

## Senate Bill No. 207

### CHAPTER 773

An act to add Chapter 2.9 (commencing with Section 53398) to Part 1 of Division 2 of Title 5 of the Government Code, relating to infrastructure financing districts.

[Approved by Governor October 7, 1999. Filed  
with Secretary of State October 10, 1999.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 207, Peace. Infrastructure financing districts: border zone.

(1) Under existing law, redevelopment agencies are authorized to pay the principal of, and interest on, indebtedness incurred to finance or refinance redevelopment, from a portion of property tax revenues diverted from other taxing agencies. The portion of taxes diverted is the amount attributable to increases in assessed valuation of property in the redevelopment project area subsequent to establishment thereof. This method of financing is commonly known as "tax increment" financing and is specifically authorized by Section 16 of Article XVI of the California Constitution.

Existing law also authorizes counties and cities to form infrastructure financing districts, in accordance with a prescribed procedure, to finance public capital facilities utilizing a similar method of tax increment financing.

This bill would similarly authorize counties and cities to create infrastructure financing districts in the border development zone, as defined, to finance public works in the Mexican border region.

Because county officers would be responsible for the division of taxes under the bill, the bill would impose a state-mandated local program in the case of districts formed by cities, but the bill would require all infrastructure financing districts to reimburse those county costs.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

SECTION 1. Chapter 2.9 (commencing with Section 53398) is added to Part 1 of Division 2 of Title 5 of the Government Code, to read:

CHAPTER 2.9. INFRASTRUCTURE FINANCING DISTRICTS IN THE BORDER  
DEVELOPMENT ZONE

Article 1. General Provisions

53398. (a) The Legislature finds and declares that the North American Free Trade Agreement has resulted in a dramatic increase in trade with Mexico. In 1998 companies in California exported over \$13.3 billion worth of goods to Mexico, and more than 80,000 jobs throughout the state are the direct result of this trade. This increased trade has strained the inadequate public infrastructure in the region just north of the international border.

(b) The Legislature further finds and declares that there is a significant opportunity for industrial development, including high technology and biotechnology manufacturing, in the region along the border. However, this region lacks the public infrastructure necessary to support new development or to provide for the rapid and reliable delivery of supplies to, and distribution of products from, companies throughout the state.

(c) The Legislature finds and declares that the state and federal governments have withdrawn in whole or in part from their former role in financing infrastructure facilities, including highways, roads and interchanges, sewage facilities and water reclamation works, water supply and treatment works, flood control and drainage works, schools, libraries, parks, parking facilities, open space, and seismic retrofit and rehabilitation of public facilities.

(d) The Legislature further finds and declares that the methods available to local agencies to finance public works often place an undue and unfair burden on buyers of new homes, especially for public works that benefit the broader community.

(e) The Legislature further finds and declares that the absence of practical and equitable methods for financing both regional and local public works leads to a declining standard of public works, a failure to construct new public works needed to support new commercial and industrial development in the region along the border, a reduced quality of life and decreased safety for affected citizens, increased objection to otherwise desirable development, and excessive costs for homebuyers.

(f) The Legislature further finds and declares that it is equitable and in the public interest to provide alternative procedures for financing public works and services needed to support new



commercial and industrial development in the region along the border that would generate significant new employment opportunities.

53398.1. Unless the context otherwise requires, the definitions contained in this article shall govern the construction of this chapter.

(a) “Affected taxing entity” means any governmental taxing agency that levied or had levied on its behalf a property tax on all or a portion of the property located in the proposed district in the fiscal year prior to the designation of the district, but not including any county office of education, school district, community college district, or the Educational Revenue Augmentation Fund.

(b) “Border development zone” means a strip of land three miles wide with the international border with Mexico on the south, the mean high tide of the Pacific Ocean on the west, and the border with the State of Arizona on the east.

(c) “City” means a city, a county, or a city and county.

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

(e) “Designated official” means the city engineer or other appropriate official designated pursuant to Section 53398.13.

(f) “District” means an infrastructure financing district located in the border development zone.

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

(h) “Landowner” or “owner of land” means any person shown as the owner of land on the last equalized assessment roll or otherwise known to be the owner of the land by the legislative body. The legislative body has no obligation to obtain other information as to the ownership of land, and its determination of ownership shall be final and conclusive for the purposes of this chapter. A public agency is not a landowner or owner of land for purposes of this chapter.

(i) “Legislative body” means the city council or board of supervisors.

53398.2. (a) The revenues available pursuant to Article 3 (commencing with Section 53398.30) may be used directly for work allowed pursuant to Section 53398.3 (including use as matching funds to accomplish this work), may be accumulated for a period not to exceed five years to provide a fund for that work, may be pledged to pay the principal of, and interest on, bonds issued pursuant to Article 4 (commencing with Section 53398.40), or may be pledged to pay the principal of, and interest on, bonds issued pursuant to the Improvement Bond Act of 1915 (Division 10 (commencing with Section 8500) of the Streets and Highways Code) or the Mello-Roos



Community Facilities Act of 1982 (Chapter 2.5 (commencing with Section 53311)), the proceeds of which have been or will be used entirely for allowable purposes of the district. The revenue of the district may also be advanced for allowable purposes of the district to an Integrated Financing District established pursuant to Chapter 1.5 (commencing with Section 53175), in which case the district may be party to a reimbursement agreement established pursuant to that chapter. The revenues of the district may also be committed to paying for any completed public facility acquired pursuant to Section 53398.3 over a period of time, including the payment of a rate of interest not to exceed the bond buyer index rate on the day that the agreement to repay is entered into by the city.

(b) The legislative body may enter into an agreement with any affected taxing entity providing for the construction of, or assistance in, financing public facilities.

53398.3. (a) A district may finance (1) the purchase, construction, expansion, improvement, seismic retrofit, or rehabilitation of any real or other tangible property with an estimated useful life of 15 years or longer that satisfies the requirements of subdivision (b), (2) the planning and design work that is directly related to the purchase, construction, expansion, or rehabilitation of that property, and (3) the costs described in Sections 53398.5 and 53398.31. A district may only finance the purchase of facilities for which construction has been completed, as determined by the legislative body. The facilities need not be physically located within the boundaries of the district. A district may not finance routine maintenance, repair work, or the costs of ongoing operation or providing services of any kind.

(b) The district shall finance only public capital facilities that provide significant benefits to the area of the border development zone, including, but not limited to, all of the following:

(1) Highways, interchanges, ramps and bridges, major and minor arterial streets, major and minor collector streets, parking facilities, and transit facilities. Phased road widening projects shall also be permitted.

(2) Sewage collection, pumping, treatment and water reclamation plants and interceptor pipes.

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

(4) Flood control levees and dams, retention basins, and drainage facilities.

(5) Child care facilities.

(6) Libraries.

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

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



(c) Any district that constructs dwelling units shall set aside not less than 20 percent of those units to increase and improve the community's supply of low- and moderate-income housing available at an affordable housing cost, as defined by Section 50052.5 of the Health and Safety Code, to persons and families of low and moderate income, as defined in Section 50093 of the Health and Safety Code.

53398.4. (a) A district may not include any portion of a redevelopment project area that is or has been previously created pursuant to Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code, whether the creation is or was proper or improper. A redevelopment project area may not include any portion of a district created pursuant to this chapter.

(b) A district may finance only the facilities or services authorized in this chapter to the extent that the facilities or services are in addition to those provided in the territory of the district before the district was created. The additional facilities or services may not supplant facilities or services already available within that territory when the district was created but may supplement those facilities and services as needed to serve new developments.

(c) A district may include areas that are not contiguous.

53398.5. It is the intent of the Legislature that the area of the districts created be substantially undeveloped, and the establishment of a district should not ordinarily lead to the removal of existing dwelling units. If, however, any dwelling units are proposed to be removed or destroyed in the course of private development or public works construction within the area of the district, the legislative body shall do all of the following:

(a) Within four years of the removal or destruction, cause or require the construction or rehabilitation, for rental or sale to persons or families of low or moderate income, of an equal number of replacement dwelling units at affordable housing cost, as defined in Section 50052.5 of the Health and Safety Code, within the territory of the district if the dwelling units removed were inhabited by persons or families of low or moderate income, as defined in Section 50093 of the Health and Safety Code.

(b) Within four years of the removal or destruction, cause or require the construction or rehabilitation, for rental or sale to persons of low or moderate income, a number of dwelling units that is at least one unit but not less than 20 percent of the total dwelling units removed at affordable housing cost, as defined in Section 50052.5 of the Health and Safety Code, within the territory of the district if the dwelling units removed or destroyed were not inhabited by persons of low or moderate income, as defined in Section 50093 of the Health and Safety Code.

(c) Provide relocation assistance and make all the payments required by Chapter 16 (commencing with Section 7260) of Division 7 of Title 1, to persons displaced by any public or private



development occurring within the territory of the district. This displacement shall be deemed to be the result of public action.

(d) Ensure that removal or destruction of any dwelling units occupied by persons or families of low or moderate income does not take place unless and until there are suitable housing units, at comparable cost to the units from which the persons or families were displaced, available and ready for occupancy by the residents of the units at the time of their displacement. The housing units shall be suitable to the needs of these displaced persons or families and shall be decent, safe, sanitary, and otherwise standard dwellings.

53398.6. Any action or proceeding to attack, review, set aside, void, or annul the creation of a district or the adoption of an infrastructure financing plan, including a division of taxes thereunder, shall be commenced within 30 days after the enactment of the ordinance creating the district pursuant to Section 53398.21. Consistent with the time limitations of this section, such an action or proceeding with respect to a division of taxes under this chapter may be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure, except that Section 869 of the Code of Civil Procedure shall not apply.

53398.7. An action to determine the validity of the issuance of bonds pursuant to this chapter may be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure. However, notwithstanding the time limits specified in Section 860 of the Code of Civil Procedure, the action shall be commenced within 30 days after adoption of the resolution pursuant to Section 53398.43 providing for issuance of the bonds if the action is brought by an interested person pursuant to Section 863 of the Code of Civil Procedure. Any appeal from a judgment in that action or proceeding shall be commenced within 30 days after entry of judgment.

53398.8. An infrastructure financing district in the border development zone is a “district” within the meaning of Section 1 of Article XIII A of the California Constitution.

## Article 2. Preparation and Adoption of Infrastructure Financing Plans

53398.10. A legislative body of a city may designate one or more proposed infrastructure financing districts in the border development zone pursuant to this chapter. Proceedings for the establishment of a district shall be instituted by the adoption of a resolution of intention to establish the proposed district and shall do all of the following:

(a) State that an infrastructure financing district is proposed to be established under the terms of this chapter and describe the



boundaries of the proposed district, which may be accomplished by reference to a map on file in the office of the clerk of the city.

(b) State the type of public facilities proposed to be financed by the district. The district may only finance public facilities authorized by Section 53398.3.

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

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

53398.11. The legislative body shall direct the clerk to mail a copy of the resolution of intention to create the district to each owner of land within the district.

53398.12. The legislative body shall direct the clerk to mail a copy of the resolution to each affected taxing entity.

53398.13. After adopting the resolution pursuant to Section 53398.10, the legislative body shall designate and direct the city engineer or other appropriate official to prepare an infrastructure plan pursuant to Section 53398.14.

53398.14. After receipt of a copy of the resolution of intention to establish a district, the official designated pursuant to Section 53398.13 shall prepare a proposed infrastructure financing plan. The infrastructure financing plan shall be consistent with the general plan of the city within which the district is located and shall include all of the following:

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

(b) A description of the public facilities required to serve the development proposed in the area of the district, including those to be provided by the private sector, those to be provided by governmental entities without assistance under this chapter, those public improvements and facilities to be financed with assistance from the proposed district, and those to be provided jointly. The description shall include the proposed location, timing, and costs of the public improvements and facilities.

(c) A finding that the public facilities provide significant benefits to the border development zone.

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

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

(2) A projection of the amount of tax revenues expected to be received by the district in each year during which the district will



receive tax revenues, including an estimate of the amount of tax revenues attributable to each affected taxing entity for each year.

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

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

(5) A date on which the district will cease to exist, by which time all tax allocation to the district will end. The date shall not be more than 30 years from the date on which the ordinance forming the district is adopted pursuant to Section 53398.20.

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

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

(e) If any dwelling units occupied by persons or families of low or moderate income are proposed to be removed or destroyed in the course of private development or public works construction within the area of the district, a plan providing for replacement of those units and relocation of those persons or families consistent with the requirements of Section 53398.5.

53398.15. The infrastructure financing plan shall be sent to each owner of land within the proposed district and to each affected taxing entity together with any report required by the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) that pertains to the proposed public facilities or the proposed development project for which the public facilities are needed. The plan shall be made available for public inspection. The report shall also be sent to the planning commission and the legislative body.

53398.16. The designated official shall consult with each affected taxing entity, and, at the request of any affected taxing entity, shall meet with representatives of an affected taxing entity. Any affected taxing entity may suggest revisions to the plan.

53398.17. The legislative body shall conduct a public hearing prior to adopting the proposed infrastructure financing plan. The public hearing shall be called no sooner than 60 days after the plan has been sent to each affected taxing entity. In addition to the notice given to landowners and affected taxing entities pursuant to Sections 53398.11 and 53398.12, notice of the public hearing shall be given by publication not less than once a week for four successive weeks in a newspaper of general circulation published in the city in which the proposed district is located. The notice shall state that the district will



be used to finance public works, briefly describe the public works, briefly describe the proposed financial arrangements, including the proposed commitment of incremental tax revenue, describe the boundaries of the proposed district, and state the day, hour, and place when and where any persons having any objections to the proposed infrastructure financing plan, or the regularity of any of the prior proceedings, may appear before the legislative body and object to the adoption of the proposed plan by the legislative body.

53398.18. At the hour set in the required notices, the legislative body shall proceed to hear and pass upon all written and oral objections. The hearing may be continued from time to time. The legislative body shall consider the recommendations, if any, of affected taxing entities, and all evidence and testimony for and against the adoption of the plan. The legislative body may modify the plan by eliminating or reducing the size and cost of proposed public works, by reducing the amount of proposed debt, or by reducing the portion, amount, or duration of incremental tax revenues to be committed to the district.

53398.19. (a) The legislative body shall not enact an ordinance approving the infrastructure financing plan providing for the division of taxes of any affected taxing entity pursuant to Article 3 (commencing with Section 53398.30) unless a resolution approving the plan has been adopted by the governing body of each affected taxing entity that is proposed to be subject to division of taxes pursuant to Article 3 (commencing with Section 53398.30) has been filed with the legislative body at or prior to the time of the hearing.

(b) Nothing in this section shall be construed to prevent the legislative body from amending its infrastructure financing plan and adopting an ordinance approving the formation of the infrastructure financing district without allocation of the tax revenues of any affected taxing entity that has not approved the infrastructure financing plan by resolution of the governing body of the affected taxing entity.

53398.20. At the conclusion of the hearing, the legislative body may, in a manner consistent with Section 53398.19, adopt an ordinance approving the infrastructure financing plan, or the infrastructure financing plan as modified, and creating the infrastructure financing district with the full force and effect of law, or the legislative body may abandon the proceedings.

53398.21. The legislative body may submit a proposition to establish or change the appropriations limit, as defined by subdivision (h) of Section 8 of Article XIII B of the California Constitution, of a district to the qualified electors of a district. The proposition establishing or changing the appropriations limit shall become effective if approved by the qualified electors voting on the proposition and shall be adjusted for changes in the cost of living and changes in populations, as defined by subdivisions (b) and (c) of



Section 7901, except that the change in population may be estimated by the legislative body in the absence of an estimate by the Department of Finance, and in accordance with Section 1 of Article XIII B of the California Constitution. For purposes of adjusting for changes in population, the population of the district shall be deemed to be at least one person during each calendar year.

### Article 3. Division of Taxes

53398.30. Any infrastructure financing plan may contain a provision that taxes, if any, levied upon taxable property in the area included within the infrastructure financing district each year by or for the benefit of the State of California, or any affected taxing entity after the effective date of the ordinance adopted pursuant to Section 53398.20 to create the district, shall be divided as follows:

(a) That portion of the taxes that would be produced by the rate upon which the tax is levied each year by or for each of the affected taxing entities upon the total sum of the assessed value of the taxable property in the district as shown upon the assessment roll used in connection with the taxation of the property by the affected taxing entity, last equalized prior to the effective date of the ordinance adopted pursuant to Section 53398.20 to create the district, shall be allocated to, and when collected shall be paid to, the respective affected taxing entities as taxes by or for the affected taxing entities on all other property are paid.

(b) That portion of the levied taxes each year specified in the adopted infrastructure financing plan for the city and each affected taxing entity that has agreed to participate pursuant to Section 53398.19 in excess of the amount specified in subdivision (a) shall be allocated to, and when collected shall be paid into a special fund of, the district for all lawful purposes of the district. Unless and until the total assessed valuation of the taxable property in a district exceeds the total assessed value of the taxable property in the district as shown by the last equalized assessment roll referred to in subdivision (a), all of the taxes levied and collected upon the taxable property in the district shall be paid to the respective affected taxing entities. When the district ceases to exist pursuant to the adopted infrastructure financing plan, all moneys thereafter received from taxes upon the taxable property in the district shall be paid to the respective affected taxing entities as taxes on all other property are paid.

53398.31. All costs incurred by a county in connection with the division of taxes pursuant to Section 53398.30 for a district shall be paid by that district.



Article 4. Tax Increment Bonds

53398.40. The legislative body may, by majority vote, initiate proceedings to issue bonds pursuant to this chapter by adopting a resolution stating its intent to issue the bonds.

53398.41. The resolution adopted pursuant to Section 53398.40 shall contain all of the following information:

(a) A description of the facilities to be financed with the proceeds of the proposed bond issue.

(b) The estimated cost of the facilities, the estimated cost of preparing and issuing the bonds, and the principal amount of the proposed bond issuance.

(c) The maximum interest rate and discount on the proposed bond issuance.

(d) A determination of the amount of tax revenue available or estimated to be available, for the payment of the principal of, and interest on, the bonds.

(e) A finding that the amount necessary to pay the principal of, and interest on, the proposed bond issuance will be less than, or equal to, the amount determined pursuant to subdivision (d).

(f) The date, hour, and place at which any person may appear before the legislative body and object to the proposal to issue bonds.

53398.42. The clerk of the legislative body shall publish the resolution adopted pursuant to Section 53398.40 once a day for at least seven successive days in a newspaper published in the city or county at least six days a week, or at least once a week for two successive weeks in a newspaper published in the city or county less than six days a week.

If there are no newspapers meeting these criteria, the resolution shall be posted in three public places within the territory of the district for two succeeding weeks.

53398.43. (a) At the hour set in the required notice, the legislative body shall proceed to hear and pass upon all written and oral objections. The hearing may be continued from time to time. The legislative body shall consider all evidence and testimony for and against the proposal to issue bonds.

(b) At the conclusion of the hearing, the legislative body may approve the issuance of bonds by adopting a resolution that shall provide for all of the following:

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

(2) The principal amount of the bonds, which shall be consistent with the amount specified in subdivision (b) of Section 53398.41.

(3) The date the bonds will bear.

(4) The date of maturity of the bonds.

(5) The denomination of the bonds.

(6) The form of the bonds.

(7) The manner of execution of the bonds.



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

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

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

53398.44. The legislative body may, by majority vote, provide for refunding of bonds issued pursuant to this chapter. However, refunding bonds shall not be issued if the total net interest cost to maturity on the refunding bonds plus the principal amount of the refunding bonds exceeds the total net interest cost to maturity on the bonds to be refunded. The legislative body may not extend the time to maturity of the bonds.

53398.45. The legislative body or any person executing the bonds shall not be personally liable on the bonds by reason of their issuance. The bonds and other obligations of a district issued pursuant to this chapter are not a debt of the city, county, or state or of any of its political subdivisions, other than the district, and none of those entities, other than the district, shall be liable on the bonds and the bonds or obligations shall be payable exclusively from funds or properties of the district. The bonds shall contain a statement to this effect on their face. The bonds do not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation.

53398.46. The bonds may be sold at discount not to exceed 5 percent of par at public sale. At least five days prior to the sale, notice shall be published, pursuant to Section 6061, in a newspaper of general circulation and in a financial newspaper published in the City and County of San Francisco and in the City of Los Angeles. The bonds may be sold at not less than par to the federal government at private sale without any public advertisement.

53398.47. If any member of the legislative body whose signature appears on bonds ceases to be a member of the legislative body before delivery of the bonds, his or her signature is as effective as if he or she had remained in office. Bonds issued pursuant to this chapter are fully negotiable.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

