

Date of Hearing: March 14, 2012

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

Norma Torres, Chair

AB 1585 (Pérez) – As Amended: March 8, 2012

SUBJECT: Redevelopment

SUMMARY: Makes changes to the process of dissolving redevelopment agencies (RDAs), including requiring the funds on deposit in the Low-and Moderate-Income Housing Fund (L&M Fund) of the former RDA to remain with the entity that assumes the housing functions. Specifically, this bill:

- 1) Provides that employee costs associated with work on specific project implementation activities, including, but not limited to, construction inspection, project management, or actual construction, are not subject to the administrative cost allowance cap.
- 2) Adds the following to the definition of enforceable obligations:
 - a) Costs incurred to fulfill collective bargaining agreements for layoffs or terminations of employees who performed work for the former RDA; and
 - b) Obligations to an employee that is transferred from the former RDA to the entity assuming the housing functions.
- 3) Adds the following to the definition of enforceable obligations requiring approval of the oversight board:
 - a) Loan agreements between the former RDA and the city, county, or city and county that created it, made within two years of the date of the creation of a project area, if the loan was for the project area; and
 - b) Loans made from the city or county to the former RDA to make a payment to the State's Supplemental Educational Revenue Augmentation Fund (SERAF).
- 4) Requires the successor agency or designated local authority to enter into an agreement with the entity assuming the housing functions and to reimburse it for any costs of the employee obligations if an employee is transferred to the housing successor entity.
- 5) Requires repayment of SERAF loans made from the L&M Fund to the former RDA to be deposited into the L&M Fund maintained by the entity that assumes the housing functions.
- 6) Provides that a loan agreement made between the former RDA and the city, county, or city and county that created it will be deemed an enforceable obligations if the Oversight Board does the following:
 - a) Makes a finding that the loan was for legitimate redevelopment purposes; and

- b) Conditions its approval on the loan being repaid to the city, county, or city and county based on a defined schedule over a reasonable term, at an interest rate not to exceed the interest rate earned by funds deposited into the Local Agency Investment Fund.
- 7) Provides that when listing the payment dates for enforceable obligations on the Recognized Obligation Payment Schedule (ROPS), the successor agency may list payments on an annual basis.
- 8) Specifies that the successor agency is a legally distinct and separate body that acts by resolution, can sue and be sued, and can have additional powers that can be conferred upon it.
- 9) Allows a city, county, or city and county, or joint powers authority that authorized the creation of the former RDA and chose not to be the successor agency to reverse that decision and serve as the successor agency.
- 10) Provides that any amounts on deposit in the L&M Fund of a former RDA will be transferred to the city, county, or city and county that elected to retain the responsibility for performing the housing functions of the former agency.
- 11) Requires any amounts on deposit that are transferred to the L&M Fund to be maintained in a separate account and used for the purposes defined in the Community Redevelopment Law relating to authorized uses of the L&M Fund.
- 12) Requires the entity that assumes the housing functions of the former RDA to enforce affordability covenants and other related activities as defined in Community Redevelopment Law.
- 13) Requires, where there is no local housing authority that elected to accept authority for performing the housing functions, that any amounts on deposit in the L&M Fund be deposited in the State Low- and Moderate Income Housing Trust Fund, administered by the Department of Housing and Community Development (HCD), to be awarded on a competitive basis to projects within the counties in which it was collected.
- 14) Requires, when awarding funds out of the State Low- and Moderate-Income Housing Fund, priority that be given to eligible projects that serve extremely low-, very low-, and low-income families and individuals.
- 15) Requires the city, county, city and county, or other public entity that assumes the housing functions of the former RDA to expend or encumber at least 80% of the moneys in the L&M Fund within four years or forfeit the remaining amount minus what is needed for monitoring and maintenance of affordable housing projects to the State Low- and Moderate -Income Housing Fund.
- 16) Allows a succeeding housing entity to apply for a waiver from HCD to extend the amount of time to expend or encumber the money in the L&M Fund by two years and to reapply again after two years.

- 17) Requires that assets and properties of the former RDA, under the direction of the oversight board, be disposed of in an expeditious but orderly manner that preserves the value of the assets.
- 18) Provides that the first ROPS for the period of January 1, 2012, through June 20, 2012, may, if necessary, include the following:
 - a) The total amount of payments required for enforceable obligations over the next two six-month periods; and
 - b) In the case of debt obligations, the amount of the annual debt service reserve set-asides and any other amounts required under indenture or similar documents.
- 19) Clarifies that the member of the oversight board representing special districts should represent the special district having the largest property tax share within the redevelopment project areas of the former RDA.
- 20) Provides that when appointing a member of the oversight board from the employees of the former RDA, if the majority of the employees were city or county employees, then the appointment should be made from the organization that represents those employees.
- 21) Provides that if there is no employee organization that represents the employees of the former RDA, city, or county, then the appointment should be made from among the employees of the successor agency.
- 22) Provides that an employee that is appointed to the oversight board is deemed not to have a conflict of interest in voting to approve a contract as an enforceable obligation.
- 23) Requires all actions taken by an oversight board to be adopted by resolution.
- 24) Requires the successor agency to get the approval of the oversight board prior to entering into a financing agreement, including issuing bonds, to fund payments under an enforceable obligation that exceeds the property tax revenue available to the successor agency during the payment period.
- 25) Provides that a successor agency is not permitted to create additional enforceable obligations except when necessary to pay the financing costs of existing enforceable obligations.
- 26) Requires the successor agency to get the approval of the oversight board for temporary increases in the administrative cost allowance to carry out the requirements of an enforceable obligation, to cover litigation costs, or to maintain and preserve the value of assets while in the possession of the successor agency.
- 27) Requires the oversight board to direct the successor agency to do the following:
 - a) Compile a complete inventory of existing real property assets of the former RDA by project area; and

- b) Include in the inventory the general categories of real property assets, the purpose for which the assets were originally acquired, the original purchase price of each asset, and the estimated current market value.
- 28) Requires the oversight board, prior to disposing of any assets, to receive and review the inventory of assets prepared by the successor agency and adopt a policy or strategy for disposal or transfer of such assets that ensures it is done in an expeditious but orderly manner that preserves the value of the asset.
- 29) Provides that in disposing of assets and properties, the oversight board may direct the successor agency to transfer ownership of assets that were constructed or used for a purpose integral to the operation of a governmental purpose, like parking facilities, to the appropriate public jurisdiction.
- 30) Requires the auditor-controller to deposit the unitary and supplemental tax increment due to the former RDA into the Redevelopment Property Tax Trust Fund (Fund).
- 31) Requires the auditor-controller, in distributing funds out of the Fund, to reserve any funds necessary to cover payments made in the second half of the calendar year, as described in the ROPS, that are in excess of the amount that is anticipated to be deposited in the Fund from the May or June allocation.
- 32) Provides that in distributing property tax revenues associated with the payment of a retired recognized obligation, the auditor-controller should only distribute property tax to the extent that it is not currently required for the payments of other recognized obligations.
- 33) Deletes the requirement that the California Law Revision Commission draft a Community Redevelopment Law clean-up bill by January 1, 2013.
- 34) Includes an urgency clause.

EXISTING LAW

- 1) Dissolves RDAs as of October 1, 2011.
- 2) Requires RDAs to continue to make all scheduled payments for enforceable obligations, perform obligations established pursuant to enforceable obligations, set aside required reserves, preserve assets, cooperate with successor agencies, and take all measures to avoid triggering a default under an enforceable obligation.
- 3) Requires RDAs to prepare an enforceable obligation payments schedule containing all payments obligated to be made and provide it to the county auditor-controller within 60 days of the effective date of ABX1 26
- 4) Requires that unencumbered RDA funds be conveyed to the county auditor-controller for distribution to the taxing entities in the county, including cities, counties, a city and a county, school districts, and special districts.

- 5) Establishes successor agencies to the RDAs that would, except in certain situations, such as those involving an RDA based on a joint powers authority, be the entity that created the RDA. If no local agency elects to be the successor agency, a designated local authority would be formed, made up of three members that would be appointed by the Governor.
- 6) Requires successor agencies to make payments on legally enforceable obligations using property tax revenues when no other funding source is available or when payment from property tax revenues is required by an enforceable obligation.
- 7) Defines enforceable obligations for successor agencies to include, but not be limited to:
 - a) Bonds, including debt service, reserves, or other required payments;
 - b) Loans borrowed by the agency for a lawful purpose including loans from the L&M Fund;
 - c) Payments required by the federal government;
 - d) Pre-existing obligations to the state or obligations imposed by state law;
 - e) Legally enforceable payments to agencies' employees, including pension obligations and other obligations conferred through a collective bargaining agreement;
 - f) Judgments and settlements entered into by a court or arbitration, retaining appeal rights;
 - g) Legally binding contracts that do not violate the debt limit or public policy; and,
 - h) Contracts necessary for administration of the agency, such as for office space, equipment, and supplies, to the extent permitted.
- 8) Provides that enforceable obligations do not include any agreements, contracts, or arrangements between the city, county, or city and county that created the RDA and the former RDA.
- 9) Requires successor agencies to take control of all assets, properties, contracts, books and records, and buildings and equipment of the RDAs on October 1, 2011.
- 10) Requires successor agencies to dispose of RDAs' assets as directed by the oversight board with the proceeds transferred to the county auditor-controller for distribution to taxing agencies within the county. Governmental facilities, such as roads, school buildings, and fire or police stations would be conveyed to the appropriate public jurisdiction.
- 11) Requires the successor agencies to compensate the taxing agencies for the value of property and assets retained by the successor agencies in an amount proportional to the taxing agencies' share of the property tax.
- 12) Creates the Redevelopment Obligation Retirement Fund and the Redevelopment Property Tax Trust Fund (Trust Fund). Property tax revenues associated with each former RDA in

each county will be deposited in the Trust Fund which will be administered by the county auditor-controller.

- 13) Requires the county auditor-controller to determine the amount of property tax increment that would have been allocated to each RDA and to deposit that amount in the Trust Fund.
- 14) Requires the county auditor-controller to allocate funds from the Trust Fund in the following order:
 - a) Local agencies, school districts, and community college districts in the amount that would have been received by such agencies as their share of the property tax base and that would have been paid pursuant to statutory and contractual pass-through agreements;
 - b) Redevelopment Obligation Retirement Fund for successor agencies' payments listed in the Recognized Obligation Payment Schedule and administration; and,
 - c) Cities, the county, schools, community college districts, and non-enterprise special districts in the proportional shares of what would have been received absent redevelopment and adjusted for pass-through agreements.
- 15) It shall be noted that in the Supreme Court's holding in *California Redevelopment Association v. Matosantos*, Case No. S19486, the Court extended all of the statutory deadlines contained in Health and Safety Code Division 24, Part 1.85 (Sections 34170-34191) and arising before May 1, 2012, by four months.

FISCAL EFFECT: Unknown.

COMMENTS:

In 2011, the Legislature approved and the Governor signed two measures, ABX1 26 and ABX1 27 that would together dissolve redevelopment agencies as they existed at the time and create a voluntary redevelopment program on a smaller scale. In response, the California Redevelopment Association and the League of California Cities, along with other parties filed suit challenging the two measures. The Supreme Court denied the petition for peremptory writ of mandate with respect to ABX1 26. However, the Court did grant CRA's petition with respect to ABX1 27. As a result, all redevelopment agencies were required to dissolve as of February 1, 2012.

When the Legislature voted on ABX1 26 and ABX1 27, it envisioned that a majority of redevelopment agencies would likely choose to opt-in to the voluntary program leaving the state to oversee the dissolution of only a handful of agencies. Because of the subsequent lawsuits and the Court's ruling, over 400 redevelopment agencies are now required to dissolve. The dissolution process has raised some questions and concerns regarding the implementation of ABX1 26. AB 1585 (John A. Pérez) is a response to those concerns and attempts to facilitate a smooth wind-down of redevelopment agencies. AB 1585 makes a variety of technical changes that are intended to ease the process of dissolution and provide greater direction to the successor agencies, oversight boards, and successor housing entities that are integral to the dissolution process. It also requires that the L&M funds that have been deposited by former RDAs continue to be used for affordable housing in the county in which they were collected.

Low-and Moderate-Income Housing Funds:

Redevelopment agencies were required to set aside 20% of the tax increment collected in a project area to fund the creation, preservation, or rehabilitation of affordable housing. In spending these funds, redevelopment agencies were required to meet the housing needs as outlined in their housing element. The extent to which RDAs spent the L&M funds varied across redevelopment agencies. Based on 2009-10 reports made to the State Controller's Office, RDAs reported having in excess of \$1.4 billion in their L&M Funds. The Controller's Community Redevelopment Agencies Annual Report for the fiscal year ending June 30, 2010, shows a statewide aggregate "unreserved designated" balance of \$967 million and an "unreserved undesignated" balance of \$391 million in agencies L&M Funds. The State Controller's Office is in the process of auditing the redevelopment agencies for the 2010-11 fiscal year and is required to submit the audit to the Legislature at the end of April.

The Governor's original proposal (SB 77) to eliminate redevelopment agencies would have allowed local jurisdictions to keep the L&M funds. However, the bill that was ultimately approved by the Legislature and signed by the Governor absorbed that fund along with the other tax increment. At the time, the belief was that allowing the L&M funds to be retained would be interpreted as the state reallocating property tax and would require a two-thirds vote. Since then, Legislative Counsel has determined that the L&M funds are assets of the redevelopment agencies under Article XVI, Section 16 of the State Constitution and not property taxes under Section 1 of Article XIII A.

AB 1585 makes several significant changes to the provisions in ABX1 26 regarding L&M funds:

- 1) Keeps the money on deposit in an L&M Fund with the successor housing entity to be spent on activities allowed under the housing provisions in the Community Redevelopment Law or, if there is no successor housing entity, requires the funds to be transferred to HCD;
- 2) Requires the successor housing entity to expend or encumber 80% of the funds within four years but gives it the option to petition HCD for more time to spend the funds; and
- 3) Designates the types of affordable housing projects that HCD can fund from monies that are transferred to the department from jurisdictions that decide not to keep the housing functions of the former RDA.

Voluntary Transfer of Money between Jurisdictions within the County:

Some jurisdictions have affordable housing projects that have financing commitments from other sources and could begin construction quickly but were relying on future tax increment to fully fund the projects. Other jurisdictions have unencumbered balances in their L&M funds that they may not intend to spend. For example, the City of San Jose has indicated that it has multiple projects that are largely financed but has no unencumbered L&M funds because it consistently spent its available balances on affordable housing. In the interest of supporting the construction of affordable housing projects that are "shovel ready," allowing jurisdictions within the same

county to transfer funds from their L&M funds rather than sending those funds to HCD for distribution will expedite the construction of affordable housing within the region. The committee may wish to consider allowing a jurisdiction that does not plan to spend its L&M Fund balances to transfer them to another jurisdiction within the county with certain restrictions, including:

- Require the jurisdiction that is receiving the funds to make findings, based on substantial evidence on the record, that each proposed use of funds will not exacerbate racial or economic segregation;
- Require the transferred funds to be used for low-income or below housing;
- Require both the transferring and the receiving jurisdiction to adopt a resolution detailing the reason for the transfer and how the funds will be used by the receiving jurisdiction; and
- Require funds to be expended in compliance with section 34176 (d).

Timeline for spending the L&M Funds:

In some jurisdictions, former redevelopment agencies had a poor record of spending their affordable housing dollars. In an attempt to ensure that any monies available to support affordable housing are spent expeditiously by the successor housing agency, the bill requires the funds to be expended or encumbered within four years and creates an appeal process with HCD for an extension. The committee may wish to consider requiring the housing successor entity to contract to spend the funds within two years while giving it four years to spend at least 80% of the funds. The requirement to contract within two years will provide a benchmark that the community can use to evaluate the commitment of the housing successor entity to spend the majority of the funds within four years.

The bill does not provide any criteria that HCD should consider in determining whether or not to allow a successor housing agency to retain the housing dollars past the four year mark. The committee may wish to consider providing criteria that HCD should consider when evaluating a housing successor agency's intention to spend the funds within the next two years. Among other criteria that HCD could develop, agencies should be required to provide evidence that the housing successor entity has a site specific project plan with local approvals including the issuance of building permits, that the project has secured financing, and evidence that some funds and have been expended from the Low and Moderate Income Housing Fund.

In order for HCD to evaluate a successor agency's compliance with the timeline to spend the funds, successor housing entities should be required to inform HCD within 45 days of receiving the funds of the amount of funds on deposit. Successor housing entities should also report to HCD after the two-year requirement to contract and the four year requirement to spend funds if they have complied.

State Low-and Moderate-Income Housing Fund:

If a city, county, or city and county, or housing authority decides not to assume the housing functions of the former RDA, or if a successor housing entity does not spend the amount on deposit in the L&M Fund within the specified timeline, then the funds are sent to HCD for distribution back into the county in which they were collected. AB 1585 requires that the funds be distributed with priority given to affordable housing projects that serve low-, very-low and extremely low-income families and individuals. The committee may wish to consider giving HCD some direction as to what criteria should be used for redistributing the funds. HCD operates several existing housing programs that serve various income categories whose guidelines could be used for redistributing these funds. This would likely reduce HCD's cost and speed the redistribution of funds.

Defining Housing Assets:

In an attempt to avoid a "fire sale" of the property and assets of the former RDA, AB 1585 attempts to inform the process by requiring the successor entity to create a detailed list of the assets. The list is intended to give the oversight board responsible for disposing of the assets more direction and includes the purpose for which the asset was purchased, the original purchase price and the current fair market value. Redevelopment agencies had flexibility in spending their 80% funds and in some instances may have used those funds to purchase parcels that ultimately became part of an affordable housing project. Mixed-use developments may also have been funded using the 80% funds for retail and the 20% for affordable housing units. Neither AB 26 X1 or AB 1585 defines a "housing asset" which could potentially result in some oversight boards disposing of assets that have affordable housing.

As part of the information that AB 1585 requires the successor agency to provide to the oversight board, describing the assets and properties, it would be useful to include the source of funds (either 20% or 80%) that were used to purchase the asset or property.

Related Legislation: SB 654 (Steinberg) would revise the definition of enforceable obligation to include amounts on deposit in the Low-and Moderate-Income Housing Fund of former redevelopment agencies. This bill is currently in the Assembly Committee on Rules.

Suggested Committee Amendments:

Amendment 1:

On page 9, amend (d), lines 5 through 25, as follows:

(d) If the city, county, or city and county, or *housing authority* ~~other public entity~~ that performs housing functions pursuant to this section has not ~~both expended or encumbered~~ *entered into a contract to expend* at least 80 percent of the moneys in the Low and Moderate Income Housing Fund within ~~two~~ *four* years of receipt of those moneys, ~~by the entity assuming the housing responsibility pursuant to this part and has not spent the monies in the Low and Moderate-Income Housing Fund within four years of receiving the funds~~ *within* ~~spend~~ all excess amounts, minus the amount necessarily reserved for the ongoing monitoring and maintenance of affordable housing projects, shall be transferred to the State Low and Moderate Income Housing Trust Fund, which is hereby created, for expenditure by the Department of Housing and Community Development for the purpose of increasing the supply of low- and moderate-income

housing in the county in which the funds were collected, with priority given to extremely low, very low, and low-income projects. Excess funds shall not be transferred to the department if the succeeding housing entity applies for, and receives, a waiver from the department. If a waiver is granted, funds shall remain with the entity for an additional two years from the date of waiver approval. *In approving a waiver the department should consider, the following criteria, including but not limited, that the city, county, or city and county, or housing authority has a site specific project plan with local approvals including the issuance of building permits, that the project has secured financing, and evidence that some funds have been expended from the Low and Moderate Income Housing Fund.* A succeeding housing entity may reapply at the end of the two-year period for a renewal of the previously granted waiver.

Amendment 2:

A city, county or city and county or housing authority may transfer all or a portion of the funds in the Low and Moderate-Income Housing Fund to another city, county, or city and county, or housing authority within the county that the funds were collected, to be spent on affordable housing, provided the following conditions are met:

- a) The jurisdiction accepting the funds must make findings, based on substantial evidence in the record, the proposed use of the funds will not exacerbate racial or economic segregation;
- b) The funds must be spent on projects to benefit families or individuals at or below low-income;
- c) Both the transferring jurisdiction and the receiving jurisdiction must adopt a resolution detailing the need for the transfer of funds and the intended use by the receiving jurisdiction; and
- d) The funds shall be expended in compliance with section 34176 (d)

Amendment 3:

Upon receipt of any moneys in the Low and Moderate Income Housing Funds, the city, county, or city and county, or housing authority, must within 45 days notify the department of the amount of funds on deposit and the entities plan for spending the funds. After two years the city, county, city and county, or housing authority shall report to the department on the percentage of funds that it has entered into contract to spend. Within four years of receipt of the funds the city, county, city and county, or housing authority shall report to the department if funds still remain in the Low and Moderate Income Housing Fund and if they desire a waiver as described in 34176 (d) or if they will be transferring the money back to the department.

REGISTERED SUPPORT / OPPOSITION:

Support

Abode Services, Fremont
Affirmed Housing Group

Aging Services of California
Allied Housing, Fremont
Bay Area Local Initiatives Support Corporation, San Francisco
Cambrian Center, San Jose
Century Housing, Culver City
City of Colton
City of Fairfield
City of Coronado
City of Lafayette
City of Lakewood
City of Moorpark
City of Vista
Community Housing Partnership, San Francisco
Daniel Solomon Design Partners, San Francisco
EAH Housing, San Rafael
Eden Housing, Inc. Hayward
Housing Authority of Kings County
Laurin Associates, Sacramento
Life Skills Training and Educational Programs, Fair Oaks
Mercy Housing, San Francisco
Monterey County Board of Supervisors
Palm Communities, Palm Desert
Resources for Community Development
San Diego Housing Commission
Four housing managers of affordable housing communities:
 Casa de la Paloma, Glendale
 Clark Terrace and Clark Terrace II, Norco
 Mountain Vistas and Mountain Vistas II, Redding

Opposition

None on file.

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