

ASSEMBLY BILL

No. 2841

Introduced by Assembly Member Travis Allen

February 19, 2016

An act to add Chapter 4 (commencing with Section 1719.1) to Part 1 of Division 6 of the Harbors and Navigation Code, relating to seaport infrastructure financing.

LEGISLATIVE COUNSEL'S DIGEST

AB 2841, as introduced, Travis Allen. State infrastructure financing for seaports.

Existing law authorizes port or harbor infrastructure projects to be financed by an enhanced infrastructure financing district. Existing law requires that a harbor agency prepare an infrastructure financing plan for a seaport infrastructure financing district, defined as an enhanced infrastructure financing district that finances port or harbor infrastructure, and requires that the plan meet specified requirements. Existing law authorizes an enhanced infrastructure financing district to fund infrastructure projects through tax increment financing, pursuant to the infrastructure financing plan and the agreement of affected taxing entities.

Existing law, 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, and requires the bank to establish criteria, priorities, and guidelines for the selection of projects to receive financial assistance from the bank, including, but not limited to, any combination of grants, loans, and the proceeds of bonds issued by the bank.

This bill would authorize a harbor agency, as defined, to prepare a proposed financing plan to be submitted to the bank to finance infrastructure development or equipment, and would require the plan to include specified information including the state fiscal and economic impacts, including increased jobs and tax revenues and state fund savings, estimated to result from the proposed project. The bill would require the bank to consider a project proposal and to approve the financing of it if the project meets specified requirements, including that the State Lands Commission has verified that the proposed project is consistent with the state tidelands trust and any conditions of a grant of trust lands to a harbor agency and a finding by the bank that the project is more likely than not to result in the estimated state fiscal and economic impacts. The bill would limit the amount of financing provided, as specified, and would authorize the bank to provide the financing only upon an appropriation of funds for that purpose.

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 all of the
- 2 following:
- 3 (a) The primary purpose of this act is to encourage the
- 4 development and growth of, and to encourage and help finance
- 5 the further investment in, and subsequent increased use of,
- 6 California's public port facilities and the introduction of
- 7 zero-emission and near-zero-emission equipment and supporting
- 8 infrastructure at California's public port facilities.
- 9 (b) The statewide interest in the need to continually invest in
- 10 California's public port infrastructure is predicated on the fact that
- 11 California's public seaports and the international trade that they
- 12 facilitate are critical components of the state economy, directly or
- 13 indirectly employing millions of Californians, contributing billions
- 14 of dollars in economic activity, and generating significant local
- 15 and state tax revenues as a result of this activity. As such, our ports
- 16 must be given the ability to successfully compete for cargo volume,
- 17 attract new trade, and continue to grow.
- 18 (c) The development, improvement, expansion, and maintenance
- 19 of the state's public ports and port infrastructure facilities, and the
- 20 utilization of public port facilities for the export and import of

1 cargo to or from distribution, manufacturing, fabrication, assembly,
2 processing, transloading, and warehousing sites in California are
3 matters of statewide significance that are essential to the growth
4 of the state's economic well-being and the ability of those
5 businesses and workers associated with trade-related industries to
6 continue to compete cost-effectively on a regional, national, and
7 global scale.

8 (d) In addition to the vast matters of statewide significance in
9 the economic impacts derived from all of California's public ports,
10 the state's interest in the reduction of mobile source emissions
11 from the freight sector and supply chain, including those emissions
12 from sources that operate at ports, are also matters of statewide
13 significance. In consideration of these environmental matters, the
14 state has a paramount interest in creating incentives that will
15 precipitate early investment by the industry in the newest
16 generation of zero-emission and near-zero-emission equipment
17 and supporting infrastructure at marine terminals and port facilities.
18 Due to the costs of those investments over and above the use of
19 traditional equipment, this is an infrastructure need that cannot be
20 met by private investment alone, and therefore public financing
21 mechanisms and the implementation of public-private partnerships
22 are required to support this new investment.

23 SEC. 2. Chapter 4 (commencing with Section 1719.1) is added
24 to Part 1 of Division 6 of the Harbors and Navigation Code, to
25 read:

26
27 CHAPTER 4. STATE INFRASTRUCTURE FINANCING FOR SEAPORTS
28

29 1719.1. (a) The Legislature finds and declares all of the
30 following:

31 (1) It is equitable and in the public interest to provide alternative
32 procedures for financing public works and services needed to
33 support new commercial, environmental, and industrial
34 development in the state's seaports and harbors that would generate
35 significant new employment opportunities and economic
36 development, increase state and local tax revenues, enhance seaport
37 competitiveness in the international trade community, reduce
38 congestion and delay in the supply chain, and result in improved
39 environmental quality.

1 (2) Except as authorized in this part, seaports and harbors in
2 California generally do not levy or expend any funds generated
3 by local taxes, as most of their operations are funded directly
4 through fees, tariffs, leases, and other revenue the seaports and
5 harbors generate from their users and tenants, in addition to the
6 occasional state or federal grant.

7 (3) There is significant opportunity for development and
8 investment in our state's seaports and harbors and in their transition
9 to operations that are characterized by the use of new zero-emission
10 and near-zero-emission equipment and supporting infrastructure.
11 However, the state lacks the public infrastructure funding necessary
12 to support all of the new development and investment that are
13 demanded.

14 (4) In addition to a lack of public infrastructure funding, our
15 state's waterfront has infrastructure and environmental needs that
16 cannot be met by private investment alone, and therefore creative
17 public financing mechanisms need to be developed. The absence
18 of practical and equitable methods for state financing of public
19 works, like the development of seaport infrastructure that is a
20 matter of statewide significance, leads to a declining standard of
21 seaport infrastructure, a failure to construct new public structures
22 and facilities needed to support new commercial and industrial
23 development in our seaports and harbors, increased congestion,
24 and a lack of tools to facilitate environmental improvements,
25 including the transition to zero-emission and near-zero-emission
26 equipment and supporting infrastructure.

27 (5) The seaports and harbors of California are valuable assets
28 of the state that provide special maritime, navigational, recreational,
29 cultural, and historical benefits to the people of the state and the
30 management and development of these seaports and harbors may
31 not be subjugated. This in turn means that the management of the
32 financial health, land use planning, waterfront assets, and
33 environmental infrastructure in all of California's public ports are
34 matters of statewide significance. This chapter will help to
35 remediate these conditions that will otherwise result in
36 underinvestment in the state's seaports and harbors by providing
37 a new financing mechanism, through the use of leveraged future
38 tax increment revenues, to facilitate matters of statewide
39 importance and further the purposes of the public trust.

1 (b) The Legislature further finds and declares all of the
2 following:

3 (1) The ability to capture future tax increment revenues to
4 finance needed seaport and harbor infrastructure projects will
5 provide direct benefits to the state. When harbor agencies are better
6 funded to further the objectives of the state, the state's seaports
7 and harbors, and the public trust and enjoyment of those trust lands
8 by the people of the state, the state's economy and environment
9 will also be improved.

10 (2) A seaport frequently generates large state tax benefits
11 directly and indirectly as a result of the economic activity that is
12 generated from its maritime operations and other economic
13 development efforts.

14 (3) Investments by a seaport and its industry partners in
15 environmental improvements generate long-term state benefits
16 and reduction in public costs with respect to the reduction of
17 greenhouse gases, criteria pollutants, projected public health
18 impacts, and overall improvements in the quality of life of
19 Californians.

20 (4) The potential for increases in state tax revenues and
21 decreases in costs to the state that will result from the improvement
22 of seaport and harbor infrastructure and investment in
23 environmental improvements should be incentivized and leveraged
24 through state financing, whenever possible, which supports the
25 state's significant interest in the successful operation of its seaports
26 and harbors.

27 1719.2 It is the intent of the Legislature that seaport
28 infrastructure financing be developed pursuant to this chapter in
29 a manner that improves public port assets, infrastructure, and
30 operations and achieves the public goals of improving the state's
31 waterborne commerce, enhancing economic prosperity, and
32 financing the costs of environmental mitigation and improvement.

33 1719.3. For purposes of this chapter, the following terms have
34 the following meanings:

35 (a) "Bank" means the Infrastructure and Economic Development
36 Bank, as established pursuant to Section 63021 of the Government
37 Code.

38 (b) "Project" has the same meaning as defined in Section 63010
39 of the Government Code.

1 1719.4. A harbor agency may prepare a proposed financing
2 plan for a project to be submitted to the bank as provided in Section
3 63041 of the Government Code, for consideration pursuant to the
4 terms of this chapter.

5 1719.5. In addition to the requirements of Section 63041 of
6 the Government Code, a proposed financing plan for a project
7 submitted to the bank pursuant to Section 1719.4 shall include all
8 of the following information:

9 (a) The infrastructure development or equipment purchase to
10 be financed through the proceeds of the proposed financing.

11 (b) (1) If the harbor agency is acting on granted lands, a finding
12 that the project to be financed is consistent with the state tidelands
13 trust and the terms and conditions of any grant of trust lands to the
14 harbor agency. A copy of this finding shall be forwarded by the
15 harbor agency to the State Lands Commission.

16 (2) If the harbor agency was formed pursuant to this code, a
17 finding that the project to be financed is consistent with its charter
18 and the statewide interests in the operation of harbors and ports.

19 (c) The state fiscal and economic impacts forecast required by
20 Section 1719.6.

21 1719.6. (a) A harbor agency shall adopt a resolution setting
22 forth estimates of the state fiscal and economic impacts that will
23 result from the project, including, but not be limited to, the
24 following:

25 (1) The total direct and indirect state tax revenues generated by
26 the impact of the infrastructure development or equipment purchase
27 to be financed through the bank.

28 (2) The total direct and indirect state general fund and special
29 fund expenditure savings generated by the impact of the
30 infrastructure development or equipment purchase to be financed
31 through the bank.

32 (3) The total local tax and user fee revenues generated by the
33 infrastructure development or equipment purchase to be financed
34 through the bank.

35 (4) The total jobs created by the infrastructure development or
36 equipment purchase to be financed through the bank, including
37 the specific impact of the financing on the employment of
38 California residents.

39 (b) (1) Prior to making findings upon which the resolution may
40 be based, a harbor agency shall obtain an economic impact report

1 that shall be completed by a third-party economist, based on a
2 published economic impact methodology. The published economic
3 impact methodology shall be incorporated into the findings of a
4 peer review conducted pursuant to paragraph (2), and shall be
5 adopted in a public meeting of the harbor agency with a finding
6 that the guidelines and methodology were developed in a manner
7 consistent with this section.

8 (2) The economic impact report and the economic methodology
9 to be adopted under this subdivision shall be peer reviewed and
10 evaluated by an independent party that is without any financial
11 association with the third party that completed the economic impact
12 report guidelines and economic methodology. The peer review
13 shall evaluate the adequacy of the guidelines and make specific
14 recommendations regarding the methodologies, which should be
15 incorporated into the peer review by the harbor agency upon
16 adoption.

17 (3) A harbor agency may adopt guidelines for study preparation
18 previously developed by a third party for another harbor agency
19 under this section as long as the final guidelines are adopted
20 pursuant to paragraph (1).

21 (c) This section shall not require a harbor agency to prepare a
22 report or adopt a resolution except at its discretion prior to
23 submission of a proposed financing plan for a project.

24 1719.7. (a) Upon receipt of a proposed financing plan for a
25 project, the bank shall consider the project and approve, require a
26 modification of, or deny the proposed financing.

27 (b) When considering approval of financing for a project
28 submitted pursuant to this chapter, the bank shall do both of the
29 following:

30 (1) Review the proposed financing plan for the project prepared
31 by the harbor agency pursuant to Section 1719.4.

32 (2) Review the methodology and projections prepared for or by
33 the harbor agency pursuant to Section 1719.6.

34 1719.8. The bank shall approve financing for a project if, after
35 conducting its own evaluation of a harbor agency's methodology,
36 it can make the finding that the execution of the project is more
37 likely than not to result in the outcomes projected by the harbor
38 agency pursuant to Section 1719.6.

39 1719.9. The bank shall not approve financing for a project if
40 the State Lands Commission objects to a finding made by a harbor

1 agency pursuant to paragraph (1) of subdivision (b) of Section
2 1719.5.

3 1719.10. Once financing for a project is approved, the bank
4 shall submit a request to the Assembly Budget Committee and the
5 Senate Committee on Budget and Fiscal Review for an
6 appropriation in the following fiscal year in an amount equal to or
7 less than the total estimated state tax revenues and state general
8 fund savings approved by the bank pursuant to Section 1719.8.

9 1719.11. The financing of the project shall be underwritten by
10 the bank only upon an appropriation by the Legislature of funds
11 for that purpose.

12 1719.12. The harbor agency shall reimburse the administrative
13 expenses or direct operating expenses that are incurred by the bank
14 as the direct result of the consideration, review, and processing of
15 the proposed financing of a project pursuant to this chapter.

16 1719.13. To the extent that any provision of this chapter
17 conflicts with any provision of Chapter 2.99 (commencing with
18 Section 53398.50) of Part 1 of Division 2 of Title 5 of the
19 Government Code with respect to a seaport infrastructure financing
20 district, this chapter shall prevail.

21 1719.14. (a) All permanent fixtures and capital improvements
22 to the real property of a harbor agency that administers public trust
23 tidelands financed pursuant to this chapter shall be a trust asset
24 once completed. This does not apply to fixtures and improvements
25 otherwise agreed as nonpermanent in a lease between the harbor
26 agency and a private tenant.

27 (b) Nothing in this chapter shall prohibit a harbor agency from
28 submitting a proposed financing plan for a project on behalf of a
29 tenant or for the purchase of equipment to be owned and operated
30 by a tenant, if the assets are owned, maintained, and used
31 exclusively in California and, upon the cessation of the lease,
32 ownership and control of the assets shall revert to the harbor agency
33 on terms enforceable by contract between the harbor agency and
34 the tenant.