Client Alert

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Real Estate Public-Private Partnerships April 13, 2015

Enhanced Infrastructure Districts: A Flexible New Tool for Local Governments

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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[1].)

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

[1] 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.

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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