

AMENDED IN ASSEMBLY APRIL 8, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2406

Introduced by Assembly Member Blakeslee

February 19, 2010

An act to amend Section 33671 of the Health and Safety Code, An act to amend Section 33334.2 of, and to add Section 33670.6 to, the Health and Safety Code, relating to redevelopment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2406, as amended, Blakeslee. ~~Redevelopment—Grover Beach and Arroyo Grande Redevelopment Agencies: pooled housing funds.~~

The Community Redevelopment Law authorizes the establishment of redevelopment agencies in communities to address the effects of blight, as defined, in blighted areas in those communities known as project areas. Section 16 of Article XVI of the California Constitution authorizes a redevelopment agency to receive funding through tax increments attributable to increases in assessed property tax valuation of property in a project area due to redevelopment. Not less than 20% of tax increments generated from a project area are required to be used by a redevelopment agency to increase and improve the community's supply of low- and moderate-income housing.

This bill would authorize the Grover Beach Redevelopment Agency and the Arroyo Grande Redevelopment Agency to combine these funds and use them anywhere within the incorporated limits of the City of Grover Beach and the City of Arroyo Grande for capital outlay. The bill would require the agency to use these combined funds outside the project area upon a resolution of the agency and the city council determining that the use will be of benefit to the redevelopment project

area. The bill would state the findings and declarations of the Legislature concerning the need for special legislation.

~~Existing law provides that certain taxes may be irrevocably pledged for payment of the principal of and interest on debt incurred to finance redevelopment.~~

~~This bill would make technical, nonsubstantive changes to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 33334.2 of the Health and Safety Code
2 is amended to read:

3 33334.2. (a) Except as provided in subdivision (k), not less
4 than 20 percent of all taxes that are allocated to the agency pursuant
5 to Section 33670 shall be used by the agency for the purposes of
6 increasing, improving, and preserving the community’s supply of
7 low- and moderate-income housing available at affordable housing
8 cost, as defined by Section 50052.5, to persons and families of
9 low or moderate income, as defined in Section 50093, lower
10 income households, as defined by Section 50079.5, very low
11 income households, as defined in Section 50105, and extremely
12 low income households, as defined by Section 50106, that is
13 occupied by these persons and families, unless one of the following
14 findings is made annually by resolution:

15 (1) (A) That no need exists in the community to improve,
16 increase, or preserve the supply of low- and moderate-income
17 housing, including housing for very low income households in a
18 manner that would benefit the project area and that this finding is
19 consistent with the housing element of the community’s general
20 plan required by Article 10.6 (commencing with Section 65580)
21 of Chapter 3 of Division 1 of Title 7 of the Government Code,
22 including its share of the regional housing needs of very low
23 income households and persons and families of low or moderate
24 income.

25 (B) This finding shall only be made if the housing element of
26 the community’s general plan demonstrates that the community
27 does not have a need to improve, increase, or preserve the supply
28 of low- and moderate-income housing available at affordable

1 housing cost to persons and families of low or moderate income
2 and to very low income households. This finding shall only be
3 made if it is consistent with the planning agency's annual report
4 to the legislative body on implementation of the housing element
5 required by subdivision (b) of Section 65400 of the Government
6 Code. No agency of a charter city shall make this finding unless
7 the planning agency submits the report pursuant to subdivision (b)
8 of Section 65400 of the Government Code. This finding shall not
9 take effect until the agency has complied with subdivision (b) of
10 this section.

11 (2) (A) That some stated percentage less than 20 percent of the
12 taxes that are allocated to the agency pursuant to Section 33670
13 is sufficient to meet the housing needs of the community, including
14 its share of the regional housing needs of persons and families of
15 low- or moderate-income and very low income households, and
16 that this finding is consistent with the housing element of the
17 community's general plan required by Article 10.6 (commencing
18 with Section 65580) of Chapter 3 of Division 1 of Title 7 of the
19 Government Code.

20 (B) This finding shall only be made if the housing element of
21 the community's general plan demonstrates that a percentage of
22 less than 20 percent will be sufficient to meet the community's
23 need to improve, increase, or preserve the supply of low- and
24 moderate-income housing available at affordable housing cost to
25 persons and families of low or moderate income and to very low
26 income households. This finding shall only be made if it is
27 consistent with the planning agency's annual report to the
28 legislative body on implementation of the housing element required
29 by subdivision (b) of Section 65400 of the Government Code. No
30 agency of a charter city shall make this finding unless the planning
31 agency submits the report pursuant to subdivision (b) of Section
32 65400 of the Government Code. This finding shall not take effect
33 until the agency has complied with subdivision (b) of this section.

34 (C) For purposes of making the findings specified in this
35 paragraph and paragraph (1), the housing element of the general
36 plan of a city, county, or city and county shall be current, and shall
37 have been determined by the department pursuant to Section 65585
38 to be in substantial compliance with Article 10.6 (commencing
39 with Section 65580) of Chapter 3 of Division 1 of Title 7 of the
40 Government Code.

1 (3) (A) That the community is making a substantial effort to
2 meet its existing and projected housing needs, including its share
3 of the regional housing needs, with respect to persons and families
4 of low and moderate income, particularly very low income
5 households, as identified in the housing element of the
6 community's general plan required by Article 10.6 (commencing
7 with Section 65580) of Chapter 3 of Division 1 of Title 7 of the
8 Government Code, and that this effort, consisting of direct financial
9 contributions of local funds used to increase and improve the
10 supply of housing affordable to, and occupied by, persons and
11 families of low or moderate income and very low income
12 households is equivalent in impact to the funds otherwise required
13 to be set aside pursuant to this section. In addition to any other
14 local funds, these direct financial contributions may include federal
15 or state grants paid directly to a community and that the community
16 has the discretion of using for the purposes for which moneys in
17 the Low and Moderate Income Housing Fund may be used. The
18 legislative body shall consider the need that can be reasonably
19 foreseen because of displacement of persons and families of low
20 or moderate income or very low income households from within,
21 or adjacent to, the project area, because of increased employment
22 opportunities, or because of any other direct or indirect result of
23 implementation of the redevelopment plan. No finding under this
24 subdivision may be made until the community has provided or
25 ensured the availability of replacement dwelling units as defined
26 in Section 33411.2 and until it has complied with Article 9
27 (commencing with Section 33410).

28 (B) In making the determination that other financial
29 contributions are equivalent in impact pursuant to this subdivision,
30 the agency shall include only those financial contributions that are
31 directly related to programs or activities authorized under
32 subdivision (e).

33 (C) The authority for making the finding specified in this
34 paragraph shall expire on June 30, 1993, except that the expiration
35 shall not be deemed to impair contractual obligations to
36 bondholders or private entities incurred prior to May 1, 1991, and
37 made in reliance on the provisions of this paragraph. Agencies that
38 make this finding after June 30, 1993, shall show evidence that
39 the agency entered into the specific contractual obligation with

1 the specific intention of making a finding under this paragraph in
2 order to provide sufficient revenues to pay off the indebtedness.

3 (b) Within 10 days following the making of a finding under
4 either paragraph (1) or (2) of subdivision (a), the agency shall send
5 the Department of Housing and Community Development a copy
6 of the finding, including the factual information supporting the
7 finding and other factual information in the housing element that
8 demonstrates that either (1) the community does not need to
9 increase, improve, or preserve the supply of housing for low- and
10 moderate-income households, including very low income
11 households, or (2) a percentage less than 20 percent will be
12 sufficient to meet the community's need to improve, increase, and
13 preserve the supply of housing for low- and moderate-income
14 households, including very low income households. Within 10
15 days following the making of a finding under paragraph (3) of
16 subdivision (a), the agency shall send the Department of Housing
17 and Community Development a copy of the finding, including the
18 factual information supporting the finding that the community is
19 making a substantial effort to meet its existing and projected
20 housing needs. Agencies that make this finding after June 30, 1993,
21 shall also submit evidence to the department of its contractual
22 obligations with bondholders or private entities incurred prior to
23 May 1, 1991, and made in reliance on this finding.

24 (c) In any litigation to challenge or attack a finding made under
25 paragraph (1), (2), or (3) of subdivision (a), the burden shall be
26 upon the agency to establish that the finding is supported by
27 substantial evidence in light of the entire record before the agency.
28 If an agency is determined by a court to have knowingly
29 misrepresented any material facts regarding the community's share
30 of its regional housing need for low- and moderate-income housing,
31 including very low income households, or the community's
32 production record in meeting its share of the regional housing need
33 pursuant to the report required by subdivision (b) of Section 65400
34 of the Government Code, the agency shall be liable for all court
35 costs and plaintiff's attorney's fees, and shall be required to allocate
36 not less than 25 percent of the agency's tax increment revenues to
37 its Low and Moderate Income Housing Fund in each year
38 thereafter.

39 (d) Nothing in this section shall be construed as relieving any
40 other public entity or entity with the power of eminent domain of

1 any legal obligations for replacement or relocation housing arising
2 out of its activities.

3 (e) In carrying out the purposes of this section, the agency may
4 exercise any or all of its powers for the construction, rehabilitation,
5 or preservation of affordable housing for extremely low, very low,
6 low- and moderate-income persons or families, including the
7 following:

8 (1) Acquire real property or building sites subject to Section
9 33334.16.

10 (2) (A) Improve real property or building sites with onsite or
11 offsite improvements, but only if both (i) the improvements are
12 part of the new construction or rehabilitation of affordable housing
13 units for low- or moderate-income persons that are directly
14 benefited by the improvements, and are a reasonable and
15 fundamental component of the housing units, and (ii) the agency
16 requires that the units remain available at affordable housing cost
17 to, and occupied by, persons and families of extremely low, very
18 low, low, or moderate income for the same time period and in the
19 same manner as provided in subdivision (c) and paragraph (2) of
20 subdivision (f) of Section 33334.3.

21 (B) If the newly constructed or rehabilitated housing units are
22 part of a larger project and the agency improves or pays for onsite
23 or offsite improvements pursuant to the authority in this
24 subdivision, the agency shall pay only a portion of the total cost
25 of the onsite or offsite improvement. The maximum percentage
26 of the total cost of the improvement paid for by the agency shall
27 be determined by dividing the number of housing units that are
28 affordable to low- or moderate-income persons by the total number
29 of housing units, if the project is a housing project, or by dividing
30 the cost of the affordable housing units by the total cost of the
31 project, if the project is not a housing project.

32 (3) Donate real property to private or public persons or entities.

33 (4) Finance insurance premiums pursuant to Section 33136.

34 (5) Construct buildings or structures.

35 (6) Acquire buildings or structures.

36 (7) Rehabilitate buildings or structures.

37 (8) Provide subsidies to, or for the benefit of, extremely low
38 income households, as defined by Section 50106, very low income
39 households, as defined by Section 50105, lower income
40 households, as defined by Section 50079.5, or persons and families

1 of low or moderate income, as defined by Section 50093, to the
2 extent those households cannot obtain housing at affordable costs
3 on the open market. Housing units available on the open market
4 are those units developed without direct government subsidies.

5 (9) Develop plans, pay principal and interest on bonds, loans,
6 advances, or other indebtedness, or pay financing or carrying
7 charges.

8 (10) Maintain the community's supply of mobilehomes.

9 (11) Preserve the availability to lower income households of
10 affordable housing units in housing developments that are assisted
11 or subsidized by public entities and that are threatened with
12 imminent conversion to market rates.

13 (f) The agency may use these funds to meet, in whole or in part,
14 the replacement housing provisions in Section 33413. However,
15 nothing in this section shall be construed as limiting in any way
16 the requirements of that section.

17 (g) (1) The agency may use these funds inside or outside the
18 project area. The agency may only use these funds outside the
19 project area upon a resolution of the agency and the legislative
20 body that the use will be of benefit to the project. The
21 determination by the agency and the legislative body shall be final
22 and conclusive as to the issue of benefit to the project area. The
23 Legislature finds and declares that the provision of replacement
24 housing pursuant to Section 33413 is always of benefit to a project.
25 Unless the legislative body finds, before the redevelopment plan
26 is adopted, that the provision of low- and moderate-income housing
27 outside the project area will be of benefit to the project, the project
28 area shall include property suitable for low- and moderate-income
29 housing.

30 (2) (A) The Contra Costa County Redevelopment Agency may
31 use these funds anywhere within the unincorporated territory, or
32 within the incorporated limits of the City of Walnut Creek on sites
33 contiguous to the Pleasant Hill BART Station Area Redevelopment
34 Project area. The agency may only use these funds outside the
35 project area upon a resolution of the agency and board of
36 supervisors determining that the use will be of benefit to the project
37 area. In addition, the agency may use these funds within the
38 incorporated limits of the City of Walnut Creek only if the agency
39 and the board of supervisors find all of the following:

1 (i) Both the County of Contra Costa and the City of Walnut
2 Creek have adopted and are implementing complete and current
3 housing elements of their general plans that the Department of
4 Housing and Community Development has determined to be in
5 compliance with the requirements of Article 10.6 (commencing
6 with Section 65580) of Chapter 3 of Division 1 of Title 7 of the
7 Government Code.

8 (ii) The development to be funded shall not result in any
9 residential displacement from the site where the development is
10 to be built.

11 (iii) The development to be funded shall not be constructed in
12 an area that currently has more than 50 percent of its population
13 comprised of racial minorities or low-income families.

14 (iv) The development to be funded shall allow construction of
15 affordable housing closer to a rapid transit station than could be
16 constructed in the unincorporated territory outside the Pleasant
17 Hill BART Station Area Redevelopment Project.

18 (B) If the agency uses these funds within the incorporated limits
19 of the City of Walnut Creek, all of the following requirements
20 shall apply:

21 (i) The funds shall be used only for the acquisition of land for,
22 and the design and construction of, the development of housing
23 containing units affordable to, and occupied by, low- and
24 moderate-income persons.

25 (ii) If less than all the units in the development are affordable
26 to, and occupied by, low- or moderate-income persons, any agency
27 assistance shall not exceed the amount needed to make the housing
28 affordable to, and occupied by, low- or moderate-income persons.

29 (iii) The units in the development that are affordable to, and
30 occupied by, low- or moderate-income persons shall remain
31 affordable for a period of at least 55 years.

32 (iv) The agency and the City of Walnut Creek shall determine,
33 if applicable, whether Article XXXIV of the California Constitution
34 permits the development.

35 (h) The Legislature finds and declares that expenditures or
36 obligations incurred by the agency pursuant to this section shall
37 constitute an indebtedness of the project.

38 (i) This section shall only apply to taxes allocated to a
39 redevelopment agency for which a final redevelopment plan is
40 adopted on or after January 1, 1977, or for any area that is added

1 to a project by an amendment to a redevelopment plan, which
2 amendment is adopted on or after the effective date of this section.
3 An agency may, by resolution, elect to make all or part of the
4 requirements of this section applicable to any redevelopment
5 project for which a redevelopment plan was adopted prior to
6 January 1, 1977, subject to any indebtedness incurred prior to the
7 election.

8 (j) (1) (A) An action to compel compliance with the
9 requirement of Section 33334.3 to deposit not less than 20 percent
10 of all taxes that are allocated to the agency pursuant to Section
11 33670 in the Low and Moderate Income Housing Fund shall be
12 commenced within 10 years of the alleged violation. A cause of
13 action for a violation accrues on the last day of the fiscal year in
14 which the funds were required to be deposited in the Low and
15 Moderate Income Housing Fund.

16 (B) An action to compel compliance with the requirement of
17 this section or Section 33334.6 that money deposited in the Low
18 and Moderate Income Housing Fund be used by the agency for
19 purposes of increasing, improving, and preserving the community's
20 supply of low- and moderate-income housing available at
21 affordable housing cost shall be commenced within 10 years of
22 the alleged violation. A cause of action for a violation accrues on
23 the date of the actual expenditure of the funds.

24 (C) An agency found to have deposited less into the Low and
25 Moderate Income Housing Fund than mandated by Section 33334.3
26 or to have spent money from the Low and Moderate Income
27 Housing Fund for purposes other than increasing, improving, and
28 preserving the community's supply of low- and moderate-income
29 housing, as mandated, by this section or Section 33334.6 shall
30 repay the funds with interest in one lump sum pursuant to Section
31 970.4 or 970.5 of the Government Code or may do either of the
32 following:

33 (i) Petition the court under Section 970.6 for repayment in
34 installments.

35 (ii) Repay the portion of the judgment due to the Low and
36 Moderate Income Housing Fund in equal installments over a period
37 of five years following the judgment.

38 (2) Repayment shall not be made from the funds required to be
39 set aside or used for low- and moderate-income housing pursuant
40 to this section.

1 (3) Notwithstanding clauses (i) and (ii) of subparagraph (C) of
2 paragraph (1), all costs, including reasonable attorney's fees if
3 included in the judgment, are due and shall be paid upon entry of
4 judgment or order.

5 (4) Except as otherwise provided in this subdivision, Chapter
6 2 (commencing with Section 970) of Part 5 of Division 3.6 of Title
7 1 of the Government Code for the enforcement of a judgment
8 against a local public entity applies to a judgment against a local
9 public entity that violates this section.

10 (5) This subdivision applies to actions filed on and after January
11 1, 2006.

12 (6) The limitations period specified in subparagraphs (A) and
13 (B) of paragraph (1) does not apply to a cause of action brought
14 pursuant to Chapter 9 (commencing with Section 860) of Title 10
15 of Part 2 of the Code of Civil Procedure.

16 (k) (1) From July 1, 2009, to June 30, 2010, inclusive, an agency
17 may suspend all or part of its required allocation to the Low and
18 Moderate Income Housing Fund from taxes that are allocated to
19 that agency pursuant to Section 33670.

20 (2) An agency that suspends revenue pursuant to paragraph (1)
21 shall pay back to its low- and moderate-income housing fund the
22 amount of revenue that was suspended in the 2009–10 fiscal year
23 pursuant to this subdivision from July 1, 2010, to June 30, 2015,
24 inclusive.

25 (3) An agency that suspends revenue pursuant to paragraph (1)
26 and fails to repay or have repaid on its behalf the amount of revenue
27 suspended pursuant to paragraph (2) shall, commencing July 1,
28 2015, be required to allocate an additional 5 percent of all taxes
29 that are allocated to that agency pursuant to Section 33670 for low-
30 and moderate-income housing for the remainder of the time that
31 the agency receives allocations of tax revenue pursuant to Section
32 33670.

33 (4) An agency that fails to pay or have paid on its behalf the
34 full amount calculated pursuant to subparagraph (J) of paragraph
35 (2) of subdivision (a) of Section 33690, or subparagraph (J) of
36 paragraph (2) of subdivision (a) of Section 33690.5, as the case
37 may be, shall, commencing July 1, 2010, or July 1, 2011, as
38 applicable, be required to allocate an additional 5 percent of all
39 taxes that are allocated to that agency pursuant to Section 33670
40 for low- and moderate-income housing for the remainder of the

1 time that the agency receives allocations of tax revenue pursuant
2 to Section 33670.

3 *(l) The Grover Beach Redevelopment Agency and the Arroyo*
4 *Grande Redevelopment Agency may combine these funds and use*
5 *them anywhere within the incorporated limits of the City of Grover*
6 *Beach and the City of Arroyo Grande. An agency may only use*
7 *these combined funds outside the project area upon a resolution*
8 *of the agency and the city council determining that the use will be*
9 *of benefit to the redevelopment project area. Funds may not be*
10 *used for this purpose until each city is determined by the*
11 *Department of Housing and Community Development to be in*
12 *compliance with the state housing element.*

13 *SEC. 2. Section 33670.6 is added to the Health and Safety*
14 *Code, to read:*

15 *33670.6. With respect to funds allocated pursuant to Section*
16 *33670, the Grover Beach Redevelopment Agency and the Arroyo*
17 *Grande Redevelopment Agency may combine these funds and use*
18 *them anywhere within the incorporated limits of the City of Grover*
19 *Beach and the City of Arroyo Grande. An agency may only use*
20 *these combined funds outside the project area upon a resolution*
21 *of the agency and the city council determining that the use will be*
22 *of benefit to the redevelopment project area. Funds may not be*
23 *used for this purpose until each city is determined by the*
24 *Department of Housing and Community Development to be in*
25 *compliance with the state housing element.*

26 *SEC. 3. The Legislature finds and declares that this act is a*
27 *special law that is necessary because a general law cannot be*
28 *made applicable within the meaning of Section 16 of Article IV of*
29 *the California Constitution because of the unique circumstances*
30 *of the Grover Beach Redevelopment Agency and the Arroyo Grande*
31 *Redevelopment Agency.*

32 ~~SECTION 1. Section 33671 of the Health and Safety Code is~~
33 ~~amended to read:~~

34 ~~33671. In any redevelopment plan or in the proceedings for~~
35 ~~the advance of moneys, making of loans, or the incurring of any~~
36 ~~indebtedness, whether funded, refunded, assumed, or otherwise,~~
37 ~~by the redevelopment agency to finance or refinance, in whole or~~
38 ~~in part, the redevelopment project, the portion of taxes referred to~~
39 ~~in subdivision (b) of Section 33670 may be irrevocably pledged~~

- 1 ~~for the payment of the principal of and interest on those loans,~~
- 2 ~~advances, or indebtedness.~~

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