

Assembly Bill No. 116

CHAPTER 656

An act to amend Sections 53398.58, 53398.63, 53398.66, 53398.69, 53398.77, and 53398.88 of, to amend and renumber Section 53398.80.5 of, and to repeal Sections 53398.67, 53398.78, 53398.79, 53398.80, 53398.81, and 53398.82 of, the Government Code, relating to local government.

[Approved by Governor October 9, 2019. Filed with Secretary of State October 9, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 116, Ting. Local government.

Existing law authorizes the legislative body of a city or a county to establish an enhanced infrastructure financing district, with a governing body referred to as a public financing authority, to finance public capital facilities or other specified projects of communitywide significance. Existing law requires a public financing authority to adopt an infrastructure financing plan and hold a public hearing on the plan, as specified. Existing law authorizes the public financing authority to issue bonds for these purposes upon approval by 55% of the voters voting on a proposal to issue the bonds. Existing law requires the proposal submitted to the voters by the public financing authority and the resolution for the issuance of bonds following approval by the voters to include specified information regarding the bond issuance.

This bill would instead authorize the public financing authority to issue bonds for these purposes without submitting a proposal to the voters. The bill would require the resolution to issue bonds to contain specified information related to the issuance of the bonds. The bill would also require the public financing authority to hold 3 public hearings on an enhanced infrastructure financing plan, as specified. The bill would also make conforming changes.

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

SECTION 1. Section 53398.58 of the Government Code is amended to read:

53398.58. 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 53398.77 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.

SEC. 2. Section 53398.63 of the Government Code is amended to read:

53398.63. After receipt of a copy of the resolution of intention to establish a district, the official designated pursuant to Section 53395.62 shall prepare a proposed infrastructure financing plan. The infrastructure financing plan shall be consistent with the general plan of the city or county 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 and other forms of development or financial assistance that is 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 development and financial assistance.

(c) If funding from affected taxing entities is incorporated into the financing plan, a finding that the development and financial assistance are of communitywide significance and provide significant benefits to an area larger than the area of the district.

(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 or county 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 45 years from the date on which the issuance of bonds is approved pursuant to Section 53398.77, or the issuance of a loan is approved by the governing board of a local agency pursuant to Section 53398.87.

(6) An analysis of the costs to the city or county 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 or county 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.

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

(e) If any dwelling units within the territory of the district are proposed to be removed or destroyed in the course of public works construction within the area of the district or private development within the area of the district that is subject to a written agreement with the district or that is financed in whole or in part by the district, a plan providing for replacement of those units and relocation of those persons or families consistent with the requirements of Section 53398.56.

(f) The goals the district proposes to achieve for each project financed pursuant to Section 53398.52.

SEC. 3. Section 53398.66 of the Government Code is amended to read:

53398.66. (a) (1) The public financing authority shall consider adoption of the enhanced infrastructure financing plan at three public hearings that shall take place at least 30 days apart. In addition to the notice given to landowners and affected taxing entities pursuant to Sections 53398.60 and 53398.61, the public financing authority shall give notice of each public hearing in accordance with subdivision (i).

(2) At the first public hearing, the public financing authority shall hear all written and oral comments, but take no action.

(3) At the second public hearing, the public financing authority shall consider any additional written and oral comments and take action to modify or reject the enhanced infrastructure financing plan. If the enhanced infrastructure financing plan is not rejected at the second public hearing, then the public financing authority shall conduct a protest proceeding at the third public hearing to consider whether the landowners and residents within the enhanced infrastructure financing plan area wish to present oral or written protests against the adoption of the enhanced infrastructure financing plan.

(b) The draft-enhanced infrastructure financing plan shall be made available to the public and to each landowner within the area at a meeting held at least 30 days before the notice given for the first public hearing. The purposes of the meeting shall be to allow the staff of the public financing authority to present the draft-enhanced infrastructure financing plan, answer questions about the enhanced infrastructure financing plan, and consider comments about the enhanced infrastructure financing plan.

(c) (1) The public financing authority shall give notice of the meeting required by subdivision (b) and the public hearings required by subdivision (a) in accordance with subdivision (i). The notice shall do all of the following, as applicable:

(A) Describe specifically the boundaries of the proposed area.
(B) Describe the purpose of the enhanced infrastructure financing plan.
(C) State the day, hour, and place when and where any and all persons having any comments on the proposed enhanced infrastructure financing plan may appear to provide written or oral comments to the enhanced infrastructure financing district.

(D) Notice of the second public hearing shall include a summary of the changes made to the enhanced infrastructure financing plan as a result of the oral and written testimony received at or before the public hearing and shall identify a location accessible to the public where the enhanced infrastructure financing plan proposed to be presented at the second public hearing can be reviewed.

(E) Notice of the third public hearing to consider any written or oral protests shall contain a copy of the enhanced infrastructure financing plan, and shall inform the landowner and resident of their right to submit an oral or written protest before the close of the public hearing. The protest may state that the landowner or resident objects to the public financing authority taking action to implement the enhanced infrastructure financing plan.

(2) At the third public hearing, the public financing authority shall consider all written and oral protests received before the close of the public hearing along with the recommendations, if any, of affected taxing entities, and shall terminate the proceedings or adopt the enhanced infrastructure financing plan subject to confirmation by the voters at an election called for that purpose. The public financing authority shall terminate the proceedings if there is a majority protest. A majority protest exists if protests have been filed representing over 50 percent of the combined number of landowners and residents in the area who are at least 18 years of age. An election shall be called if between 25 percent and 50 percent of the combined number of landowners and residents in the area who are at least 18 years of age file a protest.

(d) An election required pursuant to paragraph (2) of subdivision (c) shall be held within 90 days of the public hearing and may be held by mail-in ballot. The public financing authority shall adopt, at a duly noticed public hearing, procedures for this election.

(e) If a majority of the landowners and residents vote against the enhanced infrastructure financing plan, then the public financing authority shall not take any further action to implement the proposed enhanced infrastructure financing plan. The public financing authority shall not propose a new or revised enhanced infrastructure financing plan to the affected landowners and residents for at least one year following the date of an election in which the enhanced infrastructure financing plan was rejected.

(f) At the hour set in the notices required by subdivision (a), the public financing authority shall consider all written and oral comments.

(g) If less than 25 percent of the combined number of landowners and residents in the area who are at least 18 years of age file a protest, the public financing authority may adopt the enhanced infrastructure financing plan at the conclusion of the third public hearing by ordinance. The ordinance

adopting the enhanced infrastructure financing plan shall be subject to referendum as prescribed by law.

(h) The public financing authority shall consider and adopt an amendment or amendments to an enhanced infrastructure financing plan in accordance with the provisions of this section.

(i) The public financing authority shall post notice of each meeting or public hearing required by this section in an easily identifiable and accessible location on the enhanced infrastructure financing district's internet website and shall mail a written notice of the meeting or public hearing to each landowner, each resident, and each taxing entity at least 10 days before the meeting or public hearing.

(1) Notice of the first public hearing shall also be published not less than once a week for four successive weeks before the first public hearing in a newspaper of general circulation published in the county in which the area lies. The notice shall state that the district will be used to finance public facilities or development, briefly describe the public facilities or development, 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 public financing authority and object to the adoption of the proposed plan by the public financing authority.

(2) Notice of the second public hearing shall also be published not less than 10 days before the second public hearing in a newspaper of general circulation in the county in which the area lies. The notice shall state that the district will be used to finance public facilities or development, briefly describe the public facilities or development, briefly describe the proposed financial arrangements, 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 public financing authority and object to the adoption of the proposed plan by the public financing authority.

(3) Notice of the third public hearing shall also be published not less than 10 days prior to the third public hearing in a newspaper of general circulation in the county in which the area lies. The notice shall state that the district will be used to finance public facilities or development, briefly describe the public facilities or development, briefly describe the proposed financial arrangements, 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 public financing authority and object to the adoption of the proposed plan by the public financing authority.

(j) (1) The public financing authority shall review the enhanced infrastructure financing plan at least annually and make any amendments that are necessary and appropriate and shall require the preparation of an

annual independent financial audit paid for from revenues of the enhanced infrastructure financing district.

(2) A public financing authority shall adopt an annual report on or before June 30 of each year after holding a public hearing. Written copies of the draft report shall be made available to the public 30 days before the public hearing. The public financing authority shall cause the draft report to be posted in an easily identifiable and accessible location on the enhanced infrastructure financing district's internet website and shall mail a written notice of the availability of the draft report on the internet website to each owner of land and each resident within the area covered by the enhanced infrastructure financing plan and to each taxing entity that has adopted a resolution pursuant to Section 53398.68. The notice shall be mailed by first-class mail, but may be addressed to "occupant."

(3) The annual report shall contain all of the following:

(A) A description of the projects undertaken in the fiscal year, including any rehabilitation of structures, and a comparison of the progress expected to be made on those projects compared to the actual progress.

(B) A chart comparing the actual revenues and expenses, including administrative costs, of the public financing authority to the budgeted revenues and expenses.

(C) The amount of tax increment revenues received.

(D) An assessment of the status regarding completion of the enhanced infrastructure financing district's projects.

(E) The amount of revenues expended to assist private businesses.

(4) If the public financing authority fails to provide the annual report required by paragraph (3), the public financing authority shall not spend any funds received pursuant to a resolution adopted pursuant to this chapter until the public financing authority has provided the report.

SEC. 4. Section 53398.67 of the Government Code is repealed.

SEC. 5. Section 53398.69 of the Government Code is amended to read:

53398.69. (a) (1) At the conclusion of the hearings pursuant to Section 53398.66, the public financing authority may adopt a resolution proposing adoption of the infrastructure financing plan, as modified, and formation of the enhanced infrastructure financing district in a manner consistent with Section 53398.68, or it may adopt a resolution abandoning the proceedings. If the proceedings are abandoned, then the public financing authority shall cease to exist by operation of this section with no further action required of the legislative body and the legislative body may not enact a resolution of intention to establish a district that includes the same geographic area within one year of the date of the resolution abandoning the proceedings.

(2) In the case of an infrastructure financing plan adopted pursuant to Section 53398.75.7, the proceedings set forth in subdivision (e) of that section shall govern the adoption of the infrastructure financing plan.

(b) The infrastructure financing plan shall take effect upon the adoption of the resolution. The infrastructure financing plan shall specify if the district shall be funded solely through the district's share of tax increment, governmental or private loans, grants, bonds, assessments, fees, or some

combination thereof. However, the public financing authority shall not issue bonds or levy assessments or fees that may be included in the infrastructure financing plan before one or more of the following:

(1) The adoption of a resolution meeting the requirements of Section 53398.77, and, if applicable, subdivision (c) of Section 53398.78, to issue bonds to finance the infrastructure financing plan.

(2) Compliance with the procedures required in subdivision (f) of Section 53398.75, to levy assessments or fees to finance the infrastructure financing plan.

(c) In addition, the district may expend up to 10 percent of any accrued tax increment in the first two years of the effective date of the enhanced infrastructure financing district on planning and dissemination of information to the residents within the district's boundaries about the infrastructure financing plan and planned activities to be funded by the district.

SEC. 6. Section 53398.77 of the Government Code is amended to read:

53398.77. The public financing authority may, by majority vote, issue bonds pursuant to this chapter by adopting a resolution that includes all of the following:

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

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

(c) The maximum interest rate and discount on the 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 bond issuance will be less than, or equal to, the amount determined pursuant to subdivision (d).

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

(g) The principal amount of the bonds that shall be consistent with the amount specified in subdivision (b).

(h) The date the bonds will bear.

(i) The date of maturity of the bonds.

(j) The denomination of the bonds.

(k) The form of the bonds.

(l) The manner of execution of the bonds.

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

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

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

SEC. 7. Section 53398.78 of the Government Code is repealed.

SEC. 8. Section 53398.79 of the Government Code is repealed.

SEC. 9. Section 53398.80 of the Government Code is repealed.

SEC. 10. Section 53398.80.5 of the Government Code is amended and renumbered to read:

53398.78. (a) If the public financing authority adopts a resolution to issue bonds pursuant to Section 53398.77 for port or harbor infrastructure, it shall, before issuing the bonds, submit the resolution to issue bonds to the affected harbor agency pursuant to Section 1713 of the Harbors and Navigation Code for its preliminary approval.

(b) If the harbor agency grants preliminary approval, the proposal shall be considered by the State Lands Commission for final approval pursuant to Section 1714 of the Harbors and Navigation Code.

(c) If the State Lands Commission votes in favor of the issuance of the bonds as provided in Section 1714 of the Harbors and Navigation Code, the public financing authority may issue bonds pursuant to Section 53398.77.

SEC. 11. Section 53398.81 of the Government Code is repealed.

SEC. 12. Section 53398.82 of the Government Code is repealed.

SEC. 13. Section 53398.88 of the Government Code is amended to read:

53398.88. (a) Every two years after the issuance of debt pursuant to Section 53398.77, the district shall contract for an independent financial and performance audit. The audit shall be conducted according to guidelines established by the Controller. A copy of the completed audit shall be provided to the Controller, the Director of Finance, and to the Joint Legislative Budget Committee.

(b) Upon the request of the Governor or of the Legislature, the Bureau of State Audits shall be authorized to conduct financial and performance audits of districts. The results of the audits shall be provided to the district, the Controller, the Director of Finance, and the Joint Legislative Budget Committee.