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REPORT TO HONORABLE MAYOR AND CITY COUNCIL

RECENT STATE LEGISLATION AND CASE LAW AFFECTING INFRASTRUCTURE  
FINANCING AND POST-REDEVELOPMENT MATTERS

**INTRODUCTION**

The elimination of all redevelopment agencies (RDAs) in the State of California (State), as of February 1, 2012, led to a complicated, unpredictable redevelopment wind-down process and removed significant tools that local governments had used to revitalize blighted areas, finance capital improvements, and provide affordable housing. In the post-redevelopment era, the State Legislature (Legislature) has considered, and in some cases approved, various bills to clarify and streamline the redevelopment wind-down process and facilitate new financing mechanisms for public infrastructure and affordable housing. Since mid-2012, Governor Edmund G. Brown Jr. (Governor) has vetoed many, but signed some, of these bills.

This Report accomplishes four objectives. First, it summarizes four bills enacted during the most recent State legislative session, including S.B. 628, A.B. 229, and S.B. 614 related to infrastructure financing, and A.B. 1963 related to post-redevelopment matters.<sup>1</sup> Second, it describes how these four bills may affect the City of San Diego (City), both in its capacity as a municipal corporation and as the Successor Agency to the former Redevelopment Agency of the City of San Diego (Former RDA). Third, it explains how a recent appellate court decision will reduce the semi-annual distribution of monies from the Redevelopment Property Tax Trust Fund (RPTTF) to the City starting in January 2015. Fourth, it summarizes two recently-vetoed bills (S.B. 1129 and A.B. 2280) pertaining to post-redevelopment matters.

**DISCUSSION**

**I. Recent Legislation Affecting Public Financing of Infrastructure Projects**

**A. S.B. 628 – Enhanced Infrastructure Financing Districts**

Approved by the Legislature on August 30, 2014, and signed by the Governor on September 29, 2014, S.B. 628 will become effective on January 1, 2015. S.B. 628 is a lengthy, complex bill; its most significant provisions are summarized below. *See* Exhibit 1 for a more detailed summary of S.B. 628.

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<sup>1</sup> In this Report, “S.B.” refers to a California Senate Bill, and “A.B.” refers to a California Assembly Bill. This Report is not intended as an exhaustive summary of any legislative bills. Further information can be found in the actual text of the bills, available in searchable format at <http://leginfo.ca.gov/bilinfo.html>. As to any bills taking effect in 2015, this Report cites to statutory sections to be codified as of January 1, 2015.

## 1. Statutory Provisions

Existing law, which took effect in 1991, allows a local government to create an Infrastructure Financing District (IFD) to fund the development of certain public infrastructure projects by diverting property tax increment to the IFD from local taxing entities other than school districts. Cal. Gov't Code §§ 53395-53397.11. Yet, except for two instances in Carlsbad and San Francisco, IFDs have not been created in California over the past 24 years, due primarily to the difficult process of forming IFDs and issuing related bonds.

S.B. 628 allows a local government to create an Enhanced Infrastructure Financing District (EIFD), which is “a legally constituted governmental entity separate and distinct from the city or county that established it . . . for the sole purpose of financing public facilities or other projects.” *Id.* § 53398.51(f). The EIFD’s activities may be financed in one or more ways, including: (a) collection of property tax increment from participating taxing entities, other than school districts; (b) allocation of a portion of RPTTF distributions payable to the city or county that formed the EIFD; (c) issuance of tax increment bonds; (d) levy of assessments or fees on landowners within the EIFD; (e) governmental or private loans; or (f) grants. *Id.* §§ 53398.69(b), 53398.75, 53398.81, 53398.87. By prohibiting school districts from participating in an EIFD, S.B. 628 safeguards against any adverse fiscal impact on the State’s General Fund.

An EIFD is a new, more flexible type of district that offers several advantages in comparison to an IFD, including:

- Formation: Formation of an EIFD and approval of an infrastructure financing plan for the EIFD require the adoption of a resolution by the governing body of any taxing entity wishing to participate in the EIFD. *Id.* §§ 53398.59, 53398.66-53398.69. Formation of an IFD is more rigorous, requiring the adoption of an ordinance by the pertinent legislative body and a two-thirds vote of the registered voters or landowners in the proposed IFD. *Id.* §§ 53395.20, 53395.23, 53395.24.
- Bonds: Issuance of tax increment bonds to finance the EIFD’s activities is conditioned upon 55 percent voter approval.<sup>2</sup> *Id.* § 53398.81(a). Depending on the number of registered voters in the proposed EIFD, the vote will entail one vote per registered voter residing in the EIFD, or a weighted vote of all landowners in the EIFD based on one vote per owned acre (excluding any public agency, unless the agency is the sole landowner in the EIFD). *Id.* §§ 53398.51(g), 53398.80. By contrast, the issuance of tax increment bonds for an IFD requires a two-thirds vote of the registered voters or landowners in the IFD. *Id.* §§ 53397.5, 53397.6(a).
- Projects: The EIFD can be used to finance a broad array of infrastructure projects, and related planning and design work, that involve “[t]he purchase, construction,

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<sup>2</sup> The 55 percent voting threshold in S.B. 628 corresponds to the existing threshold for approval of a proposition authorizing certain general obligation bonds for the construction, rehabilitation, or replacement of school facilities. Cal. Const. art. XVI, § 18(b). Except for school facilities, the general rule in California is that no municipality may incur long-term indebtedness without a two-thirds vote of the public. *Id.* § 18(a). S.B. 628 does not appear to run afoul of this constitutional limitation because the entity obligated for tax increment bond debt is the EIFD (a separate legal entity), not the municipality that created the EIFD, and the bonds are backed by tax increment revenue, not general fund revenue. The legal validity of S.B. 628 could be challenged in the future, however, and the outcome of any legal challenge cannot be predicted at this time.

expansion, improvement, seismic retrofit, or rehabilitation of any real or other tangible property with an estimated useful life of 15 years or longer . . . .” *Id.* § 53398.52(a)(1)(A)-(B). Eligible projects include “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,” an extensive list of specified projects.<sup>3</sup> *Id.* § 53398.52(b). The list of specified projects for an IFD is less extensive.<sup>4</sup> *Id.* § 53395.3(b).

- Duration: The EIFD may exist for up to 45 years from the local agency’s approval of the issuance of tax increment bonds or approval of a “start-up” agency loan to the EIFD. *Id.* § 53398.53(d)(5). An IFD may exist only for 30 years from the local agency’s adoption of an ordinance approving the infrastructure financing plan and creating the IFD. *Id.* §§ 53395.14(d)(5), 53395.23.
- Environmental Remediation: The EIFD may carry out any power under, and finance any action necessary to implement, the Polanco Redevelopment Act, which is a regulatory tool to assist with remediation of contaminated properties and recovery of remediation costs from any entities responsible for the contamination.<sup>5</sup> *Id.* § 53398.52(e). This regulatory tool is not available for an IFD.

A public financing authority must be created to serve as the governing board of each EIFD. *Id.* § 53398.51(i). If the EIFD has only one participating taxing entity, the public financing authority will consist of three members of the legislative body of the participating entity and two members of the public chosen by the legislative body. *Id.* § 53398.51.1(a)(1). If the EIFD has two or more participating taxing entities, the public financing authority will consist of a majority of members from the legislative bodies of the participating entities and a minimum of two members of the public chosen by those legislative bodies. *Id.* § 53398.51.1(a)(2).

Any city or county that created an RDA may not create an EIFD or participate in the governance or financing of an EIFD until certain steps have been completed: (i) the successor agency for the former RDA has received a finding of completion; (ii) the city or county certifies to the California Department of Finance (DOF) and to the public financing authority that no assets of the former RDA subject to pending litigation involving the State, where the city, county, or successor agency are a named plaintiff, have been or will be used to benefit any

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<sup>3</sup> The list of EIFD-eligible projects includes, among other things: highways, streets, and parking facilities; sewage treatment and water reclamation plants; child care facilities; libraries; parks, recreational facilities, and open space; brownfield restoration and other environmental mitigation; development of certain projects on a former military base; acquisition, construction, or rehabilitation of affordable housing; acquisition, construction, or repair of industrial structures for private use; certain transit priority projects; and certain projects that implement a sustainable communities strategy. The statute prefaces the list with the phrase “including, but not limited to,” suggesting that the list is not exhaustive and that any projects of “communitywide significance that provide significant benefits to the district” may be permitted. The statute does not define the terms “communitywide significance” or “significant benefits” in this context. The term “community” is defined in similar contexts, such as redevelopment and planning, to include a city or a county. *See* Cal. Health & Safety Code § 33002; Cal. Gov’t Code § 65582(a). Given some ambiguity in the statutory language, the permissible scope of EIFD-eligible projects not specifically listed in the statute may need to be clarified by the Legislature or the courts.

<sup>4</sup> A.B. 2292, enacted in September 2014, expanded the list of IFD-eligible projects to include broadband, which refers to communications network facilities that enable high-speed Internet access.

<sup>5</sup> A.B. 440, enacted in October 2013, also provides local agencies, including any city, county, and housing successor to a former RDA, with a regulatory tool similar to the Polanco Redevelopment Act.

efforts of an EIFD; (iii) the State Controller has completed its asset transfer review evaluating whether any ineligible transfers of funds and assets occurred between the former RDA and its sponsoring city or county from January 1, 2011 through January 31, 2012; and (iv) the successor agency and the city or county that created the former RDA have complied with the State Controller's findings and order arising out of the asset transfer review.<sup>6</sup> *Id.* § 53398.54.

## 2. Impact on City

The dissolution of the Former RDA, and the associated loss of a continuing stream of tax increment revenue, has left the City without sufficient tools to finance many public infrastructure and affordable housing projects. According to a recent report, the City has “deteriorating infrastructure and a significant backlog of deferred capital projects . . . currently estimated to be \$898 million for facilities, streets, and storm drains . . . [and] the overall backlog could be more than \$2 billion when ongoing condition assessments are completed.” IBA Report No. 14-39 REV (Oct. 3, 2014). This report identified funding requirements for deferred capital improvements and infrastructure as a high priority for the City and recommended that the City develop a comprehensive infrastructure financing strategy, such as the issuance of general obligation bonds, and consider pursuing alternative revenue sources.

In comparison to the current regulatory landscape, S.B. 628 offers a more flexible, streamlined process for the City to establish one or more reliable methods of financing public infrastructure and affordable housing. Along the lines earlier recommended by the Office of the Independent Budget Analyst, the City may wish to consider the formation of one or more EIFDs as part of a comprehensive infrastructure financing strategy. The EIFD is a mechanism that revives many redevelopment tools, including the creation of a geographical district (similar to a redevelopment project area) with a separate governance structure, the ability to exercise powers under the Polanco Redevelopment Act to facilitate cleanup of contaminated properties, and the use of tax increment financing and related tax increment bonds to fund both public infrastructure and affordable housing.<sup>7</sup> The most valuable tool offered by a new EIFD is the ability to collect and expend property tax increment and issue bonds backed by future tax increment revenue in

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<sup>6</sup> If the City wishes to form an EIFD, the City can demonstrate that all four redevelopment-related steps have been completed, with the possible exception of step (ii). As to step (i), the Successor Agency obtained a finding of completion on December 2, 2013, signifying its completion of three payments of unencumbered funds for pro rata distribution to the local taxing entities. As to step (ii), the City and the Successor Agency are named plaintiffs or petitioners in several pending redevelopment-related lawsuits in which the State is involved, although only one of those lawsuits — a pending appeal pertaining to the funding of shoreline improvements along a boat channel at the former Naval Training Center — involves an asset that might be used to benefit any efforts of an EIFD. This appeal is likely to be resolved by mid-2016, which may be sooner than the City could form a new EIFD and obtain voter approval of bond financing. As to steps (iii) and (iv), the State Controller issued an asset transfer review report dated February 27, 2014, concluding that ineligible transfers had occurred during the relevant time period, but that the City had voluntarily reversed those transfers in favor of the Successor Agency and that no further action is needed.

<sup>7</sup> Unlike redevelopment, the EIFD does not automatically divert tax increment revenue from a local taxing entity to the EIFD unless the taxing entity chooses to participate, does not allow any diversion of tax increment revenue from school districts, does not authorize the issuance of tax increment bonds without a public vote, does not authorize the exercise of eminent domain authority, and does not require the legislative body to make a finding that the pertinent geographical area is blighted. Like the approval of a redevelopment plan, the approval of an infrastructure financing plan for an EIFD is likely to require the local agency's certification of an environmental impact report in compliance with the California Environmental Quality Act. *See* Cal. Health & Safety Code § 33352(k); Cal. Code Regs. title 14, ch. 3, § 15180(a); Cal. Gov't Code § 53398.64.

the EIFD.<sup>8</sup> Of course, this tool may be less valuable if other non-educational local taxing entities, such as the County of San Diego (County), are unwilling to participate in the EIFD by sharing all or a portion of their property tax increment. In addition, the approval of bond financing for any EIFD will require the approval of 55 percent of the qualified voters in the proposed EIFD – a less cumbersome requirement than under the IFD scheme, but not necessarily a quick, easy, or inexpensive task.

## **B. A.B. 229 – Infrastructure and Revitalization Financing Districts**

Approved by the Legislature on August 27, 2014, and signed by the Governor on September 29, 2014, A.B. 229 will become effective on January 1, 2015.

### **1. Statutory Provisions**

As mentioned above, existing law allows local governments to fund infrastructure development with tax increment financing using IFDs. Cal. Gov't Code §§ 53397.1-53397.11. A.B. 229 builds upon existing IFD law to create infrastructure and revitalization financing districts (IRFDs). A.B. 229 authorizes a city, county, or joint powers authority, if it serves as a military base reuse authority, to form an IRFD to finance improvements on a former military base, including environmental cleanup. *Id.* §§ 53369.1(b), 53369.3. An IRFD has key advantages relative to an IFD. For instance, an IRFD may exist for up to 40 years (as opposed to 30 years for an IFD) and, similar to an EIFD, may be used to finance a much broader range of projects than an IFD. *Id.* §§ 53369.3(b), 53369.14(d)(5). However, an IRFD is much less advantageous than an EIFD under S.B. 628 because, similar to an IFD, the formation of an IRFD and the issuance of related tax increment bonds require the approval of two-thirds of the qualified voters in the proposed IRFD. *Id.* §§ 53369.20, 53369.23, 53369.44(a).

### **2. Impact on City**

The City could pursue the formation of an IRFD to facilitate infrastructure projects on a closed military base in San Diego, such as the former Naval Training Center site. However, due to the relatively high voter threshold for issuance of bonds to finance the IRFD under A.B. 229 (almost 67 percent, versus 55 percent), the City may wish to explore the more streamlined process for creation of an EIFD and related bond financing in an EIFD. Development of projects on a military base is generally authorized in S.B. 628. *Id.* § 53398.52(b)(10).

## **C. S.B. 614 – Annexation of Disadvantaged, Unincorporated Communities**

Approved by the Legislature on August 25, 2014, and signed by the Governor on September 29, 2014, S.B. 614 will become effective on January 1, 2015. S.B. 614 has a sunset date of January 1, 2025.

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<sup>8</sup> Property tax increment for an EIFD will be calculated and collected in a manner similar to property tax increment for a redevelopment project area before the statewide elimination of redevelopment. Property tax increment for an EIFD generally equals the incremental increase in property taxes generated within the EIFD's boundaries after the date of formation of the EIFD, to the extent voluntarily diverted into the EIFD's special fund by any taxing entity (other than a school district) that elects to "opt in" to the EIFD mechanism. Cal. Gov't Code § 53398.75(a).

## **1. Statutory Provisions**

S.B. 614 provides local agencies with new options for financing infrastructure when they evaluate the proposed annexation of a disadvantaged, unincorporated community pursuant to the Cortese-Knox-Hertzberg Local Reorganization Act of 2000 (CKH Act). A “disadvantaged, unincorporated community” refers to inhabited, unincorporated territory with an annual median household income less than 80 percent of the statewide annual median household income. Cal. Rev. & Tax. Code § 99.3(b)(5); Cal Gov’t Code § 56033.5; Cal. Water Code § 79505.5(a). S.B. 614 supplements the existing change of organization or reorganization process in the CKH Act to require a local agency to submit a plan for how services will be provided to the affected territory and how those services will be financed, and to permit a local agency to formulate an annexation development plan for financing services and structures. Cal. Rev. & Tax. Code § 99.3(a), (c). S.B. 614 allows a local agency, in concert with other taxing entities except for school districts, to use tax increment financing in a new or reorganized special district to finance infrastructure improvements, such as water, wastewater, and stormwater systems and local streets, roads, and sidewalks, serving a disadvantaged, unincorporated community, and to issue related indebtedness. Cal. Rev. & Tax. Code § 99.3(d)-(g).

## **2. Impact on City**

S.B. 614 allows local agencies to include tax increment financing and to issue related indebtedness for infrastructure improvements as part of their plan to annex disadvantaged, unincorporated communities. If the City proposes to annex any territory that qualifies as a disadvantaged, unincorporated community in the next ten years before the sunset date of S.B. 614, the City may wish to explore the financing tools available in S.B. 614. Otherwise, S.B. 614 should have no impact on the City.

## **II. Recent Legislation and Case Law Affecting Post-Redevelopment Matters**

### **A. A.B. 1963 – Two Changes to the Dissolution Laws**

Approved by the Legislature on June 30, 2014, and signed by the Governor on July 18, 2014, A.B. 1963 took effect immediately as urgency legislation. As described below, A.B. 1963 amends the redevelopment dissolution laws in two ways: (a) it extends, by one year, the deadline for the DOF to approve each jurisdiction’s long-range property management plan (Long-Range Plan); and (b) it eliminates the requirement for the State Controller’s review of asset transfers that occurred between a successor agency and its counterpart city on or after February 1, 2012.

### **1. One-Year Extension for Approval of Long-Range Plan**

Under A.B. x1 26, enacted in June 2011, each successor agency generally must dispose of the non-housing real property assets of the former RDA in an expeditious manner aimed at maximizing value.<sup>9</sup> Cal. Health & Safety Code § 34177(e). A.B. 1484, enacted in June 2012,

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<sup>9</sup> The dissolution laws lay out a separate process for the disposition of a former RDA’s housing assets. *Id.* § 34176. Under that process, the DOF approved the Successor Agency’s list of numerous housing assets, and the Successor Agency transferred those housing assets to the City in January 2013. The City, acting as the housing successor to the Former RDA, continues to hold those housing assets and must use them for valid affordable housing purposes. The

suspended this “fire-sale” requirement, with the exception of property transfers for governmental use, until the DOF has approved a successor agency’s Long-Range Plan. *Id.* § 34191.3. Upon its approval, the Long-Range Plan governs, and supersedes all other provisions relating to, the disposition and use of a former RDA’s non-housing real property assets. *Id.* Prior to A.B. 1963, if the DOF did not approve a successor agency’s Long-Range Plan by January 1, 2015, the successor agency would need to dispose of the former RDA’s non-housing real property assets in accordance with the fire-sale provisions of A.B. 1963. A.B. 1963 extended this approval deadline for one year, until January 1, 2016, allowing more time for the DOF to complete its review of a large backlog of Long-Range Plans for jurisdictions throughout the State. *Id.*

The Successor Agency submitted its Long-Range Plan to the DOF in late April 2014. It is presently anticipated that the DOF’s final approval of the Long-Range Plan, which may involve the future consideration of DOF-mandated changes by the City Council and the Oversight Board, will occur sometime in 2015. The one-year extension under A.B. 1963 is a mixed legislative result in the Successor Agency’s case. On the positive side, the extension substantially reduces the likelihood that the Successor Agency will be required to dispose of its non-housing real estate assets through the fire-sale method, as opposed to the more orderly method envisioned by the Long-Range Plan. On the negative side, A.B. 1963 does not require the DOF to respond to the Long-Range Plan within a certain time period (e.g., within 90 days after the date of the Successor Agency’s submittal), such that the review process is likely to be prolonged.

## **2. Elimination of Further Asset Transfer Reviews**

Prior to A.B. 1963, the dissolution laws required the State Controller to complete two different phases of statewide reviews – one covering January 1, 2011 through January 31, 2012, and another covering February 1, 2012 and beyond – to determine whether a former RDA or a successor agency made ineligible transfers of funds and assets to its counterpart city that would need to be reversed. *Id.* §§ 34167.5, 34178.8. A.B. 1963 repealed the statute that required the second phase of reviews. According to the legislative history of A.B. 1963, the Legislature believes the second phase of reviews would unnecessarily duplicate the reviews of Recognized Obligation Payment Schedules (ROPS) already completed by the Oversight Board and the DOF every six months and would not be a prudent use of the State’s limited resources.

A.B. 1963 greatly reduces the risk that the State will attempt to “claw back” certain transfers of funds from the Successor Agency to the City that occurred after the Former RDA’s dissolution effective February 1, 2012. These transfers include, for instance, the Successor Agency’s payment of loan and debt amounts to the City in 2012 and 2013 in the aggregate amount of approximately \$23.4 million. The Successor Agency accomplished these transfers pursuant to DOF-approved line items in prior ROPS documents. As a result of A.B. 1963, the dissolution laws no longer authorize or require the State Controller to review, and order the reversal of, these post-dissolution interagency transfers.

### **B. Court Decision Altering the Method for Allocating RPTTF Monies**

On September 15, 2014, the San Diego County Auditor-Controller (County Auditor) informed local taxing entities, including the City, about the impact of an appellate court decision,

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City Council has approved the Affordable Housing Master Plan to govern the City’s disposition of the housing assets, and is expected to consider an updated version of this plan in the near future.

*L.A. Unified Sch. Dist. v. Cnty. of L.A.*, 217 Cal. App. 4th 597 (2013) (*LAUSD*). The County Auditor will implement the court's decision in *LAUSD* by accounting for Educational Revenue Augmentation Fund (ERAF) revenue in the calculation of each local taxing entity's percentage share of property taxes. As explained further below, this modified calculation method will cause an increase in RPTTF distributions to local educational taxing entities, such as the San Diego Unified School District and the San Diego Community College District, and a corresponding decrease in RPTTF distributions to all other local taxing entities, such as the City, the County, and special districts. According to recent correspondence from the County Auditor, this modified calculation method will be used solely on a prospective basis, commencing with the next semi-annual RPTTF distribution scheduled for January 2015.<sup>10</sup>

## 1. Summary of Court Decision

In *LAUSD*, the court resolved a petition for writ of mandate filed by the Los Angeles Unified School District (District) against several governmental entities, including the County of Los Angeles (LA County), the City of Los Angeles, and several community redevelopment and other local agencies.<sup>11</sup> The District sought to compel LA County to increase the District's allocation of statutory pass-through payments under California Health and Safety Code section 33607.5. These statutory payments are based on each taxing entity's property tax allocation base (i.e., its percentage share of general property tax revenue). The District contended that LA County had improperly excluded ERAF revenue from the District's property tax allocation base. ERAF revenue is a State-mandated accounting device in which a portion of property tax increment is allocated, at least in theory, for the benefit of school districts and community college districts. *See* Cal. Rev. & Tax. Code §§ 96.1, 97.2(d)(5), and 97.3(d)(5). Through two separate rulings, the appellate court agreed with the District. The end result of this litigation is that, when calculating the District's property tax allocation base, LA County must include both ERAF revenue that was actually received by the District and ERAF revenue that was diverted from the District to the State for non-educational purposes under 2004 State legislation.

## 2. Impact on City

Contrary to previous RPTTF distributions, the County Auditor will now implement *LAUSD* by including ERAF revenue in its calculation of the property tax allocation base of the local school districts. As such, the share of the school districts in statutory tax-sharing payments and residual balance distributions from the RPTTF will increase by multiple percentage points, and the share of all other local taxing entities, including the City, will decrease collectively by a corresponding number of percentage points. For example, the City's approximate share of the

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<sup>10</sup> The County Auditor is responsible for administering the RPTTF, which consists of incremental property taxes – formerly known as tax increment revenue – generated in the City's redevelopment project areas. The RPTTF is distributed to the Successor Agency and the local taxing entities – including the City, the County, the local school districts, and special districts – on January 2 and June 1 of each calendar year under a prescribed “waterfall” method in conjunction with each approved six-month ROPS. The RPTTF distribution includes contractual and statutory “pass-through” payments to local taxing entities, allocations to the Successor Agency for payment of enforceable obligations and certain administrative costs, and allocations of the “residual balance” (i.e., the balance remaining after the completion of earlier waterfall allocations) to the local taxing entities generally in accordance with their respective pro rata shares of regular property taxes. Cal. Health & Safety Code § 34183(a).

<sup>11</sup> The *LAUSD* lawsuit is unrelated to a pending lawsuit initiated in January 2014 by several local cities, including San Diego, against the County to challenge the County Auditor's method of allocating residual balance distributions to the local taxing entities. That pending lawsuit is expected to be resolved at the trial court level in early 2015, but the trial court's ruling will likely be appealed.



RPTTF residual balance will decrease from 20.9 percent to 17.1 percent.<sup>12</sup> The City's Fiscal Year 2015 Adopted Budget projected that the City would receive \$12.9 million from residual balance distributions. Based on the City's reduced, 17.1 percent share of residual balance distributions, however, the City's financial staff has now estimated the City's residual balance distributions in Fiscal Year 2015 will be \$2.5 million less than earlier projected. The adverse fiscal impact to the City from *LAUSD* could become more pronounced in future years as the Successor Agency retires enforceable obligations and additional money becomes available for overall residual balance distributions.

### **III. Post-Redevelopment Legislation Recently Vetoed by the Governor**

On September 29, 2014, the Governor vetoed several bills that would have clarified, augmented, or streamlined certain aspects of the redevelopment wind-down process, as well as one bill that would have provided for a more limited statewide redevelopment program. In his veto messages for most of these bills, the Governor expressed his willingness to cooperate with the Legislature to refine the bills in a manner that could gain his future approval. Therefore, one or more of these bills may be revived, and could be enacted into law in modified form, in 2015 or beyond. Two of the vetoed bills – S.B. 1129 and A.B. 2280 – are summarized briefly below.<sup>13</sup>

#### **A. S.B. 1129 – Clarifications and Improvements to the Dissolution Laws**

If enacted, S.B. 1129 would have clarified and streamlined the redevelopment wind-down process in numerous ways, such as:

- Requiring the DOF to expedite approval of Long-Range Plans, limiting the DOF's ability to object to the contents of Long-Range Plans, and clarifying that the DOF may not require a city to pay monetary compensation for the benefit of other local taxing entities in exchange for the city's acquisition of future development sites;
- Clarifying that the retroactive recalculation of accrued interest on reinstated interagency loans will utilize the fluctuating historical rate (rather than solely the current rate) applicable to the Local Agency Investment Fund from the date of loan origination until the date of loan reinstatement;

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<sup>12</sup> According to data provided by the County Auditor, ERAF revenue constitutes approximately 14.2 percent of overall property tax increment generated in the City's redevelopment project areas, and the County is expected to absorb approximately 81 percent of the fiscal impact when *LAUSD* is applied to make the ERAF-related adjustments to the property tax allocation base of local taxing entities who receive RPTTF distributions. As a result, the County's approximate share of the RPTTF residual balance will decrease by over ten percentage points, from 26.1 percent to 15.7 percent – much greater than the City's decrease of less than four percentage points, from 20.9 percent to 17.1 percent. This differential impact is attributable largely to the nuances of how ERAF revenue is collected and expended for non-redevelopment purposes under 2004 State legislation discussed in *LAUSD*.

<sup>13</sup> The Governor vetoed three other post-redevelopment bills that would have addressed factual circumstances not applicable in San Diego and thus would not have affected the City or the Successor Agency. Those bills include: (a) A.B. 2493, which would permit successor agencies and housing successors of former RDAs to use proceeds derived from bonds issued between January 1, 2011, and June 28, 2011, if the bond expenditure is consistent with a sustainable communities strategy or reduces greenhouse gas emissions; (b) A.B. 1450, which would prohibit successor agencies, under certain circumstances, from receiving tax increment revenue generated on voter-approved pension override levies to pay enforceable obligations; and (c) S.B. 1404, which would allow San Francisco's successor agency to create a new enforceable obligation to replace approximately 5,800 units of affordable housing.

- Requiring that, before the DOF rejects an enforceable obligation of a successor agency that has received a finding of completion, the DOF must first submit the proposed rejection to the oversight board for review and approval, whose determination shall be final and conclusive without further review by the DOF;
- Allowing successor agencies, after receipt of a finding of completion, to enter into new contracts, amend existing contracts, or otherwise administer projects in connection with approved enforceable obligations, if the contracts or projects will not commit new property tax funds or reduce property tax revenues or payments made to the taxing agencies; and
- Permitting each appointing authority for an oversight board to appoint an alternate representative to serve on the oversight board, with the same participatory and voting rights, if the primary representative is unable to attend any meeting.<sup>14</sup>

The Governor's veto message for S.B. 1129 stated, "The provisions included in this bill deal with separate and distinct issues that must be thoroughly reviewed and discussed amongst all affected parties. . . . I am willing to work with the Legislature in the next session to refine the redevelopment agency dissolution statutes in a way that will make them operate more fairly and advantageously for everyone."

#### **B. A.B. 2280 – Community Revitalization and Investment Authorities**

A.B. 2280 – sometimes referred to as the "Redevelopment 2.0 Bill" – would have enabled a local agency, excluding any school district, to establish a Community Revitalization and Investment Authority (Authority) to use tax increment revenues to invest in disadvantaged communities. Under A.B. 2280, an Authority could establish a community revitalization investment area (Area) and could issue tax increment bonds, subject in both instances to the approval of two-thirds of the qualified voters in the Area, if the Area met certain annual median income requirements and other conditions, such as high crime rate, high unemployment, and deteriorated and inadequate infrastructure and buildings. Among other things, A.B. 2280 would allow an Authority to do the following: (a) provide funding to rehabilitate, repair, upgrade, or construct infrastructure, and to develop affordable housing; (b) remedy or remove hazardous substances pursuant to the Polanco Redevelopment Act; (c) issue bonds, borrow money, receive grants, or accept financial or other assistance or investment from the State and Federal government or any private lending institution for any project in the Area; (d) make loans or grants for owners or tenants to improve, retrofit, or rehabilitate buildings or structures in the Area; and (e) adopt a plan to receive tax increment generated in the Area.

The Governor's veto message for A.B. 2280 stated, "I applaud the author's efforts to create an economic development program, with voter approval, that focuses on disadvantaged communities and communities with high unemployment. The bill, however, unnecessarily vests

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<sup>14</sup> The City's representatives advocated in favor of many provisions found in S.B. 1129. In fact, the City supplied the precise statutory language for appointment of oversight board alternates that the Legislature included in S.B. 1129. This language (if enacted) would have been helpful because, due to chronic scheduling conflicts among its members, the Oversight Board has faced extreme difficulty in obtaining a quorum of four of its seven members to attend meetings and vote on various matters, including the approval of each ROPS.

this new program in redevelopment law. I look forward to working with the author to craft an appropriate legislative solution.”

### CONCLUSION

Several bills have been enacted recently on the post-redevelopment and economic development fronts. Among these bills, S.B. 628 is the most significant because it provides a flexible regulatory tool for the financing and implementation of a wide variety of public infrastructure projects and affordable housing as a partial replacement for dissolved RDAs. The issuance of tax increment bonds under S.B. 628 requires a 55 percent approval vote, which is less than the current two-thirds voting threshold, but is not necessarily a quick, easy, or inexpensive task. A.B. 1963 is also important in that it extends the approval deadline on Long-Range Plans for one year, until January 1, 2016, and eliminates asset transfer reviews by the State Controller covering the period beyond a former RDA's dissolution on January 31, 2012.

The County Auditor's implementation of the appellate court's decision in *LAUSD* will reduce the City's share of all future RPTTF distributions, commencing with the next semi-annual distribution in January 2015. The negative fiscal impact to the City is estimated to be \$2.5 million in Fiscal Year 2015 and could be more pronounced in future years.

Finally, the Governor recently vetoed several bills (including S.B. 1129) that would have clarified, augmented, or streamlined certain aspects of the redevelopment wind-down process, as well as one bill (A.B. 2280) that would have replaced redevelopment in a narrower fashion by enabling a local agency, excluding any school district, to establish a Community Revitalization and Investment Authority. The Governor's veto messages left open the possibility that S.B. 1129 and A.B. 2280 could be refined in a manner that could gain the Governor's future approval.

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Rolando Charvel, City Comptroller  
Andrea Tevlin, Independent Budget Analyst

## **Exhibit 1: Detailed Summary of S.B. 628**

S.B. 628 allows a local government to create an Enhanced Infrastructure Financing District (EIFD). This exhibit provides a detailed, albeit not exhaustive, summary of S.B. 628.

### **A. Nature and Governance of EIFD**

- Legal Status: An EIFD is a governmental entity, separate and distinct from the city or county that established it. The EIFD must be established for the sole purpose of financing public facilities or other projects. No school district may participate in an EIFD.
- Public Financing Authority: A public financing authority serves as the governing board of the EIFD. If the EIFD has only one participating taxing entity, the authority's membership will consist of three members of the legislative body of the participating entity (i.e., a city council or a county board of supervisors), and two members of the public chosen by the legislative body. If the EIFD has two or more participating taxing entities, membership will consist of a majority of members from the legislative bodies of the participating entities, and a minimum of two members of the public chosen by the legislative bodies of the participating entities.
- Timing: The public financing authority must be established before the legislative body adopts a resolution approving an infrastructure financing plan and forming the EIFD.
- Transparency Requirements: The public financing authority is a "local public agency" that must comply with the requirements of the Ralph M. Brown Act, the Public Records Act, and the Political Reform Act of 1974.
- Compensation: Members of the public financing authority cannot receive compensation, but may receive reimbursement for actual and necessary expenses incurred in the performance of their official duties.

### **B. Formation of EIFD**

- Resolution of Intention: The city or county begins the process of forming an EIFD by adopting a resolution of intention to establish the EIFD. The resolution must fix a time and place for a hearing on the proposal and must identify the proposed district's boundaries, the types of facilities and development to be financed, the need for the district, the goals the district proposes to achieve, and the potential use of incremental property tax revenue to finance the district's activities.
- Infrastructure Financing Plan:
  - Preparation: After adopting the resolution of intention, the city or county must provide public notice, as specified, and direct the city or county engineer or other appropriate official to prepare an infrastructure financing plan. The designated

official must consult with each affected taxing entity (i.e., any taxing entity in the EIFD's boundaries, other than a school district) and, at the request of any affected taxing entity, must meet with representatives of an affected taxing entity. Any affected taxing entity may suggest revisions to the plan.

- Contents: The infrastructure financing plan must be consistent with the local jurisdiction's general plan and must include the following contents: (a) a map and legal description of the proposed EIFD; (b) a description of the public facilities and other forms of development or financial assistance proposed within the EIFD; (c) if funding from affecting taxing entities is incorporated into the plan, a finding that the development and financial assistance are of communitywide significance and will provide significant benefits to an area larger than the EIFD; (d) a financing section (described further below); (e) if any residential dwelling units are proposed to be removed or destroyed within the EIFD, a plan providing for the replacement of those units and the relocation of displaced persons per specified requirements; and (f) the proposed goals of each financed project in the EIFD.
- Financing Section: The financing section must specify: (i) the maximum portion of incremental tax revenues each participating taxing entity proposes to dedicate to the EIFD each year (the contribution level may differ among affected taxing entities and may change over time); (ii) a projection of future incremental tax revenues to be received by the EIFD; (iii) a plan for financing the public facilities to be assisted by the EIFD, including a detailed description of any intention to incur debt; (iv) a limit on the total tax revenues that may be allocated to the EIFD; (v) a date on which the EIFD will cease to exist and when tax allocations to the EIFD will end, which can be up to 45 years from the approval date for issuance of EIFD bonds or for provision of a "startup" loan from an affected taxing entity; and (vi) an analysis of the costs to the city or county or providing facilities and services to the EIFD area, and an analysis of the tax, fee, charge, and other revenues anticipated to be received by the city or county from expected development in the EIFD territory; (vii) an analysis of the projected fiscal impact of the EIFD and the associated development upon the affected taxing entities; and (viii) a plan for financing any potential costs that may be incurred by reimbursing a developer of certain transit-oriented projects.
- Financing Methods: The infrastructure financing plan must specify which methods will be used to finance the EIFD's activities, such as incremental tax revenues, governmental or private loans, grants, bonds, assessments, fees, or any combination thereof. However, the public financing authority may not issue bonds without voter approval (as discussed below) and may not levy assessments or fees absent compliance with the applicable statutory requirements governing such assessments or fees (including, for example, laws pertaining to parking district fees, community facilities district assessments, and facilities benefit assessments). The EIFD may expend up to 10 percent of any accrued tax increment in the first two years after the effective date of the EIFD on planning and public dissemination of information.

- Environmental Review: The infrastructure financing plan must be made available for public inspection and must be sent to each owner of land within the proposed EIFD and to each affected taxing entity, together with any report required by the California Environmental Quality Act (CEQA) that pertains to the proposed public facilities or the proposed development project for which the public facilities are needed. The CEQA report also must be sent to the planning commission and the legislative body of the city or county forming the EIFD.
- Approval Hearing: The legislative body must follow specified noticing procedures and conduct a public hearing before adopting the proposed infrastructure financing plan. The hearing must occur no sooner than 60 days after the plan has been sent to each affected taxing entity. At the hearing, the legislative body must hear and pass upon all written and oral objections. The legislative body may modify the plan by eliminating or reducing the size and cost of proposed facilities or development, by reducing the amount of proposed debt, or by reducing the portion, amount, or duration of incremental tax revenues to be committed to the EIFD. At the conclusion of the hearing, the legislative body may adopt a resolution proposing approval of the infrastructure financing plan, as modified, and formation of the EIFD, or it may abandon the proceedings. The infrastructure financing plan and the formation of the EIFD will take effect upon the legislative body's adoption of the resolution. (One portion of the EIFD statute mistakenly refers to the adoption of an ordinance, rather than a resolution, with respect to formation of the EIFD.)
- Consent of Participating Taxing Entities: The legislative body shall not enact a resolution proposing formation of the EIFD and providing for a taxing entity's contribution of tax revenues unless a resolution approving the plan has been adopted by the governing body of each participating taxing entity and has been filed with the legislative body at or before the time of the hearing.
- Redevelopment Limitations: A city or county that created a redevelopment agency (RDA) may initiate the creation of an EIFD or participate in an EIFD's governance or financing only if it meets four conditions: (i) its successor agency has received a finding of completion from the California Department of Finance (DOF); (ii) the city or county certifies to the DOF and to the public financing authority that no former RDA assets have been or will be used to benefit an EIFD if those assets are the subject of litigation where the city, county, or successor agency is a plaintiff and the State also is involved, unless the litigation and all possible appeals have been resolved; (iii) the State Controller has completed a review of prior transfers of assets between the former RDA and its counterpart city or county during the 13-month period from January 1, 2011 through January 31, 2012; and (iv) the successor agency and the city or county have complied with any findings and order arising from the State Controller's asset transfer review.

### **C. Allocation of Property Taxes to EIFD**

- Incremental Property Taxes: An infrastructure financing plan may contain a provision for the allocation of incremental property taxes into a special fund of the EIFD for all lawful purposes of the EIFD. These incremental property taxes consist of increased property tax

assessments in the EIFD territory after creation of the EIFD, to the extent that the taxing entity who would normally receive those property taxes has voluntarily agreed to allocate at least a portion of them to the EIFD. After the EIFD ceases to exist, these property taxes are again allocated to the taxing entities normally entitled to receive the taxes.

- Subordination to Redevelopment Obligations: An EIFD may include any portion of a redevelopment project area created under the California Community Redevelopment Law. Where the boundaries of an EIFD and a redevelopment project area overlap, any debt or obligation of the EIFD is subordinate to any enforceable obligations of a former RDA. Also, any taxes required to be deposited into the Redevelopment Property Tax Trust Fund (RPTTF) cannot be allocated directly to the EIFD.
- RPTTF Allocation: The legislative body of the city or county that forms an EIFD may dedicate to the EIFD any portion of “net available revenue” – defined as the periodic distributions from the RPTTF available to the sponsoring city or county after all preexisting legal commitments and statutory obligations funded from that revenue are satisfied in accordance with the redevelopment dissolution laws. The option to dedicate net available revenue to the EIFD is apparently available only to the city or county that forms the EIFD, and is expressly not available to any educational taxing entity.

#### **D. Use of Bonds and Loans**

- Initiation of Proceedings: A public financing authority may, by majority vote, initiate proceedings to issue tax increment bonds by adopting a resolution of intention that contains information about the proposed bond issuance, such as: (i) a description of the facilities or developments to be financed and their estimated cost; (ii) the maximum interest rate and discount on the bond issuance; (iii) the date, and manner of holding, the election on the bond issuance; and (iv) a finding that the amount necessary to pay the bond debt will be less than, or equal to, the amount of tax revenue estimated to be available for payment of the bond debt. The clerk of the public financing authority must publish notice of this adopted resolution in a manner specified by the statute.
- Public Vote: The proposed bond issuance may occur only if at least 55 percent of the qualified electors in the EIFD territory vote in favor of the bond issuance at a general election or a special election. If at least 12 persons have been registered to vote within the EIFD territory for each of the 90 days preceding the close of the public financing authority’s hearing on the proposed bond issuance, then the qualified electors will consist of the registered voters in the EIFD, with each voter having one vote. Otherwise, the qualified electors will consist of the landowners in the EIFD, with each landowner having one vote for each acre or portion of an acre of land that he or she owns in the EIFD.
- Resolution Approving Bond Issuance: If the voters approve issuance of the bonds, the public financing authority must proceed with issuance of the bonds by adopting a resolution containing specified information regarding the bonds.

- Effect of Failed Vote: If the voters defeat a bond proposition, the public financing authority must wait at least one year after the date of the election before submitting a similar proposition to the voters.
- Liability: The public financing authority or any person executing the tax increment bonds will not be personally liable on the bonds by reason of their issuance. The bonds or other obligations of the EIFD are payable solely from the EIFD's funds or properties, and will not give rise to liability by the city, county, or State or any of its political subdivisions.
- Agency Loan: The governing board of a city, county, or special district that contains territory within an EIFD's boundaries may loan monies to the EIFD to fund activities described in the approved infrastructure financing plan. The loan may be repaid at an interest rate no greater than the Local Agency Investment Fund rate in effect on the date the governing board approves the loan.

#### **E. Eligible Projects**

- Scope of Projects: An EIFD may finance the purchase, construction, expansion, improvement, seismic retrofit, or rehabilitation of any real or other tangible property with an estimated useful life of at least 15 years so long as the activity involves only public capital facilities or other specified projects of communitywide significance that provide significant benefits to the EIFD or the surrounding community, including, but not limited to, all of the following:
  - Highways, interchanges, ramps and bridges, arterial streets, parking facilities, and transit facilities;
  - Sewage treatment and water reclamation plants and interceptor pipes;
  - Facilities for the collection and treatment of water for urban uses;
  - Flood control levees and dams, retention basins, and drainage channels;
  - Child care facilities;
  - Libraries;
  - Parks, recreational facilities, and open space;
  - 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;
  - Acquisition, construction, or rehabilitation of housing for persons of low and moderate income, subject to recorded affordability covenants of at least 55 years for rental units and at least 45 years for owner-occupied units, or alternatively an equity sharing agreement for owner-occupied units;
  - Affordable housing components of mixed-income housing developments;
  - Acquisition, construction, or repair of industrial structures for private use;
  - Certain transit priority projects and certain projects that implement a sustainable communities strategy; and
  - Exercise of any powers under, and financing of any action necessary to implement, the Polanco Redevelopment Act.



- Planning and Design Work: The EIFD also may finance the planning and design work directly related to the purchase, construction, expansion, or rehabilitation of property.
- Location: An EIFD's territory may include areas that are not contiguous. Also, the financed facilities need not be physically located within the EIFD's territory. However, any financed facilities outside of the EIFD's territory must have a tangible connection to the work of the EIFD, as detailed in the infrastructure financing plan.
- No Maintenance or Operation Costs: The EIFD may not finance routine maintenance, repair work, operational costs, or the provision of services of any kind.
- Nature of Facilities: The EIFD may finance the authorized facilities only to the extent that the facilities are in addition to any existing facilities provided in the EIFD's territory before creation of the EIFD. The additional facilities may not supplant existing facilities, but may supplement, rehabilitate, upgrade, or make more sustainable those facilities.

#### **F. Miscellaneous Provisions**

- Appropriations Limit: A public financing authority may submit, for approval by qualified voters in the EIFD's territory, a proposition to establish or change the appropriations limit (as defined by Section 8 of Article XIII B of the California Constitution) of a proposed or established EIFD.
- Legal Actions: Any legal challenge to the creation of an EIFD or the adoption of an infrastructure financing plan must be commenced within 30 days after enactment of the resolution creating the EIFD. An action to determine the validity of issuance of tax increment bonds for the EIFD may be brought in accordance with California's validation statutes, but must be commenced within 30 days after the public financing authority's adoption of the resolution approving the bond issuance. Any appeal from a judgment in the validation action must be commenced within 30 days after entry of judgment.
- Audits: Every two years after the EIFD's issuance of bond debt, the EIFD must contract for an independent financial and performance audit, to be conducted according to guidelines established by the State Controller. A copy of each completed audit must be provided to the State Controller, the State Director of Finance, and the Joint Legislative Budget Committee. Upon the request of the Governor or the Legislature, the Bureau of State Audits is authorized to conduct financial and performance audits of any EIFD.