



ALSTON & BIRD LAND USE MATTERS

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Each month, *Land Use Matters* will provide information and insights into legal and regulatory developments, primarily at the Los Angeles City and County levels, affecting land use matters, as well as new CEQA appellate decisions.

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State of California

Office of Governor Edmund G. Brown

California's New Enhanced Infrastructure Financing Districts May Bring New Life to Infrastructure Financing

On September 29, 2014, Governor Jerry Brown signed into law California [Senate Bill 628](#), authorizing the creation of new government entities called Enhanced Infrastructure Financing Districts (EIFDs). The new legislation allows city and local officials to create EIFDs to finance the construction or rehabilitation of a wide variety of public infrastructures—and some types of private facilities—through tax increment financing. The process for creating EIFDs is more flexible than California's previous law authorizing Infrastructure Financing Districts (IFDs), and EIFDs are viewed as a highly promising first step toward returning some of the authority that cities and counties lost when the state eliminated local redevelopment agencies. However, despite optimism that EIFDs will be a valuable new mechanism for cities and counties to promote development (or redevelopment), the state development community universally agrees that EIFDs are not a full or sufficient replacement for redevelopment agencies. Still, SB 628 offers local authorities a flexible tool to address a wide variety of community needs, including economic development, affordable housing, sustainable development and environmental mitigation.

Eligible Projects

SB 628 provides a nonexhaustive list of the types of facilities that an EIFD may finance, including highways, interchanges, ramps and bridges, arterial streets, parking facilities and transit facilities; parks, recreational facilities and open space; low- and moderate-income housing; and industrial structures for private use. (See [Senate Bill 628](#), Section 53398.52(b), below.) While that statutory list is nonexhaustive, the authority of EIFDs is not unlimited; specifically, EIFDs may only use funds to finance "public capital facilities or other specified projects of communitywide significance that provide significant benefits to the district or the surrounding community." Because of the vague nature of that "limiting" language, some commentators believe that the new EIFDs may actually be used to finance certain private developments—so long as each taxing authority included in the district agrees that such project satisfies the statutory threshold that the project must provide "significant benefits" to the district or community.

Process for Creating an EIFD

To create an EIFD, a city or county must prepare an infrastructure financing plan that includes descriptions of the proposed district, descriptions of the public facilities and other forms of development or financial assistance proposed in the area of the district, whether funding from the affected taxing entities is incorporated into the financing plan, and a financing section. The preparation of an infrastructure plan should include discussions with affected taxing entities to determine whether they consent to transferring their share of the property tax increment to the proposed EIFD. Affected taxing entities may voluntarily contribute their tax increment to an EIFD and determine the amount, if any, they will contribute. The amounts contributed by affected taxing entities do not need to be the same for all taxing entities.

Before adopting the proposed infrastructure financing plan, the city or county must hold a public hearing and hear recommendations and objections to the plan. The city or county must also create a district governing board that must include members of the legislative body of the participating public entities and at least two members of the public chosen by the city or county. After the public hearing, the city or county may adopt an infrastructure financing plan to form an EIFD. Unlike the previous law authorizing IFDs, no voter approval is required to form an EIFD. The new law also changes the voter approval requirement to issue bonds. Previously, the law required two-thirds' approval. Now, the governing board of the district may issue bonds with approval of 55 percent of the voters registered to vote within the district.

List of Eligible Projects from Section 53398.52(b)

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

1. Highways, interchanges, ramps and bridges, arterial streets, parking facilities, and transit facilities.
2. Sewage treatment and water reclamation plants and interceptor pipes.
3. Facilities for the collection and treatment of water for urban uses.
4. Flood control levees and dams, retention basins, and drainage channels.
5. Child care facilities.
6. Libraries.
7. Parks, recreational facilities, and open space.
8. Facilities for the transfer and disposal of solid waste, including transfer stations and vehicles.
9. Brownfield restoration and other environmental mitigation.
10. The development of projects on a former military base, provided that the projects are consistent with the military base authority reuse plan and are approved by the military base reuse authority, if applicable.
11. The repayment of the transfer of funds to a military base reuse authority pursuant to Section 67851 that occurred on or after the creation of the district.
12. The acquisition, construction, or rehabilitation of housing for persons of low and moderate income, as defined in Section 50093 of the Health and Safety Code, for rent or purchase.
13. Acquisition, construction, or repair of industrial structures for private use.
14. Transit priority projects, as defined in Section 21155 of the Public Resources Code, that are located within a transit priority project area. For purposes of this paragraph, a transit priority project area may include a military base reuse plan that meets the definition of a transit priority project area and it may include a contaminated site within a transit priority project area.
15. Projects that implement a sustainable communities strategy, when the State Air Resources Board, pursuant to Chapter 2.5 (commencing with Section 65080) of Division 2 of Title 7, has accepted a metropolitan planning organization's determination that the sustainable communities strategy or the alternative planning strategy would, if implemented, achieve the greenhouse gas emission reduction targets.

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