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OFFICE OF THE CITY CLERK
OAKLAND

CITY OF OAKLAND

BILL ANALYSIS

2013 MAY -9 PM 3:00

Date: May 23, 2013

Bill Number: Senate Bill 33

Bill Author: Senator Lois Wolk

Contact:
Department:
Telephone: **FAX #** **E-mail:**

RECOMMENDED POSITION: Support

Summary of the Bill:

Cities and Counties can create IFD's (Infrastructure Financing Districts) and issue bonds to pay for community scale public works: highways, transit, water systems, sewer projects, flood control, child care facilities, libraries, parks, and solid waste facilities. To repay the bonds, IFD's divert property tax increment revenues from other local governments, but not schools, for 30 years (SB 308, Seymour, Chapter 1575, Statues of 1990). This Bill provides for the following changes:
Voter Approval: After preparing an Infrastructure Financing Plan, local officials must get voter approval to:

1. Form the IFD (which requires 2/3 Voter Approval)
2. Issue Bonds (which requires 2/3 Voter Approval
3. Set the Appropriations limit, which requires majority-voter approval

This Bill repeals the Voter Approval requirements to form an IFD, issue IFD Bonds, and set the IFD Appropriations limits.

Formation:
This Bill specifies how local officials must form an IFD. The clerk of the local government interested in proposing to form an IFD must post a copy of the Resolution of Intent to form an IFD on the local government's Internet Web Site, and at the end of the Public Hearing period, the local legislative body may adopt a Resolution based upon a finding that the goals of the IFD are consistent with the general plan, and the financing are an efficient way to implement the IFD's goals. The Public financing authority must designate and direct an engineer or appropriate official to prepare an infrastructure financing plan.

TYPES OF PROJECTS:

The IFD's are authorized to finance different types of projects, including:

1. The purchase, construction, expansion, improvement, seismic retrofit, or rehabilitation of any real or tangible property, and associated planning and design work of that property
2. The Purchase of Property as long as construction has been completed
3. Highways, sewage treatment, water treatment, flood control, libraries, child care facilities, parks, and open space

This Bill expands the list of projects to include levees, watershed lands, and habitat restoration.

The term of IFD Bonds can be no longer than 30 years.
This Bill extends the maximum term of IFD Bonds from 30 years to 40 years

Currently, an IFD cannot overlap with a Redevelopment Project Area.
This Bill repeals that statutory prohibition.

This Bill requires the financing plan to include three additional elements along with the current plan requirements of:
A Map and description of the proposed district
A description of the Public Facilities
A Finding that public facilities provide significant benefits to a larger area that the district
A financing section
The three additional elements contain:
The district's proposed goals of financing public facilities
The District's proposed goals to assist transit priority project development
The creation of the public accountability committee

PLEASE RATE THE EFFECT OF THIS MEASURE ON THE CITY OF OAKLAND:

___ Critical (top priority for City lobbyist, city position required ASAP)

___ Very Important (priority for City lobbyist, city position necessary)

___ **Somewhat Important** (City position desirable if time and resources are available)

___ **Minimal or** ____ **None** (do not review with City Council, position not required)

Known support:
California Building Industry Association
California Professional Firefighters
Cities of: Benecia, Emeryville, Goleta, Palmdale, West Sacramento, Whittier
East Bay Economic Development Agency
League of California Cities

Known Opposition:

California Federation of Republican Women
California Taxpayers Association
Howard Jarvis Taxpayers Association

Attach bill text and state/federal legislative committee analysis, if available.

Respectfully Submitted,

Vice Mayor Larry Reid

SENATE RULES COMMITTEE
Office of Senate Floor Analyses
1020 N Street, Suite 524
(916) 651-1520 Fax: (916) 327-4478

THIRD READING

Bill No: SB 33
Author: Wolk (D), et al.
Amended: 3/6/13
Vote: 21

SENATE GOVERNANCE & FINANCE COMMITTEE: 4-1, 3/13/13
AYES: Wolk, Beall, DeSaulnier, Liu
NOES: Knight
NO VOTE RECORDED: Emmerson, Hernandez

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SUBJECT: Infrastructure financing districts: voter approval: repeal

SOURCE: Author

DIGEST: This bill revises and recasts provisions for local governments to use Infrastructure Financing Districts (IFDs).

ANALYSIS: Cities and counties can create IFDs and issue bonds to pay for community scale public works: highways, transit, water systems, sewer projects, flood control, child care facilities, libraries, parks, and solid waste facilities. To repay the bonds, IFDs divert property tax increment revenues from other local governments, but not schools, for 30 years (SB 308, Seymour, Chapter 1575, Statutes of 1990).

This bill provides for the following changes:

1. Voter approval. After preparing an infrastructure financing plan, local officials must get voter approval to:

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- Form the IFD, which requires 2/3-voter approval.
- Issue bonds, which requires 2/3-voter approval.
- Set the appropriations limit, which requires majority-voter approval.

This bill repeals the voter approval requirements to form an IFD, issue IFD bonds, and set the IFD's appropriations limit.

2. Formation. Under current law, local officials must get 2/3-voter approval to form an IFD.

   This bill specifies how local officials must form an IFD. The clerk of a local government interested in proposing to form an IFD must post a copy of the resolution of intention on the local government's Internet Web site. At the end of a public hearing, the local government's legislative body may adopt a resolution, based upon a finding that the goals of the IFD are consistent with the general plan, and the financing programs are an efficient way to implement the IFD's goals. The resolution establishing an IFD also creates an IFD's governing board, a public financing authority. The public financing authority must designate and direct an engineer or appropriate official to prepare an irrfrastructure financing plan.

3. Public financing authority. This bill adds and defines the public financing authority as the legislative body of the infrastructure financing district. The authority must be comprised of five people: three must be members of the city council or board of supervisors that established the IFD and two must be publie members appointed by the three members of the city council or board of supervisors.

4. Irrfrastructure financing plan. Current law requires an IFD's financing plan to be consistent with the local government's general plan and include ali of the following:

   - A map and description of the proposed district;
   - A description of the public facilities;
   - A finding that public facilities provide significant benefits to a larger area than the district; and,
   - A financing section.

   This bill requires the financing plan to include three additional elements:

   - The district's proposed goals of financing public facilities;

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- The district's proposed goals to assist transit priority project development; and,
- The creation of the publie accountability committee.

  This bill prohibits an infrastructure financing plan from being implemented until the public accountability committee, as defined, is created. The publie financing authority must forward a copy of the plan to the local government's legislative body to review and approve the financing section of the plan. The plan cannot take effect until approved by the legislative body.

5. Types of projects. IFDs are authorized to finance different types of projects, including:

   - The purchase, construction, expansion, improvement, seismic retrofit, or rehabilitation of any real or tangible property, and associated planning and design work of that property.
   - The purchase of a property, as long as construction has been completed.
   - Highways, sewage treatment, water treatment, flood control, libraries, child care facilities, parks, and open-space.

   This bill expands the list of authorized projects to include levees, watershed lands, and habitat restoration.

   Currently, an IFD cannot finance routine maintenance, repair work, or costs of ongoing operation or services.

   This bili repeals this prohibition. This bill prohibits an IFD from compensating members of the local government's legislative body or members of the public financing authority.

6. Fire district approval. Before an IFD can divert property tax increment from another taxing entity, every local agency that will contribute its property tax increment revenue to the IFD must approve the infrastructure financing plan. Some special districts are governed *ex officio* by county boards of supervisors or city councils. In the case of a special district that provides fire protection services where the county board of supervisors is the governing authority, this bill requires the special district to act on an IFD's plan by adopting a separate resolution.

7. Bond terms. The terms of IFDs' bonds can't be more than 30 years.

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This bill extends the maximum term of IFDs' bonds from 30 years to 40 years.

8. Accountablity. Current IFD law is silent on fiscal protections, project management, or reporting measures.

   This bill requires that local officials' resolution of intention to form an IFD must state the goal and need of the district and that the resolution be posted on the legislative body's Internet Web site. This bill clarifies that IFDs can't be used to compensate the members of the legislative body. This bill requires the public financing authority to mail an annual report to landowners in the district and each affected taxing entity. The report must also be posted on the legislative body's website. The report must include:

   - A summary of the IFD's expenditures.
   - A progress report of the IFD's adopted goals.
   - An assessment of the status of the IFD's public works projects.

   If an IFD fails to submit the annual report to its landowners or taxing entities, or the report is not put on the legislative body's Internet Web site, it can't spend any finds to construct public works projects until the report is submitted. If an IFD fails to produce evidence of progress made towards an IFD's adopted goals for five consecutive years, the IFD is prohibited from spending any finds to construct any new public works projects. Any excess property tax increment revenues that had been allocated for new public works must be re-allocated to the affected axing entities. However, the IFD may complete any public works projects that it has started.

   This bill creates a public accountability committee to conduct an annual independent financial review and audit. Revenues of the public financing authority wili pay for audit costs. The committee membership must be comprised of a representative from each of the affected taxing entities, from the public financing authority, and one or more public members. The legislative body of the affected taxing entity and public financing authority shall appoint members to the committee.

9. Redevelopment project areas. Currently, an IFD can't overlap with a redevelopment project area.

   This bill repeals that statutory prohibition.

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10. Big box retailers and vehicle dealers. State law prohibits a community from giving financial assistance, direct below-market property deals or cuts in fees, to a big box retailer or vehicle dealer that relocates in the same market area (SB 114, Torlakson, Chapter 781, Statutes of 2003). That law applies to counties, cities, and redevelopment agencies.

    This bill prohibits IFDs from providing financial assistance to big box retailers or vehicle dealers to relocate from one local agency to another in the same market area.

11. Disadvantaged communities. State law defines disadvantaged communities as those with median household incomes less than 80% of the statewide average. Severely disadvantaged communities have median household incomes less than 60% of the statewide average. Many disadvantaged communities lack adequate public services and facilities like clean water, sewers, paved streets, storm drains, and street lights. Advocates want legislators to require local officials to include disadvantaged communities in their long-range planning for land use and public facliities.

    This bili declares that it is in the public interest for IFDs to finance public works for disadvantaged communities.

12. Polanco Act. The Polanco Redevelopment Act encourages cleanup and development of brownfields, properties contaminated by hazardous waste. The Act authorizes redevelopment agencies to conduct a cleanup and to recover the costs of that cleanup from responsible parties. Redevelopment agencies that conduct these cleanups, and individuals that enter into redevelopment agreements with the agency, immune from future cleanup liability.

    This bill allows IFDs to finance necessary actions to clean-up brownfield sites under the Polanco Act.

13. Sustainable Communities Strategy. The Sustainable Communities and Climate Protect Act requires the Air Resources Board to set regional targets for automoblles and light trucks' greenhouse gas emission reductions, requires a regional transportation plan to include a Sustainable Communities Strategy to meet targets for greenhouse gas einission reduction, requires the California Transportation Commission to maintain guidelines for travel demand models, requires cities and counties to revise their housing elements every eight years in conjunction with the regional transportation plan, and relaxes CEQA

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requirements for housing developments that are consistent with a Sustainable Communities Strategy (SB 375, Steinberg, Chapter 728, Statutes of 2008).

This bill authorizes IFDs to finance any project, like a transit priority project or regional transportation plan, that implements or is consistent with a sustainable communities strategy or alternative planning strategy.

14. Joint-powers authority. This bill authorizes a public financing authority to enter into a joint powers agreement, only to exercise power other than taxing authority.

15. Definitions. This bill defines "infrastructure financing district" as a legally constituted public and corporate government entity separate and distinct from the city that established it. The bill provides that an IFD is a local agency subject to California's open and public meeting law, the Ralph M. Brown Act.

    The bill defines "public capital facilities of communitywide significance" as facilities that benefit all areas within the district or serve or are made available to those areas.

Comments

According to the Senate Governance and Finance Committee analysis, this bill updates an existing financing mechanism for public works projects, while incorporating rigorous accountability measures to ensure local government diligence, positive project results, and healthier community development. This bili recognizes the potential for infrastructure financing districts to implement SB 375's (Steinberg, 2008) sustainable communities strategy and the benefits of rehabilitating brownfields from hazardous waste. Local officials use tax increment financing to divert part of the property tax revenue stream to a separate IFD. A local government must consent and opt-in to the IFD's formation; if an agency doesn't want to participate, its tax increment revenue shares aren't touched. Although IFDs don't raise taxes or generate new revenue, the Legislature required voter approval of IFDs' plans, bonds, and appropriations limits. This bill removes the voter-approval requirement, but still requires annual, independent audits and empowers local decision making. Legislators and voters who have elected their local representatives should let local officials do their job—setting local priorities for spending local revenues.

The California Constitution requires 2/3-voter approval before cities or counties can issue long-tenn debt backed by local general purpose revenues; school districts need 55%-voter approval. That's why local general obligation bonds need 2/3-

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voter approval. The courts have explained that cities need 2/3-voter approval before they dedicate portions of their general funds to pay for bonds. That's why local limited obligation bonds need 2/3-voter approval. However, because that constitutional limit doesn't mention infrastructure financing districts, local officials don't need voter approval before they issue tax allocation bonds. When Governor Deukmejian signed the 1990 Seymour bill that created IFDs, there was a political agreement that local officials should get 2/3-voter approval before they could issue IFD bonds. That requirement is statutory and not based on a constitutional limitation. There is no constitutional requirement for IFDs to seek 2/3-voter approval (or any voter-approval) before they issue bonds backed by property tax increment revenues. This bill repeals the statutory requirement for 2/3-voter approval on IFDs' bonds.

Related Legislation

AB 229 (J. Pérez) creates Infrastructure and Revitalization Financing Districts and authorizes its use, following a 2/3-vote to form the district, a 2/3-vote to issue the bonds, and a majority-vote for the appropriations limit, for projects like flood management, environmental mitigation, and hazardous cleanup.

AB 243 (Dickinson) creates Infrastructure and Revitalization Financing Districts (IRFD) and reduces the 2/3-voter thresholds to form an IRFD and issue bonds to 55%.

AB 294 (Holden) authorizes IFDs to use the county's Educational Revenue Augmentation Fund portion of tax increment, after the legislative body submits an economic analysis to the California Infrastructure and Economic Development Bank for review and approval.

AB 662 (Atkins) repeals the prohibition of an IFD on a former redevelopment area.

AB 690 (Campos) renames IFDs as Jobs and Infrastructure Financing Districts (JIDs), after a 55% voter-approval to create a JID. The bill requires a job creation plan that ensures that for every $1 million invested, 10 prevailing wage jobs are created.

AB 709 (Nestande) requires the Salton Sea Authority to develop a restoration plan for the Salton Sea ecosystem and submit it to the Legislative Analyst for review. if the Legislative Analyst determines the plan is financially feasible, the bill appropriates funds from the Salton Sea Restoration Fund and Proposition 84 to implement the plan.

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SB 628 (Beall) removes the voter-approval requirements to create an IFD and issue bonds for a transit priority project.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

SUPPORT: (Verified 4/8/13)

California Building Industry Association
Califomia Professional Firefighters
California Special Districts Association
California State Association of Counties
Cities of: Benicia, Emeryville, Goleta, Oakland, Palmdale, West Sacramento, and Whitter
Counties of San Joaquin and Yolo
East Bay Economic Development Agency
Economic Vitality Corporation of San Luis Obispo County
Emeryville Chamber of Commerce
Greater Eureka Chamber of Commerce
Inland Empire Economic Partnership
League of Califomia Cities
Long Beach Area Chamber of Commerce
Los Angeles Area Chamber of Commerce
Los Angeles County Division, League of Califomia Cities
Los Angeles County Economic Development Corporation
Marin county Council of Mayors and Councilmembers
North Bay Leadership Council
Orange County Business Council
Palm Desert Area Chamber of Commerce
Sacramento Area Councli of Governments
Sacramento Metro Chamber of Commerce
San Diego Regional Economic Development Corporation
San Francisco Chamber of Commerce
San Gabriel Valley Economic Partnership
Tuolumne County Business Council
Yosemite Chamber of Commerce

OPPOSITION: (Verified 4/8/13)

Califomia Federation of Republican Women
California Taxpayers Association

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Howard Jarvis Taxpayers Association

ARGUMENTS IN SUPPORT: Supporters state that this bill provides an improved mechanism to deliver much-needed infrastructure projects and create jobs in California. This bili offers an alternative form of property tax increment by removing key impediments to IFDs, such as the vote requirements to form and bond the IFD. With the elimination of redevelopment agencies, IFDs provide the most useful tool currently avaliable to capture the property tax increase resulting from development activity.

ARGUMENTS IN OPPOSITION: The California Taxpayers Association state that "Side-stepping the voters and allowing a local entity to accrue debt means voters won't have a say in what their communities look like, how bonds are issued, and how property tax revenue is spent. By passing SB 33, the Legislature would be paving the way for local government to increase property taxes – particularly at a time when homeowners are still recovering from the recession."

AGB:nl 4/10/13 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

****** END ******

Approved as to Form and Legality

DRAFT

Oakland City Attorney's Office

OAKLAND CITY COUNCIL

Resolution No. ____________________ C.M.S.
INTRODUCED BY VICE MAYOR LARRY E. REID

Resolution Supporting Senate Bill 33 (Senator Lois Wolk) To Use Infrastructure Financing Districts To Pay For Public Works Projects Without Impacting School District's Share of Property Tax Or The State General Fund: Voter Approved Repeal.

WHEREAS, Existing law states that Cities and Counties can create IFD's (Infrastructure Financing Districts) and issue bonds to pay for community scale public works: highways, transit, water systems, sewer projects, flood control, child care facilities, libraries, parks, and solid waste facihties, and to repay the these IFD bonds, may divert property tax increment revenues from other local governments, but not schools, for 30 years (SB 308, Seymour, Chapter 1575, Statues of 1990), and;

WHEREAS, Existing law states that after preparing an Infrastructure Financing Plan, local officials must get voter approval to form the IFD (which requires 2/3 Voter Approval), Issue Bonds, (which requires 2/3 Voter Approval), and set the Appropriations limit, (which requires majority-voter approval), while Senate Bill 33 repeals the voter approval requirements to form an IFD, issue IFD Bonds, and set IFD Appropriation limits, and;

WHEREAS, Senate Bill 33 updates an existing financing mechanism for public works projects, while incorporating rigorous accountability measures to ensure local government diligence, positive project results, and healthier community development and SB 33 recognizes the potential for infrastructure financing districts to implement SB 375's (Steinberg, 2008) sustainable communities strategy and the benefits of rehabilitating brownfields and future development projects, so be it

RESOLVED: That the Council of the City of Oakland proclaims its support for Senate Bill 33 (Senator Wolk) and authorizes the City Administrator to instruct the Legislative Lobbyist for the City to support the passage of Senate Bill 33.

IN COUNCIL, OAKLAND, CALIFORNIA,
PASSED BY THE FOLLOWING VOTE:
AYES -BROOKS, GALLO, KAPLAN, REID, KALB, SCHAAF, GIBSON MCELHANEY AND PRESIDENT KERNIGHAN
NOES
AYES
ABSTAIN

ATTEST:

____
LATONDA SIMMONS
City Clerk and Clerk of the Council of the City of Oakland, California