

## CALIFORNIA

### *State Revives Improvement Tax Increment Finance Districts*

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California cities are now authorized to establish local community improvement-focused property tax increment financing (TIF) authorities, under a bill signed by Gov. Jerry Brown (D). The action comes four years after the governor led the charge to eliminate those entities.

The legislation (AB 2) authorizes local governments to create redevelopment agencies called community revitalization and investment authorities. Brown's approval of the bill could validate cities' complaints that the elimination of TIF agencies in 2011 robbed them of a critical community improvement tool. (Prior coverage: *State Tax Notes*, July 25, 2011, p. 217.)

The legislation contains provisions to prevent the previous redevelopment agencies' alleged abuse of power. But opponents aren't mollified, and some say the new law will allow local governments to resume an alleged pattern of condemning private property to acquire it for sales-tax generating retailers.

#### **A Scaled-Back Program**

The new law allows local governments to create special districts within which they can bond against a portion of revenues from property tax growth to pay for community improvement activities, including affordable housing and acquiring property for development through voluntary sales and the use of eminent domain.

A 2014 bill also allowed for the creation of TIF districts for infrastructure, but AB 2 is most similar to the previous redevelopment agencies, according to stakeholders.

In a signing statement on AB 2 and SB 107, a bill that includes provisions to help streamline the process of winding down the activities and obligations of redevelopment agencies in the state, Brown said AB 2 will "boost economic development in some of our most disadvantaged and deserving communities."

Brown's comments echoed those of both Assembly member Luis Alejo (D), the author of AB 2, and the League of California Cities, one of the main backers of the legislation.

"We've been hearing from our membership that since the dissolution of redevelopment, they need an economic development tool," said Patrick Whitnell, the league's general counsel. "In terms of the overall tax structure of the state, I think it is a reflection, particularly in the area of sales tax, how important those revenues are for cities in terms of being able to provide the level of services that their residents want."

Whitnell said AB 2 tries to take into account many criticisms of redevelopment agencies, which opponents ar-

gue pushed business development at the expense of communities. For example, areas slated for authorities must be low-income areas with higher-than-normal crime and crumbling infrastructure. The bill also implements a public process that allows community members and property owners to provide input, protest, and even vote on an authority's plan. Authorities are also subject to community review every 10 years, allowing voters to halt their operations.

Local governments also have to get permission from other taxing entities present in the district where an authority would be created to use those entities' portion of the future property tax increment generated there.

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"County governments get a seat on the governing body, and they get to decide whether they want to contribute their property tax share," said Jean Hurst, an attorney with Hurst Brooks Espinosa LLC and a former lobbyist for the California State Association of Counties. "The problem with the former version of redevelopment is [a city] was making the decision" to siphon county property tax revenues.

Another important difference between the new authorities and the former redevelopment agencies is that school districts are blocked from participating, which observers say was likely necessary to gain Brown's approval. When Brown campaigned against redevelopment agencies in 2011, the state was facing a major budget crunch and redevelopment agencies were taking some property taxes that would have otherwise funded schools, which required the state to back-fill the difference.

Cities and counties that haven't finished the process of winding down the affairs of their dissolved redevelopment agencies are ineligible to establish new authorities until the Department of Finance confirms they're done.

#### **Controversy Remains**

Despite the changes, critics argue that the new authorities rekindle bad policy and threaten private property rights, especially in poorer areas.

Marko Mlikotin of the California Alliance to Protect Private Property Rights said the legislation will lead to unjust taking of land. Under the old law, cities could condemn properties by declaring them "blighted." AB 2 imposes more specific criteria for an authority to pursue properties in an area, but Mlikotin said it still works against property owners.

"The new system is weaker; there are criteria that are beyond the property owners' control" such as crumbling civic infrastructure and crime, Mlikotin said. "It creates incentive to take private property by eminent domain."

Mlikotin also said the law's processes for community oversight and protest are confusing and will be hard for poor homeowners to navigate.

However, other observers say AB 2 does rein in the potential for eminent domain abuse. Attorney Jane Samson of Newmeyer & Dillion LLP, a land-use law expert, said the more specific criteria for condemning property actually help homeowners because courts tended to defer to redevelopment agencies when gauging the application of the vague term "blighted."

Whether or not the restrictions protect businesses and homeowners, there's also a risk they will hinder the new authorities' success.

One challenge will be whether there are enough resources without the school's share of the tax increment, according to Hurst.

Mlikotin said the authorities may also be too small to raise sufficient revenue. He said that instead of allowing cities to use TIF and property seizure, the state should give developers a break from the onerous permits process and regulation.

"Developers look for certainty," he said. "Expedite the permitting process."

But Seth Merewitz, an attorney with Best Best & Krieger LLP, said he believes AB 2 can be effective if used correctly. Redevelopment agencies used their tax increment finance authority to target large areas for general improvement, but AB 2 is scaled to facilitate more specific improvement projects, he said.

"I think what it's going to move us toward is more of a project-based revitalization rather than a project 'area.'" ☆