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SB-961 Enhanced infrastructure financing districts. (2017-2018)

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Senate Bill No. 961

CHAPTER 559

An act to amend Section 53398.69 of, and to add Sections 53398.75.7 and 65040.15 to, the Government Code, relating to local government.

[Approved by Governor September 19, 2018. Filed with Secretary of State September 19, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 961, Allen. Enhanced infrastructure financing districts.

(1) Existing law establishes procedures for the formation of infrastructure financing districts, enhanced infrastructure financing districts, infrastructure and revitalization financing districts, and community revitalization and investment authorities, as specified, to undertake various economic development projects, including financing public facilities and infrastructure, affordable housing, and economic revitalization. Existing law authorizes the issuance of bonds for the funding of these purposes, and, in the case of an enhanced infrastructure financing district, requires voter approval, as specified, for the issuance of those bonds. Existing law, the Neighborhood Infill Finance and Transit Improvements Act, authorizes a city, county, or city and county to adopt a resolution, at any time before or after the adoption of the infrastructure financing plan for an enhanced infrastructure financing district, to allocate, under specified circumstances, tax revenues of that entity to the district, including revenues derived from local sales and use taxes imposed pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or transactions and use taxes imposed in accordance with the Transactions and Use Tax Law.

This bill would enact the Second Neighborhood Infill Finance and Transit Improvements Act, which would similarly authorize a city, county, or city and county to adopt a resolution, at any time before or after the adoption of the infrastructure financing plan for an enhanced infrastructure financing district, to allocate tax revenues of that entity to the district, including revenues derived from local sales and use taxes imposed pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or transactions and use taxes imposed in accordance with the Transactions and Use Tax Law, if the area to be financed is within one-half mile of a major transit stop, as specified, and, among other things, certain conditions relating to housing and the infrastructure financing plan are or will be met. The bill would authorize bonds to be issued for the purposes of the Second Neighborhood Infill Finance and Transit Improvements Act without voter approval. The bill would require an enhanced infrastructure financing district utilizing these provisions to follow specific notice, protest, and election proceedings for the adoption of the infrastructure financing plan.

(2) Existing law, the Planning and Zoning Law, establishes the Office of Planning and Research in the Governor's office to provide the Governor and his or her cabinet with long-range planning and research and to serve as the comprehensive state planning agency, and sets forth the duties of the office, as specified.

This bill would require the Office of Planning and Research, on or before January 1, 2021, to complete a study on the effectiveness of tax increment financing tools for increasing housing production, including a comparison of the relative advantages and disadvantages of infrastructure financing districts, enhanced infrastructure financing districts, affordable housing

authorities, use of the Neighborhood Infill Finance and Transit Improvements Act, and use of the Second Neighborhood Infill Finance and Transit Improvements Act, as specified.

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

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

SECTION 1. Section 53398.69 of the Government Code is amended to read:

53398.69. (a) (1) At the conclusion of the hearing, the public financing authority may adopt a resolution proposing adoption of the infrastructure financing plan, as modified, and formation of the enhanced infrastructure financing district in a manner consistent with Section 53398.68, or it may adopt a resolution abandoning the proceedings. If the proceedings are abandoned, then the public financing authority shall cease to exist by operation of this section with no further action required of the legislative body and the legislative body may not enact a resolution of intention to establish a district that includes the same geographic area within one year of the date of the resolution abandoning the proceedings.

(2) In the case of an infrastructure financing plan adopted pursuant to Section 53398.75.7, the proceedings set forth in subdivision (e) of that section shall govern the adoption of the infrastructure financing plan.

(b) The infrastructure financing plan shall take effect upon the adoption of the resolution. The infrastructure financing plan shall specify if the district shall be funded solely through the district's share of tax increment, governmental or private loans, grants, bonds, assessments, fees, or some combination thereof. However, the public financing authority shall not issue bonds or levy assessments or fees that may be included in the infrastructure financing plan before one or more of the following:

(1) An affirmative vote, pursuant to subdivision (a) of Section 53398.81 and, if applicable, subdivision (c) of Section 53398.80.5, to issue bonds to finance the infrastructure financing plan.

(2) Compliance with the procedures required in subdivision (f) of Section 53398.75, to levy assessments or fees to finance the infrastructure financing plan.

(c) In addition, the district may expend up to 10 percent of any accrued tax increment in the first two years of the effective date of the enhanced infrastructure financing district on planning and dissemination of information to the residents within the district's boundaries about the infrastructure financing plan and planned activities to be funded by the district.

SEC. 2. Section 53398.75.7 is added to the Government Code, to read:

53398.75.7. (a) This section shall be known and may be cited as the Second Neighborhood Infill Finance and Transit Improvements Act, or NIFTI-2.

(b) (1) At any time before or after the adoption of the infrastructure financing plan, a city, county, or city and county may adopt a resolution to allocate tax revenues of that entity to the district, 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 in accordance with the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code), if all of the following apply:

(A) The area to be financed with funds received pursuant to this section is within one-half mile of a major transit stop, as defined in Section 21064.3 of the Public Resources Code.

(B) The infrastructure financing plan requires that at least 40 percent of the total funds received by the district pursuant to this section be used for the acquisition, construction, or rehabilitation of housing, including the costs of predevelopment and land acquisition, for households with incomes below 60 percent of area median income for rent or purchase. Predevelopment costs include, but are not limited to, site control, engineering studies, architectural plans, application fees, legal services, permits, bonding, and site preparation.

(C) The infrastructure financing plan requires that 50 percent of the housing funds are used to develop housing affordable to and occupied by households with incomes below 60 percent and greater than 30 percent of area median income, and 50 percent of the housing funds are used for either housing affordable to and occupied by households with incomes below 30 percent of area median income or permanent supportive housing to help homeless persons get off the street.

(D) The infrastructure financing plan gives first priority for occupancy of housing funded through this plan to income-qualified households displaced from the district through no fault of their own, and secondary priority for occupancy of housing funded through this program is given to households with a member or members employed within two miles of the district.

(E) The infrastructure financing plan requires that at least 10 percent of the total funds received by the district pursuant to this section be used for investments in the capital costs of parks, urban forestry, or permanent greening improvements along boulevards, streets, or other public areas within a district, or active transportation capital projects that qualify under the Active Transportation Program (Chapter 8 (commencing with Section 2380) of Division 3 of the Streets and Highways Code), including pedestrian or bicycle facilities or supportive infrastructure, including connectivity to transit stations.

(F) The boundaries of the enhanced infrastructure financing district are coterminous with the city or county that established the district.

(G) The use of the revenues derived from the local sales and use taxes imposed under 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 in accordance with the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code) pursuant to the infrastructure financing plan is consistent with the purposes for which that tax is imposed.

(H) If the infrastructure financing plan proposes to allocate tax revenues of that entity to the district that are derived from the 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), the city, county, or city and county has received the consent of any impacted transportation agency that receives tax revenues derived from that any tax adopted pursuant to that law, and has ensured that existing or planned transportation operations and capital projects will not be negatively impacted.

(2) This section does not authorize a city, county, or city and county to allocate all, or a portion of any 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 in accordance with the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code), that was approved by the voters for a special purpose not related to the purposes in paragraph (1).

(c) The remaining funds may be used for any of the following:

(1) Multifamily affordable housing projects or mixed-use projects with affordable multifamily housing and ground floor commercial uses that support infill and compact development.

(2) Transit capital projects, including transit stations and programs supporting transit ridership, including waterborne transit.

(3) Transit-oriented development projects, including affordable housing and infrastructure at or near transit stations or connecting those developments to transit stations.

(4) Capital projects that implement local complete streets programs.

(5) Parking, including detached and decoupled parking structures that provide parking for residents, businesses, or visitors in lieu of onsite parking for proposed developments. These parking structures should provide no more than one space for each residential unit. The ground floors in these parking structures should provide space for pedestrian-oriented commercial or public uses. Revenues from parking may be used to implement transportation demand management programs to reduce automobile trips to and from the district.

(6) Other projects or programs designed to reduce greenhouse gas emissions and other criteria air pollutants by reducing automobile trips and vehicle miles traveled within a community.

(d) The infrastructure financing plan shall ensure that the requirements of this section are met every 10 years.

(e) (1) Sections 53398.66 and 53398.67 shall not apply to the adoption of an enhanced infrastructure financing plan that includes the allocation of tax revenues pursuant to this section.

(2) (A) The public financing authority shall consider adoption of the enhanced infrastructure financing plan at three public hearings that shall take place at least 30 days apart.

(B) At the first public hearing, the public financing authority shall hear all written and oral comments, but take no action.

(C) At the second public hearing, the public financing authority shall consider any additional written and oral comments and take action to modify or reject the enhanced infrastructure financing plan. If the enhanced infrastructure financing plan is not rejected at the second public hearing, then the public financing authority shall conduct a protest proceeding at the third public hearing to consider whether the landowners and residents within the enhanced infrastructure financing plan area wish to present oral or written protests against the adoption of the enhanced infrastructure financing plan.

(3) The draft enhanced infrastructure financing plan shall be made available to the public and to each landowner within the area at a meeting held at least 30 days prior to the notice given for the first public hearing. The purposes of the meeting shall be to allow the staff of the public financing authority to present the draft enhanced infrastructure financing plan, answer questions about the enhanced infrastructure financing plan, and consider comments about the enhanced infrastructure financing plan.

(4) (A) Notice of the meeting required by paragraph (3) and the public hearings required by this paragraph shall be given in accordance with paragraph (11). The notice shall do all of the following, as applicable:

(i) Describe specifically the boundaries of the proposed area.

(ii) Describe the purpose of the enhanced infrastructure financing plan.

(iii) State the day, hour, and place when and where any and all persons having any comments on the proposed enhanced infrastructure financing plan may appear to provide written or oral comments to the enhanced infrastructure financing district.

(iv) Notice of the second public hearing shall include a summary of the changes made to the enhanced infrastructure financing plan as a result of the oral and written testimony received at or before the public hearing and shall identify a location accessible to the public where the enhanced infrastructure financing plan proposed to be presented and adopted at the second public hearing can be reviewed.

(v) Notice of the third public hearing to consider any written or oral protests shall contain a copy of the enhanced infrastructure financing plan adopted pursuant to paragraph (2), and shall inform the landowner and resident of his or her right to submit an oral or written protest before the close of the public hearing. The protest may state that the landowner or resident objects to the public financing authority taking action to implement the enhanced infrastructure financing plan.

(B) At the third public hearing, the public financing authority shall consider all written and oral protests received prior to the close of the public hearing and shall terminate the proceedings or adopt the enhanced infrastructure financing plan subject to confirmation by the voters at an election called for that purpose. The public financing authority shall terminate the proceedings if there is a majority protest. A majority protest exists if protests have been filed representing over 50 percent of the combined number of landowners and residents in the area who are at least 18 years of age. An election shall be called if between 25 percent and 50 percent of the combined number of landowners and residents in the area who are at least 18 years of age file a protest.

(5) An election required pursuant to subparagraph (B) of paragraph (4) shall be held within 90 days of the public hearing and may be held by mail-in ballot. The public financing authority shall adopt, at a duly noticed public hearing, procedures for this election.

(6) If a majority of the landowners and residents vote against the enhanced infrastructure financing plan, then the public financing authority shall not take any further action to implement the proposed enhanced infrastructure financing plan. The public financing authority shall not propose a new or revised enhanced infrastructure financing plan to the affected landowners and residents for at least one year following the date of an election in which the enhanced infrastructure financing plan was rejected.

(7) At the hour set in the notice required by paragraph (2), the public financing authority shall consider all written and oral comments.

(8) If less than 25 percent of the combined number of landowners and residents in the area who are at least 18 years of age file a protest, the public financing authority may adopt the enhanced infrastructure financing plan at the conclusion of the third public hearing by ordinance. The ordinance adopting the enhanced infrastructure financing plan shall be subject to referendum as prescribed by law.

(9) For the purposes of this chapter, the enhanced infrastructure financing plan shall be the enhanced infrastructure financing plan adopted pursuant to this section.

(10) The public financing authority shall consider and adopt an amendment or amendments to an enhanced infrastructure financing plan in accordance with the provisions of this section.

(11) The public financing authority shall post notice of each meeting or public hearing required by this section in an easily identifiable and accessible location on the enhanced infrastructure financing district's Internet Web site and shall mail a written notice of the meeting or public hearing to each landowner, each resident, and each taxing entity at least 10 days prior to the meeting or public hearing.

(A) Notice of the first public hearing shall also be published not less than once a week for four successive weeks prior to the first public hearing in a newspaper of general circulation published in the county in which the area lies. The notice shall state that the district will be used to finance public facilities or development, briefly describe the public facilities or development, briefly describe the proposed financial arrangements, including the proposed commitment of incremental tax revenue, 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 in accordance with the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code), describe the boundaries of the proposed district, and state the day, hour, and place when and where any persons having any objections to the proposed infrastructure financing plan, or the regularity of any of the prior proceedings, may appear before the public financing authority and object to the adoption of the proposed plan by the public financing authority.

(B) Notice of the second public hearing shall also be published not less than 10 days prior to the second public hearing in a newspaper of general circulation in the county in which the area lies. The notice shall state that the district will be used to finance public facilities or development, briefly describe the public facilities or development, briefly describe the proposed financial arrangements, including the proposed commitment of incremental tax revenue, 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 in accordance with the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code), describe the boundaries of the proposed district, and state the day, hour, and place when and where any persons having any objections to the proposed infrastructure financing plan, or the regularity of any of the prior proceedings, may appear before the public financing authority and object to the adoption of the proposed plan by the public financing authority.

(C) Notice of the third public hearing shall also be published not less than 10 days prior to the third public hearing in a newspaper of general circulation in the county in which the area lies. The notice shall state that the district will be used to finance public facilities or development, briefly describe the public facilities or development, briefly describe the proposed financial arrangements, including the proposed commitment of incremental tax revenue, 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 in accordance with the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code), describe the boundaries of the proposed district, and state the day, hour, and place when and where any persons having any objections to the proposed infrastructure financing plan, or the regularity of any of the prior proceedings, may appear before the public financing authority and object to the adoption of the proposed plan by the public financing authority.

(f) (1) The public financing authority shall review the enhanced infrastructure financing plan at least annually and make any amendments that are necessary and appropriate in accordance with the procedures set forth in paragraph (5) and shall require the preparation of an annual independent financial audit paid for from revenues of the enhanced infrastructure financing district.

(2) A public financing authority shall adopt an annual report on or before June 30 of each year after holding a public hearing. Written copies of the draft report shall be made available to the public 30 days prior to the public hearing. The public financing authority shall cause the draft report to be posted in an easily identifiable and accessible location on the enhanced infrastructure financing district's Internet Web site and shall mail a written notice of the availability of the draft report on the Internet Web site to each owner of land and each resident within the area covered by the enhanced infrastructure financing plan and to each taxing entity that has adopted a resolution pursuant to Section 53398.68. The notice shall be mailed by first-class mail, but may be addressed to "occupant."

(3) The annual report shall contain all of the following:

(A) A description of the projects undertaken in the fiscal year, including any rehabilitation of structures, and a comparison of the progress expected to be made on those projects compared to the actual progress.

(B) A chart comparing the actual revenues and expenses, including administrative costs, of the public financing authority to the budgeted revenues and expenses.

(C) The amount of tax increment revenues received.

(D) The amount of revenues expended for housing meeting the requirements of this section.

(E) An assessment of the status regarding completion of the enhanced infrastructure financing district's projects.

(F) The amount of revenues expended to assist private businesses.

(4) If the public financing authority fails to provide the annual report required by paragraph (1), the public financing authority shall not spend any funds received pursuant to a resolution adopted pursuant to this section until the public financing authority has provided the report.

(5) Every 10 years, at the public hearing held pursuant to paragraph (2), the public financing authority shall conduct a protest proceeding to consider whether the landowners and residents within the enhanced infrastructure financing district wish to present oral or written protests against the enhanced infrastructure financing district. Notice of this protest proceeding shall be included in the written notice of the hearing on the annual report and shall inform the landowner and resident of his or her right to submit an oral or written protest before the close of the public hearing. The protest may state that the landowner or resident objects to the public financing authority taking action to implement the enhanced infrastructure financing plan on and after the date of the election described in paragraph (6). The public financing authority shall consider all written and oral protests received prior to the close of the public hearing.

(6) If there is a majority protest, the public financing authority shall not take any further action to implement the enhanced infrastructure financing plan on and after the date the existence of a majority protest is determined. If between 25 percent and 50 percent of the landowners and residents file protests, then the public financing authority shall call an election of the landowners and residents in the area covered by the enhanced infrastructure financing plan, and shall not initiate or authorize any new projects until the election is held. A majority protest exists if protests have been filed representing over 50 percent of the combined number of landowners and residents at least 18 years of age or older in the area.

(7) An election required pursuant to paragraph (6) shall be held within 90 days of the public hearing and may be held by mail-in ballot. The public financing authority shall adopt, at a duly noticed public hearing, procedures for holding this election.

(8) If a majority of the landowners and residents vote against the enhanced infrastructure financing plan, then the public financing authority shall not take any further action to implement the enhanced infrastructure financing plan on and after the date of the election held pursuant to paragraph (5). This subdivision shall not prevent the public financing authority from taking any and all actions and appropriating and expending funds, including, but not limited to, any and all payments on bonded or contractual indebtedness, to carry out and complete projects for which expenditures of any kind had been made prior to the date of the election.

(g) Notwithstanding Section 53398.52, revenues collected and allocated for the purposes of this section shall not be used for highway or highway interchange improvements.

(h) The district shall require, by recorded covenants or restrictions, that affordable housing units financed pursuant to this section remain permanently available at affordable housing costs to, and occupied by, very low income households, persons and families of low income, or persons and families of low or moderate income for the longest feasible time, but for not less than 55 years for rental units and 45 years for owner-occupied units.

(i) A legislative body shall not adopt an ordinance terminating an enhanced infrastructure financing district created pursuant to this section if the district has not complied with its affordable housing obligations.

(j) Notwithstanding Article 4 (commencing with Section 53398.77), bonds issued by a district pursuant to this section may be issued without voter approval.

(k) Paragraph (1) of subdivision (c) of Section 1720 of the Labor Code shall not apply to projects financed by the enhanced infrastructure financing district.

SEC. 3. Section 65040.15 is added to the Government Code, to read:

65040.15. On or before January 1, 2021, the Office of Planning and Research shall complete a study on the effectiveness of tax increment financing tools for increasing housing production, including a comparison of the relative advantages and disadvantages of infrastructure financing districts, enhanced infrastructure financing districts, affordable housing authorities, use of the Neighborhood Infill Finance and Transit Improvements Act, and use of the Second Neighborhood Infill Finance and Transit Improvements Act. The study shall also include an analysis of the impacts of extending the Second Neighborhood Infill Finance and Transit Improvements Act to areas around bus stops, including segregated bus rapid transit, and make recommendations to the Legislature.