

The Fate of Redevelopment Agencies Lies with the State Supreme Court

As published in *The Daily Journal*

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By Jan. 15, 2012, the state Supreme Court is expected to decide a legislative challenge that will dramatically impact future development of cities across the Golden State. The Court's ruling on the validity of two controversial bills could forever change the face of California's redevelopment agencies, possibly obliterating them entirely. Even if the Court upholds the legislation and allows redevelopment agencies to resume operations, the redevelopment landscape is likely to be a far different place from 2012 onwards.

On June 29, Gov. Jerry Brown signed the two bills at issue into law, as part of a package intended to reduce the state's budget deficit. The first bill, AB X1 26, immediately prohibited redevelopment agencies from making loans, entering into contracts, adopting or amending redevelopment plans or incurring new debts. That bill also dissolved all existing redevelopment agencies as of Oct. 1, with the agencies' existing liabilities transferred to designated successor agencies.

The second bill, AB X1 27, allowed municipalities to avoid dissolution by voluntarily committing to specified annual payments designated to benefit schools and other local programs. To continue the existence of its redevelopment agency, a city was required to adopt an ordinance before Nov. 1, designating the applicable redevelopment agency as a participant in the voluntary payment program. Brown asserted these payments – totaling \$1.7 billion statewide for the current fiscal year – were necessary to resolve California's \$25.4 billion-dollar budget deficit.

Many municipalities and urban development proponents heavily criticized the two bills, asserting that the agencies could not afford the costs of the voluntary payments. These critics argued that redevelopment agencies would be forced to fold or rendered ineffective by the diminished resources. In July 2011, the California Redevelopment Association, the League of California Cities, and the cities of San Jose and Union City filed a lawsuit in the state Supreme Court, challenging the two bills as unconstitutional and in conflict with Proposition 22, which was recently approved by California voters to protect local government funds from state budget raids. In August, 2011, the Court issued a stay that allowed redevelopment agencies to conduct business as usual, but the stay was later modified by the Court to only freeze the obligation to make any payments to the state until it made a ruling. In September 2011, Atty. Gen. Kamala Harris filed an "informal opposition" to the lawsuit, claiming that because the Legislature created the redevelopment program, it may also terminate the program because no constitutional provision to the contrary exists. The county of Santa Clara also filed an opposition to the lawsuit. In addition, a large number of amicus briefs were filed; demonstrating the divisiveness of the issues before the Court. Nine briefs were filed in favor of the petitioners, and seven briefs were in support of the state.

The Supreme Court heard oral argument on Nov. 10. Each side argued strenuously that its respective position was necessary to avoid financially disastrous consequences. The petitioners noted that the worst possible result would be to uphold AB 1X 26 but void AB 1X 27 – thereby dissolving

redevelopment agencies without allowing a mechanism for them to be resurrected. However, the county of Santa Clara argued for just such a result, claiming that the county's schools had been adversely impacted by the diversion of funds to redevelopment agencies. The state argued that both bills were valid and should be upheld, as the Legislature intended. The justices asked probing questions of all advocates, leaving all possible outcomes on the table. The parties have requested that a decision be issued ahead of the Jan. 15, 2012, deadline for making the initial voluntary payments.

The California Redevelopment Association has estimated that over 90 percent of the state's agencies opted-in to the voluntary payment program created by AB 1X 27 to avoid the dissolution of their redevelopment agencies, including the largest California cities: Los Angeles, San Diego and San Francisco. These jurisdictions have concluded that, even with a reduced budget, redevelopment agencies serve a critical role in urban renewal projects like affordable housing and transit-oriented development. Until the Court issues its final ruling, California is faced with the uncertainty of what will happen to its redevelopment agencies, and to the hundreds of projects that may be impacted. In addition to affordable housing and urban in-fill developments, transportation and other infrastructure projects funded even in part by redevelopment agencies are at risk.

Moreover, every municipality is now scrambling to deal with the possibility of facing the worst-case scenario – a Supreme Court decision that upholds AB 1X 26 and dissolves the redevelopment agencies, while at the same time rejecting AB 1X 27 and thereby eliminating the option to avoid dissolution. With that risk looming large, many major redevelopment efforts around the Golden State are threatened or have been halted completely since the two bills took effect in July 2011. An example is the construction of the Gold Line Foothill Extension light rail project, proposed to expand mass transit in eastern Los Angeles County. Likewise, the development of the Transbay Transit Center in San Francisco is threatened because the center's funding depends in part on revenue from redevelopment agency projects on state-owned land. The list of threatened projects is not limited to California's largest cities, but impacts jurisdictions around the state. Examples in smaller cities include the proposed redevelopment of the Garden Grove Harbor Boulevard resort area, just south of Disneyland in Anaheim, and the redevelopment of two blighted blocks in the state capital of Sacramento with mixed-use residential and retail projects.

The redevelopment bills present a fascinating reflection of how the three branches of government interact: a budgetary solution proposed by the governor and codified by the Legislature must now survive the scrutiny of the state's highest judicial authority. The ultimate outcome is more than mere fodder for California constitutional law wonks, but could impact millions of Californians by changing the tools available to cities for eliminating urban blight and stimulating development.

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