CALIFORNIA REDEVELOPMENT LAW CHANGES DISMANTLE REDEVELOPMENT AGENCIES

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Redevelopment Agencies in California have been dramatically affected by two recent bills signed into law by Governor Jerry Brown.

DISSOLUTION OF REDEVELOPMENT AGENCIES

AB 1X 26 dissolves Redevelopment Agencies effective October 1, 2011, and severely restricts their activities in the interim. Among other things, this bill prohibits Redevelopment Agencies from:

- entering into contracts
- amending existing contracts
- incurring, refunding or restructuring debt unless required to carry out existing enforceable obligations
- disposing of assets—including real property—by sale, lease or otherwise
- transferring, assigning or delegating assets, funds, rights, powers or obligations for any purpose to any entity
- preparing draft environmental impact reports.

If a Redevelopment Agency is dissolved pursuant to AB 1X 26, a successor agency will be formed to assure payment of outstanding enforceable obligations. This successor agency could be a local agency or a designated local authority. Under either circumstance, the focus of the successor agency will shift from economic development to wind-up and liquidation.

Under the bill, transfers of assets by a Redevelopment Agency to a city or county after January 1, 2011, are declared unauthorized in order to retroactively void the various attempts by agencies, cities and counties to avoid the effect of the dissolution bill.

CONTINUATION WITH "VOLUNTARY PAYMENTS"

AB 1X 27 permits a local government to retain its Redevelopment Agency with all pre-existing rights, but only by agreeing to allocate a portion of the Redevelopment Agency's tax increment funds to specific government entities including school districts, transit agencies, and fire protection districts, in accordance with the detailed formula set forth in the bill.

Overall, the continuation bill calls for the statewide transfer of $1.7 billion in redevelopment funds this fiscal year and $400 million annually thereafter. Redevelopment Agencies choosing this option must enact a non-binding resolution of intent to comply prior to October 1, 2011, with final action required prior to November 1, 2011, and thereafter must comply with the payment and other requirements of the bill in order to keep the agency in effect.

The bill also precludes formation of any new Redevelopment Agency unless and until the successor agency has paid all obligations and until the "voluntary payment" provisions of AB 1X 27 are enacted by ordinance.

LITIGATION

A lawsuit seeking a stay has been filed in the California Supreme Court by several parties, including the California Redevelopment Association (CRA) and the League of California Cities. The CRA lawsuit alleges among other things that the two recently enacted laws are unconstitutional. The main claim is that the statutory changes violate Proposition 22, a voter approved initiative designed to protect local revenues by prohibiting the legislature from requiring cities to use city taxes for state purposes.

As is made clear in that lawsuit, after funding prior State mandates, Redevelopment Agencies have limited reserves with which to fund these "voluntary" payments. City funding is also at risk, since cities have often relied upon redevelopment funds to pay for police and other special services.

NEXT STEPS

Most agencies are now in an assessment and retrenchment mode – evaluating whether and how to fund the payments and the long term viability of the agency after taking into account these payments and their other existing financial and legal obligations.

Cities and counties are taking a variety of approaches in response to the legislation. For example, the *City of Los Angeles* has adopted a cautious approach and has not yet committed to continuing its Redevelopment Agency, CRA/LA, in effect. The City approved a three-month budget to pay the CRA/LA's ongoing payroll obligations, expenses on specific projects, contractual obligations, debt service and operating expenses, but has limited CRA/LA budgeted staffing levels to its current position levels and has requested the CRA/LA to:

- analyze the respective project area's ability to meet a State contribution payment,
- limit work on new requests and initiatives to those that do not require a significant commitment of CRA/LA funds; and
- re-evaluate existing pipeline projects to determine feasibility.

Other cities, counties and agencies have approved or anticipate approving notices of intent to comply, and are relying upon the ability of the CRA to seek a stay of enforcement in the courts that will allow them to continue to operate while withholding the "voluntary payment" of funds to the State until the courts evaluate the constitutionality of the laws.

Further legislation is also anticipated. For example, AB 1X 27 indicates that future legislation is contemplated permitting a reduction in "voluntary" payments to schools, if agencies commit those funds to projects that "advance the achievement of statewide goals with respect to transportation, housing, economic development and job creation, environmental protection and remediation and climate change, including but not limited to projects that are consistent with the Sustainable Communities Strategies [under SB 375]."

Other legislative amendments are under discussion in Sacramento.

EFFECT ON DEVELOPMENT

In the meantime, developers are finding themselves in limbo – redevelopment plans and requirements remain in effect and are applicable to their projects, but Redevelopment Agencies are unable to take action.

Developers who have been in lengthy negotiations with agencies may find that the Redevelopment Agencies are not permitted to formalize their contracts or fund expenditures they had orally agreed to fund.

Developers dealing with agencies that do not continue in business will see their contracts transferred to successor agencies that may not be equipped or motivated to act.

Developers have discovered properties that they hoped to acquire or control have been transferred from Redevelopment Agencies to other government agencies in a prior attempt to circumvent the effects of the law. However, many of these agreements were voided by the new state legislation, leaving these properties in limbo, with no party in clear ownership.

Property that is subject to acquisition through eminent domain by agencies may also be under a cloud while the effects of the legislation are sorted out.

Overall, it is likely that there will be a period of uncertainty both because many important details were not included in the legislation and because of pending legal challenges. During this period, it is likely that Redevelopment Plan regulations will remain in effect but that Redevelopment Agencies will have little power and even less inclination to act. The good news is that the law directs Redevelopment Agencies or successor agencies to carry out binding obligations. However, projects in the pipeline will remain on hold until the dust settles.