CITY OF OAKLAND

BILL ANALYSIS

June 25, 2009

Bill Number: California Assembly Bill No. 1422

Bill Author: Assembly Member Karen Bass

Assembly Member Anthony Adams

Assembly Member Norma Torres

DEPARTMENT INFORMATION

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Department: Community Economic Development Agency, Housing and Community Development Department
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RECOMMENDED POSITION: SUPPORT

Summary of the Bill

This Assembly Bill will add language to California Redevelopment Law to authorize redevelopment agencies until January 1, 2013, to expend non-housing funds (i.e. NOT Low and Moderate Income Housing Funds) to purchase, assume, and refinance homes in foreclosure (i.e. mortgages at risk or that are in default) or that have been foreclosed (i.e. that are bank-owned).

For households in foreclosure, redevelopment agencies may assist homeowners whose household income does not exceed 150% of Area Median Income adjusted for family size. Funds may be used to purchase, assume, or refinance subprime or nontraditional mortgages on those homes (definitions of these loan types are included in the legislation).

For homes that have been foreclosed and are vacant, redevelopment agencies may assist lenders, nonprofit or for-profit developers in transactions to acquire, maintain, resell or rent these properties. Redevelopment agencies may sell these homes to any purchaser regardless of income.

Positive Factors for Oakland

According to data acquired by the City of Oakland, between January 1, 2007 and April 30, 2009 7,523 properties received a recorded Notice of Default and 5,677 properties had completed foreclosure actions (bank-owned). Staff estimates that as many as two-thirds of the foreclosed properties are still bank owned and have not been resold. Staff estimates that there are 7,365 properties that will have loan adjustments in the next two years; many of these will also result in foreclosure.

Most of the foreclosures have occurred in the West Oakland, Central City East and Coliseum redevelopment project areas. Vacant foreclosed homes are a major blighting influence that impedes the redevelopment of these areas for both residential and commercial uses. This legislation would allow (but not require) the Agency to use non-housing redevelopment funds to address the foreclosure crisis in the City of Oakland. For example, funds could be used to provide loan guarantees or revolving loans to stimulate the recovery of these areas. Because these are non-housing funds, the Agency would not be limited by restrictions on incomes or sales prices.

Negative Factors for Oakland

None.

PLEASE RATE THE EFFECT OF THIS MEASURE ON THE CITY OF OAKLAND:

___ **Critical** **(top priority for City lobbyist, city position required ASAP)**

_X_ **Very Important** **(priority for City lobbyist, city position necessary)**

___ **Somewhat Important** **(City position desirable if time and resources are available)**

___ **Minimal or** ____ **None** (do not review with City Council, position not required)

Known support:
California Redevelopment Association
California Rural Legal Assistance Foundation
League of California Cities
Western Center on Law & Poverty

Known Opposition:
None on file according to Legislature's Assembly Committee notes.

Item: ________
Rules & Legislation Comte.
June 25, 2009

Attach bill text and state/federal legislative committee analysis, if available.

Respectfully Submitted,

Walter S. Cohen, Director
Community and Economic Development Agency

Approved for Forwarding to
Rules Committee:

Office of City Administrator

AMENDED IN ASSEMBLY MAY 21, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 1422

Introduced by Assembly Member Bass
(Coauthors: Assembly Members Adams and Torres)

February 27, 2009

An act to add and repeal Chapter 7 (commencing with Section 33700) to Part 1 of Division 24 of the Health and Safety Code, relating to redevelopment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1422, as amended, Bass. Redevelopment: affordable housing.

The Community Redevelopment Law requires a redevelopment agency to deposit not less than 20% of all taxes the agency receives in a Low and Moderate Income Housing Fund and allocate those funds 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, to persons and families of low or moderate income, lower income households, very low income households, and extremely low income households, unless the agency makes specified findings.

This bill would authorize a redevelopment agency, until January 1, 2013, to expend any money that is not held in the fund to (1) purchase, assume, or refinance, or assist lenders or nonprofit or for-profit developers in purchasing, assuming, or refinancing, subprime or nontraditional mortgages on homes owned by persons meeting a specified income level within its jurisdiction, or make loans to those homeowners and (2) purchase, or assist lenders or nonprofit or for-profit developers in purchasing, homes within its jurisdiction that have been foreclosed and are vacant and sell those homes, without regard to income.

The bill would require that funds be expended pursuant to these provisions in a manner that preserves the exemption from federal and state income taxes of interest on the bonds or notes issued by the agency under the Community Redevelopment Law.

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

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

SECTION 1. Chapter 7 (commencing with Section 33700) is added to Part 1 of Division 24 of the Health and Safety Code, to read:

CHAPTER 7. HOME MORTGAGE LOANS

33700. The Legislature finds and hereby declares all of the following:

(a) The end of the housing boom in 2005 has led to declining housing prices and the reduced availability of mortgage credit.

(b) As housing prices fall, delinquencies and foreclosures on subprime and nontraditional mortgages have increased to historically high levels. Lenders with exposure to subprime and nontraditional mortgage losses have tightened their lending standards. Consequently, homeowners with subprime and nontraditional mortgages are having difficulty refinancing into more affordable loans.

(c) With many subprime and nontraditional mortgages facing their first interest reset during ~~2008 and~~ 2009, mortgage foreclosures will increase significantly and, along with falling housing prices, may overwhelm the ability of mortgage markets to restructure or refinance loans for creditworthy borrowers.

(d) Home foreclosures impose significant costs not only on borrowers and lenders, but also on local governments, neighboring homeowners, and others with a financial stake in nearby properties. This is particularly true of subprime and nontraditional mortgage foreclosures because they tend to be concentrated geographically. The effect of multiple foreclosures in limited geographic areas can cause declines in property values, accelerating the decline of entire neighborhoods. Increased crime and vandalism, lack of proper maintenance, and the spread of blight are other consequences of concentrated foreclosures in limited geographic areas.

(e) Decent housing for all of the people of this state is vital to the state's future peace and prosperity.

(f) A fundamental purpose of redevelopment is to expand the supply of low-income and moderate-income housing.

(g) In order to more effectively respond to the current crisis in subprime and nontraditional mortgage foreclosures, redevelopment agencies should be given greater flexibility on a temporary basis to do all of the following:

(1) Acquire, assume, or refinance existing subprime and nontraditional mortgages in default or at risk of default, or make loans to eligible homeowners faced with foreclosure.

(2) Acquire and then maintain, resell, or rent foreclosed homes.

33701. For purposes of this chapter, the following terms have the following meanings, unless the context clearly requires otherwise:

(a) "Eligible homeowner" means the trustor of a subprime or nontraditional mortgage who occupies a home encumbered by the subprime or nontraditional mortgage as his or her principal place of residence, if either of the following applies:

(1) The obligation secured by the subprime or nontraditional mortgage has a payment that is 30 days or more past due or has a scheduled interest rate increase that will create a financial hardship likely to produce a default.

(2) A notice of default has been recorded against the obligation secured by the subprime or nontraditional mortgage pursuant to Section 2924 of the Civil Code.

(b) The "fund" is the Low and Moderate Income Housing Fund established pursuant to Section 33334.3.

(c) "Nontraditional mortgage" means a consumer loan that allows the borrower to defer payment of principal and, under certain circumstances, interest, as set forth in the "Interagency Guidance on Nontraditional Mortgage Product Risks" (71 Fed. Reg. 58609 (Oct. 4, 2006)).

(d) (1) "Subprime mortgage" means a deed of trust securing a loan that was originated on or after January 1, 2002, was issued for the purchase of a single-family home, residential condominium, or townhome, but not a mobilehome, and meets any of the following conditions:

(A) Has an annual percentage rate that is more than one of the following:

(i) For a senior loan, 3 percent, plus the yield on United States Treasury notes with comparable maturities.

(ii) For a subordinate loan, 5 percent, plus the yield on United States Treasury notes with comparable maturities.

(B) Has interest-only payments, or an adjustable rate that may lead to negative amortization.

(2) "Subprime mortgage" does not include a subordinate home equity line of credit or a reverse mortgage.

33702. (a) The agency may expend any money that is not held in the fund to purchase, assume, or refinance, or assist lenders or nonprofit or for-profit developers in purchasing, assuming, or refinancing, subprime or nontraditional mortgages on homes owned by eligible homeowners who reside within its jurisdiction, or make loans to those eligible homeowners, if the combined annual income of the members of the eligible homeowner's household does not exceed 150 percent of area median income, adjusted for family size by the department in accordance with adjustment factors adopted and amended from time to time.

(b) The amount of assistance provided under subdivision (a) for any single eligible homeowner shall not exceed an amount equal to the loan to value ratio applied by the Federal Housing Administration for an insured loan for the applicable geographic area, multiplied by the current value of the home.

(c) The agency may also expend money that is not held in the fund to provide mortgage or credit counseling services to existing or prospective homeowners who qualify for assistance under subdivision (a).

33703. (a) The agency may expend any money that is not held in the fund to purchase, or assist lenders or nonprofit or for-profit developers in purchasing, homes within its jurisdiction that have been foreclosed and are vacant, for sale to any purchaser, regardless of income.

(b) Homes purchased under this section may be managed, maintained, and rented prior to resale.

33704. Funds shall be expended pursuant to this chapter in a manner that preserves the exemption from federal and state income taxes of interest on the bonds or notes issued by the agency under this division, if applicable.

33705. This chapter shall apply notwithstanding any other provision of this division.

33706. Consistent with this chapter, the agency may adopt local criteria governing the use of funds and provision of other assistance authorized under this chapter, including, but not limited to, limiting assistance to defined neighborhoods or a geographic area, or targeting specific income categories.

33707. This chapter shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

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BILL ANALYSIS

ASSEMBLY THIRD READING
AB 1422 (Bass)
As Amended May 21, 2009
Majority vote

HOUSING 4-1

Ayes:	Torres, Eng, Ma, Saldana		
Nays:	Harkey		

SUMMARY : Allows a redevelopment agency (agency) to use tax increment funds, not held in the Low & Moderate (L&M) Income Housing Fund, to acquire, assume or refinance loans to eligible homeowners with subprime or nontraditional mortgages in default or at risk of default.

Specifically, this bill:

1) Makes legislative findings regarding the decline in housing prices, increase in delinquencies and foreclosures, and the negative impacts of both on local governments and neighborhoods.

2) Provides the following definitions:

a) "Eligible homeowner" as a homeowner with a subprime or nontraditional loan that is 30 days or more past due or is scheduled for an interest rate increase that will likely lead to default on a home that is his/her principal residence or who has a mortgage on which a notice of default has been recorded;

b) "Fund" as the Low and Moderate Income Housing (L&M) Fund;

c) "Nontraditional mortgage" as a consumer loan that allows the borrower to defer payment on the principal and in certain circumstance the interest on the loan; and,

d) "Subprime mortgage" as a loan originated on or after January 1, 2002 for a single-family home, condominium or townhome, but not a mobilehome, that meets any of the following conditions:

i) Has an annual percentage rate that is more than three percent for senior loans and five percent for subordinate loans plus the yield on United States Treasury notes;

ii) Has interest-only payments or adjustable rate that may lead to negative amortization; and,

iii) Does not include subordinate home equity lines of credit or reverse mortgages.

3) Allows an agency to use tax increment funds, excluding funds that are held in the 20% L&M Fund, to do any of the following within its jurisdiction:

a) Purchase, assume or refinance existing subprime or nontraditional mortgages on homes owned by eligible homeowners;

b) Assist lenders or nonprofit or for-profit developers in purchasing, assuming or refinancing subprime or nontraditional mortgages owned by eligible homeowners;

c) Make loans to eligible homeowners with subprime or nontraditional mortgages if the combined annual income of the members of the household does not exceed 150% of area median income;

d) Purchase or assist lenders in purchasing homes that have been foreclosed and are vacant and sell those homes to a buyer regardless of income; and,

e) Provide mortgage or credit counseling services to existing or prospective eligible homeowners.

4) Allows an agency to manage, maintain and rent foreclosed homes prior to sale.

5) Provides the amount of assistance a single eligible homeowner can receive must not exceed an amount equal to the loan to value ratio applied by the Federal Housing Administration for an insured loan for the applicable geographic area multiplied by the current value of the home.

6) Requires funds to be expended for the purposes outlined above, in a manner that preserves the exemption from federal and state income taxes of interest on the bonds or notes issued by the agency.

7)Allows an agency to adopt local criteria governing the use of funds to address the finance of subprime or nontraditional mortgages or purchase of foreclosed properties including but not limited to assistance to defined neighborhoods, geographic areas or targeting specific income categories.

8) Includes a sunset date of January 1, 2013.

FISCAL EFFECT : None

COMMENTS : The Community Redevelopment Law allows local governments to establish redevelopment areas and capture all of the increase in property taxes that is generated within the area (referred to as "tax increment"). The law requires redevelopment agencies to deposit 20% of tax increment funds into the L&M Fund to be used to increase, improve, and preserve the community's supply of low and moderate income housing at affordable housing cost. The other 80% of tax increment funds are to be used to eradicate blight.

Once an agency is established via an ordinance and its organizational structure is formed it may function as a legal entity within its jurisdiction. The jurisdiction of an agency is the jurisdiction of the community. Agencies' power and authority to redevelop a community is derived from the California Constitution (Section 16 of Article XVI) and the public purpose established by the Legislature, to eliminate blight which constitutes physical and economic liabilities requiring redevelopment in the interest of the health, safety and general welfare of the people of the communities and the state.

The method of financing used by redevelopment agencies, tax increment financing, is authorized by the California Constitution (Section 16 of Article XVI) Tax increment financing authorizes an agency to use tax revenues from increases in the assessed value of a property within a redevelopment area. This method of financing allows agencies to carry out redevelopment activities without drawing funds down from a local government's general fund or by increases in property tax rates.

Impact of Foreclosures on California: According to Moody's Economy nearly nine million homeowners nationwide have mortgages equal to or greater than their homes' value. In February of 2008, the total foreclosure filings in California accounted for 24% of the 223,651 foreclosure filings reported nationwide. In March 2009, UC Santa Barbara Forecast Project issued a report indicating, California has lost 236,572 homes to foreclosure which represents 2% of homes in the state.

Subprime mortgages represent a significant proportion of the foreclosures. According to the mortgage banking industry, while subprime loans represent 15% of outstanding mortgages in California, they accounted for 68% of recent foreclosures in the second quarter of 2007. According to research conducted by the US Santa Barbara Forecast project, approximately 31% of all home loans in California are Alt-A, which are considered riskier loans, because they require limited documentation, have a high-loan-to value ratio and may have a non-traditional amortization schedule. Additionally, of the Alt-A loans in California, 70% are Adjustable Rate Mortgages (ARM) and over half of the Alt-A loans have not reset. The UC Santa Barbara Forecast Project predicts that 4.3% will reset in 2009, 6.1% will reset in 2010 and 38.3% will reset in 2011 and beyond.

Home foreclosure affects an owner's circumstances with the threat of bankruptcy, poor credit ratings and tax liabilities. However, foreclosures reach even further to have negative impacts on neighboring homeowners, local governments and California's greater economy. These damaging effects include increases in abandonment and vandalism, an estimated $100 billion loss in property value, and an estimated $4 billion loss of property and sales tax revenues for local governments.

In order to stabilize the market, preserve homeownership and prevent neighborhoods from becoming blighted with vacant abandoned bank owned homes, California needs innovative programs to assist credit worthy homeowners with refinancing their existing sub-prime and nontraditional loans and assist in eradicating blight through the purchase of bank owned homes.

Purpose of this bill: This bill seeks to allow redevelopment agencies to use tax increment funds that are not held in the 20% L&M fund set aside, to acquire, assume or refinance mortgages or make loans to income-eligible homeowners faced with foreclosure of *existing units. Agencies can also assist lenders or for-profit or non-*profit developers in purchasing, assuming or refinancing subprime or nontraditional mortgages. This bill additionally, allows agencies to purchase vacant and foreclosed homes and sell them to any purchaser regardless of income and if necessary, manage, maintain and rent the home prior to sale.

Analysis Prepared by : Lisa Engel / H. & C.D. / (916) 319-2085

FN: 0000908

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2009 JUN 11 PM 8:08

Approved as to Form and Legality

Deputy City Attorney

OAKLAND CITY COUNCIL

Resolution No. ____________________ C.M.S.

Introduced by Councilmember ____________________

RESOLUTION IN SUPPORT OF ASSEMBLY BILL NO. 1422 (BASS), ALLOWING REDEVELOPMENT AGENCIES TO USE TAX INCREMENT FUNDS FOR HOUSING IN FORECLOSURE

WHEREAS, the City of Oakland seeks to address the problem of properties in foreclosure or that are bank-owned in its jurisdiction; and

WHEREAS, there is a high number of properties in foreclosure, bank-owned or at-risk of foreclosure in the City of Oakland; and

WHEREAS, funding to address the foreclosure problem is limited; and

WHEREAS, the California Legislature is considering Assembly Bill No. 1422 that will allow redevelopment agencies to use, until January 1, 2013, their tax increment funds, other than Low and Moderate Income Housing Funds, to assist homeowners at risk of default or who are in default; and

WHEREAS, Assembly Bill No. 1422 will also allow redevelopment agencies to use their tax increment funds, other than Low and Moderate Income Housing Funds, until January 1, 2013, to work with banks, nonprofit and for-profit developers to purchase bank-owned properties; now, therefore, be it

RESOLVED: That the Oakland City Council hereby supports Assembly Bill No. 1422 (Bass); and be it

FURTHER RESOLVED: That the City Council authorizes and directs the City Administrator and his or her designee to advocate the City's position to the State Legislature through the City's state lobbyist and to work actively for the passage of AB 1422.

IN COUNCIL, OAKLAND, CALIFORNIA, ____________________________

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, AND PRESIDENT BRUNNER

NOES --

ABSENT –

ABSTENTION –

ATTEST:

____
LATONDA SIMMONS
City Clerk and Clerk of the Council of
the City of Oakland, California