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SACHI A. HAMAI
Interim Chief Executive Officer

May 11, 2015

To: Mayor Michael D. Antonovich
Supervisor Hilda L. Solis
Supervisor Mark Ridley-Thomas
Supervisor Sheila Kuehl
Supervisor Don Knabe

From: Sachi A. Hamai
Interim Chief Executive Officer

MOTION TO INSTRUCT THE INTERIM CHIEF EXECUTIVE OFFICER AND THE SACRAMENTO ADVOCATES TO SUPPORT AB 1335 (ATKINS), WHICH WOULD ENACT THE BUILDING HOMES AND JOBS ACT, AND ESTABLISH A PERMANENT SOURCE OF FUNDING FOR AFFORDABLE HOUSING (ITEM NO. 53-B, AGENDA OF MAY 12, 2015)

Item No. 53-B on the May 12, 2015 Agenda is a motion by Supervisors Kuehl and Ridley-Thomas instructing the Interim Chief Executive Officer and the Sacramento Advocates to support AB 1335 (Atkins), to insure that all Californians have access to affordable housing. AB 1335 would enact the Building Homes and Jobs Act and establish a permanent source of funding for affordable housing by placing a $75 fee on real estate transaction documents, excluding home sales.

Overview

Under existing law, there are programs to provide assistance for, among other things, emergency housing, multifamily housing, farmworker housing, home ownership for very low and low-income households, and downpayment assistance for first-time homebuyers. Existing law also authorizes the issuance of bonds in specified amounts pursuant to the State General Obligation Bond Law. The law requires that proceeds from the sale of these bonds be used to finance various programs, including: housing programs, capital outlay related to infill development, brownfield cleanup that promotes infill development, and housing-related parks.

Historically, funding for affordable housing projects has come from three major sources: 1) State housing bonds (Proposition 46 of 2002 and Proposition 1C of 2006); 2) redevelopment funds (i.e., tax increment, including the 20% set-aside required under the

Community Redevelopment Law); and 3) Federal Funds (i.e., CDBG funds and HOME funds).

AB 1335 (Atkins), which as amended on April 30, 2015, would enact the Building Homes and Jobs Act and establish a permanent source of funding for affordable housing by placing a $75 fee on real estate transaction documents, excluding home sales. Specifically, this bill would:

1) impose a fee of $75, beginning January 1, 2016, to be paid at the time of the recording of every real estate instrument, paper, or notice required or permitted by law to be recorded, per each single transaction per single parcel of real property, not to exceed $225;

2) require that revenues from this fee, after deduction of any actual and necessary administrative costs incurred by the county recorder, be transferred quarterly to the California Department of Housing and Community Development (HCD) for deposit in the Building Homes and Jobs Fund (Fund) for expenditures that support affordable housing, home ownership opportunities, and other housing-related program;

3) require that 20% of the moneys in the Fund be used for affordable owner-occupied workforce housing, with the remainder expended to support affordable housing, homeownership opportunities, and other housing related programs and administrative costs, as specified;

4) require a county to pay HCD any interest, at the legal rate, on any funds that are not transferred within 30 days of the end of a quarter, and require any interest or other increment resulting from the investment of money in the Fund to be deposited into the back into Fund;

5) prohibits the transfer of any money in the Fund to any other fund except for the Surplus Money Investment Fund;

6) state the intent of the Legislature to enact legislation that would create the Secretary of Housing within State government to oversee all activities related to housing in the state;

7) create an advisory board, led by the Department of Housing and Community Development (and including the California Tax Credit Allocation Committee, and the California Debt Limit Allocation Committee), to create a five-year investment plan for the revenues; and

8) impose certain auditing and reporting requirements.

The $75 recording fee would not be imposed on any real estate documents recorded in connection with a transfer subject to the imposition of a documentary transfer tax or a transfer of real property that is a residential dwelling to an owner-occupier.

AB 1335 is an urgency statute, requiring a 2/3 vote of the Legislature to pass. If signed by the Governor, it would take effect immediately.

AB 1335 is substantially similar to **SB 391 of 2013**, which passed the Senate but died in the Assembly Appropriations Committee.

AB 1335 passed the Assembly Housing and Community Development Committee by a vote of 5 to 1 on April 29, 2015. The measure has been referred to the Assembly Appropriations Committee for hearing.

<u>County Impact</u>

Community Development Commission

The Community Development Commission (CDC) reports that under the current law, the Housing Authority of the County of Los Angeles (HACoLA) administers the City of Industry Funds Program (Industry Funds) to develop affordable rental housing for non-special needs and special needs populations.

The CDC reports that the State affordable housing funding reductions are coupled with the reductions in Federal funding sources dedicated to affordable housing production, such as the HOME Investment Partnerships Program. The Community Development Commission indicates that unless a replacement source of funding is developed, such as the one proposed by AB 1335, local jurisdictions will continue to struggle to find or provide a major source of revenue for the development of affordable housing for the their most vulnerable residents.

However, the CDC also notes that while AB 1335 aims to establish a permanent funding source for affordable housing development, it is not possible to determine the direct fiscal impact of the bill on the County, the CDC, or its stakeholders because the bill only provides an outline of how the funds would be used. Specifically, the CDC notes the actual investment strategy for expenditure of funds would be recommended by the California Department of Housing and Community Development, subject to legislative approval, following the passage of the bill and every five years after that. According to the CDC, this raises concerns regarding:

- issues of local control and proportional expenditure of funds relative to the area where the fees were generated – the bill says one goal of the investment strategy will be to "promote a geographically balanced distribution of funds including a direct allocation of funds to local governments" but is unclear what the criteria for this determination would be; and

- maintaining local control of affordable housing funds - this is important because it would allow local officials to provide input into the implementation of housing policy, specifically the prioritization of geographic areas for housing development, assistance to target populations, and the provision of services. It would also permit earlier commitment of funds to projects and provide developers with site acquisition and predevelopment expenses.

The CDC suggests supporting the bill if amended to require the investment plan to clearly identify how funds would be distributed, and recommends the bill be amended to include the following provisions:

- allow funds to be dedicated for use within the jurisdiction where the funds were generated;
- specify exactly how funds are to be allocated or awarded;
- allocate funds directly to local agencies and avoid pass-throughs at the State.

Registrar-Recorder/County Clerk

The Registrar-Recorder/County-Clerk (RR/CC) indicates that while the intent of AB 1335 is aligned with broader legislative priorities, the County Recorders Association of California (Association) has expressed concerns with the bill in that it would dramatically impact fees currently charged for document recording services and could serve as a disincentive to full recording of certain transactions.

The Registrar-Recorder/County Clerk indicates that the Association's analysis identifies the following concerns:

- The proposed $75 recording fee would be in addition to any fee(s) currently charged by a county for recording these documents.
- A family refinancing their home to lower mortgage payments (where at least four documents are recorded) or homeowners facing default (where at least five documents are filed) would end up paying an additional $225 for recording required documents, creating an additional financial burden on persons or families who may already be experiencing financial hardships.

- The bill exempts real estate sales which make up a significant share of recordable documents and where miscellaneous fees are frequently incorporated into closing costs and included in financing. Broadening the bill to include these documents might enable reducing the fee and the per document fee burden across the board.

- The new fee significantly increases the base document recording fees for most documents at a time when counties across the state have experienced ongoing revenue decline in recent years associated with economic conditions and instability in the real estate market. Future consideration of adjusting the recording fee in response to operational concerns or market conditions could be negatively impacted by imposition of the fee proposed in this bill.

The Registrar-Recorder/County-Clerk has also identified administrative/operational considerations associated with the bill:

- The new fees and how they are allocated would require system modifications for the various document recording systems used by county recorders, which may be complicated and costly. Because the RR/CC built and supports the County's document recording system, the impact locally would be in the allocation of resources within the Department to make the necessary programming changes;

- Computing per document costs could be difficult given the "in connection with" language, specific documents, residential dwellings only, and maximum fee amount. The Department would seek to automate these calculations for cashiering purposes, but the language may create some ambiguity;

- Financial records have a six-year retention, so the bill may require retention of associated financial records to identify and verify all costs and dates of recording;

- Monitoring requirements are not mentioned in the bill. It is not clear if the bill implies new responsibilities for county recorders to monitor and audit collection or simply to collect and remit the new fees.

The Registrar-Recorder/County-Clerk indicates that since the proposed revenue that would be generated by AB 1335 is unrelated to the Department's operations and is associated with a broader legislative priority, the RR/CC has no specific policy recommendation on the bill. The RR/CC does, however, recommend consideration of the issues identified by the Association and the possible impacts of a significant increase to document recording fees.

Conclusion

The County's 2015-16 State Legislative Agenda contains policies to support the affordable housing provisions of AB 1335 including support for: 1) proposals that provide incentives to local governments and/or developers to increase and protect affordable housing and flexibility for counties to promote a diversity of affordable housing types through local policies; 2) proposals to provide additional resources for meeting the capital and operational costs of housing production and related supportive service needs of low- and moderate-income families and the needs of special populations, including elderly, disabled, and mentally ill persons; and 3) proposals to address affordable housing needs on a multi-jurisdictional basis. **However, because AB 1335 proposes new or increased fees, taking a position on this measure is a matter for Board policy determination.**

SAH:JJ:MR
AO:lm

c: Executive Office, Board of Supervisors
County Counsel