

# DRAFT

## Redevelopment Agencies Dissolution Clean-up and Liquid Asset Provisions Department of Finance May Revision June 11, 2012 AMENDMENTS

CHANGES IN DOF LANGUAGE IS HIGHLIGHTED IN **YELLOW**  
NEW LANGUAGE IS DOUBLE-UNDERLINED

### **Safe Harbor Provision**

1. Health and Safety Code Section 34167.5 is amended as follows:

34167.5. (a) Except as provided in subdivision (b), commencing on the effective date of the act adding this part, the Controller shall review the activities of redevelopment agencies in the state to determine whether **an asset** transfer of an asset acquired with tax increment funds has

**Comment:** protects assets not purchased with tax increment from clawback.

occurred after January 1, 2011, between the city or county, or city and county that created a redevelopment agency or any other public agency, and the redevelopment agency. If such an asset transfer did occur during that period and the government agency that received the assets is not contractually committed to a third party for the expenditure or encumbrance of those assets, to the extent not prohibited by state and federal law, the Controller shall order the available assets to be returned to the redevelopment agency or, on or after October 1, 2011, to the successor agency, if a successor agency is established pursuant to Part 1.85 (commencing with Section 34170).

Upon receiving such an order from the Controller, an affected local agency shall, as soon as practicable, reverse the transfer and return the applicable assets to the redevelopment agency or, on or after October 1, 2011, to the successor agency, if a successor agency i

is established pursuant to Part 1.85 (commencing with Section 34170). The Legislature hereby finds that a transfer of assets by a

# DRAFT

redevelopment agency during the period covered in this section is deemed not to be in the furtherance of the Community Redevelopment Law and is thereby unauthorized.

(b) Subdivision (a) shall not apply to a successor agency which does all of the following:

(1) makes the payment required by subdivision (b) of section 34177;

(2) makes the payment required by subdivision (n) of section 34177;

and

(3) transfers cash or cash equivalents, pursuant to paragraph (6) of subdivision (c) of section 34179.5 before adding any amounts that were transferred as identified in paragraphs (2) and (3) of subdivision (c) if any such transfers were pursuant to an agreement entered into prior to January 1, 2011, in an amount equal to or greater than the amount of the payment that would have been made pursuant to an ordinance that was adopted by the successor agency pursuant to section 34193.

2. Health and Safety Code Section 34177.2 is amended to read:

[SEE PAGES 28 of this document adding subdivision (f).]

3. Health and Safety Code Section 34179.5 is amended to read:

[SEE PAGES 46 of this document.]

---

Health and Safety Code Section 34163 is amended as follows:

34163. Notwithstanding Part 1 (commencing with Section 33000), Part 1.5 (commencing with Section 34000), Part 1.6 (commencing with Section 34050), and Part 1.7 (commencing with Section 34100), or any other law, commencing on the effective date of this part, an agency shall not have the authority to, and shall not, do any of the following:

(a) Make loans or advances or grant or enter into agreements to provide funds or provide financial assistance of any sort to any entity or person for any purpose, including, but not limited to, all of the following:

# DRAFT

(1) Loans of moneys or any other thing of value or commitments to provide financing to nonprofit organizations to provide those organizations with financing for the acquisition, construction, rehabilitation, refinancing, or development of multifamily rental housing or the acquisition of commercial property for lease, each pursuant to Chapter 7.5 (commencing with Section 33741) of Part 1.

(2) Loans of moneys or any other thing of value for residential construction, improvement, or rehabilitation pursuant to Chapter 8 (commencing with Section 33750) of Part 1. These include, but are not limited to, construction loans to purchasers of residential housing, mortgage loans to purchasers of residential housing, and loans to mortgage lenders, or any other entity, to aid in financing pursuant to Chapter 8 (commencing with Section 33750).

(3) The purchase, by an agency, of mortgage or construction loans from mortgage lenders or from any other entities.

(b) Enter into contracts with, incur obligations, or make commitments to, any entity, whether governmental, tribal, or private, or any individual or groups of individuals for any purpose, including, but not limited to, loan agreements, passthrough agreements, regulatory agreements, services contracts, leases, disposition and development agreements, joint exercise of powers agreements, contracts for the purchase of capital equipment, agreements for redevelopment activities, including, but not limited to, agreements for planning, design, redesign, development, demolition, alteration, construction, reconstruction, rehabilitation, site remediation, site development or improvement, removal of graffiti, land clearance, and seismic retrofits.

(c) Amend or modify existing agreements, obligations, or commitments with any entity, for any purpose, including, but not limited to, any of the following:

(1) Renewing or extending term of leases or other agreements, except that the agency may extend lease space for its own use to a date not to exceed six months after the effective date of the act adding this part and for a rate no more than 5 percent above the rate the agency currently pays on a monthly basis.

(2) Modifying terms and conditions of existing agreements, obligations, or commitments.

(3) Forgiving all or any part of the balance owed to the agency on existing loans or extend the term or change the terms and conditions of existing loans.

(4) ~~Increasing its~~ Make any future deposits to the Low and Moderate

# DRAFT

Income Housing Fund created pursuant to Section 33334.3 beyond the minimum level that applied to it as of January 1, 2011.

(5) Transferring funds out of the Low and Moderate Income Housing Fund, except to meet the minimum housing-related obligations that existed as of January 1, 2011, to make required payments under Sections 33690 and 33690.5, and to borrow funds pursuant to Section 34168.5.

(d) Dispose of assets by sale, long-term lease, gift, grant, exchange, transfer, assignment, or otherwise, for any purpose, including, but not limited to, any of the following:

(1) Assets, including, but not limited to, real property, deeds of trust, and mortgages held by the agency, moneys, accounts receivable, contract rights, proceeds of insurance claims, grant proceeds, settlement payments, rights to receive rents, and any other rights to payment of whatever kind.

(2) Real property, including, but not limited to, land, land under water and waterfront property, buildings, structures, fixtures, and improvements on the land, any property appurtenant to, or used in connection with, the land, every estate, interest, privilege, easement, franchise, and right in land, including rights-of-way, terms for years, and liens, charges, or encumbrances by way of judgment, mortgage, or otherwise, and the indebtedness secured by the liens.

(e) Acquire real property by any means for any purpose, including, but not limited to, the purchase, lease, or exercising of an option to purchase or lease, exchange, subdivide, transfer, assume, obtain option upon, acquire by gift, grant, bequest, devise, or otherwise acquire any real property, any interest in real property, and any improvements on it, including the repurchase of developed property previously owned by the agency and the acquisition of real property by eminent domain; provided, however, that nothing in this subdivision is intended to prohibit the acceptance or transfer of title for real property acquired prior to the effective date of this part.

(f) Transfer, assign, vest, or delegate any of its assets, funds, rights, powers, ownership interests, or obligations for any purpose to any entity, including, but not limited to, the community, the legislative body, another member of a joint powers authority, a trustee, a receiver, a partner entity, another agency, a nonprofit corporation, a contractual counterparty, a public body, a limited-equity housing cooperative, the state, a political subdivision of the state, the federal government, any private entity, or an individual or group of

# DRAFT

individuals.

(g) Accept financial or other assistance from the state or federal government or any public or private source if the acceptance necessitates or is conditioned upon the agency incurring indebtedness as that term is described in this part.

Health and Safety Code Section 34168 is amended as follows:

(a) Notwithstanding any other law, any action contesting the validity of this part or Part 1.85 (commencing with Section 34170) or challenging acts taken pursuant to these parts shall be brought in the Superior Court of the County of Sacramento. The Superior Court of the County of Sacramento may consider the appointment of a special master to resolve the disputes described in section 34177.2, subdivision (b) of section 34177, subdivision (h) of Section 34179 and section 34179.6.

(b) If any provision of this part or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this part which can be given effect without the invalid provision or application, and to this end, the provisions of this part are severable.

**COMMENT:** *This amendment acknowledges that a special master might be helpful in resolving the disputes between the successor agency/oversight board and the Controller, Department, or auditor-controller.*

Health and Safety Code Section 34171 is amended as follows:

(a) "Administrative budget" means the budget for administrative costs of the successor agencies as provided in Section 34177.

(b) "Administrative cost allowance" means an amount that, subject to the approval of the oversight board, is payable from property tax revenues of up to 5 percent of the property tax allocated to the former redevelopment agency and the successor agency on the Recognized Obligation Payment Schedule covering the period January 1, 2012 through June 30, 2012 for the 2011-12 fiscal year reduced by the amount, if any, of property taxes calculated pursuant to subdivision (n) of section 34177 and up to 3 percent of the property tax allocated

# DRAFT

to the Redevelopment Obligation Retirement Fund money that is allocated to the successor agency for each fiscal year thereafter; provided, however, that the amount shall not be less than two hundred fifty thousand dollars (\$250,000) for any fiscal year or such lesser amount as agreed to by the successor agency.

(1) However, the allowance amount shall exclude, and shall not apply to, any administrative costs that can be paid from bond proceeds or from sources other than property tax. Administrative cost allowances shall not include any litigation expenses related to assets or obligations, settlements and judgments, and costs of maintaining assets prior to disposition.

(2) The following expenses shall be listed and payable from funding sources listed on a successor agency's Recognized Obligation Payment Schedule: (A) expenses relating to maintaining assets prior to disposition; (B) expenses relating to litigation initiated by the successor agency relating to a Recognized Obligation Payment Schedule approved by an oversight board or to otherwise enforce its rights and obligations under Part 1.80 and this Part; and (C) expenses relating to litigation filed against the successor agency.

(3) Employee costs associated with work on specific project implementation activities, including, but not limited to, construction inspection, project management, or actual construction, shall be considered project-specific costs and are not administrative costs.

**COMMENT:** *The first change in subdivision (b) is language from AB 1585 (Perez) as modified by the reference to Section 34177(n). That section requires payment to the taxing entities of any amount that would have been allocated to the taxing entities if AB 26 has been in effect in the fall 2011. **The change also clarifies that litigation expenses and the costs of maintaining assets prior to disposition are payable from funding sources listed on the ROPS.***

(c) "Designated local authority" shall mean a public entity formed pursuant to subdivision (d) of Section 34173.

(d) (1) "Enforceable obligation" means any of the following:

# DRAFT

(A) Bonds, as defined by Section 33602 and bonds issued pursuant to Section ~~58383~~ 5850 of the Government Code, including the required debt service, reserve set-asides, and any other payments required under the indenture or similar documents governing the issuance of the outstanding bonds of the former redevelopment agency. A reserve may be held when required by the bond indenture or when the next property tax allocation will be insufficient to pay all obligations due under the provisions of the bond for the next payment due in the following half of the calendar year.

(B) Loans of moneys borrowed by the redevelopment agency for a lawful purpose, to the extent they are legally required to be repaid pursuant to a required repayment schedule or other mandatory loan terms and loans of money borrowed by the redevelopment agency pursuant to paragraph (1) of subdivision (d) of section 33691.

**COMMENT:** *The amendment to sub-paragraph (B) makes a SERAF loan an enforceable obligation.*

(C) Payments required by the federal government, preexisting obligations to the state or obligations imposed by state law, other than passthrough payments that are made by the county auditor-controller pursuant to Section 34183, or legally enforceable payments required in connection with the agencies' employees, including, but not limited to, pension payments, pension obligation debt service, unemployment payments, or other obligations conferred through a collective bargaining agreement.

(D) Judgments or settlements entered by a competent court of law or binding arbitration decisions against the former redevelopment agency, other than passthrough payments that are made by the county auditor-controller pursuant to Section 34183. Along with the successor agency, the oversight board shall have the authority and standing to appeal any judgment or to set aside any settlement or arbitration decision.

(E) Any legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy. However, nothing in this act shall prohibit either the successor agency, with the approval or at the direction of the oversight board, or the oversight board itself from terminating any existing agreements or

# DRAFT

contracts and providing any necessary and required compensation or remediation for such termination.

(F) Contracts or agreements necessary for the administration or operation of the successor agency, in accordance with this part, including, but not limited to, agreements to purchase or rent office space, equipment and supplies, and pay-related expenses pursuant to Section 33127 and for carrying insurance pursuant to Section 33134.

(G) Amounts borrowed from or payments owing to the Low and Moderate Income Housing Fund of a redevelopment agency, which had been deferred as of the effective date of the act adding this part; provided, however, that the repayment schedule is approved by the oversight board.

(H) Amounts approved by a former redevelopment agency prior to or on the effective date of Chapter 5 of the 2011 Statutes, for an affordable housing project upon a determination by the oversight board of all of the following:

(i) The former redevelopment agency approved funding for the affordable housing project prior to or on the effective date of Chapter 5 of the 2011 Statutes.

(ii) All other necessary funding to complete the project is available at the time the oversight board considers the application of the successor agency pursuant to this sub-paragraph;

(iii) Construction of the project will commence on or before July 1, 2014.

The oversight board may approve disbursement of the amount requested in payments in accordance with the construction schedule or otherwise schedule the payments over a period not to exceed three years to reduce the impact on affected taxing entities.

**COMMENT:** *The amendments added by sub-paragraph (H) are intended to provide funding for a limited number of “shovel-ready” affordable housing projects.*

(2) (A) Except as specifically provided in this part, For purposes of this part, “enforceable obligation” does not include any agreements; contracts; or arrangements between the city, county, or city and county that created the redevelopment agency and the former redevelopment agency. However, written agreements entered into (i) at the time of issuance, but in no event later than December 31,

# DRAFT

2010, of indebtedness obligations, and (ii) solely for the purpose of securing or repaying those indebtedness obligations ~~may~~ shall be deemed enforceable obligations for purposes of this part.

Notwithstanding this paragraph, loan agreements either entered into between the redevelopment agency and the city, county, or city and county that created it, within two years of the date of creation of the redevelopment agency, or loan agreements that meet the conditions of subdivision (k) of Section 34180 shall ~~may~~ be deemed to be enforceable obligations.

**COMMENT:** *The amendments are from page 5, lines 8-11 of AB 1585 (Perez). Changing “may” to “shall” for the repayment of loans issued during the first two years of an agency’s existence, is considered a clarifying change requested by cities.*

(3) Contracts or agreements between the former redevelopment agency and other public agencies, to perform services or provide funding for governmental or private services or capital projects outside of redevelopment project areas that do not provide benefit to the redevelopment project and thus were not properly authorized under Part 1 (commencing with Section 33000) shall be deemed void on the effective date of this part; provided, however, that such contracts or agreements for the provision of housing properly authorized under Part 1 (commencing with Section 33000) shall not be deemed void; and provided, further, however, that such contracts or agreements for governmental or private services or capital projects within redevelopment project areas shall be deemed to be enforceable obligations.

**COMMENT:** *We have been advised that Department of Finance has rejected funding agreements between a former redevelopment agency and state, regional or federal governmental agencies for projects or services located within a redevelopment project area.*

(e) "Indebtedness obligations" means bonds, notes, certificates of participation, or other evidence of indebtedness, issued or delivered by the redevelopment agency, or by a joint exercise of powers authority created by the redevelopment agency, to third-party investors or bondholders to finance or refinance redevelopment

# DRAFT

projects undertaken by the redevelopment agency in compliance with the Community Redevelopment Law (Part 1 (commencing with Section 33000)).

(f) "Oversight board" shall mean each entity established pursuant to Section 34179.

(g) "Recognized obligation" means an obligation listed in the Recognized Obligation Payment Schedule.

(h) "Recognized Obligation Payment Schedule" means the document setting forth the minimum payment amounts and due dates of payments required by enforceable obligations for each six-month fiscal period as provided in subdivision (m) (l) of Section 34177.

(i) "School entity" means any entity defined as such in subdivision (f) of Section 95 of the Revenue and Taxation Code.

(j) "Successor agency" means a public body corporate and politic separate from the county, city, or city and county that authorized the creation of each redevelopment agency or another entity as provided in Section 34173.

**COMMENT:** *Amendment is intended to make language consistent with intent of trailer bill to establish successor agency as separate political entity.*

(k) "Taxing entities" means cities, counties, a city and county, special districts, and school entities, as defined in subdivision (f) of Section 95 of the Revenue and Taxation Code, that receive passthrough payments and distributions of property taxes pursuant to the provisions of this part.

(l) "Property taxes" include all property tax revenues including those from unitary and supplemental tax increment.

Health and Safety Code Section 34173 is amended as follows:

34173. (a) Successor agencies, as defined in this part, are hereby designated as successor entities to the former redevelopment agencies.

(b) Except for those provisions of the Community Redevelopment Law that are repealed, restricted, or revised pursuant to the act adding this part, all authority, rights, powers, duties, and obligations previously vested with the former redevelopment agencies, under the Community Redevelopment Law, are hereby vested in the successor

# DRAFT

agencies.

(c) (1) Where the redevelopment agency was in the form of a joint powers authority, and where the joint powers agreement governing the formation of the joint powers authority addresses the allocation of assets and liabilities upon dissolution of the joint powers authority, then each of the entities that created the former redevelopment agency may be a successor agency within the meaning of this part and each shall have a share of assets and liabilities based on the provisions of the joint powers agreement.

(2) Where the redevelopment agency was in the form of a joint powers authority, and where the joint powers agreement governing the formation of the joint powers authority does not address the allocation of assets and liabilities upon dissolution of the joint powers authority, then each of the entities that created the former redevelopment agency may be a successor agency within the meaning of this part, a proportionate share of the assets and liabilities shall be based on the assessed value in the project areas within each entity's jurisdiction, as determined by the county assessor, in its jurisdiction as compared to the assessed value of land within the boundaries of the project areas of the former redevelopment agency.

(d) (1) A city, county, city and county, or the entities forming the joint powers authority that authorized the creation of each redevelopment agency may elect not to serve as a successor agency under this part. A city, county, city and county, or any member of a joint powers authority that elects not to serve as a successor agency under this part must file a copy of a duly authorized resolution of its governing board to that effect with the county auditor-controller no later than one month prior to the effective date of this part.

(2) The determination of the first local agency that elects to become the successor agency shall be made by the county auditor-controller based on the earliest receipt by the county auditor-controller of a copy of a duly adopted resolution of the local agency's governing board authorizing such an election. As used in this section, "local agency" means any city, county, city and county, or special district in the county of the former redevelopment agency.

(3) If no local agency elects to serve as a successor agency for a dissolved redevelopment agency, a public body, referred to herein as a "designated local authority" shall be immediately formed, pursuant to this part, in the county and shall be vested with all the powers and duties of a successor agency as described in this part. The Governor

# DRAFT

shall appoint three residents of the county to serve as the governing board of the authority. The designated local authority shall serve as successor agency until a local agency elects to become the successor agency in accordance with this section.

(4) Designated local authority members shall have personal immunity from suit for their actions taken within the scope of their responsibilities as designated local authority members.

(5) A city, county, or city and county, or the entities forming the joint powers authority that authorized the creation of a redevelopment agency and that elected not to serve as the successor agency under this part, may subsequently reverse this decision and agree to serve as the successor agency pursuant to this section. Any reversal of this decision shall not become effective for 60 days after notice has been given to the current successor agency and the oversight board and shall not invalidate any action of the successor agency or oversight board taken prior to the effective date of the transfer of responsibility.

(e) The liability of any successor agency, acting pursuant to the powers granted under the act adding this part, shall be limited to the extent of the total sum of property tax revenues it receives pursuant to this part and the value of assets transferred to it as a successor agency for a dissolved redevelopment agency.

(f) Any existing cleanup plans and liability limits authorized under the Polanco Redevelopment Act shall transfer to the successor agency.

All costs incurred for transferred cleanup plans shall be listed on a successor agency's Recognized Obligation Payment Schedule and shall constitute an "enforceable obligation." A successor agency shall be a "local agency" for purposes of Section 33459 and 33459.3.

**COMMENT:** *We want to be sure that a successor agency receives the liability protection that was applicable to a redevelopment agency and that the costs of cleanup of transferred properties are enforceable obligations.*

(g) A successor agency is a separate public entity from the public agency that provides for its governance and may not merge with the sponsoring city.

**COMMENT:** *The status of the successor agency is found in the*

# DRAFT

*definition of “successor agency” in Section 34171(j).*

The legislative body of the local agency that created the former redevelopment agency shall be the governing body of the successor agency unless the local agency elected not to be the successor agency pursuant to subdivision (d) of section 34172 in which case the governing body of the local agency that elected to serve as a successor agency or the designated local authority shall be the governing body.

**COMMENT:** *Since the successor agency is a separate political entity, it is necessary to clarify the composition of its governing body.*

The liabilities of the redevelopment agency do not transfer to the city, county or city and county and the assets do not become city, county or city and county assets. A successor agency has its own name, can be sued, and can sue. All litigation involving a redevelopment agency automatically transfers to the successor agency. The separate redevelopment agency employees do not automatically become city employees and the successor agency retains its own collective bargaining status. As successors, successor agencies succeed to the organizational status of the redevelopment agency, but without any legal authority to participate in redevelopment activities except as provided in this Part. Each successor agency shall be deemed to be a local entity for purposes of the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

**COMMENT:** *AB 26 requires successor agencies to “participate in certain redevelopment activities” (see Section 34177).*

(h) The city, county, or city and county that authorized the creation of a redevelopment agency may loan or grant funds to a successor agency that are repayable from the Real Property Tax Trust Fund for administrative costs, enforceable obligations, or project related expenses at the city’s discretion but receipt and use of these funds must be reflected on the Recognized Obligation Payment Schedule or the administrative budget and therefore is subject to the oversight and approval of the oversight board pursuant to section 34180. An enforceable obligation is created for repayment of such loans.

# DRAFT

**COMMENT:** A city might loan money and not expect to be repaid from property taxes. In such a case, oversight board approval is not required. **This revision reflects comments from cities to allow loans made to successor agencies to be recovered as an enforceable obligation. Grants do not need to be subject to this process.**

Health and Safety Code Section 34175 is amended as follows:

34175. (a) It is the intent of this part that pledges of revenues associated with enforceable obligations of the former redevelopment agencies are to be honored. It is intended that the cessation of any redevelopment agency shall not affect either the pledge, the legal existence of that pledge, or the stream of revenues available to meet the requirements of the pledge.

(b) All assets, properties, contracts, leases, books and records, buildings, and equipment of the former redevelopment agency are transferred on February 1, 2012, to the control of the successor agency, for administration pursuant to the provisions of this part. This includes all cash or cash equivalents and amounts owed to the redevelopment agency as of February 1, 2012. Any legal or contractual restrictions on the use of funds or assets also transfer to the successor agency.

34176. (a) The city, county, or city and county that authorized the creation of a redevelopment agency may elect to retain the housing assets and functions previously performed by the redevelopment agency. If a city, county, or city and county elects to retain the ~~responsibility for performing~~ authority to perform housing functions previously performed by a redevelopment agency, **all rights, powers, duties, and obligations** to perform the housing functions associated with housing assets transferred, all property and other housing assets, as defined in subdivision (d) excluding any amounts on deposit in the Low and Moderate Income Housing Fund not required to fulfill duties and obligations associated with the transferred housing assets, shall be transferred to the city, county, or city and county. Identification of housing assets and transfer of title shall be authorized by resolution of the oversight board.

# DRAFT

**COMMENT:** *The successor housing agency needs the rights, powers, duties and obligations plus the LMIHF funds associated with the housing assets that are transferred to it.*

(b) If a city, county, or city and county does not elect to retain the responsibility for performing housing functions previously performed by a redevelopment agency, all rights, powers, assets, liabilities, duties, and obligations associated with the housing activities of the agency, excluding any amounts in the Low and Moderate Income Housing Fund, shall be transferred as follows:

(1) Where there is no local housing authority in the territorial jurisdiction of the former redevelopment agency, to the Department of Housing and Community Development.

(2) Where there is one local housing authority in the territorial jurisdiction of the former redevelopment agency, to that local housing authority.

(3) Where there is more than one local housing authority in the territorial jurisdiction of the former redevelopment agency, to the local housing authority selected by the city, county, or city and county that authorized the creation of the redevelopment agency.

(c) Commencing on the operative date of this part, the entity to which housing assets are transferred assuming the housing functions formerly performed by the redevelopment agency may enforce affordability covenants and perform related activities pursuant to applicable provisions of the Community Redevelopment Law (Part 1 (commencing with Section 33000), including, but not limited to, Section 33418. The housing successor may exercise any rights, powers, and duties with respect to housing assets it receives that apply by virtue of contract, federal law, or conditions of receipt of funds by the redevelopment agency.

(d) “Housing asset” includes the following:

1) Any real property, interest in, or restriction on the use of real property, whether improved or not, and any personal property provided in residences (such as furniture and appliances) that was acquired for housing purposes (either by purchase or through a loan) in whole or part with funds from the Low and Moderate Income Housing Fund .

# DRAFT

2) Any funds that are encumbered by an enforceable obligation to build or acquire low and moderate income housing as low and moderate income housing is defined by the Community Redevelopment Law.

3) Any loan or grant receivable, funded from the Low and Moderate Income Housing Fund, from homebuyers, home owners, nonprofit or for-profit developers and other parties that require occupancy by persons of low or moderate income as defined in Community Redevelopment law.

4) Any funds derived from rents or operation of properties by other parties that were financed in whole or part with Low and Moderate Income Housing Fund funds, including residual receipt payments from developers, conditional grant repayments, cost savings and proceeds from refinancing, and principal and interest payments from homebuyers subject to enforceable income limits.

5) A stream of rents or other payments from housing tenants or operators of low and moderate income housing financed in whole or part with Low and Moderate Income Housing Fund funds that are used to maintain, operate, and enforce the affordability of housing or for enforceable obligations associated with low and moderate income housing.

(e) When a development includes both low and moderate income housing that meets the definition of housing asset under subdivision (d) and other types of property use, including but not limited to commercial use, governmental use, open space and parks, the oversight board shall consider the overall value to the community as well as the benefit to taxing agencies of keeping the entire development intact or dividing the title and control over the property between the housing successor and the redevelopment successor agency or other public or private agencies. Disposition of such assets may be accomplished with a revenue sharing agreement.

(f) Liabilities arising from acts or omissions of the former redevelopment agency or successor agency relating to the housing assets and functions which are the subject of this section, shall not transfer to either the entity which retains the housing assets and functions previously performed by the redevelopment agency

# DRAFT

pursuant to subdivision (a) or the entity which receives the housing assets and functions previously performed by the redevelopment agency pursuant to subdivision (b)

**COMMENT:** *The language added in subdivision (f) is intended to protect the successor housing entity from liability for acts or omissions of the successor agency or former redevelopment agency.*

Health and Safety Code Section 34177 is amended as follows:

34177. Successor agencies are required to do all of the following: (a) Continue to make payments due for enforceable obligations. (1) On and after February 1, 2011, and until a Recognized Obligation Payment

Schedule becomes operative, only payments required pursuant to an enforceable obligations payment schedule shall be made. The initial enforceable obligation payment schedule shall be the last schedule adopted by the redevelopment agency under Section 34169.

However, payments associated with obligations excluded from the definition of enforceable obligations by paragraph (2) of subdivision (e) of Section 34171 shall be excluded from the enforceable obligations payment schedule and be removed from the last schedule adopted by the redevelopment agency under Section 34169 prior to the successor agency adopting it as its enforceable obligations payment schedule pursuant to this subdivision. The enforceable obligation payment schedule may be amended by the successor agency at any public meeting and shall be subject to the approval of the oversight board as soon as the board has sufficient members to form a quorum.

In recognition of the fact that the timing of the California Supreme Court's ruling in the case *California Redevelopment Association et al. v. Matosantos et al.*, delayed the preparation by successor agencies and the approval by oversight boards of the January 1, 2012 through June 30, 2012 Recognized Obligation Payment Schedule, a successor agency may amend the Enforceable Obligation Payment Schedule to authorize the continued payment of enforceable obligations until such time as the January 1, 2012 through June 30, 2012 Recognized Obligation Payment Schedule has been approved by the oversight board and by the Department of Finance.

# DRAFT

(2) The Department of Finance and the Controller shall each have the authority to require any documents associated with the enforceable obligations to be provided to them in a manner of their choosing. Any taxing entity, the department, and the Controller shall each have standing to file a judicial action to prevent a violation under this part and to obtain injunctive or other appropriate relief. ~~The county auditor-controller, the department, and the Controller shall each have the authority to require the return of funds improperly spent or transferred to a public entity in conflict with the provisions of this part or part 1.8 within 60 days. If funds are not returned within that time, the funds may be recovered through an offset of sales and use tax or property tax allocations to the local agency. The Board of Equalization shall promptly make such offset when ordered by the Department of Finance or the Controller. The county auditor-controller may reduce the property tax allocations to any local agency in the county that fails to repay funds within 60 days if the Department of Finance or the Controller has not ordered an offset of sales and use tax allocations. The county auditor-controller, the department, and the Controller shall each have the authority to demand the return of funds improperly spent or transferred to a private person or other private entity within 60 days. If funds are not repaid after this time, they may be recovered through any lawful means of collection and are subject to a ten percent penalty plus interest at the rate charged for late personal income tax payments from the date the improper payment was made to the date the money is repaid.~~

**COMMENT:** *For alternative proposal, see Section 34177.2. There are two significant problems with this language. (1) The process is not fair since it allows the auditor-controller, DOF, and the Controller to take local funds without any legal due process-participation by the successor agency. (2) The offset of property taxes and sales taxes violate Article XIII A, section 1 and Article XIII, section 23, respectively.*

(3) Commencing on ~~May 1, 2012~~ the date the Recognized Obligation Payment Schedule is valid pursuant to subdivision (m), only those payments listed in the Recognized Obligation Payment Schedule may be made by the successor agency from the funds specified in the Recognized Obligation Payment Schedule. In addition, after it

# DRAFT

becomes valid commencing May 1, 2012, the Recognized Obligation Payment Schedule shall supersede the Statement of Indebtedness, which shall no longer be prepared nor have any effect under the Community Redevelopment Law.

(4) Nothing in the act adding this part is to be construed as preventing a successor agency, with the prior approval of the oversight board, as described in Section 34179, from making payments for enforceable obligations from sources other than those listed in the Recognized Obligation Payment Schedule.

(5) From February 1, 2011, to July 1, 2012, a successor agency shall have no authority and is hereby prohibited from accelerating payment or making any lump-sum payments that are intended to prepay loans unless such accelerated repayments were required prior to the effective date of this part.

(b) On or before September 1, 2012, make a payment of **List on the Recognized Obligation Payment Schedule covering the period July 1, 2012 through December 31, 2012** any amounts owed by a redevelopment agency to an affected taxing entity pursuant to Sections 33401, 33492.140, 33607, 33607.5, 33607.7, or 33676, or pursuant to any passthrough agreement entered into before January 1, 1994 between a redevelopment agency and an affected taxing entity to the extent the redevelopment agency or the successor agency did not remit the amounts owed for passthrough payments for the period July 1, 2011 through February 1, 2012. **during fiscal year 2011-12, funds allocated to the redevelopment agency and successor agency that should have funded those payment shall be recovered under paragraphs (1) or (2).**

(1) On or before August 1, 2012, a successor agency shall notify the auditor-controller of one of the following: (A) the amount of the payment that will be made on September 1, 2012; or (B) the amount of the payment that is owing but cannot be made on September 1, 2012 because of insufficient funds; or (C) that no amount is owing an affected taxing entity.

(2) If the auditor-controller disagrees with the information provided by the successor agency pursuant to paragraph (1), then representatives of the successor agency and the auditor-controller

# DRAFT

shall meet and confer over a thirty-day period in an attempt to resolve the disagreement. If at the conclusion of the meet and confer period, the parties have not been able to resolve the dispute, then the successor agency shall either challenge the auditor-controller's determination in an action filed in superior court within thirty days of the end of the meet and confer period, or make the payment required by this subdivision.

(3) If the successor agency fails either to make the payment required by this subdivision or challenge the auditor-controller's determination pursuant to paragraph (2), and the county auditor-controller is able to demonstrate with written evidence that such payment is due and owing, then the auditor-controller shall make the required payments to the affected taxing entities from the monies remaining in the Redevelopment Property Tax Trust Fund pursuant to paragraph (4) of subdivision (a) of Section 34183. The auditor-controller shall not make the required payments to affected taxing entities if the successor agency files an action in superior court challenging the determination of the auditor-controller except as directed by the superior court.

to list on the Recognized Obligation Payment Schedule the amounts referenced in subdivision (b), the county auditor-controller shall make the required payments to the affected taxing jurisdictions by reducing the amounts to which the successor agency would otherwise be entitled pursuant to paragraph (3) of subdivision (a) of Section 34183 at the next allocation of property tax under this part. If this amount is not sufficient to make the required payment, the county auditor-controller shall then reduce the amounts to which the successor agency would otherwise be entitled pursuant to paragraph (2) of subdivision (a) of Section 34183.

not sufficient to make the required payment, the successor agency shall list the remaining owed amount on each subsequent Recognized Obligation Payment Schedule until such time as the owed amount is fully paid. If the successor agency fails to list the owed amounts on the subsequent Recognized Obligation Payment Schedules, the county auditor-controller shall apply the provisions of this paragraph as appropriate, until the owed amount is fully paid.

(2) Alternately, the auditor-controller may accept payment from the

# DRAFT

~~successor agency's reserve funds for payments of passthrough payments owed as defined in this subdivision.~~

**COMMENT:** *A successor agency's ROPS for July 1, 2012 through December 31, 2012 will pre-date the effective date of this bill. Therefore, there is no opportunity to comply with this subdivision. This provision seems to be based upon the assumption that a successor agency has funds available to make these payments. Therefore amendments require a successor agency to transfer the requirement payment to the taxing entity and if the payment is not made, changes the source of the required payments to the amount remaining after payments required by Section 34183(a)(1), (2), and (3) are made. "Meet and confer" is provided as a way of resolving disputes.*

~~(b)~~ (c) Maintain reserves in the amount required by indentures, trust indentures, or similar documents governing the issuance of outstanding redevelopment agency bonds.

~~(c)~~ (d) Perform obligations, including entering into contracts, required pursuant to any enforceable obligation.

~~(d)~~ (e) Remit unencumbered balances of redevelopment agency funds to the county auditor-controller for distribution to the taxing entities, including, but not limited to, the unencumbered balance of the Low and Moderate Income Housing Fund of a former redevelopment agency. In making the distribution, the county auditor-controller shall utilize the same methodology for allocation and distribution of property tax revenues provided in Section 34188.

~~(e)~~ (f) (1) Dispose of assets and properties of the former redevelopment agency as directed by the oversight board; provided, however, that the oversight board may instead direct the successor agency to transfer ownership of certain assets pursuant to subdivision (a) of Section 34181. The disposal is to be done expeditiously and in a manner aimed at maximizing value. Proceeds from asset sales and related funds that are no longer needed for approved development projects or to otherwise wind down the affairs of the agency, each as determined by the oversight board, shall be transferred to the county auditor-controller for distribution as property tax proceeds under Section 34188.

(2) Notwithstanding paragraph (1), a successor agency may retain property owned by the former redevelopment agency for the purpose

# DRAFT

of the remediation or removal of the release of hazardous substances at a brownfield site, as defined in Section 33459, on, under, or from the property, using available financing, funds obtained from a responsible party, state or federal grants, any other funds at the disposal of the successor agency, or funds approved by the oversight board in order to maximize value of the asset. Upon completion of the remediation or removal of hazardous substances from the brownfield site, the successor agency shall dispose of the property pursuant to paragraph (1).

**COMMENT:** *The language in paragraph (2) would allow a successor agency to retain contaminated property for clean-up using a variety of funding sources including funds approved by the oversight board. This concept and language is taken from SB 1335 (Pavley).*

~~(f)~~ (g) Enforce all former redevelopment agency rights for the benefit of the taxing entities, including, but not limited to, continuing to collect loans, rents, and other revenues that were due to the redevelopment agency.

~~(g)~~ (h) Effectuate transfer of housing functions and assets to the appropriate entity designated pursuant to Section 34176.

~~(h)~~ (i) Expeditiously wind down the affairs of the redevelopment agency pursuant to the provisions of this part and in accordance with the direction of the oversight board.

~~(i)~~ (j) Continue to oversee development of properties until the contracted work has been completed or the contractual obligations of the former redevelopment agency can be transferred to other parties. Bond proceeds shall be used for the purposes for which bonds were sold unless the purposes can no longer be achieved, in which case, the proceeds may be used to defease the bonds.

~~(j)~~ (k) Prepare a proposed administrative budget and submit it to the oversight board for its approval. The proposed administrative budget shall include all of the following:

(1) Estimated amounts for successor agency administrative costs for the upcoming six- month fiscal period.

(2) Proposed sources of payment for the costs identified in paragraph (1).

(3) Proposals for arrangements for administrative and operations services provided by a city, county, city and county, or other entity.

~~(k)~~ (l) Provide administrative cost estimates, from its approved

# DRAFT

administrative budget that are to be paid from property tax revenues deposited in the Redevelopment Property Tax Trust Fund, to the county auditor-controller for each six-month fiscal period.

~~(l)~~ (m) (1) Before each six-month fiscal period, prepare a Recognized Obligation Payment Schedule in accordance with the requirements of this paragraph. For each recognized obligation, the Recognized Obligation Payment Schedule shall identify one or more of the following sources of payment:

(A) Low and Moderate Income Housing Fund. (B) Bond proceeds. (C) Reserve balances. (D) Administrative cost allowance.

(E) The Redevelopment Property Tax Trust Fund, but only to the extent no other funding source is available or when payment from property tax revenues is required by an enforceable obligation or by the provisions of this part.

(F) Other revenue sources, including rents, concessions, asset sale proceeds, interest earnings, and any other revenues derived from the former redevelopment agency, as approved by the oversight board in accordance with this part.

(2) A Recognized Obligation Payment Schedule shall not be deemed valid unless all of the following conditions have been met:

(A) A ~~draft~~ Recognized Obligation Payment Schedule is prepared by the successor agency for the enforceable obligations of the former redevelopment agency. ~~by March 1, 2011. From October 1, 2011, to July 1, 2012, the~~ The initial ~~draft of that~~ schedule shall project the dates and amounts of scheduled payments for each enforceable obligation for the remainder of the time period during which the redevelopment agency would have been authorized to obligate property tax increment had such a redevelopment agency not been dissolved, ~~and shall be reviewed and certified, as to its accuracy, by an external auditor designated pursuant to Section 34182.~~

(B) The ~~certified~~ Recognized Obligation Payment Schedule is submitted to and duly approved by the oversight board.

(C) A copy of the approved Recognized Obligation Payment Schedule is submitted to the county auditor-controller and both the Controller's office and the Department of Finance and be posted on the successor agency's Internet Web site.

(3) The Recognized Obligation Payment Schedule shall be forward looking to the next six months. The first Recognized Obligation Payment Schedule shall be submitted to the Controller's office and the Department of Finance by April 15, 2011, for the period of

# DRAFT

January 1, 2012, to June 30, 2012, inclusive. This Recognized Obligation Payment Schedule shall include all payments made by the former redevelopment agency between January 1, 2012 through January 31, 2012, and shall include all payments proposed to be made by the successor agency from February 1, 2012 through June 30, 2012. The first Recognized Obligation Payment Schedule submitted for the year may, if necessary, include the total amount of payments required for an enforceable obligation for the next two six-month periods and, in the case of debt obligations, may include, if necessary, the amount of the annual debt service, reserve set-asides, and any other amounts required under indenture or similar documents. Former redevelopment agency enforceable obligation payments due, and reasonable or necessary administrative costs due or incurred, prior to January 1, 2012, shall be made from property tax revenues received in the spring of 2011 property tax distribution, and from other revenues and balances transferred to the successor agency.

**COMMENT:** *The language added to subdivision (m) is from page 14, lines 9-16 of AB 1585 (Perez).*

(n) In recognition of the fact that county auditor-controllers were unable to make the payments required by paragraph (4) of subdivision (a) of Section 34183 for the period January 1, 2012 through June 30, 2012 on January 16, 2012, due to the California Supreme Court's ruling in the case *California Redevelopment Association et al. v. Matosantos et al.*, in addition to the taking the actions specified in Section 34183 with respect to the June 1 property tax allocations, county auditor-controllers shall do all the following: should have made allocations as provided in paragraph (1).

(1) Based upon the Recognized Obligation Payment Schedule covering the period February 1, 2012 through June 30, 2012 and in accordance with the provisions of paragraphs (1), (2), and (3) of subdivision (a) of Section 34183, calculate the amount, if any, that each affected taxing entity was entitled to pursuant to paragraph (4) of subdivision (a) of Section 34183 for the period February 1, 2012 though June 30, 2012.

(2) Notify the successor agency of the amount calculated pursuant to

# DRAFT

paragraph (1). Within thirty days of receiving notification from the auditor-controller, the successor agency either remit that amount to the auditor-controller or send a notice of dispute stating that the successor agency either (A) disagrees with the amount; or (B) agrees with the amount but does not have sufficient funds to remit the amount.

(3) Respond to the notice of dispute submitted by a successor agency by either (A) modifying the amount; (B) agreeing to a schedule of payments; or (C) rejecting the successor agency's notice of dispute.

(4) If the auditor-controller rejects with the successor agency's notice of dispute, then representatives of the successor agency and the auditor-controller shall meet and confer to attempt to resolve the dispute over a thirty day period.

(5) If the meet and confer process described in paragraph (4) does not resolve the dispute, the successor agency may bring an action in superior court to challenge the auditor-controller's determination within thirty days of the end of the thirty day meet and confer period.,

(6) If action is taken pursuant to sub-paragraph (A) or (B) of paragraph (3), or the dispute is resolved pursuant to paragraph (4), then the successor agency shall remit the agreed-upon amount to the auditor-controller within thirty days.

(7) If the successor agency fails to remit the amount agreed to by the parties pursuant to this subdivision, or fails to challenge the determination pursuant to paragraph (5), then the auditor-controller may reduce the amount of the payment to the successor agency pursuant to paragraph (3) of subdivision (a) of section 34183, in accordance with a payment schedule approved by the oversight board, that does not reduce any amounts necessary to pay enforceable obligations and allows for a minimum level of administrative activity by the successor agency.

(8) If an affected taxing entity has not received the full amount to which it was entitled pursuant to paragraph (4) of subdivision (a) of Section 34183 for the period January 1, 2012 through June 30, 2012

# DRAFT

and paragraph (1), the county auditor-controller shall reapply the provisions of paragraph (7) to each subsequent property tax allocation until such time as the affected taxing entity has received the full amount to which it was entitled pursuant to paragraph (4) of subdivision (a) of Section 34183 for the period January 1, 2012 through June 30, 2012.

(1) From the allocations made on June 1, 2012 for the Recognized Obligation Payment Schedule covering the period July 1, 2012 through December 31, 2012, deduct from the amount that otherwise would be deposited in the Redevelopment Property Tax Trust Fund on behalf of the successor agency an amount equivalent to the amount that each affected taxing entity was entitled to pursuant to paragraph (4) of subdivision (a) of Section 34183 for the period January 1, 2012 through June 30, 2012. The amount to be retained by taxing entities pursuant to paragraph (4) of subdivision (a) of Section 34183 for the January 1, 2012 through June 30, 2012 period is determined based on the Recognized Obligation Payment Schedule approved by the Department of Finance pursuant to Section 34179 and any amount determined to be owed pursuant to subdivision (b). The county auditor-controller should then have distributed the deducted sums to the affected taxing entities in accordance with paragraph (4) of subdivision (a) of Section 34183.

**COMMENT:** *If AB 26 had been in effect in the fall of 2011, there may or may not have been a distribution to taxing entities pursuant to Section 34183(a)(4). Therefore the amendments require first that the auditor-controller calculate the amount of the payment to taxing entities, if any. The assumption is that a successor agency retains property taxes that should have been allocated to the taxing entities. The most direct way to remedy this situation is to require the successor agency to remit the calculated amount. A “meet and confer” process is provided in the event of a dispute between the auditor controller and the successor agency.*

(o) Commencing with the Recognized Obligation Payment Schedule covering the period January 1, 2013 through June 30, 2013, successor agencies shall submit an oversight board-approved Recognized Obligation Payment Schedule to Finance and to the

# DRAFT

county auditor-controller no fewer than 45 days before the date upon which the Recognized Obligation Payment Schedule is to take effect.

(1) The successor agency shall submit a copy of the Recognized Obligation Payment Schedule to Department of Finance electronically, and the successor agency shall complete the Recognized Obligation Payment Schedule in the manner provided for by Department of Finance. A successor agency shall not be in compliance with this paragraph if it only submits to the department an electronic message or a letter stating that the oversight board has approved a Recognized Obligation Payment Schedule.

(2) If a successor agency fails to submit to Department of Finance an oversight board- approved Recognized Obligation Payment Schedule that complies with all requirements of this subdivision within five business days of the date upon which the Recognized Obligation Payment Schedule is to be used to determine the amount of property tax allocations, Department of Finance may determine if any amount should be withheld by the auditor-controller for payments for enforceable obligations from distribution to taxing agencies, pending approval of a Recognized Obligation Payment Schedule. The county auditor-controller shall distribute the portion of any the sums withheld pursuant to the paragraph to the affected taxing entities in accordance with paragraph (4) of subdivision (a) of Section 34183 upon notice by the Department of Finance that a portion of the withheld balances are in excess of the amount of enforceable obligations. The county auditor-controller shall distribute withheld funds to the successor agency only in accordance with a Recognized Obligation Payment Schedule approved by the Department of Finance. Auditor-controllers have no authority to withhold any other amounts from the allocations provided for under Sections 34183 or 34188 unless required by a court order.

(p) Cause a post-audit of the financial transactions and records of the successor agency to be made at least annually by a certified public accountant. The obligation imposed by this subdivision shall be an enforceable obligation.

**COMMENT:** *The requirement in subdivision (p) is taken from AB 1585 (Perez) at page 14, lines 22-24. We are proposing clarifying that costs incurred by the successor agency for this new requirement will be paid as an enforceable obligation.*

# DRAFT

Section 34177.2 is added to read:

34177.2 (a) The Department and the Controller each may require the return of funds expended, or transferred to a public entity, in violation of this part or part 1.8.

(b) If the Department or the Controller requires the return of funds pursuant to this section, it shall issue a written report that includes the following:

(1) the amount of the funds required to be returned;

(2) the evidence that supports the conclusion that funds were expended, or transferred to a public entity, in violation of this part or part 1.8;

The written report shall be provided to the successor agency within five business days of its completion.

(c) The successor agency shall review the written report received pursuant to subdivision (b) and prepare a reply. The reply shall confirm or reject the findings of the Department or the Controller. If the successor agency rejects any or all of the findings of the Department or the Controller, it shall include the evidence that supports its rejection of the findings. The reply of the successor agency shall be transmitted to the Department or Controller within 45 days of receiving the written report.

(d) The Department or Controller shall review the reply received pursuant to subdivision (c). If the reply rejects the findings of the Department or Controller, and the Department or Controller upholds its original conclusion, then representatives of the Department or Controller and representatives of the successor agency shall meet and confer to resolve the dispute over a thirty day period.

(e) If the meet and confer process does not resolve the dispute in this thirty day period, the successor agency may challenge the Department or Controller's decision in superior court. The court's review of the decision shall be limited to reviewing the report prepared pursuant to subdivision (b) and the reply prepared pursuant to subdivision (c) to determine whether the findings of the successor

# DRAFT

agency-are supported by substantial evidence in the entire record.

(f) Notwithstanding any other provision of this section, the Department and the Controller may not require the return of funds from a successor agency that does all of the following:

(1) makes the payment required by subdivision (b) of section 34177;

(2) makes the payment required by subdivision (n) of section 34177;

and

(3) transfers cash or cash equivalents, pursuant to paragraph (6) of subdivision (c) of section 34179.5 before adding any amounts that were transferred as identified in paragraphs (2) and (3) of subdivision (c) if any such transfers were pursuant to an agreement entered into prior to January 1, 2011, in an amount equal to or greater than the amount of the payment that would have been made pursuant to an ordinance that was adopted by the successor agency pursuant to section 34193.

Section 34177.3 is added to read:

34177.3 (a) Successor agencies have no authority to and shall not create new enforceable obligations under the authority of the Community Redevelopment Law or in any way begin new redevelopment work, except in compliance with (1) an enforceable obligation that existed **after June 28, 2011** the effective date of Chapter 5 of the 2011 Statutes; or (b) an agreement that is approved by the oversight board pursuant to section 34180.

**COMMENT:** *There has been considerable confusion about the effective date of AB 26. "Prior to June 28, 2011" may exclude a day that is "after the effective date of" of AB 26. In addition, we are proposing that the oversight board be allowed to approve certain contracts (e.g. refinancing of bonds; toxic contamination clean-up; disposition of assets;) which might be construed as beginning "new redevelopment work."*

(b) Successor agencies may create enforceable obligations to conduct the work of winding down the redevelopment agency

# DRAFT

including hiring staff, acquiring necessary professional administrative services and legal counsel, and procuring insurance.

(c) Successor agencies have no authority to and shall not transfer any powers, or revenues of the successor agency to any other party, public or private, except pursuant to an enforceable obligation on a Recognized Obligation Payment Schedule approved by the Department of Finance. Any such transfers of authority or revenues that are not made pursuant to an enforceable obligation on a Recognized Obligation Payment Schedule approved by Department of Finance are hereby declared to be void and the successor agency shall take action to reverse any such transfers. The State Controller may audit any transfer of authority or revenues prohibited by this section and may order the prompt return of any money or other things of value from the receiving party.

(d) Redevelopment agencies that resolved to participate in the Voluntary Alternative Redevelopment Program under Chapter 6 of the First Extraordinary Session of 2011 were and are subject to the provisions of Part 1.8. Any actions taken by redevelopment agencies to create obligations after June 27, 2011 are ultra vires and do not create enforceable obligations. (e) The Legislature finds and declares that the provisions of this section are declaratory of existing law.

**COMMENT:** *Agencies that opted into the voluntary payment program under AB 27 believe they should not be penalized for operating in good faith under the provisions of the law passed by the Legislature.*

Add Section 34177.5 to read:

Section 34177.5 (a) In addition to the powers granted to each successor agency, and notwithstanding anything in the act adding this part, including, but not limited to, Sections 34162 and 34189, a successor agency shall have the authority, rights and powers of the redevelopment agency to which it succeeded solely for the following purposes:

(1) For the purpose of issuing bonds or incurring other indebtedness to refund the bonds or other indebtedness of its former redevelopment agency or of the successor agency **to provide savings to the successor agency**, provided that (A) the total interest cost to maturity on the refunding bonds or other indebtedness plus the principal amount of the refunding bonds or other indebtedness shall

# DRAFT

not exceed the total remaining interest cost to maturity on the bonds or other indebtedness to be refunded, assuming, in the case of the refunding of variable rate bonds or other indebtedness, remaining interest on the bonds or other indebtedness will accrue at the maximum rate permitted under the documents pursuant to which such bonds or other indebtedness was issued, plus the remaining principal of the bonds or other indebtedness to be refunded, and (B) the principal amount of the refunding bonds or other indebtedness shall not exceed the amount required to defease the refunded bonds or other indebtedness, to establish customary debt service reserves and to pay related costs of issuance. If the foregoing conditions are satisfied, the initial principal amount of the refunding bonds or other indebtedness may be greater than the outstanding principal amount of the bonds or other indebtedness to be refunded. The successor agency may pledge to such refunding bonds or other indebtedness the revenues pledged to the bonds or other indebtedness being refunded, and such pledge, when made in connection with the issuance of such refunding bonds or other indebtedness, shall have the same lien priority as the pledge thereof in respect of the bonds or other obligations to be refunded, and shall be valid, binding and enforceable in accordance with its terms.

**COMMENT:** *The language in Section 34177.5 was drafted by a group of bond counsel. When I asked this group to review the language, they noted that the phrase that has been added above had been deleted. From Chris Lynch at Jones Hall: “It is important to re-insert the deleted language because variable rate bonds (which involve short-term rates, eg., weekly or monthly, and typically a liquidity instrument, e.g., a letter of credit) almost always bear a lower interest rate than fixed rate bonds. So, if an agency were to attempt to refinance a variable rate bond with a fixed rate bond, it probably would be unable to meet the “savings test” established by Section 34177.5 unless some assumption is made about the variable rate of interest. An inability to meet the savings test doesn’t mean it is a bad idea for the refunding to occur because (i) rates can (and almost certainly will) rise from their current, all-time low levels and (ii) the liquidity instrument always has a shorter term (usually 2-5 years) that is shorter than the term of the*

# DRAFT

*bonds, and, if the liquidity instrument terminates and the agency can't find a new provider (which is likely in today's environment), the interest rate skyrockets to a "default" rate. The problem can be solved by either (a) assuming for purposes of the test that the rate of interest on the variable rate bonds is the "maximum" permitted rate (typically 12%) or (ii) waiting until the liquidity instrument has expired and the "default" rate is in place, which is likely to be higher than the fixed rate of the refunding bonds. However, it would be better to give agencies the ability to refund these obligations now before they find themselves in a crisis."*

(2) For the purpose of issuing bonds or other indebtedness to finance debt service spikes, including balloon maturities, provided that (A) the existing indebtedness is not accelerated, except to the extent necessary to achieve substantially level debt service, and (B) the principal amount of the bonds or other indebtedness shall not exceed the amount required to finance the debt service spikes, including establishing customary debt service reserves and paying related costs of issuance

(3) For the purpose of amending an existing enforceable obligation under which the successor agency is obligated to reimburse a political subdivision of the state for the payment of debt service on a bond or other obligation of such political subdivision, or to pay all or a portion of the debt service on the bond or other obligation of such political subdivision to provide savings to the successor agency, provided that (A) the enforceable obligation is amended in connection with a refunding of the bonds or other obligations of such political subdivision so that the enforceable obligation will apply to the refunding bonds or other refunding indebtedness of the political subdivision, (B) the total interest cost to maturity on the refunding bonds or other indebtedness plus the principal amount of the refunding bonds or other indebtedness shall not exceed the total remaining interest cost to maturity on the bonds or other indebtedness to be refunded plus the remaining principal of the bonds or other indebtedness to be refunded, and (C) the principal amount of the refunding bonds or other indebtedness shall not exceed the amount required to defease the refunded bonds or other indebtedness, to establish customary debt service reserves and to

# DRAFT

pay related costs of issuance. The pledge set forth in such amended enforceable obligation, when made in connection with the execution of the amendment of the enforceable obligation, shall have the same lien priority as the pledge in the enforceable obligation prior to its amendment and shall be valid, binding and enforceable in accordance with its terms.

(4) For the purpose of issuing bonds or incurring other indebtedness to make payments under enforceable obligations when such enforceable obligations include the irrevocable pledge of property tax increment (formerly tax increment revenues prior to the effective date of this part) or other funds and the obligation to issue bonds secured by such pledge. The successor agency may pledge to such bonds or other indebtedness the property tax revenues and other funds described in such enforceable obligation, and such pledge, when made in connection with the issuance of such bonds or the incurring of other indebtedness, shall be valid, binding and enforceable in accordance with its terms. Nothing in this paragraph shall be deemed to authorize a successor agency to increase the amount of property tax revenues pledged under an enforceable obligation or to pledge any property tax revenue not already pledged pursuant to an enforceable obligation. This paragraph does not constitute a change in, but is declaratory of, the existing law.

(b) The refunding bonds authorized under this Section may be issued under the authority of Article 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the California Government Code, and the refunding bonds may be sold at public or private sale, or to a joint powers authority pursuant to the Marks-Roos Local Bond Pooling Act.

(c) (1) Prior to incurring any bonds or other indebtedness pursuant to this Section, the successor agency may subordinate to the bonds or other indebtedness the amount required to be paid to an affected taxing entity pursuant to Section 34183(a)(1), provided that the affected taxing entity has approved these subordinations pursuant to this subdivision.

(2) At the time the successor agency requests an affected taxing entity to subordinate the amount to be paid to it, the successor agency shall provide the affected taxing entity with substantial evidence that sufficient funds will be available to pay both the debt service on the bonds or other indebtedness and the payments required by Section 34183(a)(1), when due.

(3) Within 45 days after receipt of the agency's request, the affected

# DRAFT

taxing entity shall approve or disapprove the request for subordination. An affected taxing entity may disapprove a request for subordination only if it finds, based upon substantial evidence, that the successor agency will not be able to pay the debt service payments and the amount required to be paid to the affected taxing entity. If the affected taxing entity does not act within 45 days after receipt of the agency's request, the request to subordinate shall be deemed approved and shall be final and conclusive.

(d) An action may be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure to determine the validity of bonds or other obligations authorized by this Section, the pledge of revenues to such bonds or other obligations authorized by this Section, the legality and validity of all proceedings theretofore taken and (as provided in the resolution of the legislative body of the successor agency authorizing the bonds or other obligations authorized by this Section) proposed to be taken for the authorization, execution, issuance, sale, and delivery of the bonds or other obligations authorized by this Section, and for the payment of debt service on such bonds or the payment of amounts under such other obligations authorized by this Section. The provisions of Section 33501(c) shall not apply to any such action. The Department of Finance shall be noticed of the filing of any such action as an affected party.

(e) Notwithstanding any other provision of law, including but not limited to Section 33501, an action to challenge the issuance of bonds, the incurrence of indebtedness, the amendment of an enforceable obligation or the execution of a financing agreement by a successor agency must be brought within 30 days after the date on which the oversight board approves the resolution of the successor agency approving the issuance of bonds, the incurrence of indebtedness, the amendment of an enforceable obligation or the execution of a financing agreement authorized under this Section 34177.5.

(f) The actions authorized in this Section shall be subject to the approval of the oversight board, as provided in Section 34180. Additionally, an oversight board may direct the successor agency to commence any of the transactions described in (a) so long as the successor agency will be able to recover its related costs in connection with the transaction. After a successor agency, with approval of the oversight board, issues any bonds, incurs any

# DRAFT

indebtedness or executes an amended enforceable obligation pursuant to subsection (a), the oversight board may not unilaterally approve any amendments to or early termination of the bonds, indebtedness or enforceable obligation. If, under the authority granted to it by subdivision (h) of Section 34179, the Department of Finance either reviews and approves or fails to request review within five business days of an oversight board approval of an action authorized by this Section, then the scheduled payments on the bonds or other indebtedness shall be listed in the Recognized Obligation Payment Schedule and will not be subject to further review and approval by the Department of Finance or the Controller. The Department of Finance may extend its review time to 60 days for actions authorized in this Section and may seek the assistance of the State Treasurer in evaluating proposed actions under this section.

(g) Any bonds, indebtedness or amended enforceable obligation authorized by this Section shall be considered indebtedness incurred by the dissolved redevelopment agency, with the same legal effect as if such bonds, indebtedness, financing agreement or amended enforceable obligation had been issued, incurred or entered into prior to June 29, 2011 in full conformity with the applicable provisions of the Community Redevelopment Law that existed prior to such date, shall be included in the successor agency's Recognized Obligation Payment Schedule, and shall be secured by a pledge of and lien on and shall be repaid from moneys deposited from time to time in the Redevelopment Property Tax Trust Fund established pursuant to Section 34172(c), as provided in Section 34183(a)(2). Property tax revenues pledged to any bonds, indebtedness or amended enforceable obligation authorized by this Section are taxes allocated to the successor agency pursuant to Section 33670(b) and 16 of Article XVI of the Constitution.

(h) The successor agency shall make diligent efforts to ensure the lowest long-term cost financing is obtained. The financing shall not provide for any bullets or spikes and shall not use variable rates. The successor agency shall make use of an independent financial advisor in developing such financing proposals and shall make the work products of the financial advisor available to the Department of Finance at its request.

Health and Safety Code Section 34178 is amended as follows:

# DRAFT

34178. (a) Commencing on the operative date of this part, agreements, contracts, or arrangements between the city or county, or city and county that created the redevelopment agency and the redevelopment agency are invalid and shall not be binding on the successor agency; provided, however, that a successor entity wishing to enter or reenter into agreements with the city, county, or city and county that formed the redevelopment agency that it is succeeding may do so upon obtaining the approval of its oversight board. In no event, however, shall a successor agency or an oversight board exercise the powers granted by this subdivision to restore funding for an enforceable obligation that was deleted or reduced by the Department of Finance pursuant to subdivision (h) of Section 34179.

**COMMENT:** *This upsets the balance between DOF and the oversight boards. The composition of the oversight board ensures that community interests in projects that benefit the community will be balanced against the State's need for additional revenues.*

(b) Notwithstanding subdivision (a), any of the following agreements are not invalid and may bind the successor agency:

(1) A duly authorized written agreement entered into at the time of issuance, but in no event later than December 31, 2010, of indebtedness obligations, and solely for the purpose of securing or repaying those indebtedness obligations.

(2) A written agreement between a redevelopment agency and the city, county, or city and county that created it that provided loans or other startup funds for the redevelopment agency that were entered into within two years of the formation of the redevelopment agency.

(3) A joint exercise of powers agreement in which the redevelopment agency is a member of the joint powers authority. However, upon assignment to the successor agency by operation of the act adding this part, the successor agency's rights, duties, and performance obligations under that joint exercise of powers agreement shall be limited by the constraints imposed on successor agencies by the act adding this part.

Health and Safety Code Section 34179 is amended as follows:

# DRAFT

34179. (a) Each successor agency shall have an oversight board composed of seven members. The members shall elect one of their members as the chairperson and shall report the name of the chairperson and other members to the Department of Finance on or before January 1, 2012. Members shall be selected as follows:

(1) One member appointed by the county board of supervisors.

(2) One member appointed by the mayor for the city that formed the redevelopment agency.

(3) One member appointed by the largest special district, by property tax share, with territory in the territorial jurisdiction of the former redevelopment agency, which is of the type of special district that is eligible to receive property tax revenues pursuant to Section 34188.

For purposes of this paragraph, property tax share means the sum of the property tax revenue allocated to the special district as required by paragraph (1) of subdivision (a) of Revenue and Taxation Code section 96.1, and subdivision (e) of Revenue and Taxation Code Section 96.5, from within each tax rate area of the former redevelopment agency. Property tax share shall not include property tax revenues received by a special district for purposes of retiring debt issued by the special district. Property tax share shall be calculated net of any property tax revenues remitted by the special district to the county Educational Revenue Augmentation Fund.

(4) One member appointed by the county superintendent of education to represent schools if the superintendent is elected. If the county superintendent of education is appointed, then the appointment made pursuant to this paragraph shall be made by the county board of education.

(5) One member appointed by the Chancellor of the California Community Colleges to represent community college districts in the county.

(6) One member of the public appointed by the county board of supervisors.

(7) One member representing the employees of the former redevelopment agency appointed by the mayor or chair of the board of supervisors, as the case may be, from the recognized employee organization representing the largest number of former redevelopment agency employees employed by the successor agency at that time. In the case where city or county employees performed administrative duties of the former redevelopment agency, the appointment shall be made from the recognized employee

# DRAFT

organization representing those employees. If a recognized employee organization does not exist for either the employees of the former redevelopment agency or the city or county employees performing administrative duties of the former redevelopment agency, the appointment shall be made from among the employees of the successor agency. In voting to approve a contract as an enforceable obligation, a member appointed pursuant to this paragraph shall not be deemed to be interested in the contract by virtue of being an employee of the successor agency or community for purposes of Section 1090 of the Government Code.

**COMMENT:** *This language has been moved to paragraph (11) and made applicable to any "public official" who is a member of the oversight board.*

(8) If the county or a joint powers agency formed the redevelopment agency, then the largest city by acreage in the territorial jurisdiction of the former redevelopment agency may select one member. If there are no cities with territory in a project area of the redevelopment agency, the county superintendent of education may appoint an additional member to represent the public.

(9) If there are no special districts of the type that are eligible to receive property tax pursuant to Section 34188, within the territorial jurisdiction of the former redevelopment agency, then the county may appoint one member to represent the public.

(10) Where a redevelopment agency was formed by an entity that is both a charter city and a county, the oversight board shall be composed of seven members selected as follows: three members appointed by the mayor of the city, where such appointment is subject to confirmation by the county board of supervisors, one member appointed by the largest special district, by property tax share, with territory in the territorial jurisdiction of the former redevelopment agency, which is the type of special district that is eligible to receive property tax revenues pursuant to Section 34188, one member appointed by the county superintendent of education to represent schools, one member appointed by the Chancellor of the California Community Colleges to represent community college districts, and one member representing employees of the former redevelopment agency appointed by the mayor of the city where such an appointment is subject to confirmation by the county board of

# DRAFT

supervisors, to represent the largest number of former redevelopment agency employees employed by the successor agency at that time.

(11) In voting to approve a contract as an enforceable obligation, a member appointed pursuant to this paragraph shall not be deemed to be interested in the contract by virtue of being an employee or other public official of the successor agency for purposes of Section 1090 of the Government Code.

(b) The Governor may appoint individuals to fill any oversight board member position described in subdivision (a) that has not been filled by January 15, 2012, or any member position that remains vacant for more than 60 days.

(c) The oversight board may direct the staff of the successor agency to perform work in furtherance of the oversight board's duties and responsibilities under this part. The successor agency shall pay for all of the costs of meetings of the oversight board and may include such costs in its administrative budget. Oversight board members shall serve without compensation or reimbursement for expenses.

(d) Oversight board members shall have personal immunity from suit for their actions taken within the scope of their responsibilities as oversight board members.

(e) A majority of the total membership of the oversight board shall constitute a quorum for the transaction of business. A majority vote of the total membership of the oversight board is required for the oversight board to take action. The oversight board shall be deemed to be a local entity for purposes of the Ralph M. Brown Act, the California Public Records Act, and the Political Reform Act of 1974. All actions taken by the oversight board shall be adopted by resolution.

(f) All notices required by law for proposed oversight board actions shall also be posted on the successor agency's Internet Web site or the oversight board's Internet Web site.

(g) Each member of an oversight board shall serve at the pleasure of the entity that appointed such member.

(h) (1) The Department of Finance may review an oversight board action taken pursuant to the act adding this part. As such, all oversight board actions shall not be effective for three business days, pending a request for review by the department. Notice and information about all actions taken by an oversight board shall be provided to the

# DRAFT

Department of Finance electronically by electronic means and in a manner of its choosing. No action shall be effective until five business days after notice and sufficient information is provided to the department to determine if it will request a review of an action. An action of the oversight board shall be effective five business days after notice and information is provided to the Department unless the Department requests review of the item.

**COMMENT:** *The amendment is an attempt to clarify the process of DOF review.*

(2) Each oversight board shall designate an official to whom the department may make such requests and who shall provide the department with the telephone number and e-mail contact information for the purpose of communicating with the department pursuant to this subdivision. In the event that the department requests a review of a given oversight board action, it shall have ~~10~~ 20 days from the date of its request to approve the oversight board action, request additional information, or return it to the oversight board for reconsideration and such oversight board action shall not be effective until approved by the department. When reviewing an action of the oversight board, the department shall give deference to the oversight board's exercise of its fiduciary responsibilities pursuant to subdivision (i). In the event that the department returns the oversight board action to the oversight board for reconsideration, the department shall include a written statement explaining how the action of the oversight board does not comply with this Part. The department shall cite specific information and statutes that support its determination. If the oversight board agrees with the determination of the department, it shall resubmit the modified action for department approval and the modified oversight board action shall not become effective until approved by the department. If the oversight board does not agree with the determination of the department, it shall submit a written statement explaining why it disagrees. The department shall consider the oversight board's reply. No later than five business days Prior to the date for each allocation of funds to successor agencies by the county auditor controller, the Department may eliminate or modify any item on a Recognized Obligation Payment Schedule prior to approving it. for purposes of determining the amount of property tax to allocate to

# DRAFT

successor agencies and affected taxing entities.

(3) The auditor-controller shall reflect the actions of the department in determining the amount of property tax to allocate to the successor agency. The department shall provide notice to the successor agency and the auditor-controller as to the reasons for its actions. To the extent that an oversight board continues to dispute a determination with the department, one or more future recognized obligation schedules may reflect any resolution of that dispute. Until the dispute is resolved, the auditor-controller shall sequester the amount of property tax in dispute. The department may also agree to an amendment to a Recognized Obligation Payment Schedule to reflect a resolution of a disputed item; however this will not affect a past allocation of property tax or create a liability for any affected taxing entity.

(4) If a successor agency brings an action to dispute the determination of the Department and uphold the decision of the oversight board, a court shall review whether the oversight board's approval of the enforceable obligation in dispute is supported by substantial evidence. A court shall give deference to the oversight board's exercise of its fiduciary responsibilities pursuant to subdivision (i).

**COMMENT:** *The purposes of the amendments to subdivision (h) are to clarify the dispute process and give direction to the court about how to evaluate the action of the oversight board. Sequestering the amount in dispute reflects the practice of at least some auditor-controllers in the state.*

(i) Oversight boards shall have fiduciary responsibilities to holders of enforceable obligations and the taxing entities that benefit from distributions of property tax and other revenues pursuant to Section 34188. Further, the provisions of Division 4 (commencing with Section 1000) of the Government Code shall apply to oversight boards. Notwithstanding Section 1099 of the Government Code, or any other law, any individual may simultaneously be appointed to up to five oversight boards and may hold an office in a city, county, city and county, special district, school district, or community college district.

(j) Commencing on and after July 1, 2016, in each county where

# DRAFT

more than one oversight board was created by operation of the act adding this part, there shall be only one oversight board appointed as follows:

(1) One member may be appointed by the county board of supervisors.

(2) One member may be appointed by the city selection committee established pursuant to Section 50270 of the Government Code. In the city and county, the mayor may appoint one member.

(3) One member may be appointed by the independent special district selection committee established pursuant to Section 56332 of the Government Code, for the types of special districts that are eligible to receive property tax revenues pursuant to Section 34188.

(4) One member may be appointed by the county superintendent of education to represent schools if the superintendent is elected. If the county superintendent of education is appointed, then the appointment made pursuant to this paragraph shall be made by the county board of education.

(5) One member may be appointed by the Chancellor of the California Community Colleges to represent community college districts in the county.

(6) One member of the public may be appointed by the county board of supervisors.

(7) One member may be appointed by the recognized employee organization representing the largest number of successor agency employees in the county.

(k) The Governor may appoint individuals to fill any oversight board member position described in subdivision (j) that has not been filled by July 15, 2016, or any member position that remains vacant for more than 60 days.

(l) Commencing on and after July 1, 2016, in each county where only one oversight board was created by operation of the act adding this part, then there will be no change to the composition of that oversight board as a result of the operation of subdivision (b).

(m) Any oversight board for a given successor agency shall cease to exist when all of the indebtedness of the dissolved redevelopment agency has been repaid.

(n) An oversight board is not a separate public entity, but is a second governing body and acts through from the successor agency. An oversight board may not be named in a lawsuit, and any suits must be directed at the successor agency however an oversight board may

# DRAFT

provide support for a challenge to a decision by the department, the Controller or the auditor-controller brought by a successor agency..  
An oversight board may direct a successor agency to provide additional or different legal or financial advice than given by agency staff. A successor agency must take positions in litigation as directed by the oversight board.

**COMMENT:** *A public entity with two governing bodies is not workable. An oversight board should not dictate the legal or financial advice it receives. The successor agency must be free to bring litigation to uphold the decision of an oversight board, as appropriate, in order to carry out its responsibilities to carry out enforceable obligations.*

(o) An oversight board is authorized to contract with the county or other public or private agencies for administrative support.

~~(p) On matters within the purview of the oversight board, decisions made by the oversight board supersede those made by successor agency board or the staff of the successor agency. Oversight board decisions supersede the direction of the city, county or city and county governing board with respect to successor agency matters, including direction of city employees conducting business on behalf of the successor agency.~~

**COMMENT:** *AB 26 (as amended by the trailer bill) clearly sets forth the authority and role of the oversight board. There is no need to further characterize the role to “supersede” the successor agency. The successor agency may only act with approval of the oversight board (including approval of the ROPS).*

Section 34179.5 is added to the Health and Safety Code to read:

34179.5 (a) In furtherance of subdivision (e) of Section 34177, each successor agency shall employ a licensed accountant to conduct a due diligence review to determine the **unobligated** unencumbered balances available for transfer to taxing entities. The cost of the licensed accountant shall be an enforceable obligation.

**COMMENT:** *AB 26 uses the term “unencumbered,” not*

# DRAFT

*“unobligated.” The cost of the licensed accountant is deemed an “enforceable obligation.”*

(b) For purposes of this subdivision the following terms shall have the following meanings:

(1) “Cash” and “cash equivalents” includes but is not necessarily limited to cash in hand, bank deposits, Local Agency Investment Fund deposits, deposits in the city or county treasury or any other pool, marketable securities, commercial paper, United States Treasury bills, banker’s acceptances, payables on demand and amounts due from other parties as defined in subdivision (c) and any other money owned by the successor agency.

~~(2) “Enforceable obligation” includes any of the items listed in subdivision (d) of Section 34171, contracts detailing specific work to be performed that were entered into by the former redevelopment agency prior to June 28, 2011 with a third party that is other than the city, county, or city and county that created the former redevelopment agency, and indebtedness obligations as defined in subdivision (e) of Section 34171,~~

**COMMENT:** *“Enforceable obligation” is already defined by Section 34171. If this paragraph remains in the bill, suggest amending “prior to June 28, 2011, to “prior to the effective date of Chapter 5 of the 2011 Statutes.”*

(2) “Assets” do not include assets subject to the review of the Controller pursuant to section 34167.5.

**COMMENT:** *This change is intended to separate the review provided by this section from the review of asset transfers by the Controller as provided for in AB 26.*

(3) “Transferred” means the transmission of money to another party for where it is not in payment for goods or services or an investment or where the payment is de minimus. Transfer also means where the payments are ultimately merely a restriction on the use of the money.

(c) **At a minimum** The review required by this subdivision shall include the following:

**COMMENT:** *The bill should clearly set forth the requirements of the*

# DRAFT

*review required by this section rather than using the phrase “at a minimum” which could lead to new requirements imposed by the department not contemplated by the legislature.*

(1) The dollar value of assets transferred from the former redevelopment agency to the successor agency on or about February 1, 2012.

(2) The dollar value of assets and cash and cash equivalents transferred after January 1, 2011 through June 30, 2012 by the redevelopment agency or the successor agency to the city, county or city and county that formed the redevelopment agency and the purpose of each transfer. The review shall provide documentation of any enforceable obligation that required the transfer.

(3) The dollar value of any cash or cash equivalents transferred after January 1, 2011 through June 30, 2012 by the redevelopment agency or the successor agency to any other public agency or private party and the purpose of each transfer. The review shall provide documentation of any enforceable obligation that required the transfer.

(4) The review shall provide expenditure and revenue accounting information for the 2011-12 fiscal year that account for changes in balances from those reported to the State Controller for fiscal year 2010-11.

(5) A separate accounting for the balance for the low and moderate income housing fund for all other funds and accounts combined shall be made as follows:

(A) A statement of the total value of each fund as of June 30, 2012.

(B) An itemized statement listing any amounts that are legally restricted as to purpose and cannot be provided to taxing agencies. This could include the proceeds of any bonds, grant funds, or funds provided by other governmental entities that place conditions on their use.

(C) An itemized statement of the values of any assets that are not cash or cash equivalents. This could include physical assets, land, records and equipment. For purpose of this accounting, physical assets may be valued at purchase cost or at any recently estimated market value.

(D) An itemized listing of each enforceable obligation that requires the retention of any current balances, the amount of such obligation and an explanation of why future revenues are not able to satisfy that

# DRAFT

obligation. If a review finds that insufficient future revenues are available to fund future obligations and thus retention of current balances is required it shall detail the projected property tax revenues and other general purpose revenues to be received by the successor agency, together with both the amount and the timing of the bond debt service payments of the successor agency, for the period in which the oversight board anticipates the successor agency will have insufficient property tax revenue to pay the specified obligations.

(E) An itemized list and analysis of any amounts of current balances at that are needed to satisfy obligations that will be placed on the Recognized Obligation Payment Schedules for the current fiscal year.

(6) The review shall total the net balances available after deducting the total amounts described in subparagraphs (B) through (E) of paragraph (5). The review shall add any amounts that were transferred as identified in paragraphs (2) and (3) of subdivision (c) where no enforceable obligation to make such transfer existed. The resulting sum shall be available for allocation to affected taxing entities pursuant to Section 34179.6. ~~It shall be a rebuttal presumption that cash and cash equivalent balances available to the successor agency are available and sufficient to disburse the amount determined in this paragraph to taxing agencies.~~ If the review finds that there are insufficient cash balances to transfer or that cash or cash equivalents are specifically obligated to the purposes described in subparagraphs (B) (D) and (E) of paragraph (5) in such amounts that there is insufficient cash to provide the full amount determined pursuant to this paragraph, that amount shall be demonstrated in an additional itemized schedule.

(7) Notwithstanding the provisions of paragraph (6), the review shall not add any amounts that were transferred as identified in paragraphs (2) and (3) of subdivision (c) if all of the following occur:

(A) the redevelopment agency and successor agency transferred assets, cash, or cash equivalents to a public or private entity after January 1, 2011 only pursuant to a written agreement entered into between the parties prior to January 1, 2011;

(B) the successor agency makes the payment required by subdivision (b) of section 34177;

(C) the successor agency makes the payment required by subdivision (n) of section 34177; and

# DRAFT

(D) the successor agency transfers cash or cash equivalents, pursuant to paragraph (6) of subdivision (c) of section 34179.5 before adding any amounts that were transferred as identified in paragraphs (2) and (3) of subdivision (c) if any such transfers were pursuant to an agreement entered into prior to January 1, 2011, in an amount equal to or greater than the amount of the payment that would have been made pursuant to an ordinance that was adopted by the successor agency pursuant to section 34193.

Section 34179.6 is added to read:

34179.6 The review required pursuant to Section 34179.5 shall be submitted to the oversight board for review.

(a) By October 1, 2012, each successor agency shall provide to the oversight board, the county auditor-controller, the State Controller, and to the Department of Finance the results of the review conducted pursuant to Section 34179.5 for the low and moderate income housing fund and specifically the amount of cash and cash equivalents determined to be available to allocate to taxing entities. By December 15, 2013<sup>1</sup>, each successor agency shall provide to the oversight board, the county auditor-controller, the State Controller, and to the Department of Finance the results of the review conducted pursuant to Section 34179.5 for the all of the other fund and account balances and specifically the amount of cash and cash equivalents determined to be available to allocate to taxing entities. Department of Finance may request any supporting documentation relied on by the licensed accountant and review results to assist in its review under subdivision (d). The Department of Finance may specify the form and manner information about the review shall be provided to the department.

**COMMENT:** *The review must be completed by a “licensed accountant. DOF request for information should be limited to the information relied upon by the accountant.*

(b) The Department of Finance may recommend that the oversight board adjust any amount associated with the determination based

---

<sup>1</sup> Should 2013 be 2012?

# DRAFT

upon written findings that the assets or funds authorized to be retained do not comply with the provisions of subparagraphs (B) through (E) of paragraph (5) of subdivision (c) of section 34179.5. Written findings shall be based upon written evidence in the record of the department's determination.

(c) Upon receipt of the review of the Department pursuant to subdivision (b), the oversight board shall convene a public comment session to take place at least five business days before the oversight board holds the approval vote specified in subdivision (c). The oversight board also shall consider any opinions offered by the county auditor-controller and the department on the review results submitted by the successor agencies.

(d) By October 15, 2012 for the low and moderate income housing fund and by January 15, 2013 for all other funds and accounts, the oversight board shall review, approve, and transmit to Department of Finance and the county auditor-controller the determination of the amount of cash and cash equivalents that are available for disbursement to taxing entities as determined according to the method provided in Section 34179.5. The oversight board may adjust any amount provided in the review to reflect additional information and analysis. The review and approval shall occur in public sessions. The oversight board may request from the successor agency any materials it deems necessary to assist in its review and approval of the determination. The oversight board shall be empowered to authorize a successor agency to retain assets or funds identified in subparagraphs (B) through (E) of paragraph (5) of subdivision (c) of section 34179.5. An oversight board that makes such an authorization also shall identify to the Department of Finance the amount of funds authorized for retention, the source of those funds, and the purposes for which those funds are being retained. ~~The determination and authorizations to retain funds and assets shall be subject to the review and approval of the Department of Finance pursuant to subdivision (d).~~ The decision of the oversight board shall be final.

~~(d) The Department of Finance may board adjust any amount associated with the determination on its analysis and information provided by the successor agency and others. The Department of~~

# DRAFT

~~Finance shall consider any findings or opinions of the county auditor-controllers and the Controller. The Department of Finance shall complete its review of the determinations provided pursuant to subdivision (c) no later than November 10, 2012 for the low and moderate income fund and also shall notify the oversight board and the successor agency of its decision to overturn any oversight board authorizations made pursuant to subdivision (c). The Department of Finance shall complete its review of the determinations provided pursuant to subdivision (c) no later than April 1, 2013 for the other funds and accounts and also shall notify the oversight board and the successor agency of its decision to overturn any oversight board authorizations made pursuant to subdivision (c).~~ Each successor agency shall transmit

the amount of funds required pursuant to the determination of the Department oversight board within five working days of receipt of the notification. Successor agencies shall make diligent efforts to recover any money determined to have been transferred without an enforceable obligation as described in paragraphs (2) and (3) of subdivision (c) of Section 34179.5.

~~If the successor agency cannot promptly recover such funds, the remedies provided in subdivision (g) or paragraph (2) of subdivision (a) of Section 34177 may be used.~~ The Department of Finance, the county auditor-controller and the Controller shall coordinate their actions under these provisions. The department shall notify auditor controllers of its actions and the auditor-controllers will disburse the funds to taxing agencies within five working days of receipt. Amounts received after November 28 and April 10 may be held and disbursed with the regular payments to taxing agencies pursuant to Section 34183.

(e) By December 1, 2012 the county auditor-controller shall provide Finance a report specifying the amount submitted by each successor agency pursuant to subdivision (f) for low and moderate income housing funds, and specifically noting those successor agencies that failed to remit the full required amount. By April 20, 2013, the county auditor-controller shall provide Finance a report detailing the amount submitted by each successor agency pursuant to subdivision (f) for all other funds and accounts, and specifically noting those successor agencies that failed to remit the full required amount.

(f) Notwithstanding any other provision of law, of the amount provided to a school district or a community college pursuant to this

# DRAFT

subdivision, only 95 percent shall be considered to be property taxes for the purposes of paragraph (1) of subdivision (h) of Section 42238 of the Education Code. The auditor-controller shall report both amounts provided to school districts and community colleges to the State Department of Education.

(g) A successor agency shall either ~~If a successor agency fails to remit to the county auditor-controller the sums identified in subdivision (e), by the deadlines specified therein, or challenge the amount in an action in superior court. The review of the superior court shall be limited to the review prepared by the licensed accountant, the findings of the department, and the findings and decision of the oversight board. The court shall uphold the decision of the oversight board if its decision is supported by substantial evidence in the record. If the court upholds the decision of the oversight board, the successor agency shall comply with the decision of the oversight board within ten business days of the order of the superior court. the following remedies are available: (1) When the city, county, or city and county that created the former redevelopment agency is also the successor agency, Department of Finance may order an offset to the distribution provided to the city, county, or city and county pursuant to Revenue and Taxation Code Section 7204. This offset shall be equal to the amount the city, county, or city and county fails to remit pursuant to subdivision (e). The offset shall be effectuated by the Board of Equalization in an amount specified by Finance. Sums offset for purposes of subdivision (e) shall be provided by the Board of Equalization to the county auditor-controller each month until the full offset is reached. The county auditor-controller shall disburse sums received pursuant to this subdivision to the affected taxing entities in accordance with paragraph (4) of subdivision (a) of Section 34183 and subdivision (d). If a successor agency makes all or part of the remittance required by subdivision (d), but that remittance is made after the deadline, as applicable, the successor agency shall notify Finance that the remittance was made. Upon confirming this fact with the county auditor-controller, Finance shall notify the Board of Equalization to resume providing the city, county, or city and county with the full distribution authorized pursuant to Revenue and Taxation Code Section 7204.~~ (2) Alternately or in addition to the remedy provided in paragraph (1), Department of Finance may direct the county auditor-controller to deduct the unpaid amount from future allocations of property tax to

# DRAFT

~~the successor agency under Section 34183 until the amount of payment required pursuant to subdivision (d) is accomplished.~~

(h) If Department of Finance determines that payment the full amount required under subdivision (e) is not currently feasible or would jeopardize the ability of the successor agency to pay enforceable obligations in a timely manner, it may agree to an installment payment plan.

**COMMENT:** *These amendments (1) limit the review of the department and the oversight board to the review prepared by the licensed accountant; (2) require the oversight board to consider the comments of the department; (3) provide that the oversight board's decision on the amount of the unencumbered balances is final; and (4) allow the successor agency to challenge the final determination in the court. The remedy of offsetting sales tax and property tax has been deleted.*

Section 34180 is amended to read:

34180. All of the following successor agency actions shall first be approved by the oversight board: (a) The establishment of new repayment terms for outstanding loans where the terms have not been specified prior to the date of this part.

~~(b) Refunding of outstanding bonds or other debt of the former redevelopment agency by successor agencies in order to provide for savings or to finance debt service spikes; provided, however, that no additional debt is created and debt service is not accelerated. The issuance of bonds or other indebtedness or the pledge or agreement for the pledge of property tax revenues (formerly tax increment prior to the effective date of this part) pursuant to subdivision (a) of Section 34177.5.~~

(c) Setting aside of amounts in reserves as required by indentures, trust indentures, or similar documents governing the issuance of outstanding redevelopment agency bonds. (d) Merging of project areas. (e) Continuing the acceptance of federal or state grants, or other forms of financial assistance from either public or private sources, where assistance is conditioned upon the provision of matching funds, by the successor entity as successor to the former redevelopment agency, in an amount greater than 5 percent.

# DRAFT

(f) (1) If a city, county, or city and county wishes to retain any properties or other assets for future redevelopment activities, funded from its own funds and under its own auspices, it must reach a compensation agreement with the other taxing entities to provide payments to them in proportion to their shares of the base property tax, as determined pursuant to Section 34188, for the value of the property retained.

(2) If no other agreement is reached on valuation of the retained assets, the value will be the fair market value as of the 2011 property tax lien date as determined by the county assessor. (g) Establishment of the Recognized Obligation Payment Schedule.

(h) A request by the successor agency to enter into an agreement with the city, county, or city and county that formed the redevelopment agency that it is succeeding. (i) A request by a successor agency or taxing entity to pledge, or to enter into an agreement for the pledge of, property tax revenues pursuant to subdivision (b) of Section 34178.

(j) A request by a successor agency or taxing entity to pledge, or to enter into an agreement for the pledge of, property tax revenues pursuant to section 34177.5

(k) A request for the repayment of a loan between a city, county, or city and county and a former redevelopment agency as an enforceable obligation pursuant to subparagraph (C) of paragraph (2) of subdivision (d) of Section 34171, provided that the oversight board makes a finding that the loan was for legitimate redevelopment purposes and conditions its approval on the loan being repaid to the city, county, or city and county in accordance with a defined schedule over a reasonable term of years at an interest rate not to exceed the interest rate earned by funds deposited into the Local Agency Investment Fund.

(l) A request submitted to the oversight board prior July 1, 2013 for the payment of property taxes for affordable housing pursuant to subparagraph (H) of paragraph (1) of subdivision (d) of section 34171.

(m) A request to enter into an enforceable obligation pursuant to paragraph (2) of subdivision (f) of section 34177 or subdivision (h) of section 34173.

**COMMENT;** *Subdivision (j) is required by the language added in Section 34177.5. Subdivision (k), from AB 1585 allows oversight*

# DRAFT

*board approval of certain loan between the city and the former redevelopment agency if certain findings are made. Subdivision (l) allows a successor agency to make application for the use of affordable housing funds for a “shovel-ready” project. Subdivision (m) allows a successor agency to request approval to clean-up contaminated property.*

Section 34181 is amended to read:

34181. The oversight board shall direct the successor agency to do all of the following:

(a) (1) Dispose of all assets and properties of the former redevelopment agency that were funded by tax increment revenues of the dissolved redevelopment agency; provided, however, that the oversight board may instead direct the successor agency to transfer ownership of those assets that were constructed and used for a governmental purpose, such as roads, school buildings, parks, and police and fire stations, libraries, historic theatres and other historic buildings, museums, parking structures or lots, and local agency administrative buildings to the appropriate public jurisdiction pursuant to any existing agreements relating to the construction or use of such an asset. Government purpose assets do not include any parking structure or lot, whether connected to or adjacent to or separated from a governmental building or facility, which is or can be revenue producing.

(2) Dispose of all assets and properties not described in paragraph (1) by first offering to transfer such assets and properties to the city, county, or city and county that created the former redevelopment agency. If the city, county, or city and county that created the former redevelopment agency declines the asset or property, then the asset or property shall be disposed of as directed by the oversight board.

(3) Any compensation to be provided to the successor agency for the transfer of the asset shall be governed by the agreements relating to the construction or use of that asset. Disposal shall be done expeditiously and in a manner aimed at maximizing value. Asset disposition may be accomplished by a distribution of income to taxing agencies proportionate to their property tax share from one or more properties that may be transferred to a public or private agency for management pursuant to the direction of the oversight board disposition resolution.

# DRAFT

Page 14 – The Budget Trailer Bill amends Section 34176 (a) requiring that the identification of housing assets and transfer of title shall be authorized by the Oversight Board. The City of Burbank has already transferred its Housing Assets. Please strike the last sentence that DOF added to Section 34176 (a).

**COMMENT:** This is true in a lot of places. Transfer of assets has already occurred. Where this has occurred, I don't think an OB is going to go back and reverse the title and reauthorize. But if we wanted to clean up, I'd suggest adding a phrase that says, "unless transfer of title occurred prior to the effective date of the act adding this sentence."

(b) Cease performance in connection with and terminate all existing agreements that do not qualify as enforceable obligations.

(c) ~~Transfer housing responsibilities and all rights, powers, duties, and obligations along with any amounts on deposit in the Low and Moderate Income Housing Fund to the appropriate entity~~ assets pursuant to Section 34176.

(d) Terminate any agreement, between the dissolved redevelopment agency and any public entity located in the same county, obligating the redevelopment agency to provide funding for any debt service obligations of the public entity or for the construction, or operation of facilities owned or operated by such public entity, in any instance where the oversight board has found that early termination would be in the best interests of the taxing entities.

(e) Determine whether any contracts, agreements, or other arrangements between the dissolved redevelopment agency and any private parties should be terminated or renegotiated to reduce liabilities and increase net revenues to the taxing entities, and present proposed termination or amendment agreements to the oversight board for its approval. The board may approve any amendments to or early termination of such agreements where it finds that amendments or early termination would be in the best interests of the taxing entities.

(f) All actions taken pursuant to subdivisions (a) and (c) must be approved by resolution of the oversight board at a public meeting after at least 10 days notice to the public of the specific proposed actions. Such actions shall be subject to review by the Department of Finance pursuant to Section 34179 except that the department may

# DRAFT

extend its review period by up to 60 days. If the Department does not object to action subject to this section, the action of the oversight board shall be considered final and can be relied upon as conclusive by any person if no action challenging an action is commenced within 60 days of the approval of the action by the oversight board. If an action is brought to challenge an action involving title to or an interest in real property, a notice of pendency of action shall be recorded by the claimant as provided in section 405, et seq. of the Code of Civil Procedure within such 60 day period.

Section 34182 is amended as follows:

34182. (a) (1) The county auditor-controller shall conduct or cause to be conducted an agreed-upon procedures audit of each redevelopment agency in the county that is subject to this part, to be completed by July October 1, 2012.

(2) The purpose of the audits shall be to establish each redevelopment agency's assets and liabilities, to document and determine each redevelopment agency's passthrough payment obligations to other taxing agencies, and to document and determine both the amount and the terms of any indebtedness incurred by the redevelopment agency and certify pursuant to the initial Recognized

(3) The county auditor-controller may charge the Redevelopment Property Tax Trust Fund for any costs incurred by the county auditor-controller pursuant to this part.

(b) By ~~July~~ October 15, 2012, the county auditor-controller shall provide the Controller's office a copy of all audits performed pursuant to this section. The county auditor-controller shall maintain a copy of all documentation and working papers for use by the Controller.

(c) (1) The county auditor-controller shall determine the amount of property taxes that would have been allocated to each redevelopment agency in the county had the redevelopment agency not been dissolved pursuant to the operation of the act adding this part. These amounts are deemed property tax revenues within the meaning of subdivision (a) of Section 1 of Article XIII A of the California Constitution and are available for allocation and distribution in accordance with the provisions of the act adding this part. The county auditor-controller shall calculate the property tax revenues using current assessed values on the last equalized roll on August 20, pursuant to Section 2052 of the Revenue and Taxation Code, and

# DRAFT

pursuant to statutory formulas or contractual agreements with other taxing agencies, as of the effective date of this section, and shall deposit that amount in the Redevelopment Property Tax Trust Fund.

(2) Each county auditor-controller shall administer the Redevelopment Property Tax Trust Fund for the benefit of the holders of former redevelopment agency enforceable obligations and the taxing entities that receive passthrough payments and distributions of property taxes pursuant to this part.

(3) In connection with the allocation and distribution by the county auditor-controller of property tax revenues deposited in the Redevelopment Property Tax Trust Fund, in compliance with this part, the county auditor-controller shall prepare estimates of amounts to be allocated and distributed, and provide those estimates to both the entities receiving the distributions and the Department of Finance, no later than November 1 and May 1 of each year.

(4) Each county auditor-controller shall disburse proceeds of asset sales or reserve balances, which have been received from the successor entities pursuant to Sections 34177 and 34187, to the taxing entities. In making such a distribution, the county auditor-controller shall utilize the same methodology for allocation and distribution of property tax revenues provided in Section 34188.

(d) By October 1, 2012, the county auditor-controller shall report the following information to the Controller's office and the Director of Finance:

(1) The sums of property tax revenues remitted to the Redevelopment Property Tax Trust Fund related to each former redevelopment agency.

(2) The sums of property tax revenues remitted to each agency under paragraph (1) of subdivision (a) of Section 34183.

(3) The sums of property tax revenues remitted to each successor agency pursuant to paragraph (2) of subdivision (a) of Section 34183.

(4) The sums of property tax revenues paid to each successor agency pursuant to paragraph (3) of subdivision (a) of Section 34183.

(5) The sums paid to each city, county, and special district, and the total amount allocated for schools pursuant to paragraph (4) of subdivision (a) of Section 34183.

(6) Any amounts deducted from other distributions pursuant to subdivision (b) of Section 34183.

(e) A county auditor-controller may charge the Redevelopment Property Tax Trust Fund for the costs of administering the provisions

# DRAFT

of this part.

(f) The Controller may audit and review any county auditor-controller action taken pursuant to the act adding this part. As such, all county auditor-controller actions shall not be effective for three business days, pending a request for review by the Controller. In the event that the Controller requests a review of a given county auditor-controller action, he or she shall have 10 days from the date of his or her request to approve the county auditor-controller's action or return it to the county auditor-controller for reconsideration and such county auditor-controller action shall not be effective until approved by the Controller. In the event that the Controller returns the county auditor-controller's action to the county auditor-controller for reconsideration, the county auditor-controller must resubmit the modified action for Controller approval and such modified county auditor-controller action shall not become effective until approved by the Controller.

Section 34182.5 is added to read:

~~34182.5 An auditor-controller may review Recognized Obligation Payment Schedules and object to the inclusion of any items that are not demonstrated to be enforceable obligations and may object to the funding source proposed for any items. The auditor-controller shall promptly transmit notice of any such objections to the successor agency and Department of Finance. Notice must be given at least 15 days prior to an allocation date specified in section 34183. If an oversight board disputes the finding of the auditor-controller, it may refer the matter to the Department of Finance for a determination of what will be approved for inclusion in the Recognized Obligation Payment Schedule.~~

**COMMENT:** *In addition to adding another level of review to the ROPS process, and additional opportunity for conflict between the parties, there is nothing in this section which explains the basis for the auditor-controller's "objection." This section elevates the auditor-controller's opinion about what constitutes an "enforceable obligation" over the opinion of the members of the oversight board; and favors the opinion of the county over the opinion and interests of the other taxing entities.*

# DRAFT

Section 34183 is amended to read:

34183. (a) Notwithstanding any other law, from February 1, 2011, to July 1, 2012, and for each fiscal year thereafter, the county auditor-controller shall, after deducting administrative costs allowed under Section 34182 and Section 95.3 of the Revenue and Taxation Code, allocate moneys in each Redevelopment Property Tax Trust Fund as follows:

(1) Subject to any prior deductions required by subdivision (b), first, the county auditor-controller shall remit from the Redevelopment Property Tax Trust Fund to each local agency and school entity an amount of property tax revenues in an amount equal to that which would have been received under Section 33401, 33492.140, 33607, 33607.5, 33607.7, or 33676, as those sections read on January 1, 2011, or pursuant to any passthrough agreement between a redevelopment agency and a taxing jurisdiction that was entered into prior to January 1, 1994, that would be in force during that fiscal year, had the redevelopment agency existed at that time. The amount of the payments made pursuant to this paragraph shall be calculated solely on the basis of passthrough payment obligations, existing prior to the effective date of this part and continuing as obligations of successor entities, shall occur no later than January 16, 2012, and no later than June 1, 2012, and each January 16 and June 1 thereafter. Notwithstanding subdivision (e) of Section 33670, that portion of the taxes in excess of the amount identified in subdivision (a) of Section 33670, which are attributable to a tax rate levied by a taxing agency for the purpose of producing revenues in an amount sufficient to make annual repayments of the principal of, and the interest on, any bonded indebtedness for the acquisition or improvement of real property shall be allocated to, and when collected shall be paid into, the fund of that taxing agency. The amount of pass through payments computed pursuant to this section, including any passthrough agreements, shall be computed as though the requirement to set aside funds for the low and moderate income housing fund was still in effect.

(2) ~~Second, on May 16, 2012, and~~ June 1, 2012, and each January 16 ~~2~~ and June 1 thereafter, to each successor agency for payments listed in its Recognized Obligation Payment Schedule for the six-month fiscal periods beginning January 1, 2012, or and July 1, 2012,

# DRAFT

and each January 16 2 and June 1 thereafter, in the following order of priority:

(A) Debt service payments scheduled to be made for tax allocation bonds. (B) Payments scheduled to be made on revenue bonds, but only to the extent the revenues pledged for them are insufficient to make the payments and only where the agency's tax increment revenues were also pledged for the repayment of the bonds.

(C) Payments scheduled for other debts and obligations listed in the Recognized Obligation Payment Schedule that are required to be paid from former tax increment revenue.

(3) Third, on ~~May 16, 2012,~~ and June 1, 2012, and each January 16 2 and June 1 thereafter, to each successor agency for the administrative cost allowance, as defined in Section 34171, for administrative costs set forth in an approved administrative budget for those payments required to be paid from former tax increment revenues.

(4) Fourth, on May 16, 2012, and June 1, 2012, and each January 16 2 and June 1 thereafter, any moneys remaining in the Redevelopment Property Tax Trust Fund after the payments and transfers authorized by paragraphs (1) to (3), inclusive, shall be distributed to local agencies and school entities in accordance with Section 34188.

(b) If the successor agency reports, no later than April 1, 2011, and May 1, 2012, and each December 1 and May 1 thereafter, to the county auditor-controller that the total amount available to the successor agency from the Redevelopment Property Tax Trust Fund allocation to that successor agency's Redevelopment Obligation Retirement Fund, from other funds transferred from each redevelopment agency, and from funds that have or will become available through asset sales and all redevelopment operations, are insufficient to fund the payments required by paragraphs (1) to (3), inclusive, of subdivision (a) in the next six-month fiscal period, the county auditor-controller shall notify the Controller and the Department of Finance no later than 10 days from the date of that notification. The county auditor-controller shall verify whether the successor agency will have sufficient funds from which to service debts according to the Recognized Obligation Payment Schedule and shall report the findings to the Controller. If the Controller concurs that there are insufficient funds to pay required debt service, the amount of the deficiency shall be deducted first from the amount remaining to

# DRAFT

be distributed to taxing entities pursuant to paragraph (4), and if that amount is exhausted, from amounts available for distribution for administrative costs in paragraph (3). If an agency, pursuant to the provisions of Section 33492.15, 33492.72, 33607.5, 33671.5, 33681.15, 33401, or 33688, made passthrough payment obligations subordinate to debt service payments required for enforceable obligations, funds for servicing bond debt may be deducted from the amounts for passthrough payments under paragraph (1), as provided in those sections, but only to the extent that the amounts remaining to be distributed to taxing entities pursuant to paragraph (4) and the amounts available for distribution for administrative costs in paragraph (3) have all been exhausted.

(c) The county treasurer may loan any funds from the county treasury that are necessary to ensure prompt payments of redevelopment agency debts. An enforceable obligation is created for repayment of such loans.

(d) The Controller may recover the costs of audit and oversight required under this part from the Redevelopment Property Tax Trust Fund by presenting an invoice therefor to the county auditor-controller who shall set aside sufficient funds for and disburse the claimed amounts prior to making the next distributions to the taxing jurisdictions pursuant to Section 34188. Subject to the approval of the Director of Finance, the budget of the Controller may be augmented to reflect the reimbursement, pursuant to Section 28.00 of the Budget Act.

**Comment:** These amendments pick up the cross reference to 33401 to clarify that pass through payments are subordinated to bond payments.

Health and Safety Code Section 34185 is amended as follows:

34185. Commencing on ~~May 16, 2012~~, June 1, 2012 and on each January ~~16~~ 2 and June 1 thereafter, the county auditor-controller shall transfer, from the Redevelopment Property Tax Trust Fund of each successor agency into the Redevelopment Obligation Retirement Fund of that agency, an amount of property tax revenues equal to that specified in the Recognized Obligation Payment Schedule for that successor agency as payable from the Redevelopment Property Tax Trust Fund subject to the limitations of Sections ~~34173~~ 34177 (m)

# DRAFT

and 34183.

Health and Safety Code Section 34187 is amended as follows:

34187. (a) Commencing May 1, 2012, whenever a recognized obligation that had been identified in the Recognized Payment Obligation Schedule is paid off or retired, either through early payment or payment at maturity, the county auditor-controller shall distribute to the taxing entities, in accordance with the provisions of the Revenue and Taxation Code, all property tax revenues that were associated with the payment of the recognized obligation.

(1) Notwithstanding this provision, the Department of Finance may authorize a successor agency to retain receive property tax that otherwise would be distributed to affected taxing entities pursuant to this subdivision, to the extent the Department determines the successor agency requires those funds for the payment of enforceable obligations. Upon making such a determination, the Department shall provide the county auditor-controller with information detailing the amounts that it has authorized the successor agency to receive retain. Upon determining the successor agency no longer requires additional funds pursuant to this subdivision, the Department shall notify the successor agency and the county auditor-controller. The county auditor-controller shall then distribute the funds in question to the affected taxing entities in accordance with the provisions of the Revenue and Taxation Code.

(b) When all of the debt of a redevelopment agency has been retired or paid off, the successor agency must dispose of all remaining assets and terminate its existence within one year of the final debt payment. When the successor agency is terminated, all passthrough payment obligations will cease and no property tax shall be allocated to the Redevelopment Property Tax Trust Fund for that agency.

Sections 34189.1 and 34189.2 added to Chapter 6 to read:

34189.1 No party, public or private, may pursue, nor does a court have jurisdiction on a validation action filed after the effective date of the bill adding this section with respect to any action of a redevelopment agency or a successor agency to a redevelopment agency that took place on or after January 1, 2011, unless the Department of Finance, representing interests of the State of

# DRAFT

California and each of the taxing agencies who could be affected financially by the action are served with the validation action have been properly noticed.

**COMMENT:** *Language has been added to clarify that this section should only apply to actions filed after its effective date. A requirement to serve the State and taxing agencies with a validation action replaces the requirement to “properly notice” those parties.*

34189.2 A successor agency or any party to an enforceable obligation as defined under this part shall have the right to request that the state consent to a validation action with respect to any enforceable obligation, or matter of title to an asset that belonged to a redevelopment agency. For such an action to be properly filed, both the state Controller and the Director of Finance must be noticed and both must consent to the validation. Such actions must be filed in the County of Sacramento.

**COMMENT:** *We believe Section 34189.2 violates the separation of powers doctrine in that it requires the consent of the Executive Branch before a party has access to judicial review.*

~~Section 53760.1 of the Government Code is amended to read:~~

53760.1. As used in this article the following terms have the following meanings: (a) “Chapter 9” means Chapter 9 (commencing with Section 901) of Title 11 of the United States Code.

(b) “Creditor” means either of the following: (1) An entity that has a noncontingent claim against a municipality that arose at the time of or before the commencement of the neutral evaluation process and whose claim represents at least five million dollars (\$5,000,000) or comprises more than 5 percent of the local public entity’s debt or obligations, whichever is less. (2) An entity that would have a noncontingent claim against the municipality upon the rejection of an executory contract or unexpired lease in a Chapter 9 case and whose claim would represent at least five million dollars (\$5,000,000) or comprises more than 5 percent of the local public entity’s debt or obligations, whichever is less.

(c) “Debtor” means a local public entity that may file for bankruptcy under Chapter 9.

# DRAFT

(d) “Good faith” means participation by a party in the neutral evaluation process with the intent to negotiate toward a resolution of the issues that are the subject of the neutral evaluation process, including the timely provision of complete and accurate information to provide the relevant parties through the neutral evaluation process with sufficient information, in a confidential manner, to negotiate the readjustment of the municipality’s debt.

(e) “Interested party” means a trustee, a committee of creditors, an affected creditor, an indenture trustee, a pension fund, a bondholder, a union that, under its collective bargaining agreements, has standing to initiate contract or debt restructuring negotiations with the municipality, or a representative selected by an association of retired employees of the public entity who receive income from the public entity convening the neutral evaluation. A local public entity may invite holders of contingent claims to participate as interested parties in the neutral evaluation if the local public entity determines that the contingency is likely to occur and the claim may represent five million dollars (\$5,000,000) or comprise more than 5 percent of the local public entity’s debt or obligations, whichever is less.

(f) “Local public entity” means any county, city, district, public authority, public agency, or other entity, without limitation, that is a municipality as defined in Section 101(40) of Title 11 of the United States Code (bankruptcy), or that qualifies as a debtor under any other federal bankruptcy law applicable to local public entities. For purposes of this article, “local public entity” does not include a school district. For purposes of this article, “local public entity” includes a successor agency to a redevelopment agency created pursuant to Part 1.85 of Division 24 of the Health and Safety Code.

(g) “Local public entity representative” means the person or persons designated by the local public agency with authority to make recommendations and to attend the neutral evaluation on behalf of the governing body of the municipality.

(h) “Neutral evaluation” is a form of alternative dispute resolution that may be known as mandatory mediation. A “neutral evaluator” may also be known as a mediator.

Sec X. There is hereby appropriated up to fifteen million dollars

# DRAFT

(\$15,000,000) from the General Fund, for allocation to departments by the Director of Finance in furtherance of the objectives of this act. An allocation of funds approved by the Director of Finance under this item shall become effective no sooner than 30 days after the director files written notification thereof with the Chairperson of the Joint Legislative Budget Committee, and the chairpersons of the fiscal committees in each house of the Legislature, or no sooner than any lesser time the chairperson of the joint committee, or his or her designee, may in each instance determine.

~~SEC. Y. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.~~

**COMMENT:** We propose deleting the fee disclaimer since we are unable to identify the party who would pay the fee.

SEC. Z. This act is a bill providing for appropriations related to the Budget Bill within the meaning of subdivision (e) of Section 12 of Article IV of the California Constitution, has been identified as related to the budget in the Budget Bill, and shall take effect immediately.