

CALIFORNIA BUDGET WARS: LEGISLATURE APPROVES ELIMINATION OF REDEVELOPMENT AGENCIES

On Wednesday, June 15, the California Senate and Assembly passed ABX1 26 and ABX1 27 as part of a larger package of budget bills intended to close California's approximately \$9.6 billion budget deficit. ABX1 26 and ABX1 27 are so-called "trailer bills" which go along with, and help implement, the state budget bill. ABX1 26 eliminates all California redevelopment agencies ("RDAs") effective October 1, 2011. However, ABX1 27 provides that a California RDA can continue to operate and function after the October 1, 2011 elimination date if certain steps are taken by the applicable local jurisdiction, including passage of a local ordinance requiring the local jurisdiction to remit certain revenues to school entities and special districts. Taken together, the two bills effectively eliminate RDAs unless these agencies "voluntarily" turn over certain tax increment revenues for local government uses.

Yesterday, Governor Brown vetoed the state budget bill (AB 98 and SB 69). As of this writing, ABX1 26 and ABX1 27 have not yet been sent to Governor Brown for signature. Budget talks are still ongoing, so it is impossible to predict with certainty what will happen. Nevertheless, many believe that Governor Brown will sign ABX1 26 and ABX1 27 as soon as the Legislature sends him an acceptable, revised budget bill. If signed, ABX1 26 and ABX1 27 would take effect immediately.

Most of the provisions of ABX1 26 are taken from Governor Brown's initial proposal to eliminate RDAs, and therefore will be familiar to those who have received Cox Castle & Nicholson's client alerts and e-mails over the past few months. ABX1 26 eliminates RDAs effective October 1, 2011, and protects only those "enforceable obligations" existing as of the date of the Governor's signature. It also prohibits RDAs from taking actions or spending money between the effective date of the legislation and the October 1 RDA elimination date, except for actions or payments made to honor existing obligations. ABX1 26 also empowers the state controller to "claw back" certain assets transferred by an RDA to the relevant local jurisdiction or housing authority after January 1, 2011—a direct response to the efforts of certain RDAs earlier this year to avoid prospectively the reach of Governor Brown's proposed RDA elimination by moving RDA assets over to the city, county or local housing authority, as applicable. Accordingly, any financing involving the direct or indirect use of RDA funds that was committed after January 1, 2011, needs to be reevaluated immediately to consider the application of these two bills.

The enforceable obligation requirement is intended to protect existing contracts with RDAs. Under ABX1 26, however, an RDA must submit a list of its existing obligations within 60 days of the effective date. Thus, a party to an existing contract should work closely with the applicable RDA to verify that the RDA includes the contract on its list of existing obligations, and timely submits the list.

There are some notable differences between the final, approved version of ABX1 26 and the prior drafts of that bill that circulated in Sacramento over the last few months. For example, prior versions of ABX1 26 provided that the local jurisdiction that authorized the creation of an expiring RDA could elect to retain the housing assets and

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functions previously performed by that RDA, in which case all amounts on deposit in the RDA's Low and Moderate Income Housing Fund would be transferred to that local jurisdiction. The final version of ABX1 26, by contrast, treats the RDA's Low and Moderate Income Housing Fund like all other RDA unencumbered assets, requiring that all of those assets be distributed to local taxing authorities pursuant to a statutory method of apportionment.

Turning to ABX1 27, this bill reiterates that the motivating public policy behind the elimination of RDAs is primarily budgetary. If the local jurisdiction voluntarily commits to make annual Department of Finance-calculated deposits into an Educational Revenue Augmentation Fund (ERAF) benefitting local schools and into a Special District Allocation Fund (SDAF) benefitting local special districts (i.e., units of local government that provide some service not provided by the county or city), then the local RDA may continue to operate and function without regard to the October 1, 2011 elimination date. Essentially, these ERAF and SDAF funding obligations would serve to plug the local jurisdiction's share of the approximately \$5 billion in property tax revenues the Legislature believes are being diverted each year to RDAs.

Assuming that the Governor signs both ABX1 26 and ABX1 27, RDAs would have no power to approve new projects effective immediately. Local jurisdictions would be able to restore such power by enacting an ordinance pursuant to ABX1 27, but due to timing issues under the bill it is unclear if local jurisdictions will be able to do so for several months. In the interim, though, RDA doors would appear to be closed for new business.

These bills are lengthy and complicated, and contain many revisions negotiated at the eleventh hour. Therefore, we are continuing to study the final, approved versions of ABX1 26 and ABX1 27.

If you would like to discuss the implications of these bills on your projects, please contact:

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