

Date of Hearing: April 25, 2012

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

Norma Torres, Chair

AB 1555 (Norby) – As Amended: March 6, 2012

SUBJECT: Redevelopment: debt forgiveness agreements

SUMMARY: Prohibits the oversight board responsible for the wind-down of a redevelopment agency (RDA) to require the successor agency to forgive a loan, advance, or indebtedness that is owed to the dissolved RDA by a public body. Specifically, this bill:

- 1) Prohibits the oversight board responsible for the wind-down of an RDA to require the successor agency to forgive a loan, advance, or indebtedness that is owed to the dissolved RDA by a public body.
- 2) Permits the oversight board to set aside any agreements that relate to the forgiveness of a loan, indebtedness, or advance owed by the dissolved RDA dating back to January 1, 2011.

EXISTING LAW

- 1) Dissolves RDAs as of October 1, 2012 (this was extended by the courts as of February 1, 2012).
- 2) Requires a successor agency to enforce all former RDA rights for the benefit of the taxing entities, including, but not limited to, continuing to collect loans, rents, and other revenues due to the RDA (Health and Safety Code Section 34177).
- 3) 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.
- 4) 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 (Blumenfield, 2011).
- 5) 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 county, school districts, and special districts.
- 6) 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.
- 7) 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.

- 8) 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 Low and Moderate Income Housing 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 the administration of the agency, such as for office space, equipment, and supplies, to the extent permitted.
- 9) 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.
- 10) 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.
- 11) 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.
- 12) 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.
- 13) 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.
- 14) 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.
- 15) 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.

16) 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: None.

COMMENTS:

In 2011, the Legislature approved and the Governor signed two measures, ABX1 26 (Blumenfield) and ABX1 27 (Blumenfield) that would together dissolve RDAs as they existed at the time and create a voluntary redevelopment program on a smaller scale. In response the California Redevelopment Association (CRA) 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 RDAs were required to dissolve as of February 1, 2012.

Purpose of this bill: According to the author, when RDAs were dissolved, certain entities, among them some private developers, still owed money to the RDA. The author's office provided as background an article discussing the City of Montebello that reported that the city council forgave loans to a developer who made political contributions to the council members. Another article provided by the author reported that in the City of Riverbank, the city council was reluctant to become the successor agency to the former RDA because they did not think they had enough revenue to cover a multi-million dollar bond the former RDA had issued for economic development projects. They voted not to become the successor agency. Under ABX1 26, the county, school district, or other taxing entities in the county can opt to become the successor agency. If not, the Governor appoints three residents of the county to a "designated local authority" to oversee the winding down of the RDA.

This bill would prohibit an oversight board from directing a successor agency to forgive a loan in whole or in part made from the former RDA to a public body. Additionally, the oversight board would have authority to set aside any agreements made to forgive loans owed by the former RDA that date back to January 1, 2011.

ABX1 26 requires a successor agency to enforce all former RDA rights for the benefit of the taxing entities, including, but not limited to, collecting loans, rents, and other revenues that are due to the RDA. This provision would invalidate actions taken by the city council to forgive a

loan made to a private developer. In addition, forgiveness of a loan to a private entity by a city council would be unconstitutional as a gift of public funds.

This bill as drafted would prohibit a successor agency from forgiving a loan to a "public body" but based on the background provided by the author's office the intent is to prevent forgiveness of loans to private entities like developers. Additionally, it is unclear if the author's intent is for the oversight board to be able to set aside loans owned "by" or "to" the RDA dating back to January 1, 2011.

Role of the Oversight Board: The oversight board is made up of representatives of the taxing entities in the jurisdiction of the former RDA, one member of the public, and one employee of the dissolved RDA. The oversight board oversees the successor agency's disposition of all assets and properties of the former RDA, payment of enforceable obligations, merging of project areas, and the termination of any agreements between the former RDA and public bodies. Under the direction of the oversight board, the successor agency is responsible for determining whether any contracts, agreements, or other arrangements between the dissolved RDA and private parties should be terminated or renegotiated to reduce liability and increase net revenues to the taxing entities. The successor agency must present proposals to terminate or amend agreements to the oversight for approval.

Staff Comments:

The committee may wish to consider if it is appropriate to eliminate a negotiating option for the oversight board in considering how to wind down the affairs of a RDA. There may be a circumstance in which an oversight board may decide it is in the best interest of the taxing entities to forgive a loan to a private body in exchange for some reduction in liability. This bill would eliminate that option.

Double referred: If AB 1555 passes this committee, the bill will be referred to the Committee on Local Government.

REGISTERED SUPPORT / OPPOSITION:

Support

California Professional Firefighters

Opposition

None on file.

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