

AMENDED IN ASSEMBLY JULY 14, 2009

SENATE BILL

No. 477

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 amended, 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, *as specified. The bill would make these provisions inoperative on January 1, 2012.*

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

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

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

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

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

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

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

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

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

31 (3) (A) That the community is making a substantial effort to
32 meet its existing and projected housing needs, including its share
33 of the regional housing needs, with respect to persons and families
34 of low and moderate income, particularly very low income
35 households, as identified in the housing element of the
36 community's general plan required by Article 10.6 (commencing
37 with Section 65580) of Chapter 3 of Division 1 of Title 7 of the
38 Government Code, and that this effort, consisting of direct financial
39 contributions of local funds used to increase and improve the
40 supply of housing affordable to, and occupied by, persons and

1 families of low or moderate income and very low income
2 households is equivalent in impact to the funds otherwise required
3 to be set aside pursuant to this section. In addition to any other
4 local funds, these direct financial contributions may include federal
5 or state grants paid directly to a community and that the community
6 has the discretion of using for the purposes for which moneys in
7 the Low and Moderate Income Housing Fund may be used. The
8 legislative body shall consider the need that can be reasonably
9 foreseen because of displacement of persons and families of low
10 or moderate income or very low income households from within,
11 or adjacent to, the project area, because of increased employment
12 opportunities, or because of any other direct or indirect result of
13 implementation of the redevelopment plan. No finding under this
14 subdivision may be made until the community has provided or
15 ensured the availability of replacement dwelling units as defined
16 in Section 33411.2 and until it has complied with Article 9
17 (commencing with Section 33410).

18 (B) In making the determination that other financial
19 contributions are equivalent in impact pursuant to this subdivision,
20 the agency shall include only those financial contributions that are
21 directly related to programs or activities authorized under
22 subdivision (e).

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

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

sufficient to meet the community's need to improve, increase, and preserve the supply of housing for low- and moderate-income households, including very low income households. Within 10 days following the making of a finding under paragraph (3) of subdivision (a), the agency shall send the Department of Housing and Community Development a copy of the finding, including the factual information supporting the finding that the community is making a substantial effort to meet its existing and projected housing needs. Agencies that make this finding after June 30, 1993, shall also submit evidence to the department of its contractual obligations with bondholders or private entities incurred prior to May 1, 1991, and made in reliance on this finding.

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

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

(e) In carrying out the purposes of this section, the agency may 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, including the following:

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

(2) (A) Improve real property or building sites with onsite or offsite improvements, but only if both (i) the improvements are

1 part of the new construction or rehabilitation of affordable housing
2 units for low- or moderate-income persons that are directly
3 benefited by the improvements, and are a reasonable and
4 fundamental component of the housing units, and (ii) the agency
5 requires that the units remain available at affordable housing cost
6 to, and occupied by, persons and families of extremely low, very
7 low, low, or moderate income for the same time period and in the
8 same manner as provided in subdivision (c) and paragraph (2) of
9 subdivision (f) of Section 33334.3.

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

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

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

23 (5) Construct buildings or structures.

24 (6) Acquire buildings or structures.

25 (7) Rehabilitate buildings or structures.

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

34 (9) Develop plans, pay principal and interest on bonds, loans,
35 advances, or other indebtedness, or pay financing or carrying
36 charges.

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

38 (11) Preserve the availability to lower income households of
39 affordable housing units in housing developments that are assisted

or subsidized by public entities and that are threatened with imminent conversion to market rates.

(12) (A) Loan, grant, or otherwise contribute or pledge funds to an authorized purchaser of low-income housing tax credits for the construction of low-income rental housing located within the community. For the purposes of this paragraph, an “authorized purchaser” is limited to a joint powers entity created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code and consists of no less than 100 local agencies.

(B) In exercising the power authorized pursuant to subparagraph (A), the agency shall only assist housing developments with preexisting commitments of redevelopment agency funds and shall require a project sponsor to demonstrate a solid and sustained effort to secure private investors before seeking the use of redevelopment agency funds to purchase low-income tax credits.

(C) This paragraph shall become inoperative on January 1, 2011.

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

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

(2) (A) The Contra Costa County Redevelopment Agency may use these funds anywhere within the unincorporated territory, or within the incorporated limits of the City of Walnut Creek on sites contiguous to the Pleasant Hill BART Station Area Redevelopment

1 Project area. The agency may only use these funds outside the
2 project area upon a resolution of the agency and board of
3 supervisors determining that the use will be of benefit to the project
4 area. In addition, the agency may use these funds within the
5 incorporated limits of the City of Walnut Creek only if the agency
6 and the board of supervisors find all of the following:

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

14 (ii) The development to be funded shall not result in any
15 residential displacement from the site where the development is
16 to be built.

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

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

24 (B) If the agency uses these funds within the incorporated limits
25 of the City of Walnut Creek, all of the following requirements
26 shall apply:

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

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

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

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

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

4 (i) This section shall only apply to taxes allocated to a
5 redevelopment agency for which a final redevelopment plan is
6 adopted on or after January 1, 1977, or for any area that is added
7 to a project by an amendment to a redevelopment plan, which
8 amendment is adopted on or after the effective date of this section.
9 An agency may, by resolution, elect to make all or part of the
10 requirements of this section applicable to any redevelopment
11 project for which a redevelopment plan was adopted prior to
12 January 1, 1977, subject to any indebtedness incurred prior to the
13 election.

14 (j) (1) (A) An action to compel compliance with the
15 requirement of Section 33334.3 to deposit not less than 20 percent
16 of all taxes that are allocated to the agency pursuant to Section
17 33670 in the Low and Moderate Income Housing Fund shall be
18 commenced within 10 years of the alleged violation. A cause of
19 action for a violation accrues on the last day of the fiscal year in
20 which the funds were required to be deposited in the Low and
21 Moderate Income Housing Fund.

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

30 (C) An agency found to have deposited less into the Low and
31 Moderate Income Housing Fund than mandated by Section 33334.3
32 or to have spent money from the Low and Moderate Income
33 Housing Fund for purposes other than increasing, improving, and
34 preserving the community's supply of low- and moderate-income
35 housing, as mandated, by this section or Section 33334.6 shall
36 repay the funds with interest in one lump sum pursuant to Section
37 970.4 or 970.5 of the Government Code or may do either of the
38 following:

39 (i) Petition the court under Section 970.6 for repayment in
40 installments.

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

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

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

11 (4) Except as otherwise provided in this subdivision, Chapter
12 2 (commencing with Section 970) of Part 5 of Division 3.6 of Title
13 1 of the Government Code for the enforcement of a judgment
14 against a local public entity applies to a judgment against a local
15 public entity that violates this section.

16 (5) This subdivision applies to actions filed on and after January
17 1, 2006.

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