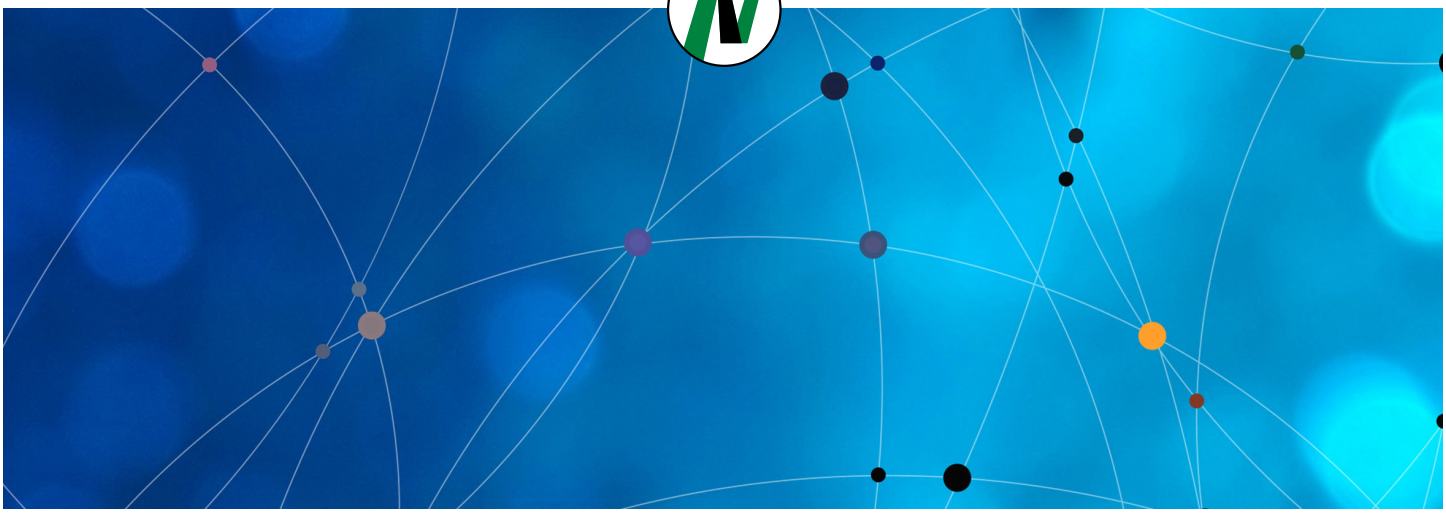

Governor Signs AB2 which will Allow the Creation of Community Revitalization & Investment Authorities

09.25.2015 | By Bernadette Duran-Brown

On September 22, 2015, Governor Jerry Brown signed Assembly Bill 2, which will allow local governments to create Community Revitalization and Investment Authorities (CRIAs) -- a step some say is the rebirth of redevelopment. The goal of the bill is to allow government entities to invest in disadvantaged communities with a high crime rate, high unemployment, and deteriorated and inadequate infrastructure, commercial, and residential buildings. The CRIAs will have many of the same abilities as the redevelopment agencies that the Governor previously dissolved: the power to issue bonds, provide low-income housing, prepare and adopt a plan for an area, and among others, the power to acquire property using the power of eminent domain.

AB2 has received mixed reviews. Some believe that the establishment of CRIAs will lead to eminent domain abuses. And others, including the Bill's proponent, state that AB2 will allow investment in poor areas so we can fix our existing neighborhoods. But how exactly will the new CRIAs work?

Creating CRIAs for Disadvantaged Communities

Beginning January 1, 2016, when AB2 goes into effect, there will be two ways to form a CRIA: (1) a city, county, or city and county together can create a CRIA, which will be administered by a five-member board appointed by the local government(s); or (2) a city, county, or special district, or any combination of those local governments, can create a CRIA by entering into a joint powers agreement, and the CRIA would be administered by members from the legislative bodies of the public agencies that created the authority. In either case, the body must include at least two members of the public who live or work in the area.

School entities and redevelopment successor agencies cannot participate in a CRIA and neither can a government entity that has not completed the wind-down process of its redevelopment agency and

received a finding of completion from the Department of Finance.

CRIAs adopt a community revitalization and investment plan within a community and revitalization and investment area (area). At least 80% of the area designated must have an annual median household income that is less than 80% of the statewide annual median income and must meet three of the following four conditions:

1. unemployment is at least 3% higher in the area than the statewide median unemployment;
2. the crime rate is 5% higher than the statewide median crime rate;
3. the area has deteriorated or inadequate infrastructure; and
4. the area has deteriorated commercial or residential structures.

Under previous redevelopment law, redevelopment agencies were only required to conduct a study and make a finding that blight existed in a project area before they could use their powers to eradicate blight. But what was blight, really? Redevelopment agencies could theoretically fit almost anything into the definition of blight, giving them sweeping powers to establish redevelopment areas without any immediate plans for redevelopment, thereby freezing the property tax base and appropriating all property tax increases that were simply due to general increases in property values over time. Though some opponents of AB2 believe the study a redevelopment agency had to complete was a more stringent test than the above-conditions created by AB2, it appears the legislature is attempting to require a greater finding by a CRIA before it can declare an area appropriate for revitalization. Plus, the inclusion of at least two community members on a CRIA board implies that the CRIA's actions can and should be influenced or guided by local community input.

Powers of CRIAs

CRIAs can (1) fund the rehabilitation, repair, upgrade or construction of infrastructure, (2) provide low and moderate-income housing, (3) clean hazardous waste, (4) provide seismic retrofitting to existing buildings, (5) acquire and transfer real property, (6) issue bonds, (7) incur debt, (8) adopt a community revitalization and investment plan, (9) make loans or grants for rehabilitation or retrofitting of buildings in the area, (10) construct structures necessary for air rights, and (11) assist businesses in connection with new or existing facilities for industrial or manufacturing uses.

A CRIA plan may include a provision for the receipt of tax increment funds. Like the former redevelopment agencies, CRIAs would freeze the property taxes of the area at the time the plan is approved and then collect the increased tax increment to use on specific activities. In another notable divergence from redevelopment law, the taxing entities in the plan area, like cities, counties and special districts, must **agree** to divert tax increment to the CRIA. Under prior redevelopment law, local agencies had no say in the process; redevelopment agencies could designate large areas for redevelopment, and the property tax funds the local agencies would otherwise receive were essentially capped because the property tax base was frozen. Forcing taxing entities to agree to divert their tax increment to CRIAs seems to limit the power of the CRIAs and may help eliminate concerns that CRIAs are including wide swaths of land in the plan area just to appropriate increased property tax revenues.

Another small change from prior redevelopment law is that at least 25% of all tax increment revenues received by the CRIA must be deposited into a separate Low- and Moderate-Income Housing Fund and must be used by the CRIA to increase, improve and preserve the community's supply of low- and moderate-

income housing. This was increased from the 20% former redevelopment agencies had to set aside for affordable housing. The new law also has detailed requirements which control the use of the Housing Fund revenues and detailed accounting and reporting requirements.

The Plan Adoption Process

The CRIA must consider adoption of a plan at three public hearings 30 days apart to (i) first hear comments, then (ii) consider additional comments and modify or reject the plan, and finally (iii) conduct a protest proceeding where the CRIA board considers the written and oral protests to the plan's adoption by property owner and residents, and ultimately makes a decision to terminate the proceedings or adopt the plan. Though the residents of the area are allowed to be heard at the hearings and protest the plan's adoption, the law may set an unreasonably high threshold for actually rejecting the plan. The plan will only be rejected if protests have been filed by **over 50%** of the property owners and residents in the area. If between 25% and 50% of the property owners and residents file protests, then an election will be called to confirm the plan – and the plan will only be rejected if a majority of the owners and residents vote against the plan. If less than 25% of property owners and residents file protests, the plan can be adopted at the third hearing by ordinance. A new protest proceeding must be held every 10 years.

Impacts to Low-Income Housing

Some opponents of AB2 say it unfairly targets poor communities, but there appear to be some protections built into the law itself. For instance, if the plan calls for the destruction or removal of low- or moderate-income housing, the CRIA must provide an equal number of units for sale or rent to low- or moderate-income persons and families within two years. In addition, any CRIA plan must include a relocation plan for displaced persons and the CRIA must comply with the state's relocation laws. And AB2 prohibits the number of housing units occupied by extremely low, very low- and low-income households from being reduced during the plan's lifetime.

Long-Term Impact is Unclear

While local government agencies may be rejoicing the creation of CRIAs, it is unclear how the new law will actually impact disadvantaged communities. Will it provide local governments the tools to invest in their communities and rehab infrastructure in desperate need of repair? Will it cause the gentrification of urban areas generally occupied by low-income households and minorities, only to replace their residences with private development projects which make developers wealthy but disenfranchise entire populations? Will it help revitalize run-down communities, building on existing infrastructure to preserve neighborhoods and provide local residents with access to safe and affordable housing and buoy local businesses? Will local governments take this as a call-to-action to clean up hazardous waste and protect their low- and moderate-income residents and their homes? Or will this be a great big mess? These are only a few of the many questions still lingering about AB2. And there are few, if any, answers.

Moreover, in a potential competition with CRIAs, Governor Brown also signed AB313 on September 22, which enhances the powers of Enhanced Infrastructure Financing Districts (EIFDs), another type of tax increment financing entity the Legislature created last year. AB313 allows local governments to form public financing authorities and invest in infrastructure projects using tax increment funding streams. Will the EIFDs and CRIAs be fighting over the same pot of funds? Or will they complement one another, giving local governments even more strength to implement public projects?

As we delve deeper into the law's many, many sections, look for more detailed discussions on our blog, the California Eminent Domain Report, regarding tax increment financing, CRIAs' right to acquire property, the eminent domain powers and limits of the CRIAs, along with further updates when the law takes effect next year.