

Date of Hearing: May 11, 2011

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

Norma Torres, Chair

AB 1222 (Gatto) – As Introduced: February 18, 2011

SUBJECT: California Housing Finance Agency: executive compensation

SUMMARY: Requires the board of directors of the California Housing Finance Agency (CalHFA) to contract directly with an independent outside advisor when commissioning a salary survey for key exempt management positions at CalHFA. Specifically, this bill:

EXISTING LAW (Health & Safety Code Section 50909):

- 1) Requires the board of directors of CalHFA to set the salaries for the, executive director, chief deputy director, general counsel, director of finance, director of homeownership programs, director of multifamily programs, director of insurance and financial risk management director, in the agency's annual budget in amounts reasonably necessary, at the discretion of the board of directors, to attract and hold a person with superior qualifications.
- 2) Requires the agency, in order to determine the compensation for the positions listed above, to contract with an independent outside advisor to conduct a salary survey of the following: other state and local housing finance agencies that are most comparable to CalHFA and other related labor pools.
- 3) Provides the board of directors cannot set a salary for one of the positions listed above that exceeds the highest comparable salary for a comparable position as determined by the survey.
- 4) Requires the Department of Personnel Administration to review the methodology used in the salary surveys.

FISCAL EFFECT: None.

COMMENTS:

Established in 1975, CalHFA was chartered as the state's affordable housing bank to make below market-rate loans through the sale of tax-exempt bonds. CalHFA is a self-supporting entity and its debts, including those related to the compensation and retirement costs of its employees are separate from the State of California. Investor capital, through the sale of bonds, provides the agency's source of revenue; not taxpayers' proceeds. Existing statutes and bond indentures state that the agency's debts are not a debt or liability of the state or any political subdivision thereof and are not backed by the faith and credit of the State of California.

In 2006, SB 257 (Chesbro), Chapter 748, clarified the board of director's authority to set salaries for key exempt management positions at CalHFA. SB 257 required the board of directors of CalHFA to set the salaries for the following positions as part of the annual budget: executive director, chief deputy director, general counsel, director of finance, director of homeownership

programs, director of multifamily programs, and director of insurance and financial risk management director. Prior to SB 257, the board was only specifically directed to set the salary for the executive director in "an amount that was reasonably necessary, at the discretion of the board, to attract and hold a person of superior qualifications." The genesis for SB 257 was a credit rating that CalHFA received from Standard & Poors which took specific note of the Agency's difficulty in attracting and retaining experienced management because of non-competitive salaries. CalHFA receives an issuer credit rating that is separate from the State of California. In addition to other elements including asset quality, debt and financial strength the credit rating is dependent up the expertise of the management personnel. The following excerpt from the report discusses the concern:

"Over the past few years, the effectiveness of management and staff has helped steer the agency through difficult economic times and an extremely competitive lending market in California. As of the date of this report, the agency is in the process of filling several key management positions that have become vacant through retirement or departure for the private sector. The agency recruits nationally to locate the most highly qualified individuals to replace key members of the top management team but faces a compensation gap from the private sector that affects the ability of the agency to fill positions and retain staff. An aging workforce within the agency, particularly as it leads to retirement of senior staff in the future, might exacerbate this personnel situation."

CalHFA sponsored SB 257 to address the concern by the rating agency and to give the agency greater flexibility to set salaries that would allow them to recruit experts in their field. At the time, CalHFA stated the concern as follows: "the inability to recruit and retain management personnel with sufficient expertise could jeopardize the Agency's existing issuer rating increasing the Agency's cost of funds, which in turn will increase its borrowing costs for customers/borrowers and erode its ability to offer affordable loan products. One of the Agency's most important financial tools are the ability to credit enhances unique products backed by the Agency's general obligation rating. A downgrade would greatly restrict the effectiveness of the Agency in supporting creative affordable housing solutions."

Setting salaries: In order to set salaries for the specified management positions, the "agency" is required to conduct a salary survey using independent outside advisors for the positions listed above. The salary survey must include information regarding other state and local housing finance agencies comparable to CalHFA and other relevant labor pools. The salaries for these positions cannot be higher than the highest comparable position in the salary survey.

Purpose of the bill: According to the author, "SB 257 (Chesbro) allowed the board of directors of CalHFA to establish salaries for specified exempt employees of the agency. In determining the compensation, the law states that the 'agency shall cause to be conducted through the use of independent outside advisors, salary surveys'. The reference to the agency could be interpreted as allowing the staff, whose salaries are the subject of the survey, to select the survey entity. Given that the salaries are established by the board, the requirement to commission a salary survey also appropriately rests with the board, as opposed to the agency. The author has no heard of any impropriety but feels this should be clarified to avoid any possibility for future abuse."

State Bureau Audit: In February 2011, the State Bureau Auditor (SBA) completed a comprehensive audit of CalHFA at the request of the Joint Legislative Audit Committee. The auditor made several recommendations regarding CalHFA, including the following: "to ensure that CalHFA's business plans and strategies are thoroughly vetted by an experienced and knowledgeable board, the Legislature should consider amending the statute that specifies the composition of CalHFA's board to include appointees with knowledge of housing finance agencies, single-family mortgage lending, bonds and related financial instruments, interest-rate swaps, and risk management."

CalHFA does business with many different lenders through their single-family mortgage program. The existing conflict of interest statute prohibits CalHFA board members from having any financial interest in any contract made by the agency. This prohibition significantly narrows the pool of financial institutions from which CalHFA can recruit board member, the amendments below would allow CalHFA to have board members who the agency does business with on their board. Existing conflict of interest laws would still apply, including requiring board members to recuse themselves from decisions in which their institutions have a financial interest.

Committee amendments:

The committee may wish to consider the following amendments to address the issue raised by the SBA:

1) *Section 50904 of the Health & Safety Code is amended to read:*

The representation of varied interest groups on the board shall be deemed essential to obtain information for the development of policy and decisions of the board. ~~It~~ *Notwithstanding Section 1090 of the Government Code, it shall not be a conflict of interest for an official of any local public entity or a resident of any affordable housing development, or a director, officer, stockholder, or employee of any savings and loan institution, investment banking firm, brokerage firm, commercial bank or trust company, architectural firm, insurance company, labor union, or any other person, association, or corporation to serve as a member of the board. If any board member has a financial interest in any matter before the board for a decision, that interest shall be disclosed as a matter of official public record. The board member shall not attempt to influence, participate in deliberations concerning, or vote as to that matter.*

2) *Section 50905 of the Health and Safety Code is amended to read:*

(a) No *officer or* employee of the agency shall be employed by, hold any paid official relation to, or have any financial interest in, any housing sponsor or any *affordable housing development* financed or assisted under this part, *provided that this prohibition shall not apply to a member of the board of directors who is not an employee of the agency.* No real property to which a member of the board or employee of the agency holds legal title or in which the person has any financial interest shall be purchased by the agency or sold by the member of the board or employee of the agency to a housing sponsor for ~~a~~ *affordable housing development* to be financed under this part.

Any violation of this section shall be a conflict of interest that shall be grounds for disqualification of the member from the board or employee of the agency from his or her employment with the board or agency.

(b) Except as provided by subdivision (c), the following actions shall be voidable in the discretion of the agency:

(1) Any purchase by the agency of real property in which a member of the board or employee of the agency has legal title or a financial interest.

(2) Any commitment by the agency to provide financial assistance to a housing sponsor in which a member of the board or employee of the agency is employed, holds any official relation, or has any financial interest.

(3) Any commitment by the agency to provide financial assistance to a housing sponsor to which real property has been or is transferred for a *affordable* housing development to be financed under this part, if a member of the board or employee of the agency has or has had legal title or any financial interest in the real property.

(c) Any commitment by the agency to provide financial assistance under the circumstances specified in paragraph (2) or (3) of subdivision (b) shall not be voidable following release of the funds.

(d) Notwithstanding the provisions of this section and Section 50904, any conflict of interest by a member of the board or employee of the agency shall not affect the validity of any bonds or insurance issued pursuant to this division.

(e) Notwithstanding the provisions of this section, an agency employee or board member may, if not acting as an investor and if otherwise eligible, participate in owner-occupied single-family financing and insurance programs operated by the agency.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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