

Introduced by Senator Florez

February 26, 2009

An act to amend Section 33334.2 of the Health and Safety Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

SB 477, as introduced, Florez. Low- and moderate-income housing: agency powers.

The Community Redevelopment Law requires that not less than 20% of the tax-increment revenue allocated to a redevelopment agency be used to increase, improve, and preserve the supply of the community's low- and moderate-income housing within the territorial jurisdiction of the agency, unless a specified finding is made annually by resolution. In carrying out this purpose, existing law authorizes the agency to exercise any or all of its powers for the construction, rehabilitation, or preservation of affordable housing for extremely low, very low, low-, and moderate-income persons or families.

This bill would include among the agency's powers the authority to loan, grant, or otherwise contribute or pledge funds to an authorized purchaser, as defined, of low-income housing tax credits for the construction of low-income rental housing located within the community.

Vote: majority. Appropriation: no. Fiscal committee: yes.
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:

1 33334.2. (a) Not less than 20 percent of all taxes that are
2 allocated to the agency pursuant to Section 33670 shall be used
3 by the agency for the purposes of increasing, improving, and
4 preserving the community's supply of low- and moderate-income
5 housing available at affordable housing cost, as defined by Section
6 50052.5, to persons and families of low or moderate income, as
7 defined in Section 50093, lower income households, as defined
8 by Section 50079.5, very low income households, as defined in
9 Section 50105, and extremely low income households, as defined
10 by Section 50106, that is occupied by these persons and families,
11 unless one of the following findings is made annually by resolution:

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

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

36 (2) (A) That some stated percentage less than 20 percent of the
37 taxes that are allocated to the agency pursuant to Section 33670
38 is sufficient to meet the housing needs of the community, including
39 its share of the regional housing needs of persons and families of
40 low- or moderate-income and very low income households, and

1 that this finding is consistent with the housing element of the
2 community's general plan required by Article 10.6 (commencing
3 with Section 65580) of Chapter 3 of Division 1 of Title 7 of the
4 Government Code.

5 (B) This finding shall only be made if the housing element of
6 the community's general plan demonstrates that a percentage of
7 less than 20 percent will be sufficient to meet the community's
8 need to improve, increase, or preserve the supply of low- and
9 moderate-income housing available at affordable housing cost to
10 persons and families of low or moderate income and to very low
11 income households. This finding shall only be made if it is
12 consistent with the planning agency's annual report to the
13 legislative body on implementation of the housing element required
14 by subdivision (b) of Section 65400 of the Government Code. No
15 agency of a charter city shall make this finding unless the planning
16 agency submits the report pursuant to subdivision (b) of Section
17 65400 of the Government Code. This finding shall not take effect
18 until the agency has complied with subdivision (b) of this section.

19 (C) For purposes of making the findings specified in this
20 paragraph and paragraph (1), the housing element of the general
21 plan of a city, county, or city and county shall be current, and shall
22 have been determined by the department pursuant to Section 65585
23 to be in substantial compliance with Article 10.6 (commencing
24 with Section 65580) of Chapter 3 of Division 1 of Title 7 of the
25 Government Code.

26 (3) (A) That the community is making a substantial effort to
27 meet its existing and projected housing needs, including its share
28 of the regional housing needs, with respect to persons and families
29 of low and moderate income, particularly very low income
30 households, as identified in the housing element of the
31 community's general plan required by Article 10.6 (commencing
32 with Section 65580) of Chapter 3 of Division 1 of Title 7 of the
33 Government Code, and that this effort, consisting of direct financial
34 contributions of local funds used to increase and improve the
35 supply of housing affordable to, and occupied by, persons and
36 families of low or moderate income and very low income
37 households is equivalent in impact to the funds otherwise required
38 to be set aside pursuant to this section. In addition to any other
39 local funds, these direct financial contributions may include federal
40 or state grants paid directly to a community and that the community

1 has the discretion of using for the purposes for which moneys in
2 the Low and Moderate Income Housing Fund may be used. The
3 legislative body shall consider the need that can be reasonably
4 foreseen because of displacement of persons and families of low
5 or moderate income or very low income households from within,
6 or adjacent to, the project area, because of increased employment
7 opportunities, or because of any other direct or indirect result of
8 implementation of the redevelopment plan. No finding under this
9 subdivision may be made until the community has provided or
10 ensured the availability of replacement dwelling units as defined
11 in Section 33411.2 and until it has complied with Article 9
12 (commencing with Section 33410).

13 (B) In making the determination that other financial
14 contributions are equivalent in impact pursuant to this subdivision,
15 the agency shall include only those financial contributions that are
16 directly related to programs or activities authorized under
17 subdivision (e).

18 (C) The authority for making the finding specified in this
19 paragraph shall expire on June 30, 1993, except that the expiration
20 shall not be deemed to impair contractual obligations to
21 bondholders or private entities incurred prior to May 1, 1991, and
22 made in reliance on the provisions of this paragraph. Agencies that
23 make this finding after June 30, 1993, shall show evidence that
24 the agency entered into the specific contractual obligation with
25 the specific intention of making a finding under this paragraph in
26 order to provide sufficient revenues to pay off the indebtedness.

27 (b) Within 10 days following the making of a finding under
28 either paragraph (1) or (2) of subdivision (a), the agency shall send
29 the Department of Housing and Community Development a copy
30 of the finding, including the factual information supporting the
31 finding and other factual information in the housing element that
32 demonstrates that either (1) the community does not need to
33 increase, improve, or preserve the supply of housing for low- and
34 moderate-income households, including very low income
35 households, or (2) a percentage less than 20 percent will be
36 sufficient to meet the community's need to improve, increase, and
37 preserve the supply of housing for low- and moderate-income
38 households, including very low income households. Within 10
39 days following the making of a finding under paragraph (3) of
40 subdivision (a), the agency shall send the Department of Housing

1 and Community Development a copy of the finding, including the
2 factual information supporting the finding that the community is
3 making a substantial effort to meet its existing and projected
4 housing needs. Agencies that make this finding after June 30, 1993,
5 shall also submit evidence to the department of its contractual
6 obligations with bondholders or private entities incurred prior to
7 May 1, 1991, and made in reliance on this finding.

8 (c) In any litigation to challenge or attack a finding made under
9 paragraph (1), (2), or (3) of subdivision (a), the burden shall be
10 upon the agency to establish that the finding is supported by
11 substantial evidence in light of the entire record before the agency.
12 If an agency is determined by a court to have knowingly
13 misrepresented any material facts regarding the community's share
14 of its regional housing need for low- and moderate-income housing,
15 including very low income households, or the community's
16 production record in meeting its share of the regional housing need
17 pursuant to the report required by subdivision (b) of Section 65400
18 of the Government Code, the agency shall be liable for all court
19 costs and plaintiff's attorney's fees, and shall be required to allocate
20 not less than 25 percent of the agency's tax increment revenues to
21 its Low and Moderate Income Housing Fund in each year
22 thereafter.

23 (d) Nothing in this section shall be construed as relieving any
24 other public entity or entity with the power of eminent domain of
25 any legal obligations for replacement or relocation housing arising
26 out of its activities.

27 (e) In carrying out the purposes of this section, the agency may
28 exercise any or all of its powers for the construction, rehabilitation,
29 or preservation of affordable housing for extremely low, very low,
30 low- and moderate-income persons or families, including the
31 following:

32 (1) Acquire real property or building sites subject to Section
33 33334.16.

34 (2) (A) Improve real property or building sites with onsite or
35 offsite improvements, but only if both (i) the improvements are
36 part of the new construction or rehabilitation of affordable housing
37 units for low- or moderate-income persons that are directly
38 benefited by the improvements, and are a reasonable and
39 fundamental component of the housing units, and (ii) the agency
40 requires that the units remain available at affordable housing cost

1 to, and occupied by, persons and families of extremely low, very
2 low, low, or moderate income for the same time period and in the
3 same manner as provided in subdivision (c) and paragraph (2) of
4 subdivision (f) of Section 33334.3.

5 (B) If the newly constructed or rehabilitated housing units are
6 part of a larger project and the agency improves or pays for onsite
7 or offsite improvements pursuant to the authority in this
8 subdivision, the agency shall pay only a portion of the total cost
9 of the onsite or offsite improvement. The maximum percentage
10 of the total cost of the improvement paid for by the agency shall
11 be determined by dividing the number of housing units that are
12 affordable to low- or moderate-income persons by the total number
13 of housing units, if the project is a housing project, or by dividing
14 the cost of the affordable housing units by the total cost of the
15 project, if the project is not a housing project.

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

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

18 (5) Construct buildings or structures.

19 (6) Acquire buildings or structures.

20 (7) Rehabilitate buildings or structures.

21 (8) Provide subsidies to, or for the benefit of, extremely low
22 income households, as defined by Section 50106, very low income
23 households, as defined by Section 50105, lower income
24 households, as defined by Section 50079.5, or persons and families
25 of low or moderate income, as defined by Section 50093, to the
26 extent those households cannot obtain housing at affordable costs
27 on the open market. Housing units available on the open market
28 are those units developed without direct government subsidies.

29 (9) Develop plans, pay principal and interest on bonds, loans,
30 advances, or other indebtedness, or pay financing or carrying
31 charges.

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

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

37 (12) *Loan, grant, or otherwise contribute or pledge funds to an*
38 *authorized purchaser of low-income housing tax credits for the*
39 *construction of low-income rental housing located within the*
40 *community. For the purposes of this paragraph, an "authorized*

1 *purchaser” is limited to a joint powers entity created pursuant to*
2 *Article 1 (commencing with Section 6500) of Chapter 5 of Division*
3 *7 of Title 1 of the Government Code and consists of no less than*
4 *100 local agencies.*

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

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

22 (2) (A) The Contra Costa County Redevelopment Agency may
23 use these funds anywhere within the unincorporated territory, or
24 within the incorporated limits of the City of Walnut Creek on sites
25 contiguous to the Pleasant Hill BART Station Area Redevelopment
26 Project area. The agency may only use these funds outside the
27 project area upon a resolution of the agency and board of
28 supervisors determining that the use will be of benefit to the project
29 area. In addition, the agency may use these funds within the
30 incorporated limits of the City of Walnut Creek only if the agency
31 and the board of supervisors find all of the following:

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

1 (ii) The development to be funded shall not result in any
2 residential displacement from the site where the development is
3 to be built.

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

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

11 (B) If the agency uses these funds within the incorporated limits
12 of the City of Walnut Creek, all of the following requirements
13 shall apply:

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

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

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

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

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

31 (i) This section shall only apply to taxes allocated to a
32 redevelopment agency for which a final redevelopment plan is
33 adopted on or after January 1, 1977, or for any area that is added
34 to a project by an amendment to a redevelopment plan, which
35 amendment is adopted on or after the effective date of this section.
36 An agency may, by resolution, elect to make all or part of the
37 requirements of this section applicable to any redevelopment
38 project for which a redevelopment plan was adopted prior to
39 January 1, 1977, subject to any indebtedness incurred prior to the
40 election.

1 (j) (1) (A) An action to compel compliance with the
2 requirement of Section 33334.3 to deposit not less than 20 percent
3 of all taxes that are allocated to the agency pursuant to Section
4 33670 in the Low and Moderate Income Housing Fund shall be
5 commenced within 10 years of the alleged violation. A cause of
6 action for a violation accrues on the last day of the fiscal year in
7 which the funds were required to be deposited in the Low and
8 Moderate Income Housing Fund.

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

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

26 (i) Petition the court under Section 970.6 for repayment in
27 installments.

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

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

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

38 (4) Except as otherwise provided in this subdivision, Chapter
39 2 (commencing with Section 970) of Part 5 of Division 3.6 of Title
40 1 of the Government Code for the enforcement of a judgment

1 against a local public entity applies to a judgment against a local
2 public entity that violates this section.

3 (5) This subdivision applies to actions filed on and after January
4 1, 2006.

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