

Date of Hearing: May 11, 2011

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

Norma Torres, Chair

AB 1235 (Hernández) – As Amended: May 5, 2011

SUBJECT: Redevelopment property: hazardous substance release: immunities

SUMMARY: Provides qualified immunities from liability, if certain conditions are met, for brownfield cleanup activities conducted by "successor agencies" assuming the authority and duties of redevelopment agencies, if redevelopment agencies are dissolved by Legislative act. Specifically, this bill:

- 1) Provides that if a redevelopment agency (RDA) has been dissolved by an act of the Legislature and its successor agency, as defined, maintains all the rights, powers, and duties that were vested in the redevelopment agency prior to its dissolution, then certain immunities that previously applied to the redevelopment agency shall apply to the successor agency for the removal of hazardous substance releases, as specified, from property that was within a redevelopment project of the redevelopment agency prior to its dissolution.
- 2) Defines "successor agency" as the county, city, or city and county that authorized the creation of the redevelopment agency.

EXISTING LAW:

- 1) Authorizes a redevelopment agency to take any actions that it determines are necessary and that are consistent with other state and federal laws to remedy or remove a release of hazardous substances on, under, or from property within a project area, whether the agency owns that property or not, subject to certain specified conditions (Health and Safety Code Section 33459.1).
- 2) Provides qualified immunities from liability to a redevelopment agency or its agent that undertakes and completes an action to remedy or remove a release of certain hazardous substances from property within a redevelopment project, for that release only and as long as the actions are in accordance with a cleanup or remedial action plan prepared by a qualified independent contractor and approved by the appropriate state or local authorities (Health & Safety Code Section 33459.3(a)).
- 3) Limits the immunity to the release or releases specifically identified in the approved cleanup or remedial action plan and not for any subsequent releases not specifically identified (Health & Safety Code Section 33459.3(e)).
- 4) Authorizes extension of immunities only to specified persons, including but not limited to employees or agents of the redevelopment agency, and any person who entered into an agreement with the RDA for redevelopment of the property if the agreement requires the person to remove or remedy a hazardous substance release with respect to that property (Health & Safety Code Section 33459.3(e)).

- 5) Prohibits extension of immunities to specified persons, including but not limited to any person who was a responsible party for the release, and any contractor who prepares the cleanup or remedial action plan or who conducts the removal or remedial action itself (Health & Safety Code Section 33459.3(f)).

FISCAL EFFECT: None.

COMMENTS:

This bill, sponsored by the Center for Creative Land Recycling, represents the forward-thinking judgment of the author that the Legislature ought not to wait until RDA's are officially dissolved before it starts to develop policy for a post-RDA landscape in California. Although the fate of redevelopment agencies is not known at this time, this bill seeks to address the limited issue of immunities for cleanup of brownfield properties in redevelopment, in the contingency that redevelopment agencies are dissolved by Legislative action and cease to exist. This bill would extend to a city or county ("successor agency") that succeeds to the role previously held by the former redevelopment agency the same qualified immunities from liability that were available to the RDA prior to its dissolution, with respect to removal of hazardous substances from a brownfield redevelopment project.

Purpose of the bill: According to the author, the bill is needed at this time in order to preserve existing legal protections to entities wishing to redevelop brownfield properties without interruption in case redevelopment agencies are dissolved. The author states: "The governor and Democratic Leaders have indicated that as part of closing the 2011-12 State Budget they intend to eliminate Redevelopment Areas in order to achieve a \$1.7 billion in savings. The purpose of the governor's proposal is to gain revenue for the State. It is not to eliminate the other benefits associated with Redevelopment Areas. AB 1235 preserves one of those other benefits. Without this bill, development will be further hindered in what was once California Redevelopment Areas.

A few months ago, this Legislative body was one vote shy of approving the Governor's proposal to eliminate redevelopment agencies. It is important to note that this proposal did not address how legal immunities were going to be transferred upon the dissolution of RDAs. It is difficult to predict when or if this proposal will be brought up again but we need a vehicle to move along the legislative process that explicitly addresses legal immunities so as to not risk having redevelopment come to a standstill if the Legislature approves an elimination of RDAs. Absent this bill, if that scenario were to play out, several months would pass before we could pass and approve a bill to address this."

Redevelopment agencies and the Polanco Act. Since 1945, state law has given local city and county government the authority to form a redevelopment agency with the specific purpose of revitalizing deteriorated or blighted areas of the community. According to the California Redevelopment Association, there are nearly 400 active RDAs throughout the state, all of which are overseen either by a local city council, county board of supervisors, or a separate appointed board, and thus are publicly accountable. With respect to contaminated properties (also known as brownfields), RDAs are often in a good position to take an active role in the cleanup and redevelopment of these sites to attract private investment.

In 1990, the Legislature passed and the governor signed AB 3193 (Polanco), Chaptered 1113, ("the Polanco Redevelopment Act", or "the Act") which granted redevelopment agencies with qualified immunity from liability under the state Superfund and other environment liability cleanup laws for hazardous substance cleanup actions conducted pursuant to an approved remedial plan. Research of the legislative history of the Act shows that its purpose was to "encourage the cleanup and redevelopment of sites contaminated by hazardous materials . . . by providing a qualified immunity from liability for future cleanup costs." (Senate Judiciary Committee bill analysis, August 7, 1990.) Proponents of AB 3193 contended at the time that RDAs and developers were prepared to expend financial resources to clean up these sites, but were reluctant to do so because of the liability exposure under then-existing law for a less than perfect cleanup operation. (*Id.*) This is essentially the same argument that proponents of this bill now make—that cleanup of brownfield sites will "come to a standstill" unless immunities from liability are extended to the actors who would otherwise invest the resources needed to do the cleanup.

Importantly, the Legislature approved AB 3193 only after establishing a number of specific parameters for the qualified immunity provided under the bill, all of which continue to exist within Section 33459.3. These parameters include: (1) the RDA must follow and properly complete a remedial action plan approved by a specified state agency for the immunity to apply; (2) the plan must be prepared by an independent contractor, not by any employee of the agency that would benefit from the immunity; (3) the immunity applies only to releases identified in the plan, and not to any subsequent or unidentified release of a hazardous substance; (4) the immunity is available only to the RDA, its employees and agents, and other specified persons who have entered into agreements with the RDA; and (5) immunity is not available to certain persons, particularly any person responsible for the hazardous substance release.

This bill would extend the qualified immunity provided by the Polanco Act to cities and counties should RDAs be dissolved.

Arguments in support: The Center for Creative Land Recycling, the sponsor of the bill, writes in support, "As the governor and Legislature debate the 2011-12 State Budget and the future of Redevelopment Areas, it is prudent and timely for the Legislature to concurrently develop policy to preserve those benefits of Redevelopment Areas that have proved successful and that do not have a state budget consequence. Without this bill, development may be further hindered in the even Redevelopment Areas are eliminated."

The California Association of Realtors also supports the bill, asserting that the immunities afforded to RDAs by the Polanco Act deserve to be extended to successor interests because they have successfully "served to promote the remediation of urban brownfields and have allowed communities throughout the state to recapture and rehabilitate blighted properties." The Realtors further contend that this bill "will help to ensure continued investment in the remediation and redevelopment of these vital urban parcels."

Pending Legislation: SB 77 (Committee on Budget and Fiscal Review) would dissolve redevelopment agencies across the state and reallocate funds previously allocated to those agencies. The definition of "successor agencies" in this bill corresponds to the definition of that term in SB 77. That bill passed the Senate by a vote of 22 to 2, but failed passage by the

necessary 3/4 margin in the Assembly by a vote of 53 to 23 and is currently pending a motion to reconsideration.

Double referred: The Assembly Committee on Rules referred AB 1235 to the Committee on Judiciary and Housing and Community Development. The bill passed the Committee on Judiciary on May 3, 2011, by a vote of 9 to 0.

REGISTERED SUPPORT / OPPOSITION:

Support

Center for Creative Land Recycling (sponsor)
California Association of Realtors

Opposition

None on file.

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