composed of members of the public and legislative bodies of participating taxing entities. The PFA, through the EIFD, may, by majority vote, initiate proceedings to issue bonds. The IFP is the essential implementing document of the EIFD. The IFP must include: (i) a description of the development or financial assistance proposed within the EIFD; (ii) a financing plan that specifies how tax increment revenues from affected taxing entities will be divided; (iii) revenue projections; (iv) a plan for financing public facilities; (v) and the termination date of the EIFD (up to 45 years from approval date of bond issuance or EIFD loan). Additionally, if housing units will be demolished pursuant to the plan, the plan must also provide for replacement units, relocation assistance and more. The IFP must be adopted by the governing boards of all taxing entities that have agreed to allocate tax increment to the EIFD.

## Funding Sources

EIFDs may raise funds in multiple ways, including:

- I. Tax Increment Bonds—EIFDs may issue bonds to finance projects and other activities if 55% of qualified voters approve such issuance. (If voters defeat the proposition, the PFA must wait another year before bringing a similar proposition.)
- II. Tax-increment financing—EIFDs are able to divert property tax from any participating tax entity, with the exception of a school district, within the EIFD.
- III. Loans—EIFDs may also obtain a loan to fund activities described in the IFP.
- IV. Impact Fees, development agreement fees and user fees
- V. Special Assessments

<sup>1</sup> A list of Cities and Counties that have received a FOC is found [here](#).

### Allowable Uses of EIFD funds

EIFDs may fund public capital facilities or projects of communitywide significance, including, but not limited to:

- I. Transportation facilities (including highways, parking and transit facilities, and sewage and water treatment facilities)
- II. Community parks, open space and recreational facilities
- III. Brownfield restoration and other environmental mitigation
- IV. Construction or repair of industrial structures for private use
- V. Projects which implement a Sustainable Community Strategy
- VI. Transit Priority Projects
- VII. Childcare facilities
- VIII. Low- and moderate-income housing

A project need not be within the EIFD boundaries if the project has a tangible connection to the work of the EIFD.

### Potential opportunities for private development

An EIFD may finance public capital facilities projects or projects of communitywide significance that provide significant benefits to the district or surrounding community. The vague nature of the limiting language appears to grant an EIFD broad discretion to choose prospective projects. So long as each taxing entity included in the EIFD agrees that a project provides "significant benefits" to the district or community, there are no statutory limits on projects an EIFD may pursue. The broad discretion granted to EIFDs by SB 628 creates significant opportunities for private development. Like redevelopment agencies before them, EIFDs may finance the private development of low- or mixed-income housing and mixed-use transit-oriented development. Under the bill, EIFDs may now finance the acquisition, construction or repair of industrial structures for purely private use. Some commentators have speculated that projects such as hotels or business parks are eligible for EIFD funds because the projects create jobs and boost local tax bases. Because EIFDs are still very new, the limits of private development that may be financed by an EIFD are still untested. However, it is clear that EIFDs may finance projects previously funded by RDAs and additional projects previously off limits to RDAs. Barring any clean-up legislation or subsequent legal challenges, an EIFD may fund the private development of any project that is of communitywide significance and provides significant benefits to the EIFD or surrounding community.

### Potential opportunities for public-private partnerships

In addition to expanding the potential opportunities for private development, the bill also affords EIFDs many opportunities to enter into public-private partnerships (P3). Unlike RDAs, EIFDs are able to finance and build a wide variety of public infrastructure projects. Projects such as highways, roads and utility

installations—frequently delivered through the P3 model—are explicitly allowable uses of EIFD funds under SB 628. Moreover, the bill's language provides an EIFD with broad discretion to pursue projects beyond those enumerated in the bill. Facilities such as hospitals or courthouses, for instance, appear to be financeable under the bill. An EIFD's broad discretion to select potential projects and access to bond financing with a lower voter threshold should broaden the categories of public-private partnerships that can be financed with public debt.

## Summary

EIFDs are new and powerful tools that offer greater flexibility to raise funds and implement infrastructure or community revitalization projects than CFDs or IFDs. Local governments can form an EIFD without an election. Although voter approval is still necessary to issue tax-increment bonds, the threshold for approval is 55% rather than two-thirds. An EIFD can fund a wide range of projects, using both private and P3 development models, and can even fund projects outside of the EIFD. While EIFDs promise to spur a variety of new developments, it remains to be seen how well multiple taxing entities will be able to work together to approve and implement specific projects.

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If you have any questions about the content of this alert, please contact the Pillsbury attorney with whom you regularly work, or the authors below.

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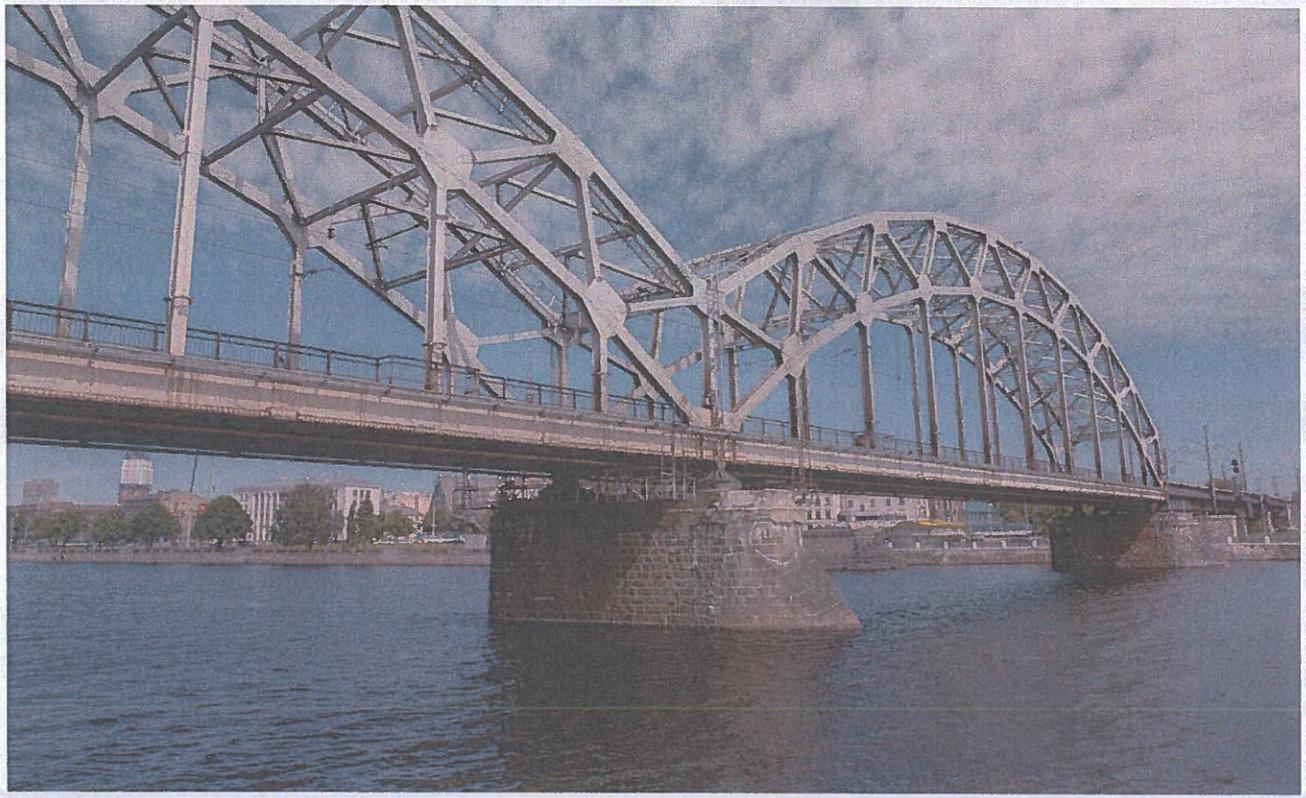
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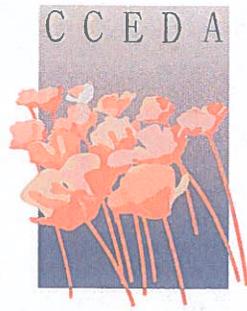
# **Enhanced Infrastructure Financing Districts**

## **RESOURCE GUIDE TO EIFDs**

Produced by:  
California Community Economic  
Development Association

Principal Investigator:  
Cynthia Amador  
Azul Management Systems Institute

February 2016



California  
Community  
Economic  
Development  
Association

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### Legal Statement of Disclaimer

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*While every reasonable effort has been made to ensure that the information contained herein is accurate as of the date of publication, the information is subject to change without notice. CCEDA shall not be held liable for any damages arising from the use or reliance on the information contained in this publication.*

The study of Enhanced Infrastructure Financing Districts (EIFDs) began in Los Angeles through the support of Citibank and was expanded throughout the State of California with a grant by the Federal Home Loan Bank.

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## EXECUTIVE SUMMARY

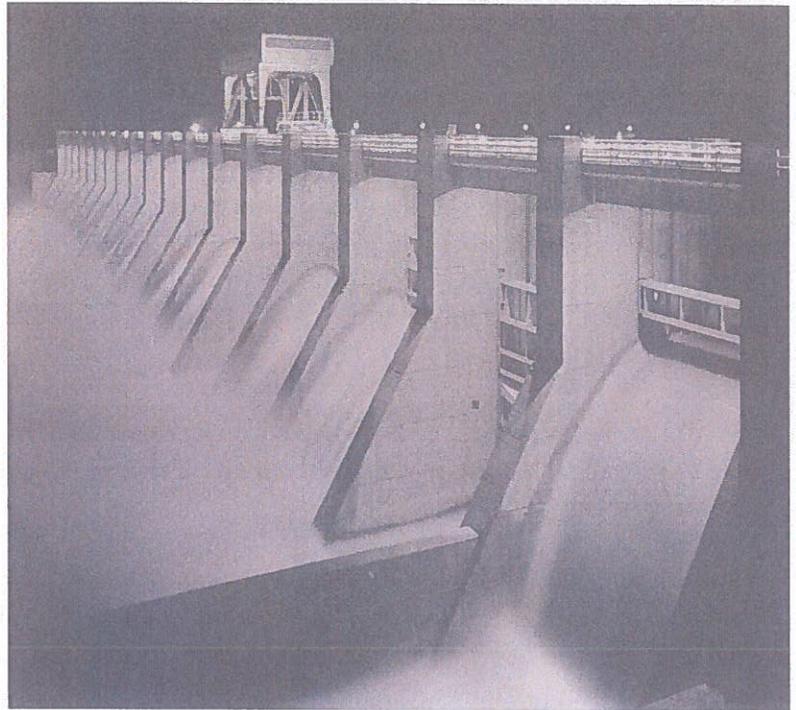
Enhanced Infrastructure Financing Districts (EIFDs) are financed through tax increment generated from the growth in property taxes collected from within a designated district boundary. CCEDA undertook this project to explore the feasibility of using EIFDs as a community development financing tool.

EIFDs were recently updated to serve as a financing tool for both large scale community-wide benefit projects and urban/rural in-fill projects.

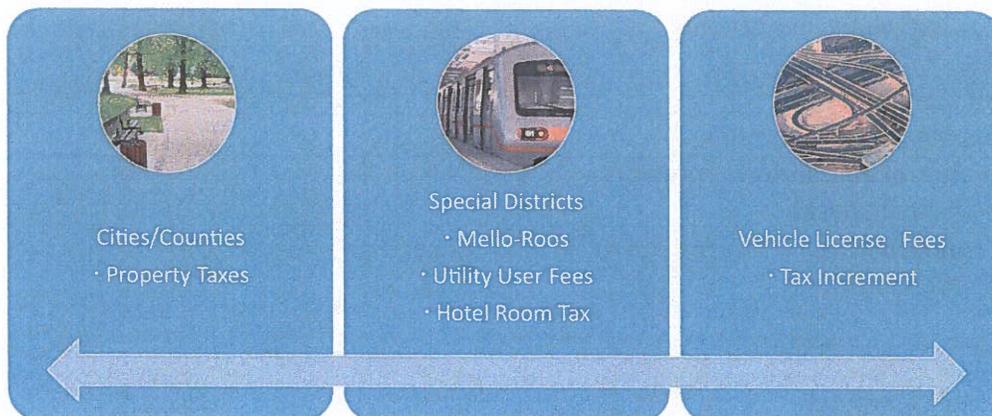
EIFDs do not require voter approval to form, however, a 55% voter approval is required for the EIFDs issuance of bonds. Thus, they have the greatest potential for success in urban or rural projects where multiple layers of taxing authorities (Cities and Counties) are highly motivated to move such projects forward and have strong community support.

To best access EIFDs, community development practitioners will need to be active in the EIFD formation process and secure the approval of these multiple layers of taxing authorities.

Our research explores how EIFDs are formed, sample projects, sample calculations, the benefits, challenges and feedback from community and public leaders on EIFDs as well as a Resource Guide to consulting and legal experts serving this unique field.



## Sample Sources of EIFD Funds



## What is an EIFD?

On January 1, 2015, Governor Jerry Brown signed into law, SB628, “Enhanced Infrastructure Financing Districts” (EIFDs) which allows for a separate government entity<sup>1</sup> to be created by a city or county within a defined area to finance infrastructure projects with community-wide benefits. EIFDs are an upgraded version of the Infrastructure Financing District (IFD). When formed through a Joint Powers Authority (JPA), an EIFD can be established without voter approval. EIFDs can finance public infrastructure projects, as well as private child care centers, affordable housing and parking facilities.



**“While no voter approval is required to form an EIFD, a 55% affirmative vote is required for the EIFDs issuance of bonds.”<sup>2</sup>”**

Through the establishment of a Joint Powers Authority, the EIFD accommodates more flexible institutional collaborations. EIFD expert, Larry Kosmont reports, “EIFDs can lead the way to further economic development and growth in cities and counties. EIFD tax increment is available for up to 45 years from the date of first bond issuance.”

EIFDs can be used on both large scale projects and smaller urban/rural in-fill projects. EIFD projects will most likely be layered with several financial instruments. EIFDs do allow that property tax increment revenues within a designated district boundary to be available for project funding in addition to other funding streams such as benefit assessments, development fees, and private investments.

## Why EIFDs?

On December 29, 2011, the California Supreme Court upheld AB 126, which eliminated redevelopment agencies. As a result, 400 redevelopment agencies across the State of California were dissolved. Tax incentives offered by State Enterprise Zones were also eliminated. These actions reduced the availability of flexible financial tools used for affordable housing and community development projects.

## How Can EIFDs Be Used?

“EIFDs are empowered to provide financing for a broad range of infrastructure work, including traditional public works such as:

- Roads, highways and bridges
- parking facilities
- transit stations
- sewage and water facilities
- flood control and drainage projects
- solid waste disposal
- parks and libraries
- child care facilities

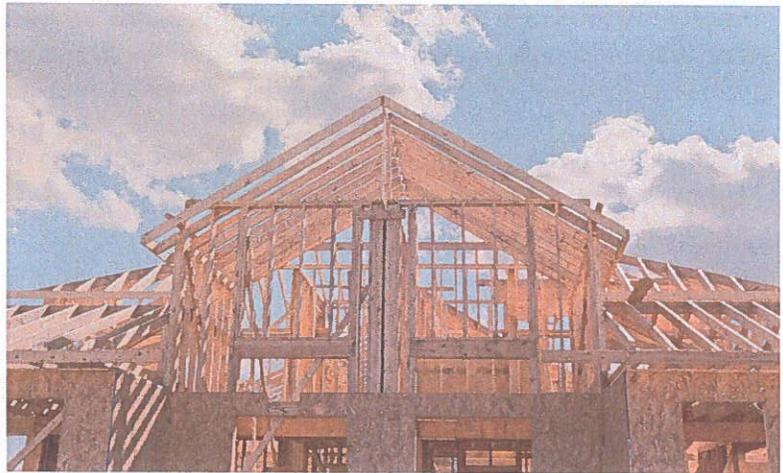
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<sup>1</sup> As a separate entity, the EIFDs can use other statutory authorities such as the Infrastructure Financing Authority and are subject to state provisions such as prevailing wage.

<sup>2</sup> September 30, 2014, Bulletin No. 1143691.2 by KMTG Legal Alert, page 1.

EIFD’s may also finance the purchase, construction, expansion, improvement, and/or seismic retrofitting of a property, and other items, including:

- Brownfield restoration
- Environmental mitigation
- Military base reuse projects
- **Affordable housing**
- Private industrial buildings
- **Transit oriented development projects**
- Projects carrying out sustainable community strategies.

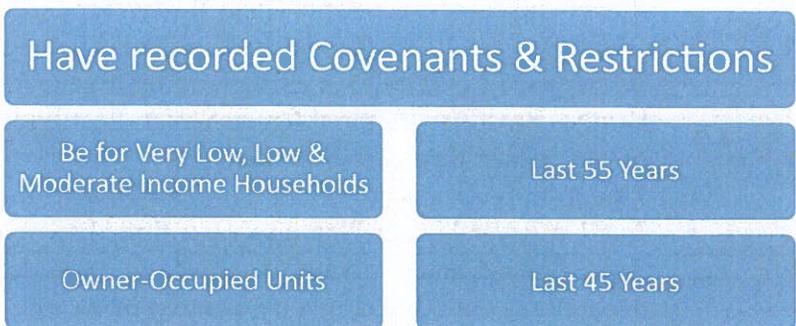


EIFD’s are financed through tax increment generated from the growth in property taxes collected from the designated parcels. Because school districts are not permitted to participate in an EIFD, the primary participants in EIFDs will be cities, counties and special districts.<sup>3</sup>”

### How Can I Use EIFDs for Affordable Housing

While EIFDs do not require voter approval to form, they do require 55% voter approval prior to EIFD’s issuance of bonds. In late 2015, Governor Jerry Brown approved AB 313<sup>4</sup> which further refined EIFDs in two ways: “It broadens the governance by allowing any local agency that brings resources to the table to participate on the governing board. AB 313 allows the multiple layers of taxing authorities to streamline the assignment of duties of the new agency so infrastructure planning and development can be accomplished with all participating agencies (which may include one or more local municipalities and the County).

AB 313 requires affordable housing units:



**For community developers to use EIFDs on affordable housing and community development, projects will require the approval and funding allocation of the Governing Board.**

Practitioners will need to be an active voice to the Joint Powers Authority/Governing Board and participate in the stakeholder formation process to secure EIFD funds.

To address blight, Governor Jerry Brown also approved AB2 on September 15, 2015 which focuses on blighted areas and authorizes “certain local agencies to form a community revitalization authority (authority) within a community revitalization and investment area, and allows for the issuance of bonds serviced by tax increment revenues. AB2 requires the authority to adopt a community revitalization and investment plan for the community revitalization and investment area that includes revitalization activities described in the AB2 Chart.

<sup>3</sup> KMTG Legal Alert, Bulletin No. 1143691.2, September 20, 2014.

<sup>4</sup> [http://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160AB313](http://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB313)

AB2 also authorizes the creation of Community Revitalization and Investment Authority (CRIA) to invest property tax increment revenue to relieve conditions of unemployment, reduce high crime rates, repair deteriorated or inadequate infrastructure, promote affordable housing, and improve conditions leading to increased employment opportunities.<sup>5</sup> ”

Consulting experts, elected representatives and municipality executives strongly encourage affordable housing projects be built adjacent to EIFD funded projects to enjoy the economic and community enhancement benefits that EIFD projects will bring.

### Sample EIFD Projects

#### City of West Sacramento - Bridge District Redevelopment Project (active project)

- \$60 million project (rail removal, demolition, new roads, streetscapes, utilities, parks, water storage, 700 housing units, and Riverfront entertainment)
- \$15 million in EIFD funds

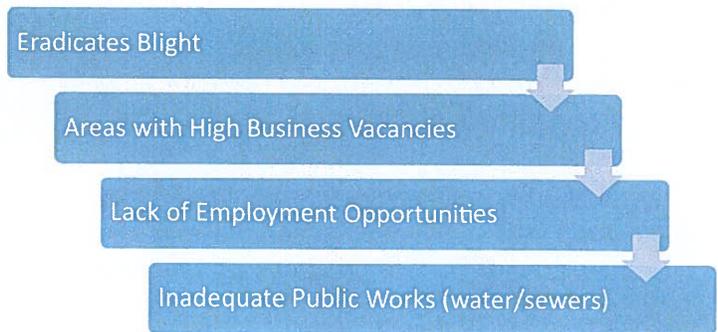
#### City and County of Santa Clara - New \$1.3 billion Levi’s Stadium for the San Francisco 49ers

- Up to \$621 million in Bank loans
- \$263 million in NFL and 49ers funding
- \$312 million in EIFD funds supported by Seat Licenses
- \$114 million from Santa Clara through local hotel taxes, parking garage fees, Silicon Valley Power and carry-over Santa Clara Redevelopment Agency funds.

#### City of Los Angeles - LA River Revitalization (Project is in planning stage)

- Estimated \$40,000,000 in EIFD funding to launch initial projects, including Elysian Park Bridge, Broadway Arterial Green Street, East End of LA State Historic Park and Cornfields of Chinatown Regional Gateway.
- Opportunity area is an 11 mile stretch of the 48-mile LA River.
- The LA River Master Plan integrates three key objectives—river revitalization, neighborhood improvement, and community opportunities as a whole. The river would be revitalized through flood storage and water quality improvement, safe public access and a functional ecosystem. Neighborhood improvements would be enhanced by a continuous river greenway, connection between neighborhoods and the River, extended open space, and public art along the river. Community opportunities would be enhanced by transforming the River into a hub of activity and civic pride (enhanced public health for residents, and new opportunities for employment, housing, and retail space).

### AB 2 Supports Revitalization



## Funding Summary Overview

Following is a flow chart prepared by Kronick Moskowitz Tiedemann & Girard of how EIFDs are secured, and a comparison with Redevelopment vs. Infrastructure Financing Districts vs. EIFDs<sup>6</sup> :

<sup>5</sup> [http://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201520160AB2](http://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201520160AB2)

<sup>6</sup> Chart prepared by Kronick Moskowitz Tiedemann & Girard, presented at CALED Conference April 21, 2015.

FORMATION

|                             | RDA   | IFD   | EIFD  |
|-----------------------------|---|---|---|
| Blight Finding              | Yes   | No  | No  |
| Urbanization Finding        | Yes   | No  | No  |
| Relationship with RDA       |   | IFD may include former redevelopment project area.<br><br>Successor Agency must have Finding of Completion for RDA project. | EIFD may include former redevelopment project area.<br><br>Successor Agency must have Finding of Completion for RDA project, RDA litigation must be resolved, and Controller review must be complete.   |
| Citizen Committee Review    | Yes – if residential eminent domain allowed                         | No  | No  |
| Governing Board             | Usually same as City Council/ County Board that established the RDA | Legislative body of taxing agency establishing IFD.   | Governing Board is separate public financing authority.<br><br>If one taxing entity: 3 members of entity's legislative body + 2 public members<br><br>If multiple taxing entities: majority of members of each entity's legislative body + 2 public members |
| Noticed Public Hearing      | Yes   | Yes   | Yes   |
| Preparation of Plan         | Yes – Redevelopment Plan  | Yes – infrastructure Financing Plan   | Yes – Infrastructure Financing Plan   |
| Public Agency Vote          | Simple Majority   | Simple Majority   | Simple Majority   |
| Voter Approval of Formation | No  | Yes – 2/3 affirmative   | No  |
| CEQA                        | Yes – EIR   | Yes (may be covered by CEQA documentation for project)  | Yes (may be covered by CEQA documentation for project)  |



| P O W E R S                          |   |   |   |
|--------------------------------------|---|---|---|
|                                      | RDA   | IFD   | EIFD  |
| Infrastructure Financing             | Yes, if no other reasonable financing available                                 | Yes, for public capital facilities and projects of communitywide significance | Yes, for capital facilities and public projects of communitywide significance |
| Land Acquisition                     | Yes (may acquire itself or finance acquisition)                                 | Yes (finance acquisition only)  | Yes (finance acquisition only)  |
| Eminent Domain                       | Yes   | No  | Yes, Under AB 2   |
| Land Conveyance                      | Yes   | No  | No  |
| Environmental Remediation            | Yes   | Not specifically authorized   | Yes   |
| Affordable Housing                   | Yes   | Yes   | Yes   |
| Private Commercial Rehabilitation    | Yes, for commercial rehabilitation loans and industrial/manufacturing financing | No  | Yes, for acquisition, construction or repair of industrial structures.        |
| Maintenance, Operations and Services | No  | No  | No  |
| F I N A N C I N G                    |   |   |   |
|                                      | RDA   | IFD   | EIFD  |
| Property Tax Increment               | Yes – mandatory for all taxing agencies   | Yes- only for consenting taxing agencies; education district may not consent  | Yes- only for consenting taxing agencies; education district may not consent  |
| Amount of Tax Increment to District  | All   | All or portions of consenting agencies' share as designated in plan           | All or portions of consenting agencies' share as designated in plan           |
| Issuance of Tax Allocation bonds     | Yes   | Yes   | Yes   |
| Vote for Bond Issuance               | RDA Board – Simple Majority   | IFD – Board simple majority + District Voters – 2/3 majority                  | EIFD Board – simple majority + District Voters – 55% majority                 |
| Term                                 | Up to 45 years receipt of taxes to repay debt                                   | Up to 30 years from district formation  | Up to 45 years from issuance of bonds or loan                                 |
| Relationship to RDA debt             | n/a   | Subordinate to RDA enforceable obligations                                    | Subordinate to RDA enforceable obligations                                    |

## EIFD Pre-Screen Check List - Is an EIFD Right for Your Project?

A leading expert in utilizing EIFDs as a financing tool, the Kosmont Group developed this pre-screening tool for those considering using EIFDs as part of their financing strategy. Kosmont suggests that an agency begin with an economic analysis to determine the potential application of tax increment available for a project as the first step. Such a process should include:

| Pre-Check List   | Notes |
|--|-------|
| 1. Who is interested in forming/participating in the EIFD?<br>Which cities/counties/special districts would measurable benefit from the EIFD and what is their share of the property tax increment?<br>What is the impact of the investment in the local economy?  |       |
| 2. What needs to get done?<br>What are the infrastructure improvements and development projects that can be addressed?   |       |
| 3. Who is located in the EIFD?<br>Do the identified projects serve multiple jurisdictions?<br>How many property owners are located within the EIFD?  |       |
| 4. Where is the EIFD Project Area?<br>What are the boundaries/scale of this District?<br>The District need not be contiguous.  |       |
| 5. What are the funding sources? Sources may include: <ul style="list-style-type: none"> <li>• Growth in property tax increment.</li> <li>• Private sector partners.</li> <li>• VLF (Vehicle License Fee) tax increment.</li> <li>• Special taxes (Mello-Roos, utility user fees, room tax, etc.)</li> </ul> |       |
| 6. What value will the project have over time and what is the cash flow in early years?<br>Run initial cash flows and conduct resiliency analysis.<br>Source early (start-up) EIFD contributions of funds.   |       |

On the upside, reports Kosmont, “the private sector can serve as a start-up funding source for EIFDs by launching a project using their initial capital. Project reimbursement funding can come from a variety of sources including tax increment. Ultimately, the EIFDs must achieve 55% landowner or registered voter approval, for the reimbursement mechanism source to be a tax increment bond.”

An EIFD District term is 45 years from the time a tax increment bond is issued, so there is ample time to enter into multiple public private transactions using tax increment as a source of repayment.

### How Are EIFD's Generated<sup>7</sup> ?

EIFD's may fund infrastructure using the following mechanisms:

- a. Property tax increment of consenting taxing agencies (cities, counties, special districts but not schools).
- b. Revenues from property tax corresponding to the increase in assessed valuation of taxable property attributed to those property shares received by a city or county pursuant to in lieu of VLF (Motor Vehicle-in-Lieu Fees) and dedicated to a city or county to the EIFD.

<sup>7</sup> [http://eco-rapid.org/Project/studies\\_reports/EIFD%20-%20A%20Mechanism%20for%20Eco%20Rapid%20Transit%20-%20FinalDraft\\_22Jan2015.pdf](http://eco-rapid.org/Project/studies_reports/EIFD%20-%20A%20Mechanism%20for%20Eco%20Rapid%20Transit%20-%20FinalDraft_22Jan2015.pdf)

- c. Property tax revenue distributed to a city, county or special district after payment of a successor agency debts.
- d. Fees or assessment revenues derived from one of 10 specified existing sources, including assessments for benefits and developer fees.
- e. Loans from a city, county or special district, that must be repaid at no more than the Local Agency Investment Fund (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.
- f. User Fees/Partnerships derived from the use of the Infrastructure Finance and Investment Act, which the EIFD can use as it is established as a separate government entity.
- g. Availability Payments, annual payments to a third party, which sit as line item entries city or county budgets and are amortized over a specified period.

### Sample Sources of EIFD Funds



As noted above, there are various sources to fund EIFDs. Creating the balance in layering these to build up the tax increment will be key. As illustrated above, EIFDs can be very complicated and must be customized to within your specific community. Significant resources exist to assist in these efforts, some of which are noted in this guide.

### Comments from Community and Public Leaders on EIFDs:

#### HISTORY

1. The first EIFD was presented by State Senator Presley of the Inland Empire in the early 1990's. He presented it twice and twice it failed. One of the original issues is that the use of increment was not connected to the constitutional tax increment flow. Essentially the law would act similar to CRA without any benefit to the low income communities as required in the constitutional tax increment statute.
2. EIFDs allow for over a dozen types of projects that could potentially have a 15-year process. While EIFDs require a "community wide benefit," there is no mention that low-income communities must be part of this inclusion. Additionally, there is no requirement to address local businesses concern that may be affected by an EIFD project.

#### SCOPE

1. The EIFD model works well in both suburban infill projects and areas such as the Central Valley, as well as large urban inner city areas. Success will depend upon how and whether the JPA (Joint Powers Authority) can be negotiated and implemented with multiple layers of taxing authorities (Cities and Counties). One major benefit is that EIFDs can best be used for long-term proposals that require financial layering and need to lock up "today" dollars for investment into a future long-term investment.

2. In reviewing EIFD projects we have found several factors are necessary for moving EIFD project forward:
  - a. Commonality of the project to move forward.
  - b. Advantage of large projects, e.g. airport renovation, transit project, storm water treatment center, etc.
  - c. Community involvement and support in resolving deficiencies.
  
3. As a financing tool, it's important to look at EIFDs and how they can be used to scale, not simply funding disparate pilot projects throughout the County. For optimal results, EIFDs are best to be part of a comprehensive plan and not project level financing.
  
4. It is recommended that CRIA (Community Revitalization Investment Authority) and VLF (Vehicle License Fee) are better financial tools for affordable housing than EIFDs. Additionally, VLF tax increment fees grow faster than property tax rates.



## CHALLENGES

1. Some of the challenges of EIFDs is that it requires the release of the ceding authority from the Legislative Body to the State Financing Authority. In essence, taking it away from local jurisdictional oversight to the State. Further, Administration of an EIFD is cumbersome and costly using administrative funds, project oversight, project funding, etc. Local jurisdiction is responsible for outcomes achievement, yet it has ceded authority to the State. The law is unclear as to who is in charge.
  
2. EIFD's using multiple parcels requires a Joint Powers Authority with the City/County, thus the process adds additional layers of negotiations that have competing interests, making it a more cumbersome financial tool as well as requiring 100% prevailing wage.
  
3. EIFDs do require that during the pre-adoption process there is a requirement for community hearings so they have input. Additionally, it requires that the Public Finance Authority is in charge of analysis and public cures, not legislative bodies.
  
4. EIFD's requires 55% voter approval for a bond issue. A project can secure EIFD funding allocation and then be denied by the community if the bond issue is not approved, leaving it in financial limbo. An EIFD does not allow for "pay as you go," the project must be done as a bond to allow for financial continuity. It does allow for a Private Activity Bond, though these are more costly than a Tax Increment Bond.

## POTENTIAL

EIFDs could potentially be used for a number of infrastructure projects beyond the LA River as proposed by the Los Angeles City Council. Other Los Angeles-based projects may include:

- New Sidewalks in LA's CD9's Washington and Slauson and Central Avenues
- LA's CD9's 54th and Avalon – Creation of a wild life corridor with a wet lands district.
- Architect, Frank Gerry's prototype for the LA River, includes water management and water retention - all part of a resource and river management system.
- Newly passed AB 520, authorizes the development of a working group to create a revitalization plan for the Lower Los Angeles River which runs from the City of Commerce to Long Beach. The work group is developing a master plan that may utilize EIFDs for funding projects south of the City of Los Angeles.

## CCEDA

### **Mission**

CCEDA's mission is to serve low and moderate income individuals, families and communities in California by supporting organizations committed to community revitalization. The organization's goal is to strengthen and build the capacity of community development organizations that would allow them to efficiently and effectively serve their communities and better leverage impacted communities they represent.

### **Brief History**

In 1988, a group of 15 Executive Directors who operated high capacity pipe-line nonprofit community economic development organizations throughout the State of California organized a support association focused on advancing the field of community economic development. CCEDA began supporting nonprofit, community-based, neighborhood-targeted development organizations that have programs, services and projects focused on improving the overall economic conditions in low and moderate income communities.

CCEDA's early programs consisted of its annual teaching and learning conference, newsletters, programmatic funding and policy advocacy, and regionally targeted community development programs. CCEDA's annual budget enabled it to serve an annual membership of over 200 organizations focused on building and implementing community economic development strategies for California's economically impacted communities. Beginning in 2003, CCEDA substantially expanded its training and technical assistance programs for community development organizations.

### **Services Provided**

CCEDA provides a wide range of training and direct technical assistance for community economic development projects; including affordable housing and real estate development, workforce development programs, asset-building programs, business development programs, lending programs such as credit unions and loan funds, and job creation enterprises and programs. Many organizations seek to refine community economic development strategies, hence CCEDA assists them with developing their long-term plans. CCEDA focuses on building organizational capacity and assets to ensure the success of future projects. CCEDA emphasizes the fit of a project into the overall community economic development strategy to ensure the most beneficial and long-term results.

Additionally, CCEDA responds to request for assistance through its "911 Program" for stalled or troubled projects that required CCEDA's turnaround expertise. Non-profit practitioners often seek out CCEDA to find creative solutions to secure and negotiate the financial gaps in affordable housing and community development projects with non-profit bonds, seller-carry backs and interim investments that were simply not needed prior to the elimination of redevelopment agencies. This is a unique service that CCEDA provides its members, typically provided by for-profit consultants at a substantial cost.

## RESOURCES

*The contacts and resources presented by the California Community Economic Development Association is not an endorsement of their view, opinions, products or services of the contacts appearing herein. The contents of this manual are presented as a matter of information only and no endorsement is made.*

### Consultants

#### **Debbie Kern**

A senior principal at Keyser Marston Associates, Inc. based in San Francisco who specializes in land use economics and structuring financing plans for public facilities and municipal services. She prepared the Infrastructure Financing Plan (IFP) for the adopted Rincon Hill Infrastructure Financing District (IFD) in San Francisco and is currently preparing IFPs and evaluating the feasibility of EIFDs in several communities, including: Placer County, City of Sacramento, City of West Sacramento, City of Fresno, and the City/County of San Francisco. She holds a master's degree in Economics from Columbia University and a bachelor's degree from the University of California at Berkeley. Debbie can be reached at (415) 398-3050 or [dkern@keysermarston.com](mailto:dkern@keysermarston.com).

#### **Larry Kosmont**

Larry J. Kosmont, CRE®, is President and CEO of Kosmont Companies, which he founded in 1986. Kosmont Companies is an industry leader in public/private real estate transactions and economic development. In 1990, he founded Kosmont Realty Corporation, a real estate brokerage firm. In 2015, he launched Kosmont Transactions Services which sources private financing for public projects, P3 initiatives, and infrastructure funding. He's also a Principal of California Golden Fund, an approved EB-5 Regional Center. His 40-year career encompasses public/private financial structuring and negotiations, development, and management of real estate and public finance transactions exceeding \$12B. He has an extensive track record as a consultant and advisor, assisting hundreds of local government agencies and guiding over 1,000 private sector projects. Larry can be reached at (424) 456-3080 or at [crodgers@kosmont.com](mailto:crodgers@kosmont.com)

#### **Russ Powell**

Russ Powell is Senior Vice President at Economic and Planning Systems (EPS) in Sacramento. His expertise is in the formation of Mello-Roos Community Facility Districts, financing plans and strategies for public facilities and infrastructure, special district formation and funding analysis, special assessment and tax district creation and formation, and local government funding. He assisted in the formation of the Bridge District Infrastructure in West Sacramento, and is a graduate of the University of California Davis. Russ can be reached at (916) 649-8010 or [rpowell@epsac.com](mailto:rpowell@epsac.com).

#### **John Yonai**

John Yonai is the Principal and Chairman of Tierra West Advisors, a trusted consultant to both private and public agencies throughout California. Over the last 35+ years, John has teamed with local leaders tasked with creating lively public spaces; providing insightful analysis and vision required to make sound financial and development decisions. John has utilized multiple forms of financing for infrastructure including Mello-Roos/Community Facility Districts, tax increment financing and others. Recently, John and Tierra West served as Project Manager for the Northeast Los Angeles Riverfront Collaborative, a unique effort that brought together 18 cross-disciplinary organizations to partner on the revitalization of the Los Angeles River, including the analysis and implementation of an EIFD. John is a native Angelino and a graduate of Loyola Marymount University and UCLA. He can be reached at (323) 265-4400 or [jyonai@tierrawestadvisors.com](mailto:jyonai@tierrawestadvisors.com).

## Attorneys

### **Kyle Arndt**

Kyle Arndt is a transactional real estate attorney and a founding partner in Bocarsly Emden. While Mr. Arndt has experience in a wide variety of transactional matters, he has focused his practice in the areas of real estate development, tax credit syndication, private equity real estate investment and mezzanine lending. Mr. Arndt has participated in numerous multi-family housing and economic development projects using the Federal Low Income Housing Tax Credit, Tax Exempt Private Activity Bonds, Federal CDBG and HOME Funds, local tax increment funds, New Market Tax Credits, Historic Tax Credits, Tax Increment Financing and other similar sources. Mr. Arndt is a graduate of University of California, Los Angeles Law School. Kyle can be reached at (213) 239-8048 or at [karndt@bocarsly.com](mailto:karndt@bocarsly.com)

### **Constantine Baranoff**

A shareholder attorney at Kronick, Moskovitz, Tiedemann & Girard based in Sacramento, CA who focuses on bond counsel work and Mello-Roos community facilities district formation. He also counsels the firm's educational and public agency clients in construction, land acquisitions and facility matters. Mr. Baranoff advises and assists his clients in the areas of formation of Mello-Roos community facilities districts, formation of Infrastructure Financing Districts, bond counsel and disclosure counsel for general obligation bonds, and other public transactions. Most recently he served as one of the lead counsels of the Bridge District Infrastructure Financing District in West Sacramento. He is a graduate of the University of California Davis Law School and the University of San Francisco. Constantine can be reached at (916) 321-4500 or [cbaranoff@kmtg.com](mailto:cbaranoff@kmtg.com).

### **Lance Bocarsly**

Lance Bocarsly is a nationally recognized transactional real estate attorney specializing in affordable housing, community and economic development transactions, and a founding partner in Bocarsly Emden. He has represented community development non-profits, developers, syndicators and investors in over one thousand transactions financed with federal low income housing tax credits and tax exempt bonds, generating tens of thousands of residential units for low income tenants in over forty states. Mr. Bocarsly's practice focuses on all aspects of the acquisition and development of, and investment in, real property, including negotiation of purchase agreements, construction and permanent financing from institutional and governmental sources, negotiation of construction and development contracts, formation and syndication of partnerships and limited liability companies owning and operating real estate developments and syndication of investment funds in real estate transactions. In addition, Mr. Bocarsly has substantial experience in advising nonprofit and for-profit developers undertaking affordable housing and economic development, as well as highly complex financially layered projects. Lance may be reached at (213) 239-8088 or at [lbocarsly@bocarsly.com](mailto:lbocarsly@bocarsly.com)

### **Ruben Duran**

Ruben Duran represents exclusively public agencies as a partner in the Municipal Law and Public Policy and Ethics Compliance practice groups of Best & Krieger LLP. He provides both general counsel services and special counsel in the areas of New Markets Tax Credits, elections law, real estate, education law and complex conflicts of interest and open government issues. He serves as the general counsel for the Oxnard Harbor District, which owns and operates the commercial Port of Hueneme. He previously served as city attorney of Desert Hot Springs (2006-2012) and general counsel of the Fontana Unified School District. His clients include cities, school districts, special districts and public health plans. Ruben holds a bachelor's degree from UC San Diego and his JD from UC Hastings College of the Law. He can be reached at [ruben.duran@bbklaw.com](mailto:ruben.duran@bbklaw.com) or (213) 787-2569.

**Juan Galvan**

Juan Galvan is a bond attorney with experience serving as bond counsel, disclosure counsel and underwriter's counsel in financings that include Mello-Roos special tax and redevelopment/IFD tax increment. Juan is currently assisting San Francisco with the formation of infrastructure financing districts and related financings for Treasure Island and Yerba Buena Island and a number of projects for the Port of San Francisco. Juan is a graduate of California State University, Northridge and the University of California, Berkeley, School of Law (Boalt Hall). Prior to attending law school, Juan worked for an international public accounting firm and continues to be licensed as a Certified Public Accountant in California. Juan can be reached at (415) 391-5780 or [jgalvan@joneshall.com](mailto:jgalvan@joneshall.com)

**Jon Goetz**

A shareholder attorney at Kronick, Moskovitz, Tiedemann & Girard based in San Luis Obispo, CA with more than 25 years of experience in land use, real estate, redevelopment, affordable housing and municipal law. He represents a broad spectrum of private-sector landowners and real estate developers, as well as cities, housing authorities, universities and other public entities in complex real estate transactions, land use planning, public-private development and affordable housing transactions. Most recently he served as one of the lead counsels of the Bridge District Infrastructure Financing District in West Sacramento. He is an honors graduate of Harvard Law School and the University of California San Diego. Jon can be reached at (805) 786-4302 or [jgoetz@kmtg.com](mailto:jgoetz@kmtg.com).

**Lynn Hutchins**

Lynn Hutchins is a partner at Goldfarb & Litman with thirty years of experience in the areas of community economic development, affordable housing, environmental law, and real estate finance. Ms. Hutchins represents developers and public agencies in the development, financing and management of low and moderate income housing and community development projects. Her experience includes all phases of the development process, including developer selection, formation of special-purpose entities, land use entitlements, acquisition and disposition of property, loan and equity investments closings, advice relating to hazardous materials, CEQA, NEPA and land use issues, and syndication of housing and community development projects. She is an honors graduate of University of California, Davis School of Law. Lynn can be reached at (510) 836-6336 or at [lhutchins@goldfarbblipman.com](mailto:lhutchins@goldfarbblipman.com).

**Chris Lynch**

Chris Lynch is a bond attorney with more than 20 years of experience as bond counsel, disclosure counsel and underwriter's counsel in financings that include Mello-Roos special tax and redevelopment/IFD tax increment financings. Chris was the lead attorney when Jones Hall acted as bond counsel for the City and County of San Francisco in connection with the formation of its Infrastructure Financing District No. 1 (Rincon Hill) and is assisting San Francisco with infrastructure financing district financings for Treasure Island/Yerba Buena Island and a number of projects related to the Port of San Francisco. Chris also assisted with a number of redevelopment- and IFD-related State laws. Chris is a graduate of Stanford University and Stanford Law School. Chris can be reached at (415) 391-5780 or [clynch@honeshall.com](mailto:clynch@honeshall.com)

**Seth Merewitz**

Seth Merewitz is a partner in the Los Angeles office of Best Best & Krieger LLP and heads the Public-Private Partnership/Joint Venture group. Prior to joining the firm in 2010, he was a shareholder with McDonough Holland & Allen in Sacramento. He provides advisory and transactional services to developers, land owners, public agencies and private entities/investors. His practice focuses on real estate development including zoning / land use, master-planned communities and military base reuse. He represents applicants on entitlement and permit processing matters and has particular expertise in public-private partnerships and government assistance, in-fill and mixed-use development, infrastructure financing, and commercial and industrial development. Seth is a graduate of UC Davis undergrad and law school. Seth can be reached at [seth.merewitz@bbklaw.com](mailto:seth.merewitz@bbklaw.com) or (213) 787-2567

## NOTES

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LEGAL ALERTS | OCT 2, 2018

# AB 2035: New Tax Increment Financing for Shelters and Affordable Housing

California Lawmakers Continue to Address Housing Crisis



Local affordable housing authorities in California will see their oversight enhanced with the passage of [AB 2035](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB2035) ([https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180AB2035](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB2035)), signed Friday by Gov. Jerry Brown. [Last year, Brown signed legislation authorizing cities and counties to create an affordable housing authority](https://www.bbklaw.com/news-events/insights/2017/legal-alerts/10/the-governors-housing-package) (<https://www.bbklaw.com/news-events/insights/2017/legal-alerts/10/the-governors-housing-package>) to plan and fund housing projects using tax increment financing and bonds. AB 2035 expands the list of projects an affordable housing authority may fund to include, among other projects, emergency shelters and transitional housing. The new law also provides some technical fixes and clarifications.

Like other housing bills, AB 2035 reflects the Legislature's interest in monitoring how local governments are implementing new tools to address California's housing crisis. The Legislature has made regular updates to these laws to either clarify points of confusion or tighten provisions of unintended flexibility.

An affordable housing authority is created by resolution of a city or county. An authority consists of five or seven members, which must include at least three members of the city council or board of supervisors and at least one member of the public who lives or works in the authority's boundaries.

An affordable housing authority is funded by either the issuance of bonds or tax increment financing. After the authority is created, it may approve the issuance of bonds to fund its project. Before the authority is created, the city may approve tax increment financing for the authority. Generally, counties collect property taxes and then disburse the revenues to the cities. With property tax increment financing, the city may allocate its annual revenue from property tax increases to the authority.

Existing law authorizes an affordable housing authority to acquire real estate and make loans and grants for certain affordable housing projects. AB 2035 expands the range of projects an authority may fund, including projects to:

- Develop housing that meets the local share regional very low-, low- and moderate-income housing needs;
- Develop only very low-income housing, regardless of the local share of regional housing needs;
- Rehabilitate, expand or construct emergency shelters, supporting housing or transitional housing;
- Provide services and assistance that are ancillary to affordable housing (e.g., social work, counseling or job training), but such expenditures may not be financed by bonds and may not exceed 5 percent of the authority's total funds and
- Finance water, sewer and other public infrastructure to support affordable housing.

Along with these new projects, AB 2035 makes some technical fixes and clarifications for financing of affordable housing authorities. The new law:

- Requires that the county disburse the revenue from property tax increments directly to the authority after deducting any administrative costs;
- Requires that tax increment financing start the tax year after the Dec. 1 in which a city approves financing (this means that if a city creates an authority on Oct. 5, 2018, the financing will start on Jan. 1, 2019, but, if a city approves financing on Dec. 2, 2018, the financing will start Jan. 1, 2020) and
- Makes clear that a city's tax increment financing will in no way effect the calculation or determination of local property tax rates.

Finally, AB 2035 limits opportunities to challenge an affordable housing authority. Under the new bill, any lawsuit to the authority's creation, affordable housing plan or financing must be filed within 30 days of the relevant action.

For more information about this law and how it may impact your agency, please contact one of the authors of this Legal Alert listed at the right in the firm's [Municipal Law \(https://www.bbklaw.com/services/practices/municipal-law\)](https://www.bbklaw.com/services/practices/municipal-law) practice group or your [BB&K attorney \(https://www.bbklaw.com/our-team\)](https://www.bbklaw.com/our-team).

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**Assembly Bill No. 2035****CHAPTER 862**

An act to amend Sections 62250, 62251, 62252, 62253, 62254, and 62255 of, and to add Section 62261.1 to, the Government Code, relating to local government.

[ Approved by Governor September 28, 2018. Filed with Secretary of State September 28, 2018. ]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 2035, Mullin. Affordable housing authorities.

Existing law authorizes a city, county, or city and county to adopt a resolution creating an affordable housing authority with powers limited to providing low- and moderate-income housing and affordable workforce housing, as provided, by means of tax increment financing. Existing law defines various terms for these purposes.

This bill would additionally define the terms "authorizing resolution" and "property tax increment" for these purposes. The bill would additionally revise these provisions to limit the authority to providing low- and moderate-income housing and affordable housing, as specified.

Existing law sets forth the composition of the governing board of an authority created pursuant to these provisions and requires the governing board to be an odd number with at least 5 or 7 members, at least 3 of which are required to be appointed by the legislative body of the city or county, as specified.

This bill would, in the case of an authority created by a city and county, require the governing board to include appointments made by the mayor in the same number as are appointed by the legislative body of the city and county, as specified.

Existing law authorizes specified local entities to adopt a resolution to provide property tax increment revenues to the authority. Existing law requires that housing funds expended by an authority be spent in proportion to the share of the regional housing need allocated to the city, county, or city and county for income categories for low, very low, and moderate-income housing.

This bill would require the resolution provision for receipt of property tax increment to become effective in the property tax year that begins after the December 1 immediately following the adoption of a resolution to provide property tax revenues to the authority. The bill would additionally authorize the repeal of the resolution by giving the county auditor-controller at least 90 days' notice prior to the end of the current fiscal year, as specified. The bill would establish alternative purposes for which housing funds may be spent, including expending all housing funds for the development of very low income housing or for one or more activities relating to the rehabilitation, expansion, or construction of emergency shelters, supportive housing, or transitional housing, or a combination of that development and one or more of those activities. The bill would also require the county auditor-controller to deduct any costs incurred by the county in administering these provisions, prior to distributing property tax increment to the authority.

Existing law additionally authorizes specified local entities to adopt a resolution allocating other tax revenues to the authority, subject to certain requirements.

This bill would authorize the repeal of this resolution, as specified.

Existing law authorizes an authority to take specified actions, including issuing bonds in conformity with provisions governing the issuance of general obligation bonds.

This bill would additionally authorize an authority to issue bonds in conformity with the Housing Authorities Law and to finance water, sewer, or other public infrastructure necessary to support the development of affordable housing.

Existing law requires the authority to contract for an independent audit every 5 years beginning in the calendar year in which the authority has allocated a cumulative total of more than \$1,000,000 in property tax revenues or other revenues, including any proceeds of a debt issuance, as specified.

This bill would instead require an authority to contract for an independent audit commencing in the calendar year in which the authority has been allocated a cumulative total of more than \$1,000,000 in revenues, including any proceeds of a debt issuance, and annually thereafter.

The bill would additionally require any proceeding to attack, review, set aside, void, or annul the creation of an authority, the adoption of an affordable housing plan, the allocation of tax revenues to an authority, or the issuance of bonds by an authority to be commenced within 30 days of the enactment of the resolution authorizing the action.

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

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

**SECTION 1.** Section 62250 of the Government Code is amended to read:

**62250.** For purposes of this division, the following terms have the following meanings:

(a) "Affordable housing" means housing with an affordable housing cost, as defined in Section 50052.5 of the Health and Safety Code, or affordable rent, as defined in Section 50053 of the Health and Safety Code, for households whose gross income does not exceed 120 percent of the area median income.

(b) "Authority" means an affordable housing authority created pursuant to this division.

(c) "Authorizing resolution" means a resolution adopted pursuant to subdivision (a) of Section 62251 creating an authority.

(d) "Consenting local agency" means a local agency that has adopted a resolution of its governing body consenting to the affordable housing investment plan.

(e) "Plan" means an affordable housing investment plan adopted pursuant to Section 62252. The plan shall be deemed to be the plan described in Section 16 of Article XVI of the California Constitution.

(f) "Property tax increment" means that portion of the ad valorem taxes, as defined under subdivision (a) of Section 1 of Article XIII A of the California Constitution, levied each year in excess of the amount levied by or for a taxing agency upon the total sum of the assessed value of the taxable property in the boundaries of an authority as defined in the resolution first establishing the authority, as shown upon the assessment roll used in connection with the taxation of that property by the taxing agency as of the last equalized roll prior to either the effective date of the authorizing resolution or, if specified in the authorizing resolution, another fiscal year no more than five years prior to the effective date of the authorizing resolution. Property tax increment shall not include taxable properties located within the boundaries of a former redevelopment agency dissolved pursuant to Section 34172 of the Health and Safety Code unless and until all obligations of the former redevelopment agency have been retired and the successor agency to the former redevelopment agency has fully dissolved. Following dissolution, for purposes of calculating property tax increment for those taxable properties located within the boundaries of a former redevelopment agency, the fiscal year following final dissolution shall serve as the last equalized roll.

(g) "Real property" means any of the following:

- (1) Land, including land under water and waterfront property.
- (2) Buildings, structures, fixtures, and improvements on the land.
- (3) Any property appurtenant to, or used in connection with, the land.
- (4) Every estate, interest, privilege, easement, franchise, and right in land, including rights-of-way, terms for years, and liens, charges, or encumbrances by way of judgment, mortgage, or otherwise and the indebtedness secured by those liens.

**SEC. 2.** Section 62251 of the Government Code is amended to read:

**62251.** (a) A city, county, or city and county may adopt a resolution creating an affordable housing authority that shall be limited to providing low- and moderate-income housing and affordable housing pursuant to this division. An authority created pursuant to this division is a public body, corporate and politic. An authority shall be deemed to be an "agency" described in subdivision (b) of Section 16 of Article XVI of the California Constitution only for purposes of receiving property tax increment revenues.

(b) (1) A school entity, as defined in subdivision (f) of Section 95 of the Revenue and Taxation Code, may not participate in an authority created pursuant to this section.

(2) A successor agency, as defined in subdivision (j) of Section 34171 of the Health and Safety Code, may not participate in an authority created pursuant to this part, and an entity created pursuant to this part shall not receive any portion of the property tax revenues or other moneys distributed pursuant to Section 34188 of the Health and Safety Code.

(3) An authority formed by a city or county that created a redevelopment agency that was dissolved pursuant to Part 1.85 (commencing with Section 34170) of Division 24 of the Health and Safety Code shall not become effective until the successor agency or designated local authority for the former redevelopment agency has adopted findings of fact stating all of the following:

(A) The agency has received a finding of completion from the Department of Finance pursuant to Section 34179.7 of the Health and Safety Code.

(B) Former redevelopment agency assets that are the subject of litigation against the state, where the city or county or its successor agency or designated local authority are a named plaintiff, have not been or will not be used to benefit any efforts of an authority formed under this part unless the litigation has been resolved by entry of a final judgment by any court of competent jurisdiction and any appeals have been exhausted.

(C) The agency has complied with all orders of the Controller pursuant to Section 34167.5 of the Health and Safety Code.

(c) The governing board of an authority created pursuant to this division shall be an odd number of members with at least five or seven members in total, as follows:

(1) (A) In the case of an authority formed by a city, at least three members of the city council appointed by the city council.

(B) In the case of an authority formed by a county, at least three members of the board of supervisors appointed by the board of supervisors.

(C) In the case of an authority created jointly by a city and a county, at least three members of the city council and three members of the board of supervisors.

(D) In the case of an authority created by a city and county, the mayor shall appoint the same number of members as are appointed by the legislative body of the city and county. Appointments made pursuant to this subparagraph shall not be subject to review by the legislative body of the city and county.

(2) At least one member of the public who lives or works within the boundaries of the city or county that created the authority.

(d) The boundaries of an authority created pursuant to this division may be identical to the boundaries of the city or county that created the authority.

**SEC. 3.** Section 62252 of the Government Code is amended to read:

**62252.** (a) An authority created pursuant to this division shall, by resolution, create a Low and Moderate Income Housing Fund and adopt an affordable housing investment plan that may include either or both of the following:

- (1) A provision for the receipt of property tax increment generated within the area.
- (2) A provision for the receipt of any tax revenues allocated to the authority pursuant to subdivision (b) of Section 62253.

(b) The plan shall include each of the following elements:

- (1) A statement of the principal goals and objectives of the plan.
- (2) An affordable housing program that describes how the authority will fulfill its objective and if duties and activities will be assigned to a city or county housing department or public housing authority.
- (3) The estimated amount that will be deposited in the Low and Moderate Income Housing Fund during each of the next five years.
- (4) Estimates of the number of new, rehabilitated, or price restricted residential units to be assisted during each of the five years and estimates of the expenditures of moneys from the Low and Moderate Income Housing Fund during each of the five years.
- (5) A description of how the program will implement the requirements for expenditures of funds in the Low and Moderate Income Housing Fund over a 10-year period at various income levels.
- (6) Estimates of the number of units, if any, to be developed by the authority for very low, low-, and moderate-income households during the next five years.
- (7) A fiscal analysis setting forth the projected receipt of revenue and projected expenses over a five-year planning horizon, including the potential issuance of bonds backed by property tax increment revenues pursuant to subdivision (a) of Section 62253 during the term of the plan.

(8) Time limits as follows:

- (A) Forty-five years for the establishing of loans, advances, and indebtedness.
  - (B) Forty-five years for repayment of all of the authority's debts and obligations, and fulfilling all of the authority's housing obligations. The plan shall specify that an authority shall dissolve as a legal entity in no more than 45 years, and that no further taxes shall be allocated to the authority thereafter. Nothing in this subparagraph shall be interpreted to prohibit an authority from refinancing outstanding debt solely to reduce interest costs.
- (9) A feasible method or plan for relocation of families and persons to be temporarily or permanently displaced from housing facilities in the plan area. The method or plan shall be consistent with the requirements of Section 62256.

(c) The authority shall hold a public hearing before adopting an affordable housing investment plan. The authority shall provide notice of that hearing in accordance with Section 6062. The authority shall consider any comments made on the plan at that hearing before adopting the plan.

**SEC. 4.** Section 62253 of the Government Code is amended to read:

**62253.** (a) (1) At any time before or after adoption of the plan, any city, county, or special district, other than a school entity as defined in subdivision (n) of Section 95 of the Revenue and Taxation Code or a successor agency as defined in subdivision (j) of Section 34171, that receives ad valorem property taxes from property located within an area may adopt a resolution directing the county auditor-controller to allocate its share of property tax increment within the area covered by the plan to the authority. The resolution adopted pursuant to this subdivision may direct the county auditor-controller to allocate less than the full amount of the property tax increment, and to establish a maximum amount of time in years that the allocation takes place. These amounts shall be allocated to the authority and, when collected, shall be held in a separate fund by the authority. Before adopting a resolution pursuant to this subdivision, a city, county, or special district shall approve a memorandum of understanding with the authority governing the use of property tax increment funds by the authority for administrative and overhead expenses.

(2) The provision for the receipt of property tax increment shall become effective in the property tax year that begins after the December 1 immediately following the adoption of a resolution pursuant paragraph (1). A resolution adopted pursuant to paragraph (1) shall be provided to the county auditor-controller no later than the December 1 immediately following its adoption.

(3) A resolution adopted pursuant to this subdivision may be repealed and be of no further effect beginning in the fiscal year following the adoption of any repeal, by giving the county auditor-controller at least 90 days' notice prior to the end of the current fiscal year, provided, however, that the county auditor-controller shall continue to allocate the taxing entity's share of ad valorem property taxes that have been pledged to the repayment of debt issued by the authority to the authority until that debt has been fully repaid, including by means of a refinancing or refunding, unless otherwise agreed upon by the authority and the taxing entity. For purposes of determining the annual amount of a taxing entity's share of ad valorem property taxes that shall continue to be allocated to an authority following a repeal, the annual amount allocated for all years until the debt has been fully repaid shall be the maximum amount required to service the debt for any single annual period as provided in the authority's debt service schedule.

(4) When the loans, advances, and indebtedness of an authority, if any, and interest thereon, have been paid, or the maximum amount of time in years has passed in accordance with a resolution adopted pursuant to this subdivision, all funds thereafter received from taxes upon the taxable property in the authority's boundaries shall be paid into the funds of the respective taxing agencies as taxes on all other property are paid.

(5) All of the taxes levied and collected upon the taxable property in the boundaries of the authority shall be paid into the funds of the respective taxing agencies as though the authority had not been created unless the total assessed valuation of the taxable property in the boundaries of an authority exceeds the total assessed value of the taxable property in the boundaries as shown by the last equalized assessment roll.

(b) (1) At any time before or after the adoption of the plan, a city, county, or special district, other than a school entity as defined in subdivision (n) of Section 95 of the Revenue and Taxation Code or a successor agency as defined in subdivision (j) of Section 34171, may adopt a resolution to allocate tax revenues of that entity to the authority, including revenues derived from local sales and use taxes imposed pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code) or transactions and use taxes imposed pursuant to the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251) of the Revenue and Taxation Code), provided that both of the following apply:

(A) The use of those revenues by the authority for purposes of this division is consistent with the purposes for which that tax was imposed.

(B) The boundaries of the authority are coterminous with the city or county that established the authority.

(2) A resolution adopted pursuant to this subdivision may be repealed and be of no further effect, provided, however, that the tax revenues allocated to the authority that have been pledged to the repayment of debt issued by the authority shall continue to be so allocated until that debt has been fully repaid, including by means of a refinancing or refunding, unless otherwise agreed upon by the authority and the taxing entity.

(c) A minimum of 95 percent of the allocated property tax increment revenues pursuant to subdivision (a), and allocated tax revenues pursuant to subdivision (b), shall be used to increase, improve, and preserve the community's supply of housing for low, very low, and moderate-income households. Not more than 5 percent of allocated revenues may be used for administration.

(d) Housing funds expended by an authority shall be spent in one of the following ways:

(1) All housing funds expended in proportion to the share of the regional housing need allocated to the city, county, or city and county for each income category pursuant to Section 65584 for low, very low, and moderate-income housing.

(2) All housing funds expended for the development of very low income housing.

(3) All housing funds expended for one or more of the following activities:

(A) Rehabilitation, expansion, or construction of one or more of the following:

(i) An emergency shelter, as defined in subdivision (e) of Section 50801 of the Health and Safety Code.

(ii) Supportive housing, as defined in subdivision (b) of Section 50675.14 of the Health and Safety Code.

(iii) Transitional housing, as defined in subdivision (h) of Section 50675.2 or subdivision (i) of Section 50801 of the Health and Safety Code.

(B) (i) Not more than 5 percent of all housing funds may be used for ancillary services and assistance.

(ii) An authority shall not use the proceeds of bonds for the purposes specified in clause (i).

(C) Any activity authorized by paragraph (2) or (7) of subdivision (a) of Section 50803 of the Health and Safety Code.

(4) All housing funds expended for the development of very low income housing and one or more of the activities listed in paragraph (3).

(e) Prior to distributing property tax increment to the authority, the county auditor-controller shall deduct any costs incurred by the county in administering the provisions of this division.

(f) This section shall not be construed to do any of the following:

(1) Reduce any allocations of excess, additional, or remaining funds that would otherwise have been allocated to county superintendents of schools, cities, counties, and cities and counties pursuant to clause (i) of subparagraph (B) of paragraph (4) of subdivision (d) of Section 97.2, clause (i) of subparagraph (B) of paragraph (4) of subdivision (d) of Sections 97.3, or Article 4 (commencing with Section 98) of Chapter 6 of Part 0.5 of Division 1, of the Revenue and Taxation Code had this section not been enacted.

(2) Alter in any way the manner in which ad valorem property tax revenue is allocated among taxing entities in a county that have not passed a resolution pursuant to subdivision (a).

(3) Alter in any way the manner in which ad valorem property tax revenue growth from fiscal year to fiscal year is otherwise determined or allocated in a county.

(4) Alter in any way the ad valorem property tax revenue allocations required under Article 4 (commencing with Section 98) of Chapter 6 of Part 0.5 of Division 1 of the Revenue and Taxation Code.

(5) Alter in any way the calculations performed pursuant to Section 95.3 of the Revenue and Taxation Code.

(6) Alter in any way the manner in which ad valorem property tax revenue is allocated pursuant to Section 75.70 of the Revenue and Taxation Code.

(7) Alter in any way the manner in which calculations are performed pursuant to Section 97.70 of the Revenue and Taxation Code.

**SEC. 5.** Section 62254 of the Government Code is amended to read:

**62254.** An authority may do any of the following:

(a) Provide for low- and moderate-income housing and affordable housing in accordance with this division.

(b) Remedy or remove a release of hazardous substances pursuant to 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) or Chapter 6.10 (commencing with Section 25403) of Division 20 of the Health and Safety Code.

(c) Provide for seismic retrofits of existing buildings in accordance with all applicable laws and regulations.

(d) Acquire and transfer real property in accordance with Section 62260. The authority shall retain controls and establish restrictions or covenants running with the land sold or leased for private use for the periods of time and under the conditions as provided in the plan. The establishment of these controls is a public purpose under this division.

(e) Issue bonds in conformity with Article 4.5 (commencing with Section 53506) and Article 5 (commencing with Section 53510) of Chapter 3 of Part 1 of Division 2 of Title 5, or Article 5 (commencing with Section 34350) of Chapter 1 of Part 2 of Division 24 of the Health and Safety Code, provided that if any provision thereof conflicts with this division, this division shall control.

(f) (1) Borrow money, receive grants, or accept financial or other assistance or investment from the state or the federal government or any other public agency or private lending institution for any project within its area of operation, and comply with any conditions of a loan or grant. An authority may qualify for funding as a

disadvantaged community pursuant to Section 79505.5 of the Water Code or as defined by Section 56033.5. An authority may also enter into an agreement with a qualified community development entity, as defined by Section 45D(c) of the Internal Revenue Code, to coordinate investments of funds derived from the New Markets Tax Credit with those of the authority in instances where coordination offers opportunities for greater efficiency of investments to improve conditions described in subdivisions (c) and (d) within the territorial jurisdiction of the authority.

(2) Receive funds allocated to it pursuant to a resolution adopted by a city, county, or special district to transfer these funds from a source described in subdivision (d), (e), or (f) of Section 53398.75, subject to any requirements upon, or imposed by, the city, county, or special district as to the use of these funds.

(g) Adopt an affordable housing plan pursuant to Section 62252.

(h) Make loans or grants for owners or tenants to improve, rehabilitate, or retrofit buildings or structures within the plan area.

(i) Construct foundations, platforms, and other like structural forms necessary for the provision or utilization of air rights sites for buildings to be used for purposes of providing affordable housing pursuant to this division.

(j) Finance water, sewer, or other public infrastructure necessary to support the development of affordable housing pursuant to this division.

**SEC. 6.** Section 62255 of the Government Code is amended to read:

**62255.** Commencing in the calendar year in which the authority has allocated a cumulative total of more than one million dollars (\$1,000,000) in property tax increment revenues pursuant to subdivision (a) of Section 62253 or other revenues pursuant to subdivision (b) of Section 62253, including any proceeds of a debt issuance, and each year thereafter, the authority shall contract for an independent audit conducted in accordance with generally accepted governmental auditing standards.

**SEC. 7.** Section 62261.1 is added to the Government Code, to read:

**62261.1.** Any action or proceeding to attack, review, set aside, void, or annul the creation of an authority, the adoption of an affordable housing plan pursuant to Section 62252, the allocation of tax revenues to an authority pursuant to Section 62253, or the issuance of bonds by an authority shall be commenced within 30 days after the enactment of the resolution authorizing the action. Consistent with the time limitations of this section, an action or proceeding with respect to an allocation of tax revenues to, or the issuance of bonds by, an authority shall be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure. An authority that receives an allocation of tax revenues pursuant to 62253 or that issues bonds, warrants, contracts, obligations, or other evidences of indebtedness may bring an action in the superior court of the county in which the authority is located to determine the validity of the bonds, warrants, contracts, obligations, or evidences of indebtedness pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.