

Date of Hearing: April 27, 2011

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

Norma Torres, Chair

AB 1275 (Torres) – As Amended: April 25, 2011

SUBJECT: Redevelopment agency contracts

SUMMARY: Clarifies the general powers of a redevelopment agency and provides that a contract that a redevelopment agency enters into can be declared null and void, by a court, if it violates the Community Redevelopment Law (CRL). Specifically, this bill:

- 1) Provides that a redevelopment agency or legislative body cannot delegate its obligation to make a decision, determination, or other action to a person.
- 2) Provides that a redevelopment agency can make and execute contracts if they are subject to any limitations and obligations imposed on the agency by the CRL.
- 3) Allows a redevelopment agency to amend a contract if it is necessary to conform the contract to a redevelopment plan, an amendment redevelopment plan, current state or local law, or to comply with a court order, provided that it complies with the CRL.
- 4) Provides that a contract entered into by a redevelopment agency may be null and void, if any of the following, are found by a court to be true:
 - a) The agency has exercised the authority provided by the CRL in a manner that exceeds its authority or constitutes an abuse of discretion;
 - b) The agency has entered into a contract that in whole or in part violates any powers or obligations imposed by the CRL; or
 - c) The agency assumes any obligations that impairs its abilities to meet the existing obligations of the CRL

EXISTING LAW

- 1) Allows an action may be brought to challenge the validity of bonds and the redevelopment plan, the legality of any proceedings taken in connection with establishing the agency, its authority to transact business and exercise its powers, designate a survey area, select a project area, formulate a preliminary plan, find that the project area is predominately urban, and deliver or sell bonds (Health and Safety Code Section 33501).
- 2) Provides that an action to determine the validity of a redevelopment plan or amendment to a redevelopment plan may be brought within 90 days after the date of adoption of the ordinance adopting or amending the plan (Health and Safety Code Section 33501).

- 3) Prohibits a validation action to be brought to challenge an agency's actions unless the objection is raised orally or in writing by any person before the close of the public hearing in which the action is being discussed (Health and Safety Code Section 33501.2).
- 4) Allows the Attorney General or the Department of Finance to challenge the validity of an ordinance adopting or amendment a redevelopment plan (Health and Safety Code Section 33501).
- 5) Allows the Attorney General to challenge the validity of redevelopment agencies actions if they were not raised in writing or orally in the public meeting regarding the action (Health and Safety Code Section 33501.2).

FISCAL EFFECT: None.

COMMENTS:

The Fontana Redevelopment Agency (agency) entered into a contract with a private developer in 1982 to provide infrastructure (school, storm drainage, sewer system) in its Jurupa Hills project area. Although the agency was then obligated to set aside 20% of the tax increment from the project area for affordable housing, and the infrastructure project was not directly related to the development of affordable housing as required by the Community Redevelopment Law, the agency pledged 100% of its tax increment to repay the debt. It also amended the contract between 1982 and 1992 to provide for a 15½ % interest rate and created a debt scheme to enable the agency to exceed the \$135 million debt limitation established in its amended redevelopment plan.

The agency's contract and amendments were validated by the San Bernardino Superior Court in a series of validation actions brought pursuant to Code of Civil Procedure §860 *et seq.* As a result of this scheme, the agency's debt to a single developer grew to over \$1.3 billion of which, \$988 million is interest. The agency continues to spend virtually all of its revenues to reduce that debt and no money at all has been paid to the agency's affordable housing fund for the project area.

In 2003, as part of the same contract, the agency issued another \$40 million in bonds, the proceeds of which were to be used exclusively to repay the developer's debt. It then sought to validate issuance of the bonds. Despite the prior judgments "validating" its illegal contract, the appellate court refused to validate an ongoing illegality on the grounds that the agency had far exceeded its debt limit, and its bond issuance failed to provide that any of the proceeds would be deposited in the affordable housing fund as required by Community Redevelopment Law (*Fontana Redevelopment Agency v. Torres* (2007) 153 Cal.App.4th 902).

The agency delegated its authority to the private developer by agreeing:

- 1) To not amend the redevelopment plan in any way that would adversely affect the agency's receipt of tax revenues or its pledge of those tax revenues to the private developer;

- 2) To issue and sell tax allocation bonds “only at the written request” of the private developer for purposes of refinancing the debt;
- 3) To appoint bond counsel, bond underwriters, investment bankers and other financial consultants as approved by the private developer;
- 4) To not take any voluntary action that would adversely affect the developer’s right to receive *all* tax increment, without the written consent of the developer or a valid court order;
- 5) To not issue any other indebtedness that would impair the agency’s pledge to the private developer, without the prior written consent of the developer; and
- 6) To relinquish the agency’s eminent domain powers with respect to any property owned or acquired by the developer within the project area.

Purpose of this bill:

Redevelopment agencies actions are subject to various validation procedures. In order for certain actions to be subject to validation proceedings, there must always be an 'authorizing' statute. The authorizing statute to validate redevelopment plans, amendments, and related activities are subject to a 90-day statute of limitations. But validation actions brought to validate other actions, like contracts, are still subject to a 60-day statute of limitations pursuant to the validation statutes. A challenge to validate an agency's action may not be brought unless the specific objections were presented either orally or in writing to the agency or the legislative body before the close of the required public hearing and the person bringing the challenge objected to the adoption of the plan or amendment before the close of the public hearing. If a challenge is made at the public hearing, than a person has standing to bring an action to challenge the contract in the courts

This bill is intended to provide a process to challenge contracts that are believed to be illegal in the courts. If a contract was found to be illegal in that it violated a redevelopment agency's obligations under the CRL it could be made void by the courts.

In addition to the scenario outlined above in Fontana where the redevelopment agency entered into an illegal contract, in the recent months, some redevelopment agencies have amended their redevelopment plans in anticipation of their possible elimination. These amendments in some cases are intended to allow agencies to increase their debt limitations and enter into more contracts. This bill will be important tool once those contracts have been initiated and reviewed to allow for challenges if appropriate.

According to the author, this bill is intended to provide a tool for challenging illegal contracts that do not comply with an agency's obligations under the CRL. The existing process is short, and requires a challenge in the public meeting in order to take an action to validate of a contract. The only redevelopment agencies that are impacted by this bill would be those that enter into illegal contracts under the CRL.

Arguments in support:

According to the Western Center on Law & Poverty, "redevelopment agencies are currently permitted to enter into contracts and other instruments in order to carry out a redevelopment plan. They also are authorized to have certain contracts involving significant financial obligations "validated" by the courts. Validation of a contract can result in a contract becoming "forever and finally binding," whether illegal or fiscally irresponsible. AB 1275 would help ensure that agencies do not abuse these powers. AB 1275 would clarify existing law, which prohibits agencies and their legislative bodies from delegating their obligations to any other person or entity. It also clarifies that an agency's contracts and instruments must be consistent with the Community Redevelopment Law."

REGISTERED SUPPORT / OPPOSITION:

Support

California Rural Legal Assistance Foundation
Western Center on Law & Poverty

Opposition

None on file.

Analysis Prepared by: Lisa Engel / H. & C.D. / (916) 319-2085