

AMENDED IN ASSEMBLY APRIL 8, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 294

Introduced by Assembly Member Holden

February 11, 2013

An act to ~~amend Sections 53395.1, 53395.3, 53395.10, 53395.14, and 53397.6 of, and to add Section 53397.12 to, the~~ *add and repeal Article 5.5 (commencing with Section 63047.55) of Chapter 2 of Division 1 of Title 6.7 of the Government Code, relating to local government.*

LEGISLATIVE COUNSEL'S DIGEST

AB 294, as amended, Holden. ~~Infrastructure financing districts: use of incremental property tax revenue. Local-State Joint Investment Partnership Pilot Program.~~

The Bergeson-Peace Infrastructure and Economic Development Bank Act establishes the Infrastructure and Economic Development Bank within the Governor's Office of Business and Economic Development. The bank is authorized to, among other things, issue bonds, approve the issuance of certain bonds, invest moneys, and make loans, as specified.

This bill would, until January 1, 2025, establish a pilot program whereby certain local governmental entities, upon the approval and oversight of the bank, are authorized to reallocate their payments directed to the Educational Revenue Augmentation Fund to instead finance certain kinds of public works that further state policy, as specified. This bill would require each local governmental entity operating a project under the pilot program and the bank to submit annual reports, as specified, on the results of the pilot program.

~~(1) Existing law authorizes a legislative body, as defined, to create an infrastructure financing district, adopt an infrastructure financing plan, and issue bonds, to finance specified public facilities, upon voter approval. Existing law authorizes an infrastructure financing district to fund infrastructure projects through tax increment financing, pursuant to the infrastructure financing plan and agreement of affected taxing entities, as defined.~~

~~This bill would authorize an infrastructure financing district to utilize the Educational Revenue Augmentation Fund (ERAF) portion of incremental tax revenue. The bill would require an infrastructure financing district that proposes to utilize the ERAF portion of incremental tax revenue to include that intention in the financing plan, and prior to adopting a resolution authorizing the first debt issuance utilizing the ERAF share, obtain and submit an economic analysis to the California Infrastructure and Economic Development Bank for review and approval, as specified.~~

~~(2) Existing law authorizes the legislative body of an infrastructure financing district to issue bonds upon the approval, by a $\frac{2}{3}$ vote, of the voters voting on the proposition and requires the issuance of the bonds to include, among other things, the date on which the bonds will mature.~~

~~This bill would require the issuance to specify that the date on which the bonds will mature may not occur prior to the receipt of at least the aggregate of \$100,000 in incremental property tax revenues by the district.~~

~~(3) Existing law authorizes an infrastructure financing district to finance only public capital facilities of communitywide significance, which provide significant benefits to an area larger than the area of the district, including, among others, highways, interchanges, ramps and bridges, arterial streets, parking facilities, transit facilities, facilities for the collection and treatment of water for urban uses, child care facilities, libraries, and facilities for the transfer and disposal of solid waste.~~

~~This bill would additionally authorize an infrastructure financing district to finance brownfield cleanup that promotes infill housing development and other related infill development consistent with regional and local plans.~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.~~

The people of the State of California do enact as follows:

1 *SECTION 1. The Legislature finds and declares that the*
2 *purpose of this act is to create a pilot program whereby certain*
3 *local governmental entities, upon the approval and oversight of*
4 *the Infrastructure and Economic Development Bank, are authorized*
5 *to reallocate their payments directed to the Educational Revenue*
6 *Augmentation Fund to instead finance certain kinds of public*
7 *works.*

8 *SEC. 2. Article 5.5 (commencing with Section 63047.55) is*
9 *added to Chapter 2 of Division 1 of Title 6.7 of the Government*
10 *Code, to read:*

11
12 *Article 5.5. Local-State Joint Investment Partnership Pilot*
13 *Program*

14
15 63047.55. *There is in state government the Local-State Joint*
16 *Investment Partnership Pilot Program.*

17 63047.60. *Only a local governmental entity, including, but not*
18 *limited to, an infrastructure financing district established pursuant*
19 *to Chapter 2.8 (commencing with Section 53395) of Part 1 of*
20 *Division 2 of Title 5, but excluding a city, county, or city and*
21 *county, may file an application for financing a public works project*
22 *with, and for approval by, the bank pursuant to the program.*

23 63047.65. *Only the following public works that further state*
24 *policy objectives shall be financed under the program:*

25 (a) *“City streets,” “county highways,” and “state highways,”*
26 *as those terms are used in paragraphs (1), (2), and (15),*
27 *respectively, of subdivision (q) of Section 63010.*

28 (b) *“Sewage collection and treatment,” as that term is used in*
29 *paragraph (10) of subdivision (q) of Section 63010.*

30 (c) *“Water treatment and distribution,” as that term is used in*
31 *paragraph (12) of subdivision (q) of Section 63010.*

32 (d) *Facilities for the collection and treatment of water for urban*
33 *uses.*

34 (e) *“Drainage, water supply, and flood control,” as that term*
35 *is used in paragraph (3) of subdivision (q) of Section 63010.*

36 (f) *“Educational facilities,” as that term is used in paragraph*
37 *(4) of subdivision (q) of Section 63010.*

- 1 (g) “Parks and recreational facilities,” as that term is used in
 2 paragraph (6) of subdivision (q) of Section 63010.
- 3 (h) “Solid waste collection and disposal,” as that term is used
 4 in paragraph (11) of subdivision (q) of Section 63010.
- 5 (i) “Public transit,” as that term is used in paragraph (9) of
 6 subdivision (q) of Section 63010.
- 7 (j) “Power and communications,” as that term is used in
 8 paragraph (8) of subdivision (q) of Section 63010.
- 9 (k) (1) Brownfield cleanup that promotes infill housing
 10 development and other related infill development consistent with
 11 regional and local plans.
- 12 (2) For purposes of this subdivision, “brownfield” has the same
 13 meaning as in paragraph (2) of subdivision (a) of Section 25395.20
 14 of the Health and Safety Code.
- 15 63047.70. (a) An application for financing approval filed with
 16 the bank pursuant to the program shall include all of the following
 17 information in a manner prescribed by the bank:
- 18 (1) An economic analysis of the project.
- 19 (2) A description of how the project will further local and
 20 statewide policy objectives.
- 21 (3) A description of all local resources available to invest in
 22 the project and an analysis of the reduced scope or feasibility of
 23 the project based on the investment of only those local resources.
- 24 (4) The annual amount of property taxes otherwise allocated
 25 to the Educational Augmentation Revenue Fund, from the tax rate
 26 areas within the territorial jurisdiction of the applicant, that the
 27 applicant proposes to reallocate to finance the project, and whether
 28 the applicant proposes to issue debt to fund the project.
- 29 (5) A demonstration, to a reasonable probability, that the project
 30 would result in an amount of tax revenue to the state General Fund
 31 with a net present value that is greater than the net present value
 32 of the amount of property tax increment revenues that would be
 33 reallocated from the Educational Revenue Augmentation Fund
 34 over the term of the project, taking into consideration all pertinent
 35 data.
- 36 (b) The bank may circulate an application for financing to other
 37 state agencies, including, but not limited to, the Department of
 38 Finance, the Department of Housing and Community Development,
 39 and the Office of Planning and Research.

1 (c) *The bank may establish a process for the public to comment*
2 *on an application for financing.*

3 (d) *The legislative body of the applicant shall reimburse the*
4 *bank for the reasonable cost of the bank’s review of its application*
5 *for financing.*

6 (e) *For purposes of this article, “public works project” means*
7 *the entire plan for developing the public works specified in Section*
8 *63047.65, within a specified geographical area, as set forth by the*
9 *applicant.*

10 63047.75. (a) *On and after January 1, 2015, the bank may*
11 *approve up to a maximum of 25 applications for financing pursuant*
12 *to the program.*

13 (b) *The bank shall not approve an application for financing*
14 *unless it determines that approving a public works project*
15 *proposed in an application is necessary either to make the project*
16 *financially feasible or to significantly enhance the scope and*
17 *potential benefits of the project.*

18 (c) *In reviewing the economic analysis in an application for*
19 *financing, the bank shall consider the increase in state General*
20 *Fund tax revenues that would occur because of the proposed*
21 *economic activity.*

22 (d) *In making its decision to approve an application for*
23 *financing, the bank may give weight to any established state policy*
24 *objective or benefit identified by a state agency reviewing the*
25 *application.*

26 (e) *The bank shall only approve financing that reallocates tax*
27 *revenue that would otherwise be allocated to the Educational*
28 *Revenue Augmentation Fund from each affected taxing entity*
29 *making the application, and the reallocation shall be made in*
30 *proportion to the percentage share of property taxes that each*
31 *affected taxing entity would otherwise contribute to the Educational*
32 *Revenue Augmentation Fund.*

33 63047.80. (a) *To approve an application for financing under*
34 *the program, the bank shall issue a written statement that*
35 *establishes, but is not limited to, the total amount of tax revenue*
36 *that would have been directed to the Educational Revenue*
37 *Augmentation Fund that is reallocated to finance specific public*
38 *works projects proposed in the application, the amount of each*
39 *affected taxing agency’s payment to the Educational Revenue*
40 *Augmentation Fund that is being reallocated, and the duration of*

1 *those reallocations. The bank shall transmit the statement to the*
2 *county tax collector or the official responsible for the allocation*
3 *of property tax revenues within the county.*

4 *(b) Upon receiving the bank's written statement described in*
5 *subdivision (a), the county tax collector or the official responsible*
6 *for the allocation of tax revenues within the county shall direct*
7 *the tax revenues as prescribed in the bank's statement.*

8 *63047.85. (a) On or before December 31, 2016, and annually*
9 *thereafter, each applicant that has received financing pursuant to*
10 *the program for any fiscal year shall provide a report to the bank*
11 *that includes all of the following information for that fiscal year:*

12 *(1) The amount of money that the county auditor reallocated*
13 *from the Educational Revenue Augmentation Fund for financing*
14 *under the program.*

15 *(2) The purposes for which that allocated money was used.*

16 *(3) The actions taken during the fiscal year to implement the*
17 *applicant's project.*

18 *(b) On or before March 1, 2017, and annually thereafter, the*
19 *bank shall provide a report to the Joint Legislative Budget*
20 *Committee that includes all of the following information for the*
21 *preceding fiscal year:*

22 *(1) The name, location, and general description of each*
23 *application for financing approved under the program.*

24 *(2) The total amount of money that county auditors reallocated*
25 *from the Educational Revenue Augmentation Fund under the*
26 *program.*

27 *(3) An evaluation of the extent to which the implementation of*
28 *the approved financing has achieved the purposes and intent of*
29 *the program. In preparing this evaluation, the bank may solicit*
30 *advice and assistance from other state entities, including, but not*
31 *limited to, the departments within the Transportation Agency, the*
32 *Business, Consumer Services, and Housing Agency, and the*
33 *Natural Resources Agency, the Department of Finance, and the*
34 *Office of Planning and Research.*

35 *63047.90. This article shall remain in effect only until January*
36 *1, 2025, and as of that date is repealed, unless a later enacted*
37 *statute, that is enacted before January 1, 2025, deletes or extends*
38 *that date. However, the repeal of this article shall not affect the*
39 *continuing annual reallocation of property taxes for financing*
40 *approved by the bank prior to the repeal of this article.*

1 ~~SECTION 1. Section 53395.1 of the Government Code is~~
2 ~~amended to read:~~

3 ~~53395.1. Unless the context otherwise requires, the definitions~~
4 ~~contained in this article shall govern the construction of this~~
5 ~~chapter.~~

6 ~~(a) “Affected taxing entity” means any governmental taxing~~
7 ~~agency which levied or had levied on its behalf a property tax on~~
8 ~~all or a portion of the property located in the proposed district in~~
9 ~~the fiscal year prior to the designation of the district, but not~~
10 ~~including any county office of education, school district, or~~
11 ~~community college district.~~

12 ~~(b) “City” means a city, a county, or a city and county.~~

13 ~~(c) “Debt” means any binding obligation to repay a sum of~~
14 ~~money, including obligations in the form of bonds, certificates of~~
15 ~~participation, long-term leases, loans from government agencies,~~
16 ~~or loans from banks, other financial institutions, private businesses,~~
17 ~~or individuals.~~

18 ~~(d) “Designated official” means the city engineer or other~~
19 ~~appropriate official designated pursuant to Section 53395.13.~~

20 ~~(e) (1) “District” means an infrastructure financing district.~~

21 ~~(2) An infrastructure financing district is a “district” within the~~
22 ~~meaning of Section 1 of Article XIII A of the California~~
23 ~~Constitution.~~

24 ~~(f) “ERAF” means the Educational Revenue Augmentation~~
25 ~~Fund.~~

26 ~~(g) “ERAF share” means the county ERAF portion of~~
27 ~~incremental tax revenue.~~

28 ~~(h) “Infrastructure financing district” means a legally constituted~~
29 ~~governmental entity established pursuant to this chapter for the~~
30 ~~sole purpose of financing public facilities.~~

31 ~~(i) “Landowner” or “owner of land” means any person shown~~
32 ~~as the owner of land on the last equalized assessment roll or~~
33 ~~otherwise known to be the owner of the land by the legislative~~
34 ~~body. The legislative body has no obligation to obtain other~~
35 ~~information as to the ownership of land, and its determination of~~
36 ~~ownership shall be final and conclusive for the purposes of this~~
37 ~~chapter. A public agency is not a landowner or owner of land for~~
38 ~~purposes of this chapter, unless the public agency owns all of the~~
39 ~~land to be included within the proposed district.~~

1 (j) ~~“Legislative body” means the city council or board of~~
2 ~~supervisors.~~

3 SEC. 2. ~~Section 53395.3 of the Government Code is amended~~
4 ~~to read:~~

5 ~~53395.3. (a) A district may finance (1) the purchase,~~
6 ~~construction, expansion, improvement, seismic retrofit, or~~
7 ~~rehabilitation of any real or other tangible property with an~~
8 ~~estimated useful life of 15 years or longer which satisfies the~~
9 ~~requirements of subdivision (b), (2) may finance planning and~~
10 ~~design work which is directly related to the purchase, construction,~~
11 ~~expansion, or rehabilitation of that property and (3) the costs~~
12 ~~described in Sections 53395.5, and 53396.5. A district may only~~
13 ~~finance the purchase of facilities for which construction has been~~
14 ~~completed, as determined by the legislative body. The facilities~~
15 ~~need not be physically located within the boundaries of the district.~~
16 ~~A district may not finance routine maintenance, repair work, or~~
17 ~~the costs of ongoing operation or providing services of any kind.~~

18 ~~(b) The district shall finance only public capital facilities of~~
19 ~~communitywide significance, which provide significant benefits~~
20 ~~to an area larger than the area of the district, including, but not~~
21 ~~limited to, all of the following:~~

22 ~~(1) Highways, interchanges, ramps and bridges, arterial streets,~~
23 ~~parking facilities, and transit facilities.~~

24 ~~(2) Sewage treatment and water reclamation plants and~~
25 ~~interceptor pipes.~~

26 ~~(3) Facilities for the collection and treatment of water for urban~~
27 ~~uses.~~

28 ~~(4) Flood control levees and dams, retention basins, and drainage~~
29 ~~channels.~~

30 ~~(5) Child care facilities.~~

31 ~~(6) Libraries.~~

32 ~~(7) Parks, recreational facilities, and open space.~~

33 ~~(8) Facilities for the transfer and disposal of solid waste,~~
34 ~~including transfer stations and vehicles.~~

35 ~~(e) Notwithstanding subdivisions (a) and (b), a district may~~
36 ~~finance brownfield cleanup that promotes infill housing~~
37 ~~development and other related infill development consistent with~~
38 ~~regional and local plans.~~

39 ~~(d) Any district which constructs dwelling units shall set aside~~
40 ~~not less than 20 percent of those units to increase and improve the~~

1 community's supply of low- and moderate-income housing
2 available at an affordable housing cost, as defined by Section
3 50052.5 of the Health and Safety Code, to persons and families of
4 low- and moderate-income, as defined in Section 50093 of the
5 Health and Safety Code.

6 SEC. 3. Section 53395.10 of the Government Code is amended
7 to read:

8 53395.10. A legislative body of a city may designate one or
9 more proposed infrastructure financing districts pursuant to this
10 chapter. Proceedings for the establishment of a district shall be
11 instituted by the adoption of a resolution of intention to establish
12 the proposed district and shall do all of the following:

13 (a) State that an infrastructure financing district is proposed to
14 be established under the terms of this chapter and describe the
15 boundaries of the proposed district, which may be accomplished
16 by reference to a map on file in the office of the clerk of the city.

17 (b) State the type of public facilities proposed to be financed
18 by the district. The district may only finance public facilities
19 authorized by Section 53395.3.

20 (c) (1) State that incremental property tax revenue from the
21 city and some or all affected taxing entities within the district may
22 be used to finance these public facilities.

23 (2) In the case of a district that proposes to utilize the ERAF
24 share, state that incremental property tax revenues from the county
25 ERAF within the district may be used to finance these public
26 facilities.

27 (d) Fix a time and place for a public hearing on the proposal.

28 SEC. 4. Section 53395.14 of the Government Code is amended
29 to read:

30 53395.14. After receipt of a copy of the resolution of intention
31 to establish a district, the official designated pursuant to Section
32 53395.13 shall prepare a proposed infrastructure financing plan.
33 The infrastructure financing plan shall be consistent with the
34 general plan of the city within which the district is located and
35 shall include all of the following:

36 (a) A map and legal description of the proposed district, which
37 may include all or a portion of the district designated by the
38 legislative body in its resolution of intention.

39 (b) A description of the public facilities required to serve the
40 development proposed in the area of the district including those

1 to be provided by the private sector, those to be provided by
 2 governmental entities without assistance under this chapter, those
 3 public improvements and facilities to be financed with assistance
 4 from the proposed district, and those to be provided jointly. The
 5 description shall include the proposed location, timing, and costs
 6 of the public improvements and facilities.

7 (e) A finding that the public facilities are of communitywide
 8 significance and provide significant benefits to an area larger than
 9 the area of the district.

10 (d) A financing section, which shall contain all of the following
 11 information:

12 (1) (A) A specification of the maximum portion of the
 13 incremental tax revenue of the city and of each affected taxing
 14 entity proposed to be committed to the district for each year during
 15 which the district will receive incremental tax revenue. The portion
 16 need not be the same for all affected taxing entities. The portion
 17 may change over time.

18 (B) If the district proposes to utilize the ERAF share, a statement
 19 of the maximum amount of tax increment from the ERAF share
 20 that the district will receive during the period of the district.

21 (2) A projection of the amount of tax revenues expected to be
 22 received by the district in each year during which the district will
 23 receive tax revenues, including an estimate of the amount of tax
 24 revenues attributable to each affected taxing entity for each year.

25 (3) A plan for financing the public facilities to be assisted by
 26 the district, including a detailed description of any intention to
 27 incur debt.

28 (4) A limit on the total number of dollars of taxes which may
 29 be allocated to the district pursuant to the plan.

30 (5) A date on which the district will cease to exist, by which
 31 time all tax allocation to the district will end. The date shall not
 32 be more than 30 years from the date on which the ordinance
 33 forming the district is adopted pursuant to Section 53395.23.

34 (6) An analysis of the costs to the city of providing facilities
 35 and services to the area of the district while the area is being
 36 developed and after the area is developed. The plan shall also
 37 include an analysis of the tax, fee, charge, and other revenues
 38 expected to be received by the city as a result of expected
 39 development in the area of the district.

1 ~~(7) An analysis of the projected fiscal impact of the district and~~
2 ~~the associated development upon each affected taxing entity.~~

3 ~~(8) A plan for financing any potential costs that may be incurred~~
4 ~~by reimbursing a developer of a project that is both located entirely~~
5 ~~within the boundaries of that district and qualifies for the Transit~~
6 ~~Priority Project Program, pursuant to Section 65470, including~~
7 ~~any permit and affordable housing expenses related to the project.~~

8 ~~(e) If any dwelling units occupied by persons or families of low~~
9 ~~or moderate income are proposed to be removed or destroyed in~~
10 ~~the course of private development or public works construction~~
11 ~~within the area of the district, a plan providing for replacement of~~
12 ~~those units and relocation of those persons or families consistent~~
13 ~~with the requirements of Section 53395.5.~~

14 ~~SEC. 5. Section 53397.6 of the Government Code is amended~~
15 ~~to read:~~

16 ~~53397.6. (a) The bonds may be issued if two-thirds of the~~
17 ~~voters voting on the proposition vote in favor of issuing the bonds.~~

18 ~~(b) If the voters approve the issuance of the bonds as provided~~
19 ~~by subdivision (a), the legislative body shall proceed with the~~
20 ~~issuance of the bonds by adopting a resolution which shall provide~~
21 ~~for all of the following:~~

22 ~~(1) The issuance of the bonds in one or more series.~~

23 ~~(2) The principal amount of the bonds, which shall be consistent~~
24 ~~with the amount specified in subdivision (b) of Section 53397.2.~~

25 ~~(3) The date the bonds will bear.~~

26 ~~(4) The date of maturity of the bonds, which shall not occur~~
27 ~~prior to the receipt of at least the aggregate of one hundred~~
28 ~~thousand dollars (\$100,000) in incremental property tax revenues~~
29 ~~by the district.~~

30 ~~(5) The denomination of the bonds.~~

31 ~~(6) The form of the bonds.~~

32 ~~(7) The manner of execution of the bonds.~~

33 ~~(8) The medium of payment in which the bonds are payable.~~

34 ~~(9) The place or manner of payment and any requirements for~~
35 ~~registration of the bonds.~~

36 ~~(10) The terms of call or redemption, with or without premium.~~

37 ~~SEC. 6. Section 53397.12 is added to the Government Code,~~
38 ~~to read:~~

39 ~~53397.12. (a) (1) Before adopting the resolution required by~~
40 ~~subdivision (b) of Section 53397.6 authorizing the issuance of~~

1 bonds utilizing the ERAF share, the legislative body shall obtain
2 and submit an economic analysis to the California Infrastructure
3 and Economic Development Bank for review and approval. The
4 Legislative body shall include the adopted infrastructure financing
5 plan with the economic analysis.

6 ~~(2) The legislative body shall obtain the economic analysis from
7 one of the following entities:~~

8 ~~(A) The University of California.~~

9 ~~(B) The California State University.~~

10 ~~(C) A group of economists of comparable stature and
11 qualifications to those from the University of California or the
12 California State University.~~

13 ~~(b) The bank may circulate the economic analysis to other state
14 agencies, including, but not limited to, the Department of Finance,
15 the Department of Housing and Community Development, and
16 the Office of Planning and Research, and solicit their comments
17 and recommendations. After considering the comments and
18 recommendations of other state agencies, if any, the bank shall
19 take one of the following actions:~~

20 ~~(1) Approve the economic analysis and infrastructure financing
21 plan if the bank makes the finding required pursuant to subdivision
22 (d).~~

23 ~~(2) Return the economic analysis and infrastructure financing
24 plan to the legislative body with specific recommendations for
25 changes that would allow the bank to approve the fiscal analysis.~~

26 ~~(3) Require an additional economic analysis to affirm the
27 determinations made by the first economic analysis.~~

28 ~~(e) The bank shall have 100 days from the receipt of the
29 economic analysis to act pursuant to this subdivision. If the bank
30 does not act within 100 days, the fiscal analysis shall be deemed
31 approved.~~

32 ~~(d) For bank approval, the economic analysis shall demonstrate
33 to the bank's reasonable satisfaction a reasonable probability that
34 the development to be financed would result in an amount of
35 revenue to the General Fund with a net present value that is greater
36 than the net present value of the amount of property tax increment
37 revenues that would be diverted from ERAF over the term of the
38 district, taking into consideration all pertinent data. In reviewing
39 the economic analysis, the bank shall consider only those General
40 Fund revenues that would occur because of economic activity~~

- 1 proposed to occur as a result of implementation of the infrastructure
- 2 financing plan.
- 3 (e) ~~The legislative body shall reimburse the bank for the~~
- 4 ~~reasonable cost of the review and approval of the fiscal analysis.~~

O