

Date of Hearing: July 3, 2013

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
Ed Chau, Chair

SB 470 (Wright) – As Amended: May 8, 2013

SENATE VOTE: 36-0

SUBJECT: Community development: economic opportunity

SUMMARY: Gives cities, counties, or cities and counties the authority that redevelopment agencies (RDAs) had under the Polanco Redevelopment Act (the Polanco Act) to cleanup brownfields and the authority to sell or lease land for an economic opportunity, at less than market value, in the jurisdiction of a former RDA. Specifically, this bill:

- 1) Includes legislative intent language.
- 2) Defines "economic opportunity" to mean any of the following:
 - a) Development agreements that create, retain or expend new jobs that the legislative body finds will create or retain at least one full-time permanent job for every \$35,000 of city, county, or city and county investment in a project;
 - b) Development agreements that will increase the property tax revenues to all taxing entities by at least 15% when the project is at full implementation as compared to the rate one year prior to the acquisition by a governmental entity;
 - c) The creation of affordable housing if there are demonstrated affordable housing needs as defined in the approved housing element or regional housing needs assessment (RHNA);
 - d) Projects that meet the goals of SB 375 (Steinberg), Chapter 728, Statutes of 2008, is included in a sustainable communities strategy, an alternative planning strategy or implements the goals of those adopted plans; and
 - e) Transit priority projects.
- 3) Creates a process for a city, county, or city and county to sell or lease properties that are returned to them as part of the long-range property management plan of former RDA properties for an economic development purpose.
- 4) Requires a legislative body to approve the sale or lease of a property that is part of the long-range property management plan for an economic purpose by resolution after a public hearing that has been noticed for two consecutive weeks in the newspaper.
- 5) Requires the city, county or city and county to provide a report for the public to review and copy that includes the following:
 - a) A copy of the proposed sale or lease;

- b) The cost of the agreement to the city, county, or city and county that includes land acquisition costs, clearance costs, relocation costs, cost of improvements provided by the local government's interest on any loans or bonds to finance the agreements;
 - c) The estimated value of the property to be sold or leased as determined by the highest and best uses permitted under the general plan or zoning;
 - d) The estimated value of the property to be sold or leased with the conditions, covenants, and development costs required by the sale or lease;
 - e) The purchase price or lease payments that the lessor will be required to make during the term of the lease;
 - f) If the sale price or rental amount is less than fair market value as determined by the highest and best use, then the legislative body must provide an explanation for the difference;
 - g) An explanation of why the sale or lease of the property will result in the creation of economic opportunity;
- 6) Requires the resolution approving the sale or lease of the property to be approved by a majority vote, or a 2/3 vote if required by an adopted ordinance, a finding that the sale or lease of the property will assist in the creation of economic opportunity, and include one of the following:
- a) The consideration is not less than the fair market reuse value at its highest and best use; or
 - b) The consideration is not less than the fair reuse value at the use and with the covenants and conditions and development costs authorized by the sale or lease.
- 7) Provides that the provisions of this bill are an alternative to any other authority granted to cities to dispose of city-owned property.
- 8) As allowed under Community Redevelopment Law (CRL) for a RDA, allows a city, county, or city and county to establish a program to make loans to owners or tenants to rehabilitate commercial buildings or structures.
- 9) As allowed under the CRL for a RDA, permits a city, county, or city and county to assist with the financing facilities or capital equipment as part of an agreement with a developer or rehabilitate a property that will be used for industrial or manufacturing purposes.
- 10) As allowed under the CRL for a RDA, requires a city, county, or city and county to make a finding, after a public hearing, that assisting with the purchase of capital equipment or facilities is necessary for the economic feasibility of the development and cannot be achieved through the private market.
- 11) States the provisions of this bill are not intended to authorize the use of eminent domain for economic development purposes.

- 12) Gives a city, county, or city and county authority to clean up contaminated properties under the Polanco Redevelopment Act that are in the project areas of a former RDA whether it owns the property or not.
- 13) Allows a city, county, or city and county to take any actions that it determines are necessary and that is consistent with other state and federal laws to remedy or remove a release of hazardous substances on, under, or from property within its jurisdiction, whether it owns that property or not, subject to specified conditions.
- 14) Requires the city, county, or city and county to request cleanup guidelines from the Department of Toxic Substances Control (DTSC) or Regional Water Quality Control Board (RWQCB) before taking action to remedy or remove a release, unless an administering agency has been designated under state law. The city, county, or city and county must submit for approval a cleanup or remedial action plan to DTSC or RWQCB before taking action to remedy or remove a release. DTSC or RWQCB must respond to the requests for guidelines and approvals within a reasonable period of time.
- 15) Identifies the conditions under which a city, county, or city and county can designate a local agency, in lieu of DTSC or RWQCB, to review and approve a cleanup or remedial action plan and to oversee the remediation or removal of hazardous substances from a specific hazardous substance release site. Allows a local agency to withdraw from its designation and allows DTSC or RWQCB to require, under specified conditions, a local agency to withdraw from the designation.
- 16) Requires a city, county, or city and county to notify DTSC, RWQCB, and local health and building departments of cleanup activity at least 30 days before the activity begins. Allows DTSC or RWQCB to require a city, county, or city and county to remedy or remove a release of a hazardous substance pursuant to state law if the city, county, city and county, or a responsible party's action to remedy or remove a release of a hazardous substance is inconsistent with an approved plan.
- 17) Imposes specified conditions on a city, county, or city and county's authority to remedy or remove a release of hazardous substances.
- 18) Allows a city, county, or city and county to require the owner or operator of any site within a project area to provide the city, county, or city and county with all existing environmental information pertaining to the site, except for information which is determined to be privileged. A person can only be requested to furnish information that is within their possession or control, including actual knowledge of information within the possession or control of any other party. If environmental assessment information is not available, the city, county, or city and county can require the owner of the property to conduct an assessment in accordance with standard real estate practices for conducting phase I or phase II environmental assessments.
- 19) Provides that a city, county, or city and county is not liable under specified state and local liability laws if it undertakes and completes an action, or causes another person to undertake and complete an action, to remedy or remove a hazardous substance release in accordance with a cleanup or remedial action plan that meets specified criteria.

- 20) Requires that a city, county, or city and county must receive written acknowledgement from DTSC, RWQCB, or local agency that it will receive specified immunity from liability upon proper completion of a remedial or removal action in accordance with an approved plan.
- 21) Specifies the manner in which DTSC, RWQCB, or local agency must make a determination that a remedial or removal action has been properly completed and notify the city, county, or city and county in writing that the immunity provided by the bill is in effect. A city, county, or city and county must reimburse DTSC, RWQCB, and local agency for costs incurred in reviewing or approving cleanup or remedial action plans.
- 22) Requires that a local agency's approval of a cleanup or remedial action also must be subject to the concurrent approval by DTSC or RWQCB, under specified conditions.
- 23) Identifies the people and entities to which it extends immunity from specified liability upon proper completion of a remedial or removal action. The bill also identifies people and entities to which it does not extend immunity.
- 24) States that the bill:
 - a) Provides immunity that is in addition to any other immunity of a city, county, or city and county provided by law;
 - b) Does not impair specified causes of action against the person, firm, or entity responsible for the hazardous substance release that is the subject of a removal or remedial action;
 - c) Does not apply to, or limit, alter, or restrict, any action for personal injury, property damage, or wrongful death;
 - d) Does not limit liability under a specified provision of federal law; and
 - e) Does not establish, limit, or affect the liability of a city, county, or city and county for any release of a hazardous substance that is not investigated or remediated pursuant to state laws.
- 25) Requires any responsible parties to be liable to a city, county, or city and county that remedies or removes, or requires others to remedy or remove, a release of a hazardous substance. The bill prohibits a city, county, or city and county from recovering the costs of goods and services that were not procured in accordance with applicable procurement procedures. The amount of the costs must include the interest, calculated according to a specific formula, on the costs accrued from the date of expenditure and reasonable attorney's fees. The costs can be recovered in a civil action.
- 26) Identifies the defenses that are available to a responsible party under state law.
- 27) Allows a city, county, or city and county to recover costs for developing and implementing an approved cleanup or remedial action plan to the same extent DTSC is authorized to recover those costs. The bill defines the scope and standard of liability for recovering a city, county, or city and county's costs.

- 28) Require a city, county, or city and county to begin an action to recover costs of a remedy or removal within three years after completion of the remedy or removal. The bill states that the cost recovery authority it grants is in addition to, and is not to be construed as restricting, any other cause of action available to a city, county, or city and county.
- 29) With specified exceptions, requires that a city, county, or city and county that undertakes and completes a remedial action, or otherwise causes a remedial action to be undertaken and completed, shall not be liable, based on its ownership of property after a release occurred, for any costs that any responsible party incurs to investigate or remediate the release or to compensate others for the effects of that release.
- 30) With specified exceptions, states that its provisions do not limit the powers of the State Water Resources Control Board or a RWQCB to enforce specified provisions of state law.
- 31) Replicates the Polanco Act's definitions for numerous terms.

EXISTING LAW

- 1) Dissolved RDAs as of February 1, 2012, and provides for the designation of a successor agency, as defined, to resolve the final matters of the agencies and to dispose of assets and properties in accordance with certain procedures.
- 2) Allowed RDAs to sell or lease properties at less than the value of the property at the highest and best use if it provides various disclosures including an explanation that the sale will assist in the elimination of blight. Requires the sale to be approved by resolution in a public meeting by a majority vote unless the legislative body has placed an ordinance requiring a two-thirds vote (Health and Safety Code Section 33433).
- 3) Under the Polanco Act which was part of the Community Redevelopment Act, assisted RDAs in responding to brownfield properties in their redevelopment areas. It prescribed processes for RDAs to follow when remediating a hazardous substance release in a redevelopment project area. It also provided specified immunity from liability for sites cleaned up under a cleanup plan approved by the Department of Toxic Substances Control (DTSC) or a Regional Water Quality Control Board (RWQCB). It provided limited liability protections for RDAs and future purchasers of properties remediated under the Polanco Act.

FISCAL EFFECT: None.

COMMENTS:

In 2011, facing a severe budget shortfall, the Governor proposed eliminating RDAs in order to deliver more property taxes to other local taxing agencies. Redevelopment redirected 12% of property taxes statewide away from schools and other local taxing entities and into community development and affordable housing. Ultimately, the Legislature approved and the Governor signed two measures, ABX1 26 and ABX1 27 that together dissolved RDAs as they existed at the time and created a voluntary redevelopment program on a smaller scale. In response, the California Redevelopment Association (CRA), 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, "local economic development has remained stagnant since the dissolution of redevelopment. The ability of local governments and partner-agencies to support transit-oriented development, assist with affordable housing, create jobs or generally increase tax revenues through sale of local land. This bill authorizes local governments to promote economic opportunity using local dollars through agreements that create, retain, or expand new jobs. It gives local governments the ability to enter into land sale agreements based upon "faire reuse value" at term defined and achieved only if the local government can transparently prove community benefits through a public review process and verifiable to data. SB 470 will also reinstate the Polanco Act to allow local governments to enter into collaborate partnership and utilize unique powers to mitigate environmentally tax brownfield sites."

Disposition of property: Under Community Redevelopment Law, RDAs could sell or lease property at the "fair reuse value" or an amount less than the value at the highest and best use because a RDA imposed specific development conditions, covenants and criteria that are more restrictive than what would be permitted under the highest and best use. RDAs were required to approve the sale or lease in a public hearing and disclose the value of the property at the highest and best use as it compared to the fair reuse value. This bill would allow cities and counties to use this process to sell or lease properties that were owned by the former redevelopment and are part of the long-range property management plan approved by DOF as part of the dissolution of the RDA. The city or county would be required to show that the new use of the property would result in job creation, affordable housing, or an increase in property taxes as a measure of economic development. This authority gives local governments the ability to evaluate the community and economic benefit to selling a property for less than the market value.

Economic development: Redevelopment was created to eradicate blight. In order to sell or lease a property at less than the value at the highest and best use, RDAs were required to explain how the sale for fair reuse value would reduce blight. This bill requires that the city or county explain how the disposition of the property will result in an economic benefit. The bill also gives cities and counties the authority that RDAs had to make loans for capital development after making a finding at a public hearing that the assistance cannot be obtained for economically feasible terms in the private market.

The Polanco Act: In 1990, AB 3193 (Polanco), Chapter 1113 (Polanco Redevelopment Act), was enacted to assist RDAs in responding to brownfield properties in their redevelopment areas. It prescribes a process for RDAS to follow when cleaning up a hazardous substance released in a redevelopment project area. It also provides specified immunity from liability for sites cleaned up under a cleanup plan approved by DTSC or a regional water quality control board. RDAs had the authority to take any actions that the agency determined was necessary to address a release of hazardous substances on or under property within a project area. In return the agency, the developer of the property and the subsequent owners received limited immunity from further cleanup liability. This bill gives cities and counties similar authority that RDAs had under the Polanco Act to remediate properties that are in the jurisdiction of former redevelopment project areas.

Committee amendments:

On page 5, delete lines 33-35. This section is repetitive.

Double referred: If SB 470 passes this committee, the bill will be referred to the Committee on Local Government.

REGISTERED SUPPORT / OPPOSITION:

Support

City of Long Beach (sponsor)
California Contract Cities Association
Gateway Cities Council of Governments
Los Angeles County Division of the League of California Cities

Opposition

None on file.

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