

Memorandum 2012-14

**Community Redevelopment Law Cleanup: Legal Actions
(Discussion of Issues)**

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.

The "savings provision" noted in the last bullet point above is discussed in Memorandum 2012-11, with a draft of the proposed provision set out on pages 9-11 of that memorandum.

This memorandum provides preliminary analysis and staff recommendations regarding Chapter 5 ("Legal Actions") of Part 1 of Division 24 of the Health and Safety Code (Health & Safety Code §§ 33000-33080.8). Those provisions are reproduced in the attached Exhibit.

Throughout this memorandum, the staff uses the term "transitional period" as it is defined in the proposed savings provision:

"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 Memorandum 2012-11, p. 9.

Unless otherwise indicated, all statutory citations in this memorandum are to the Health and Safety Code.

TWO-STEP ANALYSIS

In this memorandum, the provisions of Chapter 5 will be analyzed in two-steps:

- (1) **Analyze the relevance of the provisions *after* the transitional period.** First, the staff will assess whether the group of provisions will serve any purpose after the end of the transitional period. In other words, once the affairs of all former redevelopment agencies (“RDAs”) have been wound down and all redevelopment-related litigation has been finally resolved, will the analyzed provisions still be needed? If not, the provisions are obsolete and should be repealed. If the group of provisions would serve some continuing purpose after the end of the transitional period, the staff will recommend that the provisions be retained, or suggest another means of effectively dealing with the situation.
- (2) **Analyze the relevance of the provisions *during* the transitional period.** Second, the staff will assess whether the group of provisions might have some continuing utility during the transitional period that would not be adequately preserved by the savings provision. If so, the staff will assess whether and how to adjust the savings provision to account for the issue.

ANALYSIS OF CHAPTER 5 — LEGAL ACTIONS

The provisions of Chapter 5 all fall into the same functional category. They are all provisions that authorize and regulate the conduct of specified types of legal actions, as follows:

- **Specified legal actions authorized, within specified time limitations.** See Sections 33500 (action to review validity of adoption or approval of redevelopment plan and related findings), 33501 (action to review the validity of bond or redevelopment plan). See also Section 33501.2 (prerequisite for bringing specified actions).
- **Standing, intervention, and service.** See Sections 33501(d)-(e) (“interested persons” who may bring action include Attorney General, Department of Finance, and specified agricultural entities), 33501.1 (Attorney General intervention), 33501.3 (mandatory service of documents on Attorney General), 33501.5 (mandatory service of documents on Director of Department of Housing and Community Development).
- **Miscellaneous procedural rules.** See Sections 33501.7 (limitation on indemnification), 33501.9 (mediation), 33502-33503 (finality of judgment), 33505 (limitation on settlement), 33510 (Government Claims Act), 33515 (limitation on use of RDA funds to bring action).

Relevance After Transitional Period

The legal actions governed by Chapter 5 involve the review of specified redevelopment-related decisions. Once all redevelopment activity has ceased,

those types of decisions will no longer be made. In fact, existing law appears to prohibit such decisions being made during the transitional period. See Sections 34162(a)(1) (redevelopment bonds may not be issued), 34164(a) (redevelopment plan may not be adopted or amended), (j)-(k) (findings or declarations relating to blight cannot be made or modified). Consequently, there should not be any new grounds for action under Chapter 5.

Once the courts have finally resolved all pending litigation brought under Chapter 5, the chapter will no longer be necessary. **It should be repealed as obsolete.**

Relevance During Transitional Period

Legal actions filed pursuant to Sections 33500 and 33501 may still be pending at this time. Furthermore, new actions could be filed for up to two years after a redevelopment-related decision that was made before RDAs were dissolved. See Sections 33500(c)-(d), 33501(c).

Consequently, Chapter 5 will remain relevant during the transitional period and should continue to govern the proceedings that it authorizes.

Is the savings provision sufficient to achieve that result? As recommended by the staff, the savings provision would make clear that the repeal of a provision by the clean-up legislation would have no effect, during the transitional period, on the “substance, construction, or application” of former law, including

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

See Memorandum 2012-11, p. 9 (emphasis added).

The reference to “rules of procedure” would encompass many of the provisions of Chapter 5, but it is not certain that it would include all of those provisions. For example, is a provision that creates a cause of action a “rule of procedure?” Perhaps not. **The staff therefore recommends that the savings provision be revised to include a reference to a provision that authorizes legal action.**

Furthermore, the language limiting the savings provision to an action “brought by or against a former redevelopment agency or a successor agency” is probably too narrow. Section 33500 appears to authorize an action against a “legislative body” and Section 33501 appears to authorize an action brought by the Attorney General, the Department of Finance, and some specified

agriculture-related entities. It is not clear that a former RDA or successor agency would necessarily be a party to such actions. **The staff therefore recommends that the savings provision be revised to delete the party-based limitation language.**

Those issues could be addressed by revising the relevant savings provision language as follows:

Any provision of former law authorizing legal action or specifying rules of evidence or procedure governing a legal action brought by or against a former redevelopment agency or a successor agency.

With that revision, the savings provision should be broad enough to encompass all of Chapter 5. **The staff recommends that the proposed revisions be made.**

Respectfully submitted,

Brian Hebert
Executive Director

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HEALTH AND SAFETY CODE

DIVISION 24. COMMUNITY DEVELOPMENT
AND HOUSING

PART 1. COMMUNITY REDEVELOPMENT LAW

CHAPTER 5. LEGAL ACTIONS

Article 1. Actions Involving Redevelopment Plans or Bonds

§ 33500. Action to review the validity of redevelopment plan and related findings

33500. (a) Notwithstanding any other provision of law, including Section 33501, an action may be brought to review the validity of the adoption or amendment of a redevelopment plan at any time within 90 days after the date of the adoption of the ordinance adopting or amending the plan, if the adoption of the ordinance occurred prior to January 1, 2011.

(b) Notwithstanding any other provision of law, including Section 33501, an action may be brought to review the validity of any findings or determinations by the agency or the legislative body at any time within 90 days after the date on which the agency or the legislative body made those findings or determinations, if the findings or determinations occurred prior to January 1, 2011.

(c) Notwithstanding any other law, including Section 33501, an action may be brought to review the validity of the adoption or amendment of a redevelopment plan at any time within two years after the date of the adoption of the ordinance adopting or amending the plan, if the adoption of the ordinance occurred after January 1, 2011.

(d) Notwithstanding any other law, including Section 33501, an action may be brought to review the validity of any findings or determinations by the agency or the legislative body at any time within two years after the date on which the agency or the legislative body made those findings or determinations, if the findings or determinations occurred after January 1, 2011.

§ 33501. Action to review validity of bond, redevelopment plan, or related matters

33501. (a) An action may be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure to determine the validity of bonds and the redevelopment plan to be financed or refinanced, in whole or in part, by the bonds, or to determine the validity of a redevelopment plan not financed by bonds, including without limiting the generality of the foregoing, the legality and validity of all proceedings theretofore taken for or in

1 any way connected with the establishment of the agency, its authority to transact
2 business and exercise its powers, the designation of the survey area, the selection
3 of the project area, the formulation of the preliminary plan, the validity of the
4 finding and determination that the project area is predominantly urbanized, and the
5 validity of the adoption of the redevelopment plan, and also including the legality
6 and validity of all proceedings theretofore taken and (as provided in the bond
7 resolution) proposed to be taken for the authorization, issuance, sale, and delivery
8 of the bonds, and for the payment of the principal thereof and interest thereon.

9 (b) Notwithstanding subdivision (a), an action to determine the validity of a
10 redevelopment plan, or amendment to a redevelopment plan that was adopted prior
11 to January 1, 2011, may be brought within 90 days after the date of the adoption of
12 the ordinance adopting or amending the plan.

13 (c) Any action that is commenced on or after January 1, 2011, which is brought
14 pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the
15 Code of Civil Procedure to determine the validity or legality of any issue,
16 document, or action described in subdivision (a), may be brought within two years
17 after any triggering event that occurred after January 1, 2011.

18 (d) For the purposes of protecting the interests of the state, the Attorney General
19 and the Department of Finance are interested persons pursuant to Section 863 of
20 the Code of Civil Procedure in any action brought with respect to the validity of an
21 ordinance adopting or amending a redevelopment plan pursuant to this section.

22 (e) For purposes of contesting the inclusion in a project area of lands that are
23 enforceably restricted, as that term is defined in Sections 422 and 422.5 of the
24 Revenue and Taxation Code, or lands that are in agricultural use, as defined in
25 subdivision (b) of Section 51201 of the Government Code, the Department of
26 Conservation, the county agricultural commissioner, the county farm bureau, the
27 California Farm Bureau Federation, and agricultural entities and general farm
28 organizations that provide a written request for notice, are interested persons
29 pursuant to Section 863 of the Code of Civil Procedure, in any action brought with
30 respect to the validity of an ordinance adopting or amending a redevelopment plan
31 pursuant to this section.

32 **§ 33501.1. Attorney General intervention**

33 33501.1. Notwithstanding Chapter 9 (commencing with Section 860) of Title 10
34 of the Code of Civil Procedure, the Attorney General may, pursuant to subdivision
35 (b) of Section 387 of the Code of Civil Procedure, intervene as of right in an
36 action specified in Section 33501 challenging the validity of any finding and
37 determination that a project area is blighted. The Attorney General may seek
38 permissive intervention pursuant to subdivision (a) of Section 387 of the Code of
39 Civil Procedure in any other action brought pursuant to Section 33501.

1 **§ 33501.2. Prerequisite for action under Section 33501**

2 33501.2. (a) An action shall not be brought pursuant to Section 33501 unless the
3 alleged grounds for noncompliance with this division were presented to the agency
4 or the legislative body orally or in writing by any person before the close of the
5 public hearing required by this division.

6 (b) A person shall not bring an action pursuant to Section 33501 unless a person
7 objected to the decision of the agency or the legislative body before the close of
8 the public hearing required by this division.

9 (c) This section does not preclude any organization formed after the approval of
10 a project from bringing an action pursuant to Section 33501 if a member of that
11 organization has complied with subdivision (b).

12 (d) This section does not apply to the Attorney General.

13 (e) This section does not apply to any alleged grounds for noncompliance with
14 this division for which there was no public hearing or other opportunity for
15 members of the public to raise those objections orally or in writing before the
16 decision by the agency or the legislative body, or if the agency or the legislative
17 body failed to give the notice required by law.

18 **§ 33501.3. Mandatory service on Attorney General**

19 33501.3. If an action specified in Section 33501 challenging the validity of any
20 finding and determination that the project area is blighted is filed in any court,
21 each party filing any pleading or brief with the court in that proceeding shall serve,
22 within three days of the filing with the court, a copy of that pleading or brief on
23 the Attorney General. Relief, temporary or permanent, shall not be granted to a
24 party unless that party files proof with the court showing that it has complied with
25 this section. A court may, by court order, allow a party to serve the Attorney
26 General after the three-day period, but only upon showing of good cause for not
27 complying with the three-day notice requirement, and that late service will not
28 prejudice the Attorney General's ability to review, and possibly participate in, the
29 action.

30 **§ 33501.5. Mandatory service on Director of Housing and Community Development in**
31 **certain actions**

32 33501.5. In any judicial action specified in Section 33501 in which the validity
33 of actions of the agency under Section 33334.2, 33334.3, or 33334.6 are in issue,
34 the party initiating the judicial action or otherwise challenging the validity of those
35 actions of the agency shall serve a copy of the complaint or answer alleging that
36 invalidity upon the Director of Housing and Community Development within 10
37 days after filing that complaint or answer with the court. The court may render no
38 judgment in the matter or provide other permanent or provisional relief to any
39 party until proof of service of the Director of Housing and Community
40 Development pursuant to this section has been submitted to the court. Nothing in
41 this section shall be deemed to expand the scope of Section 33501.

1 **§ 33501.7. Limitations on indemnification**

2 33501.7. Notwithstanding any other provision of law, an agency or legislative
3 body shall not permit or require a property owner or a real party in interest to
4 indemnify the agency or the legislative body against actions brought pursuant to
5 Section 33501 to challenge the adoption or amendment of a redevelopment plan,
6 as a condition of adopting or amending a redevelopment plan.

7 **§ 33501.9. Mediation**

8 33501.9. Any action brought in the superior court relating to the adoption or
9 amendment of a redevelopment plan may be subject to a mediation proceeding
10 conducted pursuant to Chapter 9.3 (commencing with Section 66030) of Division
11 1 of Title 7 of the Government Code.

12 **§ 33502. Judgment**

13 33502. The judgment shall determine the validity or invalidity, respectively, of
14 the matters specified in Section 33501. The judgment shall be subject to being
15 reopened under Section 473 or Section 473.5 of the Code of Civil Procedure or
16 otherwise only within 90 days after the entry of the judgment and petitioner and
17 any person who has appeared in the special proceeding shall have the right to
18 move for a new trial under proper circumstances and upon appropriate grounds
19 and to appeal from the judgment.

20 **§ 33503. Finality**

21 33503. The judgment, if no appeal is taken, or if taken and the judgment is
22 affirmed shall be forever binding and conclusive, as to all matters therein
23 adjudicated or which at that time could have been adjudicated, against the agency
24 and against all other parties and if the judgment determines that the agency is
25 lawfully established, that the redevelopment plan is valid and effective, that the
26 agency is authorized to issue such bonds and that such bonds when issued will be
27 valid, the judgment shall permanently enjoin the institution by any person of any
28 action or proceeding raising any issue as to which the judgment is binding and
29 conclusive.

30 **§ 33504. Other actions by obligees**

31 33504. Other actions by obligees are authorized by Sections 33660 and 33661.

32 **§ 33505. Limitation on settlement**

33 33505. (a) The agency and legislative body shall not authorize or approve the
34 settlement of any judicial action specified in Section 33501 that contests the
35 validity of the adoption or amendment of a redevelopment plan if the settlement
36 requires the expenditure of funds outside the project area unless the agency and
37 the legislative body have first held a public hearing on the proposed settlement
38 pursuant to this section.

1 (b) Notice of the public hearing shall be published once a week for two
2 successive weeks in a newspaper of general circulation in the community. Notice
3 of the public hearing shall be posted in at least five prominent locations inside the
4 project area for at least two weeks before the hearing. Notice of the hearing shall
5 be mailed by first-class mail to the project area committee, if any, and to any other
6 persons or organizations who have filed a written request for public notice.

7 (c) Copies of the proposed settlement shall be available for public inspection and
8 copying not later than the first date of publication of the public notice.

9 Article 2. Actions for Money or Damages

10 § 33510. Application of Government Claims Act

11 33510. All claims for money or damages against the agency are governed by
12 Part 3 (commencing with Section 900) and Part 4 (commencing with Section 940)
13 of Division 3.6 of Title 1 of the Government Code except as provided therein, or
14 by other statutes or regulations expressly applicable thereto.

15 Article 3. Actions Involving Public Agencies

16 § 33515. Limitation on use of redevelopment agency funds to file or maintain action

17 33515. (a) A redevelopment agency shall not, either directly or indirectly, use its
18 funds to file or maintain an action or proceeding in either of the following
19 circumstances:

20 (1) Against a public agency that does not have jurisdiction to conduct its
21 governmental activities within the jurisdiction of the redevelopment agency.

22 (2) The subject matter of the action involves real property outside the
23 jurisdictional boundaries of the redevelopment agency.

24 (b) The prohibition in subdivision (a) shall not preclude a redevelopment agency
25 from using its funds to:

26 (1) Defend itself against any action.

27 (2) File or maintain an action against a public agency or private entity regarding
28 the interpretation or enforcement of a written agreement between the
29 redevelopment agency and that public agency or private entity.

30 (c) No funds of a redevelopment agency shall be loaned or granted to any
31 person, corporation, or public agency to finance, in whole or in part, an action the
32 financing of which by a redevelopment agency is prohibited by subdivision (a). In
33 addition, a redevelopment agency shall not borrow funds from its community or
34 any other source to file or maintain an action which is prohibited by subdivision
35 (a).

36 (d) Nothing in this section shall prohibit a community from filing or maintaining
37 an action on behalf of the community and its redevelopment agency as long as
38 funds of the redevelopment agency are not used, either directly or indirectly, on
39 behalf of the lawsuit.

1 (e) For purposes of this article:

2 (1) "Finance" includes, but is not necessarily limited to, the payment of filing
3 fees, attorneys' fees, service fees, expert witness fees, consultants' fees, or any
4 other expenses or costs incurred in connection with an action.

5 (2) "Public agency" includes a local agency as defined in Section 54951 of the
6 Government Code and includes a joint powers agency or authority and a
7 redevelopment agency.
