



Legal Update: Redevelopment Bills Challenged

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CRA FILES LAWSUIT CHALLENGING REDEVELOPMENT BILLS

ABX1 26 and ABX1 27 were enacted by the State Legislature in late June as “trailer bills” to help implement the state budget bill. The purpose and effect of the bills is to reallocate tax revenue which would otherwise go to redevelopment agencies to other government functions.

ABX1 26 dissolves current redevelopment agencies as of October 1, 2011. Property tax increment that would have been allocated to the agency will be deposited into a trust fund in the county in which the agency operates, to be allocated to other local taxing entities. ABX1 27 provides that if a local jurisdiction commits to make specified payments to fund local schools and other local government functions by adopting a “continuation ordinance,” the agency may continue to operate and function without regard to the October 1, 2011 elimination date specified in ABX1 26. The agency’s payment obligation is its proportionate share of \$1.7 billion, which the Legislature views as the local jurisdiction’s share of the approximately \$5 billion in property tax revenues which will be “diverted” to redevelopment agencies in 2011-2012. The redevelopment agencies view the legislation as an effort to strong-arm financial contributions to fund obligations of the State, under threat of termination of the agencies.

On July 19, the California Redevelopment Agency, League of California Cities, City of Union City, and City of San Jose filed a petition in the California Supreme Court for a writ of mandate to restrain implementation of these bills, and a temporary stay pending resolution of the petition. The petition was filed in the California Supreme Court due to the importance of the issue. The primary argument made in the petition is that the legislation violates Proposition 22, adopted by the voters in November 2010. Proposition 22 added Article XIII, Section 24(b) to the California Constitution and provides that the Legislature “may not reallocate, transfer, borrow, appropriate, restrict the use of, or otherwise use” a tax imposed by a local government for local government purposes, and also prohibits the Legislature from requiring redevelopment agencies to “pay or transfer their property tax increment for the benefit of the State.”

The petition argues that the effect of ABX1 26 and ABX1 27 is to compel the transfer of tax increment revenue to the State, or for the benefit of the State, and therefore violates Proposition 22. The lawsuit highlights two immediate adverse effects of the legislation. First, the legislation results in the immediate inability of redevelopment agencies to issue bonds or other forms of indebtedness given the uncertainty created. Second, phased projects, such as the Station District project in Union City, may not be completed because of the effects of the legislation, and money spent for earlier phases may be lost. Although ABX1 26 allows for the continued performance of “enforceable obligations” by a successor agency, redevelopment projects often consist of a series of numerous ongoing and interrelated contracts, which are not all executed at once. Money spent in preliminary phases, or grants obtained for future phases, may be lost if a project cannot be completed. Moreover, some of the redevelopment agencies do not have the funds available to make the required payments to continue to operate, and so have no choice but to shut down.

Because agencies are required to (i) pass a non-binding resolution by October 1, 2011 to adopt a “continuation ordinance”, (ii) pass a binding resolution by November 1, 2011 to adopt a “continuance ordinance”, and (iii) make the first required payment on January 15,



2012, the petition requests a stay of the legislation by August 15, 2011 in order to maintain the status quo pending resolution of the legal questions.

It is critical that anyone dealing with a redevelopment agency understand and prepare for the impact of this legislation and lawsuit. Stay tuned for developments.

For more information about this legislation, or other redevelopment related legislative or legal updates, please contact Bill Shiber or JoAnne Dunec at 925-935-9400 or email them at bill.shiber@msrlegal.com or joanne.dunec@msrlegal.com. For more background on redevelopment agencies and how they operate, see [Miller & Starr California Real Estate 3d](#), Chapter 30B “Community Redevelopment”.