

## Memorandum 2012-20

**Community Redevelopment Law Cleanup:  
Savings Provision**

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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, which included the following decision:

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.

A staff draft of a savings provision was set out in Memorandum 2012-11, which the Commission reviewed at its April 3, 2012, meeting. At that meeting, the Commission approved the staff draft for inclusion in a tentative recommendation, with a number of changes. See Minutes (April 2012), pp. 3-6.

In three instances, the Commission made general decisions about revisions to the savings provision, but left it to the staff to develop specific implementing language. This memorandum presents a staff draft of implementing language for the Commission’s consideration.

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

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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](http://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.

## REVISED SAVINGS PROVISION

With the revisions that were specifically approved by the Commission, the savings provision now reads as follows:

### **Health & Safety Code § 33090 (added). Savings 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 legally brought.

(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 policy, substance, construction, or application of former law with regard to any redevelopment-related matter, including, but not limited to, 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 provision of former law authorizing legal action or specifying rules of evidence or procedure governing a legal action.

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

(6) The validity of any redevelopment-related ordinance, resolution, referendum, regulation, plan, report, map, boundary description, or other legally operative document promulgated by a former redevelopment agency, a successor agency, or any other person or entity.

(7) Any rule or procedure relating to any aspect of redevelopment, including, but not limited to, any rule relating to an ordinance, resolution, referendum, regulation, bylaw, or other legislative act in connection with redevelopment.

(8) Any determination of a base year assessment roll.

(9) Any legislative declaration of public policy relating to redevelopment.

(c) Nothing in the Redevelopment Law Clean-Up Act endorses, abrogates, or otherwise affects any judicial decision interpreting a provision of former law or determining its constitutionality.

(d) Nothing in the Redevelopment Law Clean-Up Act precludes any change in the law governing redevelopment during the transitional period.

(e) 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.

## IMPLEMENTATION OF APRIL 2012 DECISIONS

### Mediation During Transitional Period

The purpose of the savings provision is to make clear that

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 policy, substance, construction, or application of former law with regard to any redevelopment-related matter....

Proposed Section 33090(b) (emphasis added).

“Transitional period” is defined to mean the period in 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 legally brought.

Proposed Section 33090(a)(3). In the interest of clarity and completeness, the Commission decided that the second prong of that definition, subparagraph (3)(B), should include a reference to mediation. See Minutes (April 2012), p. 5.

That cannot be accomplished by simply adding “mediation” to the list of proceedings in that subparagraph, because the last clause describes all of the listed proceedings as “legally binding,” and a mediation might not result in an enforceable agreement. **Instead, the staff recommends that the subparagraph be recast to read:**

(B) A redevelopment-related proceeding is pending or may be legally commenced. For the purposes of this section, “proceeding” means any adjudicative, investigative, or dispute resolution proceeding, including, without limitation, a civil, criminal, or administrative action or proceeding, mediation, or arbitration.

At the April meeting, the Commission also expressed interest in having the staff better harmonize the language of subparagraph (a)(3)(B) with the language of paragraph (b)(4) (which also addresses redevelopment-related proceedings).

**If the Commission decides to recast proposed Section 33090(a)(3)(B) along the lines recommended above, the staff recommends that paragraph (b)(4) also be revised, to make the two provisions more parallel, thus:**

(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 policy, substance, construction, or application of former law with regard to any redevelopment-related matter, including, but not limited to, any of the following redevelopment-related matters:

...  
(4) Any provision of former law authorizing ~~legal action~~ a redevelopment-related proceeding or specifying rules of evidence or procedure governing a ~~legal action~~ redevelopment-related proceeding.  
...

That revision would have three main benefits:

- (1) It would create parallelism between two conceptually-related provisions, increasing the likelihood that the shared concept will be understood the same way in both provisions.
- (2) It would make clear that paragraph (b)(4) is only concerned with “redevelopment-related” proceedings.
- (3) It would broaden the scope of paragraph (b)(4) to include matters that might not be understood to be “legal action” (e.g., mediation and administrative adjudication).

### **Should those changes be made?**

#### **“Redevelopment-Related” Legal Action**

At the April meeting, the Commission decided that “redevelopment-related” legal action should include both (1) legal action involving a redevelopment agency (“RDA”) or successor agency as a party, regardless of the subject matter, and (2) legal action involving a provision of redevelopment law. This would help to make clear that the capacity of an RDA to “sue and be sued” is not affected during the transitional period, even if a suit against an RDA does not involve redevelopment law. See Minutes (April 2012), p. 7.

At the April meeting, the Commission expressed some skepticism about trying to define the term “redevelopment-related” in the statute itself. Doing so might do more harm than good, especially if some aspect of redevelopment-related legal action is overlooked. Instead, the Commission suggested that the staff consider adding clarifying language to the Comment.

The Comment to Section 33090 could be revised to include the following explanatory language:

Subparagraph (a)(3)(B) and paragraph (b)(4) both refer to “redevelopment-related” proceedings. The term “redevelopment-related” should be construed broadly, to include any proceeding that involves redevelopment law, as well as any proceeding that involves a redevelopment agency or successor agency as a party, regardless of whether that proceeding is grounded in redevelopment law. For example, an employment discrimination action brought against a redevelopment agency should be considered “redevelopment-related.” See subdivision (e) (“This section shall be liberally construed to achieve its purpose.”).

### **Should those changes be made?**

## EXPANSION OF COMMENT

At the April meeting, the Commission deleted paragraphs (c)(1)-(3) from the first staff draft of the savings provision (expressing statements of legislative intent). The deleted paragraphs read:

(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.

The Commission directed the staff to consider moving some of the content of those paragraphs into the Comment.

**Having considered the matter, the staff recommends against doing so.** The Comment as originally drafted covers the same basic ground, providing:

**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.

When we reach the stage of drafting a narrative “preliminary part” for inclusion in the tentative recommendation, we will have another opportunity to fully explain the purpose and effect of the savings provision.

Respectfully submitted,

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