

A number of questions have arisen concerning the Supreme Court's August 11, 2011, partial stay of AB1X 26-27. In particular, redevelopment agencies and cities have inquired about what actions an agency or city can or should take under the terms of the stay. This joint communication of the League of California Cities ("LOCC") and the California Redevelopment Association ("CRA") is intended to provide general guidance on those questions. Answers to some of the questions are not free from doubt. As always, individual cities and agencies should consult with their own attorneys concerning application of the stay to their particular circumstances.

1. *What cities/counties/agencies are subject to the stay?*

The State and its officers are clearly subject to the stay. Some have suggested that cities/counties/agencies that are not parties to the action pending before the Supreme Court are not subject to the stay. CRA and LOCC believe that all cities/counties/agencies are subject to the stay, whether or not they are parties to the action. The stay suspends, in part, the effectiveness of a statute. It therefore applies to any city/county/agency acting under the terms of the statute.

2. *Are redevelopment agencies required to adopt an enforceable obligations payment schedule?*

The stay is ambiguous as to this question. LOCC and CRA have requested a clarification as to whether the State intends to review enforceable obligations schedules pursuant to Section 34169(i) notwithstanding the stay. We may also request clarification from the Supreme Court with respect to this issue and will notify members if we hear from the State and/or the Court.

Section 34167 prohibits agencies from making payments for anything other than "enforceable obligations" (as defined by Section 34167(d)) beginning August 28, 2011. Therefore, in the meantime, agencies should continue the process of determining which of their obligations are "enforceable obligations" as defined by the statute.

3. *May an agency enter into an agreement to reimburse the city/county for any community remittance payments made pursuant to AB1X27?*

These agreements are authorized under AB1X 27, which is stayed. They would also constitute new agreements that are forbidden under the provisions of AB1X 26 that have not been stayed.

Some agencies are concerned that if they do not adopt a reimbursement agreement prior to October 1, 2011, they will not be able to include it in their 2011 Statement of Indebtedness. LOCC and CRA will call this predicament to the attention of the Supreme Court and request additional time for agencies and their legislative bodies to enter into reimbursement agreements and for the agency to enter into other agreements without triggering additional community remittance payments if the statutes are held constitutional. However, it is extremely unlikely that the Court will clarify this issue prior to October 1, 2011. If agencies wish to enter into such agreements while the stay is in effect, they should do so conditionally, to be operative only if AB1X 26-27 are upheld and the stay lifted.

4. May cities/counties adopt continuation ordinances under AB1X 27?

The stay suspends the effectiveness of AB1X 27 which authorizes the adoption of continuation ordinances. If AB1X 26-27 are ultimately held to be constitutional, LOCC and CRA believe that agencies and cities will not be punished for having complied with the stay. Moreover, Supreme Court decisions are not final for thirty days, which should allow time for most communities to pass continuation ordinances. CRA and LOCC will also ask the Court to provide additional time for cities/counties to consider and adopt such ordinances if the statutes are eventually upheld. As with remittance agreements, if agencies nevertheless wish to enact such ordinances in the interim, they should do so conditionally, to be operative only if AB1X 26-27 are upheld and the stay lifted.

Some communities have introduced a continuation ordinance but not given it a second reading when the stay was granted. In that case, LOCC and CRA recommend the second reading of the ordinance be continued to a date certain.

5. Are redevelopment agencies in cities/counties that adopted continuation ordinances prior to issuance of the stay subject to the same limitations as agencies in cities/counties that had not yet done so?

LOCC and CRA will request a clarification of this issue from the Supreme Court and will notify members of the Court's response as soon as we receive it. While awaiting the Court's response, agencies in cities or counties that previously adopted a continuation ordinance should seek the guidance of their attorneys as to what actions they can safely take without violating the stay.

6. What actions can an agency take while the stay is in effect?

Whether or not the legislative body has previously adopted a continuation ordinance, agencies can continue to carry out "enforceable obligations." "Enforceable obligations" are defined by Section 34167(d). Enforceable obligations include obligations under bond indentures, disposition and development agreements, owner participation agreements, exclusive negotiating agreements, cooperation agreements and other enforceable contracts. (See Health and Safety Code Section 34167(d) for a complete definition of the term "enforceable obligation.") Enforceable obligations may include new contracts necessary to carry out the agency's duties under an enforceable obligation. For example, if a disposition and development agreement qualifies as an enforceable obligation, the agency may enter into contracts for the purchase of land or construction of public improvements, as called for in the agreement. Agencies may continue to pay for staff and consultant services, as needed to carry out enforceable obligations.

7. What actions is an agency prohibited from taking while the stay is in effect?

Subject to clarification of question 5 by the Supreme Court as to communities that have previously adopted a continuation ordinance, agencies are prohibited from a wide range of activities that are listed in Sections 34162-34165. For example, agencies may not adopt or amend redevelopment plans, enter into new agreements, amend or modify existing agreements, issue or restructure bonds (with limited exceptions) or dispose of its assets, except as necessary

to carry out enforceable obligations.