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GOVERNMENT

With budget approved, gutting of redevelopment agencies begins

By Ursula Hyman and Peter Gutierrez

After months of protracted negotiations surrounding California's fiscal crisis, the Legislature finally adopted a budget, which Gov. Jerry Brown signed into law on June 29. Since January, when Brown first floated the idea of eliminating redevelopment agencies to capture their tax increment for use in closing the state's massive funding gap, a cloud of uncertainty has hung over these agencies, limiting their ability to act.

Two trailer bills adopted as part of the budget package, ABx1 26 and 27, purportedly provide clarity and promote fiscal stability by establishing a process for redevelopment agencies to continue to operate if they collectively contribute $1.7 billion to the state; the bills eliminate those agencies that cannot or will not make these payments. Arguably, the two bills accomplish neither goal. Due to ambiguous drafting and pending legal challenges, their adoption leaves the future of redevelopment, including many already approved agreements, uncertain. Further, redevelopment proponents argue that raiding local funds to pay for the statewide budget crisis will actually harm California's financial health by eliminating funds used to create construction jobs and other economic growth related to redevelopment activity.

The first bill, ABx1 26, includes three main elements. It immediately halts any new redevelopment activity in the state; eliminates redevelopment agencies as of October 1; and establishes successor agencies to resolve redevelopment agencies' outstanding obligations. As of June 29, the law prohibits redevelopment agencies from entering into new contracts, amending existing agreements, creating or amending a redevelopment plan, selling or otherwise disposing of property, or taking on any new debt.

As of October 1, all redevelopment agencies will be dissolved (save for those that fall under the purview of ABx1 27, discussed below), and the tax increment that they would have collected will be deposited into a redevelopment property tax trust fund in the county where the agency is located. Each county will appoint a successor agency, and the agency will allocate money from the trust fund to various taxing agencies in the county. The successor agency will also use the trust fund to meet any existing "enforceable obligations" entered into by a redevelopment agency prior to Jan. 1, 2011. The elimination of future redevelopment agency activity is estimated to free up $1.7 billion in taxes for education and other essential uses.

The second bill, ABx1 27, creates a "voluntary" program that redevelopment agencies must opt in to if they wish to continue to operate. To avoid the effects of ABx1 26, a locality must enact an ordinance by November 1 specifically stating its intent to continue redevelopment activities. The ordinance must also commit the redevelopment agency to a series of payments to the state. The first two payments are deposits into an educational revenue augmentation fund and a special district allocation fund to pay for schools and other local government functions and represent the redevelopment agency's share of the $1.7 billion that ABx1 26 intends to generate. The agency must also commit to annual contributions to both funds; amounts of these ongoing payments will be determined each year by the Department of Finance.

Although the new legislation answers some of the questions raised by the proposed bill released this past February, significant uncertainty remains. Both pieces of legislation leave many questions regarding the Legislature's intent and the implementation mechanics unanswered. Additionally, sections of the bill or their ultimate implementation may violate the state and federal constitutions, leaving the legality of the law in doubt.

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First, the laws call into question recent contracts between redevelopment agencies and certain local governments regarding land transfers and payment obligations. After the governor announced his plan to eliminate redevelopment, many redevelopment agencies and municipal governments entered into agreements whereby the local government assumed many of the agency's assets and obligations in an effort to shield redevelopment funds from the state and to carry on what local officials defined as important activities supporting economic growth in their jurisdictions. In response, ABx1 26 nullifies these agreements. It is unclear whether the Legislature has the power to accomplish this, however, because some of the agreements may be with an entity over which the Legislature arguably does not have control (such as a charter city, for example).

Another issue is that ABx1 26 uses a circular definition of the term "enforceable agreement," leaving contracting parties guessing as to whether the successor agencies will honor their contracts with redevelopment agencies. This issue is especially acute for parties that do not have fixed funding pledges from redevelopment agencies, but rather have agreements to receive funding support in the form of a share of future agency revenue. Further, current agreements to purchase, sell or lease property are in doubt since redevelopment agencies are essentially prohibited from taking any actions during the period prior to their demise or election to make the payment required by the ABx1 27 formulae. It is also unclear what will happen if an existing "enforceable agreement" requires a redevelopment agency to issue new contracts, take on new debt, or perform any other newly-proscribed activity.

Finally, ABx1 27's "voluntary" program is described by some as "extortion," rather than offering a legitimate work-around for the elimination of redevelopment agencies. An initial reading suggests that several redevelopment agencies may be unable to make the payments that are required to opt-in while continuing to meet their current obligations to service outstanding debt or provide sufficient funding to meet future pledge obligations under existing contracts. Faced with the choice between continuing redevelopment activities and defaulting on outstanding debt and other contractual obligations or surrendering control of redevelopment funds, redevelopment agencies rightly see themselves in an intractable position.

The California Redevelopment Association (CRA) is already attempting to help redevelopment agencies deal with the effects of ABx1 26 and 27. They published a model ordinance localities can adopt to opt in to the voluntary redevelopment program under ABx1 27. Within the next week, the CRA has indicated that it expects to file a lawsuit challenging the adoption of ABx1 26 and 27. We are not privy to counsel's thinking but expect that at a minimum, the suit will allege that the bills violate Proposition 22, Proposition 1A, and Article 16, Section 16 of the state Constitution. Because of the pressing need to resolve the ambiguity described above, CRA has announced it will file directly to the state Supreme Court in an attempt to strike down the law before it eliminates redevelopment agencies in October. When the Court decides to accept or reject the case, it may signal how it plans to ultimately resolve the issue, but as of now it is unclear how receptive the Court will be to any of CRA's legal challenges.

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