

Memorandum 2012-11

**Community Redevelopment Law Cleanup:
Savings Provision**

Health and Safety Code Section 34189(b) requires the Law Revision Commission to “draft a Community Redevelopment Law cleanup bill for consideration by the Legislature no later than January 1, 2013.”

At its February 2012 meeting, the Commission approved a general methodology for the conduct of that study:

- The Commission’s clean-up work will be limited to making technical changes to conform to the effect of ABx1 26 (Blumenfield).
- The Commission will not recommend any revisions to construe, clarify, or alter the substantive effect of ABx1 26.
- The Commission’s clean-up work will not alter the existing powers and duties of successor agencies, as established by ABx1 26.
- The Commission’s clean-up work will not alter the existing status of the employees of former redevelopment agencies, as established by ABx1 26.
- The Commission’s clean-up work will not disturb the existing allocation of the revenue of former redevelopment agencies, as established by ABx1 26.
- The scope of the Commission’s clean-up work will include Parts 1, 1.5, 1.7, 1.8, 1.85, and 1.9 of Division 24 of the Health and Safety Code. The Commission will also correct any cross-references to any of those provisions.
- If the Commission discovers a possible substantive defect in ABx1 26 or any other provision of the community redevelopment statutes, the matter will be noted in an appendix for inclusion in the Commission’s final report. The appendix will state expressly that it has been prepared solely for informational purposes and that the Commission does not take any position on whether or how any of the issues noted in the appendix should be addressed. The appendix will also make clear that the omission of any issue

Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission’s website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission’s staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting.

from the appendix should not be construed to infer that the Commission evaluated the issue and concluded that it is unproblematic.

- If the Commission determines that a provision of the community redevelopment statute is wholly obsolete, it shall recommend the provision's repeal.
- The staff will prepare a general "savings provision" for review by the Commission at its next meeting. The savings provision will expressly declare that the Commission's clean-up work does not have any effect on the existing powers and duties of successor agencies, the existing rights and obligations of the employees of former redevelopment agencies, the existing rules for allocation of the revenue of former redevelopment agencies, or any other substantive effect of ABx1 26.

See Minutes (Feb. 2012), p. 6.

This memorandum discusses the "savings provision" noted in the last bullet point above. Unless otherwise indicated, all statutory citations in this memorandum are to the Health and Safety Code.

WHAT IS A "SAVINGS PROVISION?"

In general, a "savings provision" is a provision that preserves the effect of former law, despite the repeal, amendment, or invalidity of the former law. Savings provisions can be framed in a number of different (but related) ways.

One type of savings provision is a provision that makes clear that technical and organizational changes in statutory law have no effect on the substance of that law. For example, when the Commission recommended the nonsubstantive reorganization of deadly weapons law, the recommendation included this savings provision:

Penal Code § 16005. Nonsubstantive reform

Nothing in the Deadly Weapons Recodification Act of 2010 is intended to substantively change the law relating to deadly weapons. The act is intended to be entirely nonsubstantive in effect. Every provision of this part, of Title 2 (commencing with Section 12001) of Part 4, and every other provision of this act, including, without limitation, every cross-reference in every provision of the act, shall be interpreted consistent with the nonsubstantive intent of the act.

See *Nonsubstantive Reorganization of Deadly Weapon Statutes*, 38 Cal. L. Revision Comm'n Reports 217 (2009).

Similarly, the Commission recommendation to reorganize the civil discovery statutes contained the following uncodified provision:

SEC. _____. Nothing in this act is intended to substantively change the law of civil discovery.

Civil Discovery: Nonsubstantive Reform, 33 Cal. L. Revision Comm'n Reports 789, 969 (2003); see also 2004 Cal. Stat. ch. 182, § 61. Those types of savings provisions are useful where a statutory reform involves extensive technical changes but is intended to be entirely nonsubstantive.

Another situation where a savings provision is helpful is where substantive changes are made to the law, but they are not intended to apply retroactively. In this situation it is helpful to have a transitional provision (a type of savings provision) expressly declaring that the former law continues to apply to events arising prior to the operative date of the new law. For example, when the Commission recommended a substantive overhaul of the law governing the statutory presumption of undue influence applicable to certain gifts, the change in the law was made prospective. See Prob. Code § 21392(a). Under the general transitional provision governing the Probate Code (which was added as part of the Commission-recommended recodification of the entire Probate Code), former law continues to apply to matters not governed by a “new law” even if the old law is no longer on the books:

(g) If the new law does not apply to a matter that occurred before the operative date, the old law continues to govern the matter notwithstanding its amendment or repeal by the new law.

A savings provision can also be used in a more targeted way, to preserve specific rights or responsibilities despite a change in the law that might otherwise appear to have eliminated or changed those rights and responsibilities. For example, the Commission's recommendation on Trial Court Restructuring contained the following uncodified provision:

SEC. _____. If a right, privilege, duty, authority, or status, including but not limited to, a qualification for office, salary range, or employment benefit, is based on a provision of law repealed by this act, and if a statute, order, rule of court, memorandum of understanding, or other legally effective instrument provides that the right, duty, authority, or status continues for a period beyond the effective date of the repeal, that provision of law continues in effect for that purpose, notwithstanding its repeal by this act.

Statutes Made Obsolete by Trial Court Restructuring: Part 1, 32 Cal. L. Revision Comm'n Reports 1, 566 (2002).

Another interesting type of savings provision are the annual “validating acts” that the Legislature enacts each year. These acts expressly affirm the legal existence of all public bodies within the state, affirm the validity of their boundaries, affirm specified public body actions, and limit the time available to challenge those actions. See, e.g., 2011 Cal. Stat. ch. 303 (SB 193 (Committee on Government and Finance)). Why? The validating acts serve to globally trump any technical errors that might otherwise affect public entity bond or credit ratings. The Senate Government and Finance Committee analysis of SB 193 explains:

Purpose of the bill. The annual Validating Acts protect investors from the chance that a minor error might undermine the legal integrity of a public agency’s bond. Banks, pension funds, and other investors will not buy public agencies’ securities unless they are sound investments. Investors rely on legal opinions from bond counsels to assure the bonds’ creditworthiness. Without legislative action to cure technical errors, bond counsels are reluctant to certify bonds as good credit risks. SB 193 gives legislative protection to public agencies and private investors.

In effect, these validating acts are declaring that certain technical errors have no legal effect, notwithstanding the apparent existence of those errors “on the books.”

NEED FOR SAVINGS PROVISION

Redevelopment Law Mostly Obsolete

ABx1 26 prohibited the creation of new RDAs and eliminated all existing RDAs. See Sections 34166, 34172. On first glance, these changes would seem to make all of the existing statutes that govern RDA operations obsolete. However, as discussed below, existing redevelopment statutes will continue to have some relevance during the “transitional period” that follows the elimination of RDAs.

Continuing Relevance During “Transitional Period”

Although RDAs have now shut their doors, ABx1 26 created “successor agencies” and charged them with winding down the affairs of the former RDAs. Section 34713(a). While much of the winding down process involves liquidation of the former RDA’s assets and obligations, a successor agency may be required

to continue to perform some redevelopment activities. Specifically, Section 34177(i) requires a successor agency to “[c]ontinue to oversee development of properties until the contracted work has been completed or the contractual obligations of the former redevelopment agency can be transferred to other parties.”

Presumably, when a successor agency performs ongoing redevelopment activities pursuant to Section 34177(i), it is governed by any relevant provisions of redevelopment law that were in effect when the successor agencies took over the responsibilities of the former RDAs. This seems to be the import of Section 34173(b), which vests a successor agency with the statutory “authority, rights, powers, duties, and obligations” of the former RDA that it succeeds.

Existing law will also remain relevant during the period in which any redevelopment-related litigation is pending or may be brought.

For the purposes of this memorandum (and future memoranda in this study), the staff will use the term “transitional period” to refer to the period during which many provisions of existing redevelopment law will have continuing relevance. The draft savings provision presented below defines “transitional period” as follows:

“Transitional period” means the period during which either or both of the following are true:

(A) A successor agency is winding down the affairs of a former redevelopment agency.

(B) An arbitration, administrative adjudication or other administrative proceeding, civil action or proceeding, criminal action or proceeding, or any other kind of legally binding proceeding relating to redevelopment is pending or may be brought without violating the applicable statute of limitations.

See proposed Section 33090(a)(3), below.

Effect of Savings Provision

The complication discussed above can be managed by taking a two-pronged approach to the clean-up work:

- (1) Repeal all provisions of existing law that will be entirely obsolete after the end of the transitional period.
- (2) Add a broad savings provision expressly providing that the clean-up legislation has *no* substantive effect on the application of redevelopment law during the transitional period.

The advantage of this approach is that it would allow the Commission to prepare comprehensive clean-up legislation, as directed by Section 34189(b), within the deadline provided for that work, without disturbing the effect of existing law that remains relevant during the transitional period.

The disadvantage of the savings provision approach is that it will require successor agencies and other interested persons to comply with law that is no longer “on the books.” That will be inconvenient, but the inconvenience will be temporary.

There are ample precedents for requiring compliance with former statutory law that is no longer on the books. For example, the constitutional prohibition on *ex post facto* laws means that a person charged with a crime cannot be tried under substantive criminal law that is more punitive than the law as it existed at the time of the alleged offense. In other words, if current law is more punitive than former law, the criminal must be tried pursuant to former law, even though that law is no longer on the books. See generally 1 B. Witkin, Cal. Crim. Law *Crimes* § 10 (3d ed. 2010).

And, as discussed above, the same principle applies when a change in civil law is made prospective only — acts completed while the former law was in effect are governed by the former law, even if that law is no longer on the books. See, e.g., Prob. Code § 3(g).

Publication of Former Law During Transitional Period

The practical inconvenience described above could be reduced somewhat if the former law were made readily available to the public during the transitional period. This could be achieved through informal publication of the former law, in an easily accessible form.

It is possible that private legal publishers would step forward and provide this service. However, it might be a good idea to address the issue directly in the proposed law. For example, the proposed law could include a provision along the following lines, requiring the Legislative Counsel to publish the former redevelopment statutes on the Internet, for use as a reference:

The Legislative Counsel shall prepare and publish an electronic report comprised of the code provisions repealed by the act that added this section. This report shall be made available on the Internet until January 1, 2023.

Should such a provision be included in the proposed law? If so, what time period should be used? The language above would provide for a 10-year publication period.

Alternative Approaches

Although the purpose of this memorandum is to set out a draft of a savings provision, it is worth briefly discussing the alternatives to using a savings provision. The staff sees two alternatives:

(1) Repeal only those provisions that have no relevance during the transitional period. For example, provisions that *only* relate to the creation of new RDAs will probably have no future relevance, as Section 34166 prohibits the creation of new RDAs. This would be an extremely modest approach, which would do very little actual clean-up. The bulk of redevelopment law, which will be obsolete at the end of the transitional period, would be left in place.

(2) Amend each provision that remains relevant during the transitional period, to reflect the shift in responsibility from RDAs to their successor agencies. This would require analysis of every provision of existing redevelopment law to determine whether it has any continuing relevance during the transitional period and, if so, how to adjust it to reflect any shift in responsibilities. This would involve more work than could reasonably be completed in the time available. The task would be made much more difficult to the extent that there are ambiguities in ABx1 26. Such ambiguities could make it impossible to know how a provision should be adjusted to effectuate the Legislature's intentions. In some cases, the Commission might be reduced to making an educated guess. In other cases, the issues involved might prompt strong disagreement among different stakeholder groups, which would be difficult to resolve without making political judgments.

Is the Commission interested in exploring either of those alternative approaches further?

SCOPE OF SAVINGS PROVISION

To be effective, the savings provision must be global in its application. It must make clear that the clean-up legislation has absolutely no substantive effect on the operation of redevelopment law during the transitional period.

To achieve that breadth of application, the staff recommends that the savings provision include the following features:

- (1) *Broad catch-all language.* The substantive language of the savings provision should be framed broadly, to make clear that the clean-up language has no substantive effect on any law governing redevelopment during the transitional period.
- (2) *Illustrative non-exclusive list of things left undisturbed.* To further aid understanding and avoid disputes on the most critical issues, the savings provision should include a list of the most significant points of existing law that would not be altered by the clean-up legislation. The list should be expressly non-exclusive, to avoid any implied limitation on the breadth of the catch-all language.
- (3) *A statement of legislative intent.* Such a statement can provide further explanatory context and can make clear that the savings provision should be interpreted liberally so as to achieve its purpose.

Consistent with the methodology that the Commission adopted at its February 2012 meeting, the illustrative list should make clear that the clean-up legislation has no effect on any of the following elements of existing law:

- (1) The authority, rights, powers, duties, and obligations of successor agencies.
- (2) The status of the employees of former RDAs.
- (3) The revenue allocation scheme put into place by ABx1 26.

In thinking more about these matters, the staff believes it would also be helpful if the illustrative list were to include the following matters:

- (1) The authority, rights, powers, duties, and obligations of *third parties*, with respect to redevelopment-related matters. For example, Section 33080 requires an RDA to prepare a specified annual report. Section 33080.8 requires the *State Controller* to take certain actions relating to an RDA's annual report. This statutory duty of the State Controller should not be disturbed by the proposed law.
- (2) Existing law governing rules of evidence or civil procedure in a legal action involving a successor agency. For example, Section 33501.9 provides that "Any action brought in the superior court relating to the adoption or amendment of a redevelopment plan may be subject to a mediation proceeding conducted pursuant to Chapter 9.3 (commencing with Section 66030) of Division 1 of Title 7 of the Government Code." If such an action is pending or can be brought during the transitional period, then the rule provided in Section 33501.9 should not be disturbed.

- (3) The validity of existing bonds.
- (4) The validity of officially promulgated ordinances, regulations, plans, and other legally operative documents.

It seems likely that further work on redevelopment law will expose other issues that should be added to the illustrative list. If so, they can be addressed at that time.

DRAFT OF SAVINGS PROVISION

The staff recommends that a provision along the following lines be included in the proposed law:

Health & Safety Code § 33090 (added). Transitional provision

33090. (a) For the purposes of this section, the following terms have the following meanings:

(1) “Former law” means the law in effect before the operative date of the Redevelopment Clean-Up Act.

(2) “Redevelopment Clean-Up Act” means the act that added this section.

(3) “Transitional period” means the period during which either or both of the following are true:

(A) A successor agency is winding down the affairs of a former redevelopment agency.

(B) An arbitration, administrative adjudication or other administrative proceeding, civil action or proceeding, criminal action or proceeding, or any other kind of legally binding proceeding relating to redevelopment is pending or may be brought without violating the applicable statute of limitations.

(b) The repeal or amendment of a provision of former law by the Redevelopment Clean-Up Act shall have no effect, during the transitional period, on the substance, construction, or application of former law with regards to any redevelopment-related matter, including, without limitation, any of the following redevelopment-related matters:

(1) The authority, rights, powers, duties, and obligations of a successor agency or any other person or entity who is granted or charged with authority, rights, powers, duties, and obligations relating to redevelopment.

(2) The allocation of revenue pursuant to Part 1.85 (commencing with Section 34170).

(3) The rights of an employee of a former redevelopment agency who became an employee of a successor agency pursuant to Section 34190.

(4) Any rules of evidence or procedure governing a legal action brought by or against a former redevelopment agency or a successor agency.

(5) The validity of any bond issued by a redevelopment agency.

(6) The validity of any redevelopment-related ordinance, regulation, plan, or other legally operative document promulgated by a former redevelopment agency, a successor agency, or other entity.

(c) The Legislature makes the following declarations of intent:

(1) The purpose of the Redevelopment Law Clean-Up Act is to repeal those provisions of law that will have no relevance or effect once the transitional period has ended. However, some of those obsolete provisions could have relevance during the transitional period.

(2) The law governing the redevelopment activities of successor agencies and other persons and entities during the transitional period is not affected in any way by the enactment of the Redevelopment Law Clean-Up Act. Whatever law governed those activities prior to enactment of the Redevelopment Law Clean-Up Act would apply to the same extent during the transitional period, notwithstanding the repeal or amendment of any code provision by the Redevelopment Law Clean-Up Act.

(3) The substantive and procedural law applicable in any redevelopment-related adjudicative proceeding is not affected in any way by the enactment of the Redevelopment Law Clean-Up Act. Whatever law governed those proceedings prior to enactment of the Redevelopment Law Clean-Up Act would apply to the same extent during the transitional period, notwithstanding the repeal or amendment of any code provision by the Redevelopment Law Clean-Up Act.

(4) Nothing in the Redevelopment Law Clean-Up Act is intended to endorse, abrogate, or otherwise affect any judicial decision interpreting a provision of former law.

(5) Nothing in the Redevelopment Law Clean-Up Act is intended to preclude any change in the law governing redevelopment during the transitional period.

(6) This section shall be liberally construed to achieve its purpose.

Comment. Section 33090 is intended to make clear that the Redevelopment Law Clean-Up Act has no effect on the validity, meaning, or application of a provision of former law during the transitional period. To the extent that a provision of former law applied to redevelopment matters before the operation of this section, it will continue to apply with the same meaning and effect during the transitional period, notwithstanding the repeal or amendment of the provision by the Redevelopment Law Clean-Up Act.

However, nothing in this section precludes future changes to redevelopment law. The meaning, effect, or application of a provision of former law could be changed or reinterpreted by a future statutory enactment or judicial interpretation.

The sole purpose of this section is to provide that the Redevelopment Law Clean-Up Act has no effect on the former law during the transitional period. Nothing in this section is intended to endorse, abrogate, or otherwise affect the validity, meaning, application, or judicial construction of a provision of former law.

Respectfully submitted,

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