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**SB-852 Climate resilience districts: formation: funding mechanisms.** (2021-2022)

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**Senate Bill No. 852**

**CHAPTER 266**

An act to add Division 6 (commencing with Section 62300) to Title 6 of the Government Code, relating to climate resilience districts.

[ Approved by Governor September 09, 2022. Filed with Secretary of State September 09, 2022. ]

**LEGISLATIVE COUNSEL'S DIGEST**

SB 852, Dodd. Climate resilience districts: formation: funding mechanisms.

Existing law authorizes certain local agencies to form a community revitalization authority (authority) within a community revitalization and investment area, as defined, to carry out provisions of the Community Redevelopment Law in that area for purposes related to, among other things, infrastructure, affordable housing, and economic revitalization. Existing law provides for the financing of these activities by, among other things, the issuance of bonds serviced by property tax increment revenues, and requires the authority to adopt a community revitalization and investment plan for the community revitalization and investment area that includes elements describing and governing revitalization activities.

Existing law authorizes the legislative body of a city or a county to establish an enhanced infrastructure financing district to finance public capital facilities or other specified projects of communitywide significance, including projects that enable communities to adapt to the impacts of climate change. Existing law also requires the legislative body to establish a public financing authority, defined as the governing board of the enhanced infrastructure financing district, prior to the adoption of a resolution to form an enhanced infrastructure district and adopt an infrastructure financing plan.

This bill would authorize a city, county, city and county, special district, or a combination of any of those entities to form a climate resilience district, as defined, for the purposes of raising and allocating funding for eligible projects and the operating expenses of eligible projects. The bill would deem each district to be an enhanced infrastructure financing district and would require each district to comply with existing law concerning enhanced infrastructure financing districts, except as specified. The bill would require a district to finance only specified projects that meet the definition of an eligible project. The bill would define "eligible project" to mean projects that address sea level rise, extreme heat, extreme cold, the risk of wildfire, drought, and the risk of flooding, as specified. The bill would establish project priorities and would authorize districts to establish additional priorities.

This bill would impose certain requirements on a project undertaken or financed by a district. In this regard, the bill would require a district to obtain an enforceable commitment from the developer that contractors and subcontractors performing the work use a skilled and trained workforce, in accordance with specified provisions. These certifications would expand the crime of perjury, thereby imposing a state-mandated local program.

This bill would authorize specified local entities to adopt a resolution allocating tax revenues to the district, subject to certain requirements. The bill would provide for the financing of the activities of the district by, among other things, levying a benefit assessment, special tax, property-related fee, or other service charge or fee consistent with the requirements of the California

Constitution. The bill would require each district to prepare an annual expenditure plan, an operating budget, and capital improvement budget, and would require this material to be adopted by the governing body of the district and subject to review and revision at least annually. By imposing duties on counties in the administration of tax revenues and elections of a climate resilience district, the bill would impose a state-mandated local program.

Existing law creates the Sonoma County Regional Climate Protection Authority, requires the authority to be governed by the same board as that governing the Sonoma County Transportation Authority, and imposes certain duties on the authority. Existing law authorizes the authority to apply for and to receive grants of funds to carry out its functions.

This bill would deem the Sonoma County Regional Climate Protection Authority a climate resilience district and grant the authority all of the powers available to such a district, except that the authority may not use any tax increment revenue unless it complies with the requirements for receiving and using tax increment revenue applicable to a new climate resilience district.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

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

**SECTION 1.** Division 6 (commencing with Section 62300) is added to Title 6 of the Government Code, to read:

### **DIVISION 6. Climate Resilience Districts**

**62300.** This division shall be known, and may be cited, as the Climate Resilience Districts Act.

**62301.** It is the intent of the Legislature in enacting this division to provide the ability for local governments to create districts for the purpose of addressing climate change effects and impacts through activities and actions that include mitigation and adaptation, as necessary and appropriate, to achieve all of the following:

- (a) Providing a sustained and certain level and source of funding at the local level.
- (b) Allowing activities and actions on an appropriate geographic basis.
- (c) Facilitating the receipt and use of federal, state, local, and private funds.

**62302.** For purposes of this division:

- (a) "District" means a climate resilience district formed pursuant to this division.
- (b) (1) "Eligible project" means a project, including a capital project, that is designed and implemented to address climate change mitigation, adaptation, or resilience, including, but not limited to, all of the following:
  - (A) A project that addresses river, bay, or sea level rise, or rising groundwater, including wetlands or marsh restoration, vegetated dunes, living shorelines, erosion control, or levees.
  - (B) A project that addresses extreme heat or the urban heat island effect, including increasing shade, deploying cool building and surface materials, using cool pavements; constructing, improving, or modifying new or existing facilities; or increasing access to cooling opportunities.
  - (C) A project that addresses extreme cold, rain, or snow, including constructing, improving, or modifying new or existing facilities.
  - (D) A project that addresses the risk of wildfire, including establishing fire breaks, prescribed burning, structure hardening, or vegetation control.
  - (E) A project that addresses drought, including multiuse land repurposing, groundwater replenishment, groundwater storage, or conjunctive use.

(F) A project that addresses the risk of flooding, including structure elevation or relocation, wetlands restoration, flood easements or bypasses, or levees.

(2) At a minimum, a district shall give priority to a project that does any of the following:

(A) Utilizes natural infrastructure, as defined in paragraph (3) of subdivision (c) of Section 71154 of the Public Resources Code, to address climate change adaptation or resilience based upon the best available science.

(B) Addresses the needs of under-resourced communities, as defined in subdivision (g) of Section 71130 of the Public Resources Code, or vulnerable communities, as defined in subdivision (d) of Section 71340 of the Public Resources Code.

(3) A district may adopt additional priorities for projects.

(4) A district shall seek the input of the communities specified in subparagraph (B) of paragraph (2) in the planning, development, and implementation of projects.

(c) "Participating entity" means a city, county, or special district that meets both of the following:

(1) The city, county, or special district is an affected taxing entity within the climate resilience district.

(2) The city, county, or special district adopts a resolution pursuant to subdivision (b) of Section 62304 that is applicable to its territory located within the climate resilience district.

(d) "Participating member city or county" means a city or county that does not adopt a resolution to be a participating entity, as described in subdivision (c), and alternatively adopts a resolution at a noticed public hearing stating that it agrees to participate in, and have its territory subject to, the jurisdiction, powers, and authority of the district conditioned upon the city or county also being represented on the governing body of the district pursuant to Section 62305.

(e) (1) "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, excluding any ad valorem taxes or assessments levied pursuant to subdivision (b) of Section 1 of Article XIII A of the California Constitution, divided pursuant to Section 53398.75.

(2) Except as otherwise specified in this division, a district formed pursuant to this division is hereby deemed to also be an enhanced infrastructure financing district pursuant to Chapter 2.99 (commencing with Section 53398.50) of Part 1 of Division 2 of Title 5 and shall be subject to statutory provisions for enhanced infrastructure financing districts.

**62303.** (a) (1) A city, county, city and county, or a combination of any of those entities may form a climate resilience district pursuant to this division.

(2) The boundaries of the district shall be one of the following:

(A) Coterminous with the city, county, or city and county forming the district.

(B) Within a city, county, or city and county forming the district.

(C) Across two or more cities, counties, or cities and counties that are forming the district.

(D) A special district may join a district initiated by a city, county, city and county, or a combination of cities and counties.

(b) (1) A district shall be formed for the purpose of raising and allocating funding for eligible projects and the operating expenses of eligible projects.

(2) Operating expenses may include any of the following:

(A) The expenses of operating the district.

(B) The planning of eligible projects.

(C) The operational expenses of any eligible project.

(3) A district shall finance only projects described in subdivision (b) of Section 53398.52 if the project meets the definition of an eligible project.

(4) A district shall use the proceeds of bonds issued by a district to finance only eligible projects that meet the requirements of subdivision (a) of Section 53398.52.

(c) A district 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.

**62303.5.** (a) Notwithstanding the procedures for establishing a district under this division, the authority shall be deemed a climate resilience district and is hereby granted all of the powers described in Section 62307, except as provided in subdivision (c).

(b) Notwithstanding subdivision (a) of Section 62305, the legislative body of the district formed pursuant to this section shall be the legislative body of the authority.

(c) This section shall not grant the district the power to use any tax increment revenues unless it complies with the requirements for receiving and using tax increment revenue pursuant to subdivision (b) of Section 62304.

(d) For purposes of this section, “authority” means the Sonoma County Regional Climate Protection Authority created pursuant to Division 19.1 (commencing with Section 181000) of the Public Utilities Code.

**62304.** (a) Proceedings for the establishment of a district shall be instituted by the adoption of a resolution of intention to establish the proposed district and shall do all of the following:

(1) State that a district is proposed to be established pursuant to this division and describe the boundaries of the proposed district, which may be accomplished by reference to a map on file in the office of the clerk of the city or in the office of the recorder of the county, as applicable.

(2) State the type of eligible projects proposed to be financed or assisted by the district.

(3) State the need for the district and the goals the district proposes to achieve.

(b) The city, county, or city and county, shall enact a resolution providing for the division of taxes of any participating entity pursuant to the procedures for the preparation and adoption of an infrastructure financing plan described in Sections 53398.59 to 53398.74, inclusive. A district that completes these procedures shall follow the procedures for the division of taxes and issuance of tax increment bonds described in Sections 53398.75 to 53398.88, inclusive.

**62305.** (a) A district shall be governed by a board that has the same membership as a public financing authority as described in Section 53398.51.1. The board shall have the same powers and requirements as a public financing authority, unless otherwise specified.

(b) The legislative body shall ensure the district board is established at the same time that it adopts a resolution of intention pursuant to Section 62304.

**62306.** (a) A minimum of 95 percent of the allocated tax increment revenues pursuant to subdivision (b) of Section 62304 shall be used to fund eligible projects.

(b) Not more than 5 percent of allocated revenues may be used for administration.

**62307.** In addition to the powers granted to an enhanced infrastructure financing district pursuant to Chapter 2.99 (commencing with Section 53398.50) of Part 1 of Division 2 of Title 5, a district has the power to do all of the following within the territorial jurisdiction of a city, county, or city and county that is a participating entity, or a participating member city or county, pursuant to this division and is represented on the governing board in accordance with Section 62305:

(a) (1) Levy a benefit assessment, special tax levied pursuant to Article 3.5 (commencing with Section 50075) of Chapter 1 of Part 1 of Division 1 of Title 5, or property-related fee or other service charge or fee consistent with the requirements of Articles XIII A, XIII C, and XIII D of the California Constitution, including, but not limited to, a benefit assessment levied pursuant to paragraph (2).

(2) The district may levy a benefit assessment for any of the purposes authorized by this division pursuant to any of the following:

(A) The Improvement Act of 1911 (Division 7 (commencing with Section 5000) of the Streets and Highways Code).

(B) The Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500) of the Streets and Highways Code).

(C) The Municipal Improvement Act of 1913 (Division 12 (commencing with Section 10000) of the Streets and Highways Code).

(D) The Landscaping and Lighting Act of 1972 (Part 2 (commencing with Section 22500) of Division 15 of the Streets and Highways Code), notwithstanding Section 22501 of the Streets and Highways Code.

(E) Any other statutory authorization.

(b) Apply for and receive grants from federal and state agencies.

(c) Solicit and accept gifts, fees, grants, and allocations from public and private entities.

(d) Issue revenue bonds for any of the purposes authorized by this division pursuant to the Revenue Bond Law of 1941 (Chapter 6 (commencing with Section 54300) of Part 1 of Division 2 of Title 5), subject to any applicable constitutional requirements.

(e) Incur general obligation bonded indebtedness for the acquisition or improvement of real property or for funding or refunding of any outstanding indebtedness, subject to any applicable constitutional requirements.

(f) Receive and manage a dedicated revenue source.

(g) Deposit or invest moneys of the district in banks or financial institutions in the state in accordance with state law.

(h) Sue and be sued, except as otherwise provided by law, in all actions and proceedings, in all courts and tribunals of competent jurisdiction.

(i) Engage counsel and other professional services.

(j) Enter into and perform all necessary contracts.

(k) Enter into joint powers agreements pursuant to the Joint Exercise of Powers Act (Chapter 5 (commencing with Section 6500) of Division 7 of Title 1).

(l) Hire staff, define their qualifications and duties, and provide a schedule of compensation for the performance of their duties.

(m) Use interim or temporary staff provided by local agencies that are a members of the district. A person who performs duties as interim or temporary staff shall not be considered an employee of the district.

**62308.** (a) If a district proposes a measure that will generate revenues for the district that requires voter approval pursuant to the California Constitution, the board of supervisors of the county or counties in which the district has determined to place the measure on the ballot shall call a special election on the measure. The special election shall be consolidated with the next regularly scheduled statewide election and the measure shall be submitted to the voters in the appropriate counties, consistent with the requirements of Articles XIII A, XIII C, and XIII D, or Article XVI of, the California Constitution, as applicable.

(b) A district shall be deemed a district for purposes of Section 317 of the Elections Code. A measure proposed by a district that requires voter approval shall be submitted to the voters within the boundaries of the district in accordance with the provisions of the Elections Code applicable to districts, including the provisions of Chapter 4 (commencing with Section 9300) of Division 9 of the Elections Code.

(c) The district shall file with the board of supervisors of each county in which the measure shall appear on the ballot a resolution of the district requesting consolidation, and setting forth the exact form of the ballot question, in accordance with Section 10403 of the Elections Code.

(d) The legal counsel for the district shall prepare an impartial analysis of the measure. The impartial analysis prepared by the legal counsel for the district shall be subject to review and revision by the county counsel of the county that contains the largest population, as determined by the most recent federal decennial census, among those counties in which the measure will be submitted to the voters.

(e) Each county included in the measure shall use the exact ballot question, impartial analysis, and ballot language provided by the district. If two or more counties included in the measure are required to prepare a translation of ballot materials into the same language other than English, the county that contains the largest population, as determined by the most recent federal decennial census, among those counties that are required to prepare a translation of ballot materials into the same language other than English shall prepare the translation and that translation shall be used by the other county or counties, as applicable.

(f) Notwithstanding Section 13116 of the Elections Code, if a measure proposed by a district pursuant to this division is submitted to the voters of the district in two or more counties, the elections officials of those counties shall mutually agree to use the same letter designation for the measure.

(g) The county clerk of each county shall report the results of the special election to the authority. If two-thirds of all voters voting on the question at the special election vote affirmatively, or a different approval threshold required by the California Constitution at the time the election is achieved, the measure shall take effect in the counties in which the measure appeared on the ballot within the timeframe specified in the measure.

(h) The county clerk of each county shall report the results of the special election to the district.

**62309.** (a) Each district shall prepare an annual expenditure plan that identifies and describes the operations and eligible projects undertaken by the district. The expenditure plan shall be, after public review and hearing, adopted by the governing body of the district and subject to review and revision at least annually.

(b) Each district shall also prepare and adopt an annual operating budget and capital improvement budget. The annual operating budget and capital improvement budget shall be, after public review and hearing, adopted by the governing body of the district and subject to review and revision at least annually.

**62310.** (a) A district shall provide for regular audits of its accounts and records, maintain accounting records, and report accounting transactions in accordance with generally accepted accounting principles adopted by the Governmental Accounting Standards Board of the Financial Accounting Foundation for both public reporting purposes and for reporting of activities to the Controller.

(b) A district shall provide for annual financial reports and make copies of the annual financial reports available to the public.

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

**62311.** (a) All meetings of the district shall be subject to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5).

(b) All records prepared, owned, used, or retained by the district are public records for purposes of the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1).

**62312.** (a) The following requirements shall apply to a project that is undertaken or financed by a district:

(1) Construction, alteration, demolition, installation, and repair work on the project shall be deemed a public work for which prevailing wages must be paid for purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(2) The district shall obtain an enforceable commitment from the developer or general contractor that the developer or general contractor and all its contractors and subcontractors at every tier will individually use a skilled and trained workforce, in accordance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code, to perform all work on the project that falls within an apprenticeable occupation in the building and construction trades.

(3) Paragraph (2) shall not apply if all contractors and subcontractors at every tier performing the work will be bound by a project labor agreement that requires the use of a skilled and trained workforce and provides for enforcement of that obligation through an arbitration procedure.

(b) For purposes of this section:

(1) "Project labor agreement" has the same meaning as set forth in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.

(2) "Skilled and trained workforce" has the same meaning as set forth in subdivision (d) of Section 2601 of the Public Contract Code.

**SEC. 2.** The Legislature finds and declares that the allocation of revenues derived from a sales and use tax or a transactions and use tax to a climate resilience district pursuant to Division 6 (commencing with Section 62300) of Title 6 to the Government Code, as added by this act, is not subject to Section 29 of Article XIII of the California Constitution because a district is not a city, county, or city and county within the meaning of that provision, but is rather a separate political entity as described in subdivision (c) of Section 62303 of the Government Code, as added by this act.

**SEC. 3.** No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction,

eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.