

**DISSOLUTION OF
REDEVELOPMENT AGENCIES**

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APPENDIX A: California Department of Finance Information

I.
**LEGISLATION DISSOLVING
REDEVELOPMENT AGENCIES**

In 2011, the California Legislature passed legislation barring redevelopment agencies from engaging in new business and providing for their dissolution.¹ On December 29, 2011, the California Supreme Court, the California Redevelopment Association v. Matosantos² upheld the provisions of the legislation. As a result, redevelopment agencies were dissolved on February 1, 2012.

The California Redevelopment Association, the League of California Cities, and other affected parties filed suit alleging that the legislation was unconstitutional. The California Supreme Court held that under the California Constitution, the Legislature may dissolve redevelopment agencies. The California Supreme Court held that AB1X 26, the dissolution measure, is a proper exercise of the legislative power vested in the Legislature by the California Constitution. That power includes the authority to create entities, such as redevelopment agencies, to carry out the state's ends, and the corollary power to dissolve those same entities when the Legislature deems it necessary and proper.

The California Supreme Court, however, held that Assembly Bill 1X 27, which conditioned further redevelopment agency operations on additional payments by the redevelopment agency to schools and special districts, was unconstitutional and violated Proposition 22.³ The California Supreme Court held that Proposition 22 expressly forbids the Legislature from requiring such payments.

II.
SUCCESSOR AGENCY AND ENFORCEABLE OBLIGATION

The legislation, Assembly Bill 1X 26, replaces redevelopment agencies with successor agencies. Health and Safety Code section 34171(j) defines a "successor agency" as a county, city, or city and county that authorizes the creation of each redevelopment agency. Section 34170.5 requires a successor agency to create within its treasury a redevelopment obligation retirement fund to be administered by the successor agency. Section 34170.5 requires the County Auditor-Controller to create within the county treasury a Redevelopment Property Tax Trust Fund for the property tax revenues related to each former redevelopment agency, for administration by the County Auditor-Controller.

A. Enforceable Obligations

Health and Safety Code section 34171 defines "enforceable obligation" as any of the following:

¹ Assembly Bill 1X 26 and Assembly Bill 1X 27, Stats. 2011, First Extraordinary Session 2011-2012, Ch. 5-6.

² ___ Cal. 4th ___ (2011). The California Supreme Court extended all statutory deadlines arising before May 1, 2012 by four months.

³ See, California Constitution, Art. XIII, Section 25.5(a)(7).

1. Bonds, 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.
2. Loans of monies 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.
3. 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, or legally enforceable payments required in connection with the agency's employees, including, but not limited to, pension payments, pension obligation debt service, unemployment payments, or other obligations conferred through a collective bargaining agreement.
4. Judgments or settlements 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. 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.
5. Any legally binding and enforceable agreement or contract that is not otherwise void as violating debt limit or public policy. However, nothing in the legislation 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 contracts in providing any necessary and required compensation or remediation for such termination.
6. Contracts or agreements necessary for the administration or operation of a successor agency including, but not limited to, agreements to purchase or rent office space, equipment and supplies, and pay related expenses and for carrying insurance.
7. 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.

Section 34171(d)(2) states that "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 at the time of issuance but in no event later than December 31, 2010, of indebted obligations, and solely for the purpose of securing or repaying those indebtedness obligations may be deemed enforceable obligations for purposes of this part. Loan agreements 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, may be deemed to be enforceable obligations. 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, shall be deemed void on the effective date of this legislation provided, however, that each contract or agreement for the provision of housing properly authorized shall not be deemed void.⁴

B. Recognized Obligations

Health and Safety Code section 34171(g) defines “recognized obligation” as an obligation listed in the Recognized Obligation Payment Schedule (ROPS). Section 34171(h) defines “Recognized Obligation Payment Schedule” as a document setting forth the minimum payment amounts and due dates of payments required by enforceable obligations for each six month fiscal period, as set forth in Section 34177(m).

C. Dissolution of Redevelopment Agency

Health and Safety Code section 34172(a) states that all redevelopment agencies and redevelopment agency components of community development agencies are dissolved and shall no longer exist as a public body.⁵ Section 34172 prohibits a community from creating a new redevelopment agency. However, a community in which the agency has been dissolved and the successor entity has paid off all the former agency’s enforceable obligations may create a new agency.

D. Successor Agencies

Health and Safety Code section 34173 designates successor agencies as successor entities to the former redevelopment agencies. Section 34174 states that solely for the purposes of Article XVI, Section 16 of the California Constitution, all agency loans, advances or indebtedness and interest thereon shall be extinguished and paid, provided, however, that nothing herein is intended to absolve the successor agency of payment or other obligations due or imposed pursuant to the enforceable obligations. Section 34175 states that it is the intent of the legislation that pledges of revenue associated with enforceable obligations of the former redevelopment agencies are to be honored. Section 34175(b) states that all assets, properties, contracts, leases, books and records, buildings and equipment of the former redevelopment agency are transferred to the control of the successor agency effective October 1, 2011 (now February 1, 2012 by order of the California Supreme Court).

⁴ Health and Safety Code section 34171(d)(3).

⁵ By order of the California Supreme Court in California Redevelopment Association v. Matosantos, all deadlines set forth in the statutes are advanced for a period of four months. As a result, redevelopment agencies are dissolved effective February 1, 2012.

Health and Safety Code section 34176 states that 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. In the alternative, the city or county may transfer responsibility for the housing assets and functions to a local housing authority.

E. Duties of Successor Agencies

Health and Safety Code section 34177 outlines the duties required of successor agencies since successor agencies are required to continue to make payments due for enforceable obligations.

On and after October 1, 2011 (now February 1, 2012) and until a Recognized Obligation Payment Schedule (ROPS) becomes operative, only payments required pursuant to an enforceable obligation payment schedule shall be made. The initial enforceable obligation payment schedule shall be the last schedule adopted by the redevelopment agency. Payments associated with obligations excluded from the definition of enforceable obligations shall be excluded from the enforceable obligation payment schedule and be removed from the last schedule adopted by the redevelopment agency prior to the successor agency adopting it as its enforceable obligation payment schedule. 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.⁶

The State Department of Finance and the State Controller shall 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 of Finance and the State Controller shall each have standing to file a judicial action to prevent a violation and to obtain injunctive or appropriate relief.⁷

Commencing on January 1, 2012 (now May 1, 2012), only those payments listed in the Recognized Obligation Payment Schedule (ROPS) may be made by the successor agency from the funds specified in the Recognized Obligation Payment Schedule (ROPS). In addition, commencing January 1, 2012 (now 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.⁸

Nothing in the legislation 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.⁹ From October 1, 2011 to July 1, 2012 (now February 1, 2012 to November 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 pre-pay loans,

⁶ Health and Safety Code section 34177(a)(1).

⁷ Health and Safety Code section 34177(a)(2).

⁸ Health and Safety Code section 34177(a)(3).

⁹ Health and Safety Code section 34177(a)(4).

unless such accelerated repayments were required prior to the effective date of this legislation (i.e., February 1, 2012).¹⁰

Successor agencies are required to maintain reserves in the amount required by indentures, trust indentures, or similar documents governing the issuance of outstanding redevelopment agency bonds, to perform obligations, required pursuant to any enforceable obligation, to remit unencumbered balances of redevelopment agency funds to the County Auditor-Controller for distribution to the taxing entities. In addition, successor agencies are required to:

1. Dispose of assets and properties of the former redevelopment agency as directed by the oversight board.
2. Enforce all former redevelopment agency rights for the benefit of the taxing entities.
3. Effectuate transfer of housing functions and assets to the appropriate entity.
4. Expeditiously wind down the affairs of the redevelopment agency in accordance with the direction of the oversight board.
5. 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.
6. Prepare or propose an administrative budget and submit it to the oversight board for its approval.¹¹

Successor agencies are also required to provide administrative cost estimates from its administrative budget that are paid from property tax revenues deposited in the Redevelopment Property Tax Trust Fund to the County Auditor-Controller for each six month fiscal period, and before each six month fiscal period, prepare a Recognized Obligation Payment Schedule (ROPS) in accordance with the requirements of Section 34177. For each recognized obligation, the Recognized Obligation Payment Schedule shall identify one or more of the following sources of payment:

1. Low and Moderate Income Housing Fund.
2. Bond proceeds.
3. Reserve balances.
4. Administrative cost allowance.

¹⁰ Health and Safety Code section 34177(a)(5).

¹¹ Health and Safety Code section 34177(b)-(j).

5. The Redevelopment Property Tax Trust Fund.
6. Other revenue sources.¹²

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

1. A draft Recognized Obligation Payment Schedule (ROPS) is prepared by the successor agency for the enforceable obligations of the former redevelopment agency by November 1, 2011 (now March 1, 2012).¹³
2. The certified Recognized Obligation Payment Schedule (ROPS) is submitted to and duly approved by the oversight board.
3. A copy of the approved Recognized Obligation Payment Schedule is submitted to the County Auditor-Controller, the State Controller and the Department of Finance, and posted on the successor agency's Internet website.¹⁴

F. Validity of Agreements between the City or County and Former Redevelopment Agency

Commencing February 1, 2012, agreements, contracts or arrangements between the city or county that created the redevelopment agency and the redevelopment agency are invalid and shall not be binding on the successor agency. However, the successor agency may enter or reenter into agreements with the city or county that formed the redevelopment agency if approved by the oversight board.¹⁵ However, 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 or 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 a redevelopment agency.
3. A joint exercise of powers of agreement in which the redevelopment agency is a member of the joint powers authority.

¹² Health and Safety Code section 34177(1).

¹³ It is unclear how the California Supreme Court's order affects this date.

¹⁴ Health and Safety Code section 34177(1)(2).

¹⁵ Health and Safety Code section 34178(a).

III. OVERSIGHT BOARDS

A. Composition of the Oversight Board

Health and Safety Code section 34179 states that 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 (now May 1, 2012 by order of the California Supreme Court). The members are 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.
4. One member appointed by the county superintendent of schools to represent schools if the superintendent is elected.
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 the 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.¹⁶

B. Oversight Board Costs

If any oversight board member position has not been filled by May 15, 2012, or any member position remains vacant for more than sixty days, the Governor may appoint individuals to fill the position.¹⁷ The oversight board may direct the staff of the successor agency to perform work in furtherance of the oversight board's duties and responsibilities. These successor agencies shall pay for all of the costs of meetings of the oversight board and may include such

¹⁶ Health and Safety Code section 34179(a).

¹⁷ Health and Safety Code section 34179(b).

costs in its administrative budget. Oversight board members shall serve without compensation or reimbursement for expenses.¹⁸

C. Oversight Board Immunity and Legal Requirements

Oversight board members shall have personal immunity from suit for their actions taken within the scope of their responsibilities as oversight board members.¹⁹ 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 1974.²⁰

All notices required by law for proposed oversight board actions shall also be posted on the successor agency's Internet website or the oversight board's Internet website.²¹ Each member of an oversight board shall serve at the pleasure of the entity that appointed such member.²²

The Department of Finance may review an oversight board action and as such, all oversight board actions shall not be effective for three business days, pending a request for review by the Department of Finance. Each oversight board shall designate an official to whom the Department of Finance may make such requests and who shall provide the Department of Finance with the telephone number and e-mail contact information for the purpose of communicating with the Department of Finance. In the event that the Department of Finance requests a review of a given oversight board action, the oversight board shall have ten days from the date of its request to approve the oversight board action or return it to the oversight board for reconsideration and such oversight board action shall not be effective until approved by the Department of Finance. In the event that the Department of Finance returns the oversight board action to the oversight board for reconsideration, the oversight board shall resubmit the modified action for Department of Finance approval and the modified oversight board action shall not become effective until approved by the Department of Finance.²³

Oversight boards shall have fiduciary responsibilities to holders of enforceable obligations and the taxing entities that benefit from distribution of property tax and other revenues. An individual may simultaneously be appointed to up to five oversight boards and may hold an office in a city or county, special district, school district, or community college district.²⁴

¹⁸ Health and Safety Code section 34179(c).

¹⁹ Health and Safety Code section 34179(d).

²⁰ Health and Safety Code section 34179(e).

²¹ Health and Safety Code section 34179(f).

²² Health and Safety Code section 34179(g).

²³ Health and Safety Code section 34179(h).

²⁴ Health and Safety Code section 34179(i).

D. Consolidation of Oversight Boards

Commencing on and after July 1, 2016, in each county where more than one oversight board was created by operation of this legislation, there shall be only one oversight board appointed as follows:

1. One member appointed by the county board of supervisors.
2. One member appointed by the city selection committee established pursuant to Section 50270 of the Government Code.
3. One member 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 appointed by the county superintendent of schools to represent schools if the superintendent is elected.
5. One member appointed by the Chancellor of the California Community Colleges to represent community colleges in the county.
6. One member of the public appointed by the county board of supervisors.
7. One member appointed by the recognized employee organization representing the largest number of successor agency employees in the county.²⁵

The Governor may appoint individuals to fill any oversight board member position that has not been filled by July 15, 2016, or any member position that remains vacant for more than sixty days.²⁶ Commencing on and after July 1, 2016, in each county where only one oversight board was created by the operation of this legislation, there will be no change to the composition of that oversight board.²⁷ 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.²⁸

E. Duties of the Oversight Board

The oversight board must approve all of the following successor agency actions before the successor agency can act:

1. The establishment of new repayment terms for outstanding loans where the terms have not been specified prior to February 1, 2012.

²⁵ Health and Safety Code section 34179(j).

²⁶ Health and Safety Code section 34179(k).

²⁷ Health and Safety Code section 34179(l).

²⁸ Health and Safety Code section 34179(m).

2. Refunding of the outstanding bonds and other debt of the former redevelopment agency by successor agencies in order to provide for savings or to finance debt service spikes provided that no additional debt is created and debt service is not accelerated.
3. Setting aside amounts in reserves as required by indentures, trust indentures, or similar documents governing the issuance of outstanding redevelopment agency bonds.
4. The merging of project areas.
5. 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 five percent.
6. Development of a compensation agreement between a city or county wishing to retain any properties or assets for future redevelopment activities with other taxing entities to provide payments to them in proportion to their shares of the base property tax for the value of the property retained. If no other agreement is reached on evaluation 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.
7. Establishment of Recognized Obligation Payment Schedules (ROPS).
8. A request by the successor agency to enter into an agreement with the city or county that formed the redevelopment agency that it is succeeding.
9. A request by a successor agency or taxing entity to pledge, or to enter into an agreement for the pledge of property tax revenues.²⁹

The oversight board is required to direct the successor agency to do all of the following:

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 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 fire stations, to the appropriate public jurisdiction pursuant to any existing agreements relating to the construction or use of such an asset. Any compensation to be provided to the successor agency for the transfer of the asset shall be governed by the agreements relating to

²⁹ Health and Safety Code section 34180.

the construction or use of that asset. Disposal shall be done expeditiously and in a manner aimed at maximizing value.

2. Cease performance in connection with and terminate all existing agreements that do not qualify as enforceable obligations.
3. 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.
4. 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.
5. 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.³⁰

IV. AUDIT OF FORMER REDEVELOPMENT AGENCY FUNDS

A. Duties of the County Auditor-Controller

The County Auditor-Controller is required to conduct or arrange to be conducted audits of each redevelopment agency in the county to be completed by March 1, 2012 (now July 1, 2012). The purpose of the audits is 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 the initial Recognized Obligation Payment Schedule (ROPS). The County Auditor-Controller may charge the Redevelopment Property Tax Trust Fund for any costs incurred by the County Auditor-Controller.³¹

³⁰ Health and Safety Code section 34181.

³¹ Health and Safety Code section 34182(a).

By March 15, 2012 (now July 15, 2012), the County Auditor-Controller shall provide the State Controller's office a copy of all audits performed. The County Auditor-Controller shall maintain a copy of all documentation and working papers for the use by the state controller.³²

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. These amounts are deemed property tax revenues under the California Constitution, Article XIII A, Section 1(a), and are available for allocation and distribution in accordance with the provisions of this legislation. The County Auditor-Controller shall calculate the property tax revenues using current assessed values on the last equalized roll on August 20, pursuant to Revenue and Taxation Code section 2052, and 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.³³

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 received passthrough payments and distributions of property taxes. In connection with the allocation and distribution by the County Auditor-Controller of the property tax revenues deposited in the Redevelopment Property Tax Trust Fund, 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 state Department of Finance, no later than November 1 and May 1 of each year. Each County Auditor-Controller shall disburse proceeds of asset sales or reserve balances, which have been received from the successor entities to the taxing entities. In making such distributions, a County Auditor-Controller shall utilize the same methodology for allocation and distribution of property tax revenues as provided in Health and Safety Code section 34188.³⁴

By October 1, 2012, the County Auditor-Controller shall report the following information to the State 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 revenue remitted to each agency.
3. The sums of property tax revenue remitted to each successor agency.
4. The sums of property tax revenue paid to each successor agency.
5. Sums paid to each city, county and special district and the total amount allocated for schools.

³² Health and Safety Code section 34182(b).

³³ Health and Safety Code section 34182(c)(1).

³⁴ Health and Safety Code section 34182(c).

6. Any amount deducted from other distributions.³⁵

A County Auditor-Controller may charge the Redevelopment Property Tax Trust Fund for the cost of administering the provisions of this legislation.³⁶ The State Controller may audit and review any County Auditor-Controller action taken pursuant to this legislation. As such, all County Auditor-Controller actions shall not be effective for three business days, pending a request for review by the State Controller. In the event that the State Controller requests a review of a given County Auditor-Controller action, he or she shall have ten 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 State Controller. In the event that the State Controller returns the County Auditor-Controller's action to the County Auditor-Controller for reconsideration, the County Auditor-Controller must resubmit a modified action for State Controller approval and such modified County Auditor-Controller action shall not become effective until approved by the State Controller.³⁷

Health and Safety Code section 34183 sets forth a formula for the allocation of property taxes in each Redevelopment Property Tax Trust Fund following the County Auditor-Controller's deduction for administrative costs. Section 34183 also establishes an order of priority for payments listed in the Recognized Obligation Payment Schedule (ROPS).

B. Distribution of Funds

The distribution to each taxing entity shall be in an amount proportionate to its share of property tax revenues in the tax rate area in that fiscal year as follows:

1. For distributions from the Redevelopment Property Tax Trust Fund, the share of each taxing entity shall be applied to the amount of property tax available in the Redevelopment Property Tax Trust Fund after deducting the amounts of any distributions under paragraphs (2) and (3) of Subdivision (a) of Section 34183 (e.g., debt payments and obligations).
2. For each taxing entity that receives passthrough payments, that agency shall receive the amount of any passthrough payments identified under paragraph (1) or Subdivision (a) of Section 34183, in an amount not to exceed the amount that it would receive pursuant to Section 34188 in the absence of the passthrough agreement. However, to the extent that the passthrough payments received by the taxing entity are less than the amount that the taxing entity would receive pursuant to Section 34188 in the absence of a passthrough agreement, the taxing entity shall receive an additional payment that is equivalent to the difference between those amounts.³⁸

³⁵ Health and Safety Code section 34182(d).

³⁶ Health and Safety Code section 34182(e).

³⁷ Health and Safety Code section 34182(f).

³⁸ Health and Safety Code section 34188(a).

Property tax shares of local agencies shall be determined based on property tax allocation laws in effect on the date of distribution, without revenue exchange amounts allocated pursuant to Section 97.68 of the Revenue and Taxation Code, and without the property taxes allocated pursuant to Section 97.70 of the Revenue and Taxation Code.³⁹ The total school share, including pass-throughs, shall be the share of the property taxes that would have been received by school entities, as defined in Subdivision (f) of Section 95 of the Revenue and Taxation Code, in the jurisdictional territory of the former redevelopment agency, including, but not limited to, the amount specified in Sections 97.68 and 97.70 of the Revenue and Taxation Code.⁴⁰

V.
EFFECT OF REPEAL OF
COMMUNITY REDEVELOPMENT LAW

Effective February 1, 2012, all of the provisions of the community redevelopment law that depend on the allocation of tax increment to redevelopment agencies shall be inoperative.⁴¹ The California Law Revision Commission is required to draft a Community Redevelopment Law clean-up bill for consideration by the Legislature no later than January 1, 2013.⁴²

Nothing in this legislation relieves a successor agency of the obligations of the former redevelopment agency under the collective bargaining laws. The collective bargaining agreements negotiated by the redevelopment agencies shall be enforceable obligations of the successor agency and the successor agency shall become the employer of all employees of the redevelopment agency as of February 1, 2012.⁴³

³⁹ Health and Safety Code section 34188(b).

⁴⁰ Health and Safety Code section 34188(c).

⁴¹ Health and Safety Code section 34189.

⁴² Health and Safety Code section 34189(b).

⁴³ Health and Safety Code section 34190.

WELCOME TO THE CALIFORNIA DEPARTMENT OF FINANCE

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ABx1 26 Redevelopment Agency Dissolution

This webpage contains links to various documents and information designed to assist parties in administering the provisions of ABx1 26. These webpages may be updated at any time.

The information provided on these webpages is instructional guidance only, based upon the Department's interpretation of ABx1 26 and recent court decisions. The information on these webpages does not contain any legal advice. For legal advice, please seek advice from an independent attorney.

Because the timeframes for dissolution activities may become very compressed, the Department of Finance and the State Controller will be allocating many different employees to work on aspects of the law's implementation. It is not possible to promise access to specific individuals nor to arrange in-person meetings to conduct most of the work we need to do in a timely fashion. Therefore we have created the contact points below that are shared by this staff.

CONTACT INFORMATION:

To contact the staff who are reviewing obligation payment schedules and other aspects of implementation of ABx1 26, please e-mail:

email_redevelopment_administration@dof.ca.gov

Or call (916) 445-1546

We encourage redevelopment agencies and their successors to immediately begin work on Recognized Obligation Payment Schedules (ROPS) and in organizing the oversight board. Please forward the names and contact information (as required by Sec. 34179 (h)) for the oversight board and the successor agency to the above e-mail address as soon as possible. Please forward the ROPS and any supporting documents to the e-mail address above. If documents are very voluminous, please call and we will discuss other delivery options.

DEPARTMENT OF FINANCE AND STATE CONTROLLER OVERLAPPING RESPONSIBILITIES:

Department of Finance and the State Controller have some overlapping responsibilities and authorities under this statute. We intend to exercise them jointly to the extent possible. Both Controller and Finance staff will be reviewing enforceable obligation schedules and jointly determining which items to review in more detail and make objections to. To the extent we are able to agree, we will provide joint determinations. But both agencies reserve the right to take independent actions.

Agencies should expect to be contacted by phone and e-mail for more information and to answer questions from Finance and Controller employees. We expect that field audits may be necessary in some cases.

The State Controller is authorized to recover its costs for activities under this statute from redevelopment property tax. It is our intent to fund their work from this source.

BOND QUESTIONS:

We are aware of some questions that have been raised by many in the financial community with regard to redevelopment agency bonds. The document linked to below provides Department of Finance views on the content of ABx1 26 that applies to these issues. While we cannot answer every specific question in this document, we will endeavor to provide guidance if provided with sufficient information. Please forward your questions to the e-mail and phone numbers noted above.

COMMON DISSOLUTION QUESTIONS:

We are also aware of several questions that have been asked with regard to specific dissolution issues not directly related to bonds. The document linked below has questions and answers to common issues. While we cannot answer every specific question in this document, we will endeavor to provide guidance if provided with sufficient information. Please forward your questions to the e-mail and phone numbers noted above.

WEBPAGE LINKS:

The full text of ABx1 26 is provided in the link below:

[Exhibit 1](#) (www.leginfo.ca.gov, .pdf, <1 MB)

On December 29, 2011, the Supreme Court issued its decision in RDAs v. Matosantos. The full text of the decision can be found here:

[Exhibit 2](#) (www.courtinfo.ca.gov, .pdf, <1 MB)

Q & A re: redevelopment agency bonds:

[Exhibit 3](#) (.pdf, <1 MB)

Q & A re: common dissolution issues:

[Exhibit 4](#) (.pdf, <1 MB)

Department of Finance

AB x1 26—Expectations and understandings regarding bond payments

Various interested parties have raised questions about how AB x1 26 may affect various types of debt instruments that have been issued by redevelopment agencies. The Department of Finance will endeavor to administer its responsibilities under the act and provide guidance as questions arise so as to achieve the intent of the law that bond holders and other obligors be protected. The Department of Finance believes that while AB x1 26 does not specifically recite every possible requirement, it does place affirmative duty to perform obligations required pursuant to bond covenants and agreements. It is the Department's expectation that redevelopment agencies, successor agencies, oversight boards, and county auditors will take appropriate actions to comply with obligations as they have in the past.

Q. What Should Happen to Bond Payments due on February 1, 2012?

Abx1 26 requires compliance with all obligations contained in enforceable obligations. Bond payments due on February 1, 2012, should be paid in accordance with the bond covenants, which likely require payments be made to a trustee prior to the February 1st due date. In general, bond documents require the payment of funds a couple of days prior to the due date so that the trustee can make the debt service payment on time. Further, even if the early payment to the trustee is not required by the bond documents, nothing in ABx1 26 prevents a redevelopment agency from making the payment to the trustee early.

Additionally, the redevelopment agency and future successor can work with the county auditor to determine how best to get the payments and make certain that the bond payments will be seamless. ABx1 26 provides tools to help this occur. For example, ABx1 26 requires that redevelopment agencies provide documents and information to the future successor (§34169, subd. (e)) and requires that redevelopment agencies have set aside and maintained reserves required by section §34169, subd. (c). Finally, ABx1 26 explicitly requires that the successor to make bond payments. The Department of Finance has no reason to believe that any successor will fail in this task.

The Department of Finance believes that ABx1 26 requires successor agencies to perform all obligations with respect to debt including any special accounting, reserving, or payment priorities. The Department of Finance believes that AB x1 26 does not prevent compliance and it is the Department's expectation that successor agencies, oversight boards, and county auditors will take appropriate actions to comply with obligations as they have in the past.

Q. What about bonds with uneven payment schedules where one semi-annual payment is much larger than the other?

ABx1 26 requires successor agencies to perform all obligations with respect to enforceable debt obligations. The Department of Finance believes this includes requirements for any special accounting, reserving, or annual set-aside payment priorities. With respect to uneven payment schedules, ABx1 26 clearly allows successor agencies to create reserves for future bond payments that may be needed, and so that bond covenants can be met as required by ABx1 26. Further, many bond indentures

require set-asides at the beginning of a fiscal year an amount to cover payments for the entire year, if not more. In order to comply with the bond covenants, this type of annual set-aside should be included on the Recognized Obligation Payment Schedule, thereby ensuring that enough revenues will be available when each semi-annual payment comes due. It is the Department's expectation that any needed reserves or required annual set-asides will be included in Recognized Obligation Payment Schedules.

Q. Does ABx1 26 require bond funds to be comingled or pooled?

No.

The Department of Finance believes that ABx1 26 requires successor agencies to perform all obligations with respect to debt including any special accounting, reserving, or payment priorities. The Department believes that AB x1 26 places an affirmative duty to perform obligations required pursuant to bond covenants and agreements. Additionally, county auditor-controllers also have an affirmative duty to administer the Trust Fund for the benefit of RDA bond holders. Thus, it is the Department's expectation that successor agencies, oversight boards, and county auditors will take appropriate actions to comply with obligations as they have in the past.

Q. Does ABx1 26 eliminate revenue pledges?

No.

ABx1 26 specifically states that revenue pledges are to be honored. In order to maintain the pledges, it may be necessary to continue to segregate the revenues received attributable to each project area as has been done in the past. It is recommended that the county auditor-controller and the successor agency coordinate efforts to create subaccounts in order to comply with bond covenants applicable to each project area. Maintaining subaccounts (in the similar fashion as done under the prior law) will facilitate a successor agency's ability to set aside the required specific revenues for each bond and make payments from those specific revenues first, if and as required by the bond obligations.

It is further the Department's expectation that certain credits may be strengthened in comparison to what they would be under prior law in that they will have access to more of the tax increment for servicing of debt. Specifically, the 20-percent housing set-aside is no longer made and only those funds necessary to service housing bond debt and other enforceable housing obligations will be designated for housing purposes. The remainder will be available for debt service on other bonds.

Q. Does ABx1 26 eliminate the ability of counties to do cash-flow loans if needed?

No. Department of Finance believes county treasurers have authority under both existing law and ABx1 26 to make cash flow loans to successor agencies. If there is insufficient cash to make payments, we urge county treasurers to make such loans from the funds held for each successor agency. These loans could be recovered by future distributions, if necessary.

34174(a) nothing herein is intended to absolve the successor agency of payment or other obligations due or imposed pursuant to the enforceable obligations; and provided further, that nothing in the act adding this part is intended to be construed as an action or circumstance that may give rise to an event of default under any of the documents governing enforceable obligations.

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.

34177. Successor agencies are required to do all of the following: (b) Maintain reserves in the amount required by indentures, trust indentures, or similar documents governing the issuance of outstanding redevelopment agency bonds. (c) Perform obligations required pursuant to any enforceable obligation.

The Department views this language and 34173 (a) and 34175 (a) above as including any responsibilities with respect to bond obligations, including segregation of funds or separate priority of payments. This also would include requirements with respect to tax exempt status or other federal bond laws.

Section 34183 (c) The county treasurer may loan any funds from the county treasury that are necessary to ensure prompt payments of redevelopment agency debts.

We call attention to the following specific provisions in ABx1 26 (Health and Safety Code Sections):

Sec. 34169 Until successor agencies are authorized...redevelopment agencies shall do all of the following:

...

(c). Set aside or maintain reserves in the amount required by indentures, trust indentures, or similar documents governing the issuance of outstanding redevelopment agency bonds.

(e) Cooperate with successors agencies, and provide all documents necessary or desirable for ... making of payments required by enforceable obligations, and performance of enforceable obligations by successor agencies.

(f) Take all reasonable measures to avoid triggering an event of default under any enforceable obligations as defined in subdivision (d) of Section 34167.

Sec. 34171 (d) (1) "Enforceable obligation" means any of the following: (A) Bonds, as defined by Section 33602 and bonds issued pursuant to Section 58383 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.

35167 (h) After the enforceable obligation payment schedule is adopted pursuant to Section 34169, or after 60 days from the effective date of this part, whichever is sooner, the [redevelopment] agency shall not make a payment unless it is listed in an adopted enforceable obligation payment schedule, **other than payments required to meet obligations with respect to bonded indebtedness.**

34177. Successor agencies are required to do all of the following: (a) Continue to make payments due for enforceable obligations. (1) On and after October 1, 2011, and until a Recognized Obligation Payment Schedule becomes operative, only payments required pursuant to an enforceable obligations payment schedule shall be made.

Under the Court's order, while the due date for adopting a Recognized Obligation Payment Schedule is extended to May 1, 2012, the successor agency can adopt and have an operational Schedule by February 4, if the Oversight Board is appointed and adopts a Schedule on February 1, and if Finance does not object. This would require notice of the meeting to occur in January. We recognize this is very difficult timing but some agencies have already adopted draft Recognized Obligation Payment Schedules and this may be possible for many agencies.

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 agencies.

Redevelopment Agency Dissolution Under ABx1 26

Frequently Asked Questions

Q. What are the enforceable obligations for projects partially underway?

Many agencies and parties interested in various projects have asked about instances in which a "project" may have been defined very broadly and within it are various actual or potential land acquisitions, site remediation, site improvements, building construction or reconstruction, and other work. Some contracts may exist for portions of this broadly defined project but other components may not yet be fully obligated by contract with other parties. Work components may be completed or in progress. These questions revolve around what, if any, portions of these projects can be considered enforceable obligations under ABx1 26.

A. Generally, Finance believes ABx1 26 provides that written contracts for specific performance with parties that are not the sponsoring agency are what qualify as enforceable obligations. Plans, statements of intent, statements of intent to award, designations of project areas, descriptions or lists of projects, or commitments by the agency without any counter party (other than the local agency that formed the redevelopment agency) will not be considered enforceable obligations. Contracts too vague to be enforceable are also not enforceable obligations. Contracts to develop future proposals or future contracts are limited to the work that is specified sufficiently so that it could be enforced. A contract to design something does not imply or become a contract to construct unless such extension or inclusion is specifically called out in the contract and compensation is specified for it, such as in a design-build contract.

Specific situations involving bonds that have been sold but for which the specific things to be done with the bond proceeds are not obligated through contracts for performance will have to be reviewed to see if obligations to bond holders require such contracts to be made by successor agencies or whether bonds must be defeased.

While this may result in some work being completed that has little apparent current value, ABx1 26 provides that the oversight board may terminate contracts and provide compensation to avoid wastage of funds. Department of Finance encourages successor agencies and oversight boards to review opportunities to do this as they are constructing and approving Recognized Obligation Payment Schedules.

There are many different fact situations that will arise that we cannot anticipate or provide advance guidance on. Finance encourages parties that are concerned about specific situations to bring them to our attention by submitting questions and information regarding the specific situation to the Redevelopment Administration website. While we cannot promise to provide a quick or definitive answer, we will endeavor to do so whenever possible. We will try to provide a fairly early indication that we think the situation requires further information and review. Please provide the name, phone number and e-mail address of a principal contact person with whom we can follow up.

In those cases where Finance and the Controller do not initially come to a conclusion or need further review time, we are prepared to approve the Recognized Obligation Payment Schedule (ROPS) without the questioned item, if that is a practical option. If

timing issues require an earlier decision with regard to a Recognized Obligation Payment Schedule, we may or may not forgo objection at that time but reserve the right to take action under Sec. 34177 or object to the inclusion of the items in a future ROPS. Finance and the Controller are prepared to make commitments with regard to future actions on specific situations once our review is completed.

Q. Can interagency loans be enforceable obligations? Agencies have been the recipients of funds provided by sponsoring agencies. In some instances these have been described as loans. In some instances there have been specified repayment schedules and terms, in other cases no repayment schedule was specified before the operative date of ABx1 26. In some instances the repayment schedules have not been adhered to. ABx1 26 provides that until oversight boards are established, no new repayment schedules can be established. Questions have been raised about a variety of these types of situations with regard to whether the repayment is prohibited by Sec. 34171 (d) (2).

A. Except for loan agreements made within the first two years of the life of the agency, or loans that relate to issued securities, the act does not recognize such loans to be enforceable obligations. Instead effectively it treats them as contributions of funds.

Q. Does AB x1 26 or other law require successor agencies to retain all redevelopment agency employees, maintain their current contractual compensation indefinitely, or transfer the employees into city or county jobs unrelated to successor activities?

A. ABx1 26 and labor law generally do not require the retention by the successor of any redevelopment employees. The laying off of represented employees is governed by the applicable memorandum of understanding, if there is one in force. ABx1 26 does require the MOU to pass to the successor agency until it would expire under its own terms and provides some authority to transition employees to jobs within the entity that is also the successor entity.

Q. Does the successor agency merge with or become a part of the city or county that chooses to perform the duties of the successor agency?

A. Finance views the successor agency as separate employer from the city or county for labor law purposes. ABx1 26 provides that the liability of the successor agency only extend as far as the money available from tax increment and former assets of the agency will fund. Thus redevelopment employees do not become city employees unless they already were or if they are hired to do a city job at the discretion of the city.

Finance expects that successor agencies will promptly release any employees who no longer have work to do, consistent with the terms of their employment contracts, and retain those employees necessary for the wind down activities. The successor agencies are authorized however, to use any employees they wish to use for this work.

Q. Does the 5 percent limitation on administrative expenses in Sec. 34171 (b) force the reduction of staff and related support expenses to this level immediately?

A. No. The limitation applies only to administrative staff and related expenses funded with property tax. Employees funded with bond proceeds or other project funds do not

count against this limit, nor do employees funded from rents or other revenues or grants. Generally employees working on specific project implementation activities such as construction inspection, project management or actual construction would not be viewed by Finance as "administrative." The ability to fund project oversight work from bond funds may be restricted by the terms of each bond.

Additionally we view this as a limit on the amount of property tax that may be retained by the successor from each distribution of property taxes. Thus administrative costs funded from retained balances also will not count against this limitation. It is our expectation that oversight boards will exercise prudence in determining administrative budgets and project budgets and determining what funding sources to use so as to preserve the revenues to taxing agencies.

Q. Are unfunded liabilities for pensions and other employee benefits enforceable obligations that must be paid immediately upon dissolution?

A. Finance is exploring issues related to this with PERS. We hope to have further guidance on this soon. We expect that many of these costs will be determined to be enforceable obligations up to the date the employees are separated. We expect some reasonable payment schedule or reserving schedule can be arranged. The specific requirements of MOUs or other contractual agreements will have to be specifically reviewed. ABx1 26 provides that successor agencies are only liable up to the limit of the total of property tax allocable to the former redevelopment agency.

Q. Are successor agencies responsible for costs of site remediation or environmental damages beyond the funds available to the successor agency from redevelopment revenues and assets?

A. Sec. 34173 (e) states that the liability of a successor agency is limited to the funds transferred to it by ABx1 26.