

## REPORT TO CITY COUNCIL AND REDEVELOPMENT AGENCY

**DATE:** AUGUST 10, 2011

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL  
AND REDEVELOPMENT AGENCY

**FROM:** GREG RAMIREZ, CITY MANAGER/EXECUTIVE DIRECTOR  
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**SUBJECT:** DISCUSSION OF WHETHER THE CITY/AGENCY SHOULD  
PARTICIPATE IN THE “ALTERNATIVE VOLUNTARY  
REDEVELOPMENT PROGRAM,” MAKE THE REQUIRED PAYMENTS  
TO THE STATE OF CALIFORNIA AND CONTINUE  
REDEVELOPMENT ACTIVITIES UNDER AB X1 27

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The objective of this item before you tonight is to determine whether or not the City of Agoura Hills will opt into the Alternative Voluntary Redevelopment Program so that the Agoura Hills Redevelopment Agency will continue to operate and perform redevelopment activities of benefit to the Project Area.

The City of Agoura Hills and the Agoura Hills Redevelopment Agency have carried out an active and successful redevelopment program since the creation of the Agency in 1988. However, the continuing ability of the Agency to eliminate blight and create economic development opportunities has been threatened by the Legislature’s adoption of the recent budget package which, in part, solves State budget problems by taking revenue from redevelopment agencies. AB X1 26, which was signed by the Governor of California on June, 29, 2011, immediately suspends most redevelopment agency activities and, among other things, prohibits redevelopment agencies from incurring indebtedness or entering into or modifying contracts. Then, on October 1, 2011, AB X1 26 dissolves all existing redevelopment agencies and redevelopment agency components of community development agencies, and designates successor agencies as successor entities to the former redevelopment agencies, imposes numerous requirements on the successor agencies, and subjects successor agency actions to the review of oversight boards established under the new law.

AB X1 27 was signed by the Governor concurrently with AB X1 26. This companion law establishes an Alternative Voluntary Redevelopment Program whereby a redevelopment agency will, notwithstanding AB X1 26, be authorized to continue to exist and carry out the provisions of the Redevelopment Law. To “opt into” this “voluntary” alternative, the City must adopt an ordinance signifying the City’s compliance with the onerous exactions imposed by the Legislature. To restore the ability to continue redevelopment activities, the City must make

specified annual payments to the County Auditor-Controller on a schedule, who then will allocate the payments to special districts and educational entities. The amount to be paid in fiscal year 2011-12 is the Agency's proportionate share of \$1.7 billion, as determined by the State of California Department of Finance pursuant to a formula specified in the statute. The Department of Finance has notified the City that its fiscal year 2011-12 remittance amount is \$1,176,985. The City staff has previously been authorized to file an appeal of this amount with the Department of Finance, which appeal must be filed by August 15, 2011. For fiscal year 2012-13 and thereafter, the City is required to calculate its own payment amount, subject to audit by the Department of Finance. This payment obligation is an ongoing obligation of the City in subsequent years and could extend for as long as the Agency receives tax increment. Commencing in 2012-13, the payments will be based on the Agency's proportionate share of \$400 million (with adjustments based on growth/decline of tax increment revenues, and with additional payments triggered if the Agency incurs new debt).

Thus, the Legislature has created a system where the City is liable for making continuing annual payments out of City funds in order for the Redevelopment Agency to be able to continue its activities. AB X1 27 provides that the City and Agency may enter into an agreement whereby the Agency will transfer a portion of its tax increment to the City in an amount not to exceed the annual remittance required that year. Any tax increment funds transferred from the Agency to the City are required to be spent only "for the purpose of financing activities within the redevelopment area that are related to accomplishing the redevelopment agency project goals."

If the City Council determines that it **will not** opt into the AB X1 27 "voluntary" program, the activities of the Agency will continue to be severely curtailed. Ultimately, the Agency will be dissolved as of October 1, 2011 and a number of "wind-up" activities must be undertaken by a successor entity. No further redevelopment activities would be accomplished in 2011 and the assets of the Agency would be disposed of. The State Controller would have the authority to review, and potentially unwind, asset transfer transactions between the City and the Agency which occurred after January 1, 2011. In addition, AB X1 26 provides that, except in very limited circumstances, the Agency could not repay amounts currently owed to the City. The "wind-up" activities of the Agency would be subject to the supervision of a new "Oversight Board" with the authority to give direction to City and Agency staff, and to usurp the existing authority of the City Council and Agency Board.

A more detailed description of AB X1 26 and AB X1 27 is attached to this report.

**ANALYSIS** At a threshold level, the City Council must determine whether to take the steps necessary to continue the activities of the Redevelopment Agency or allow the Agency to be dissolved.

This determination requires answers to the following questions:

1. Do the benefits of keeping the Agency in operation outweigh the costs and risks to the City of opting into the program?

- a. The benefits of keeping the Agency in operation include, but are not limited to:
    - i. Funding for capital projects within the Project Area (i.e.: Kanan Interchange, Reyes Adobe Interchange, Canwood/Kanan Turn Pocket);
    - ii. Economic development opportunities within the Project Area and, specifically, the Agoura Village Specific Plan;
    - iii. Opportunity to provide quality workforce housing within the community;
    - iv. Home Rehabilitation Program Funding;
    - v. Tools such as property acquisition and leasing capabilities;
    - vi. Retain Eminent Domain Powers;
    - vii. Elimination of Blight.
    - viii. Ability to retain Housing bond proceeds and develop affordable housing.
    - ix. Repayment of City Loan to the extent that there are surplus tax increment revenues.
  
  - b. The cost to the City of making the payments are:
    - i. For FY 2011-2012: \$1,176,985
  
    - ii. For FY 2012-2013 ESTIMATED (with annual payments continuing thereafter): \$278,830
  
  - c. Risks to the City if it chooses to “opt into” the “voluntary” program. Those risks include, but are not limited to:
    - i. The risk that the City will not have sufficient available funds in subsequent years to continue making the required payments. If the City stops making the payments in future years, all of the sanctions associated with AB X1 26, including dissolution of the Agency, will be imposed at that time.
  
    - ii. The risk that at some future time, the net benefits of making the payments will not exceed the actual cost of making those payments.
  
    - iii. The risk that the Legislature makes changes to the program, or requires additional payments, in future years. For example, if the total amount paid by agencies in 2011-12 does not equal the \$1.7 billion anticipated by the State budget, this could trigger the need for additional exactions.
  
    - iv. The risk that the City will be unable to recover its payments to the State if AB X1 26 and AB X1 27 are ultimately invalidated by the courts.
2. If the City Council determines that the potential benefits outweigh the costs, will the City have the resources to make the annual payments required under AB X1 27?

AB X1 27 provides that the obligation to make annual remittances is a City obligation. AB X1 27 provides that the Agency and City can enter into a transfer agreement whereby the Agency can transfer tax increment revenues to the City in the amount of the annual remittances. However, AB X1 27 also provides that such payments are “for the purpose of financing activities within the redevelopment area that are related to accomplishing the redevelopment agency project goals.”

While the complete financial picture has not been forecast, it appears that our RDA would be running a deficit balance by fiscal year 2013-14. After payments for bonds and set-aside obligations, staff projects that the RDA will not have sufficient excess surplus tax increment revenues for transfer to the City each year in the amount of the City’s AB X1 27 payment obligation. AB X1 27 provides that for fiscal year 2011-12 only, an agency can transfer to a city the amount the agency would otherwise be required to deposit in the Low and Moderate Income Housing Fund. However, the Agency’s Bond Counsel must review the Agency’s 2008 Housing Set-Aside Tax Allocation Bonds to determine if this is an option.

The answers to the foregoing questions will help the City Council determine whether or not to “opt into” the “voluntary” redevelopment program established by AB X1 27. If the City Council determines that the City will “opt into” the program, the City Council must adopt a Continuation Ordinance by the applicable deadline set forth in AB X1 27 (i.e., by October 1, 2011), unless the Council adopts a nonbinding resolution of intention by October 1, 2011, in which case the Council would have until November 1, 2011 to adopt the ordinance). In addition, the City Council must direct staff to propose the City budget adjustments necessary to facilitate the required payments and prepare a transfer agreement between the Agency and City.

In addition, the City and Agency, in the meantime, must take certain steps to comply with the requirements of AB X1 26. This is because the deadlines for certain steps required by AB X1 26 occur prior to the deadline for adopting a Continuation Ordinance. For example, AB X1 26 requires the Agency to adopt a Statement of Enforceable Obligations by August 28, 2011 if the Council has not adopted a Continuation Ordinance by that date. The Statement will govern payments to be made by the Agency on its enforceable obligations (except bonds) until such time as the City Council timely adopts a Continuation Ordinance or the Agency is dissolved.

Likewise, if the City Council determines not to participate in AB X1 27’s voluntary program, staff will prepare the actions necessary to comply with AB X1 26 and bring those items before the Agency Board and City Council as necessary.

**FISCAL IMPACT** The City has recently hired HdL Companies to prepare a fiscal analysis of the two options presented. HdL will have their analysis to us by the first of the week. A limited analysis has been conducted on a staff level. This analysis shows the following impacts regarding each option:

**Participate in Alternative Voluntary Redevelopment Program** - Under Option 1, the City would pay approximately \$1.18 million to the State in fiscal year 2011-12 to participate in the Alternative Voluntary Redevelopment Program, with lower payments required in subsequent years.

**Do not participate in Alternative Voluntary Redevelopment Program** – Staff prepared an alternative budget for 2011-12 and a forecast through 2013-14 using the assumption that the City became the successor agency and the RDA was dissolved on October 1, 2011. While this places a burden on the General Fund for the first year, in outgoing years the forecast shows that we can operate with a balanced budget.

## **OPTIONS**

1. Determine that the City and Agency will participate in the Alternative Voluntary Redevelopment Program.
2. Determine that the City and Agency will not participate in the Alternative Voluntary Redevelopment Program.

**RECOMMENDATION** Staff recommends that the City Council consider the foregoing facts and analysis and direct staff to return to the August 24, 2011 meeting with either of the following directions:

1. Participate in the Alternative Voluntary Redevelopment Program which includes the following steps:
  - a. Preparation of the Continuation Ordinance;
  - b. Identification of funding resources;
  - c. Budget transfers;
  - d. Preparation of a transfer agreement between the Agency and City;
  - e. Preparation of the Enforceable Obligation Payment Schedule (and an Agency resolution adopting the schedule), which the Agency must adopt by August 28, 2011; and
  - f. Preparation of a City Council resolution making an election regarding the designation of a successor agency in the event the Agency is dissolved, since the Council will not have adopted a Continuance Ordinance by the September 1, 2011 deadline for notifying the County Auditor-Controller of the City's election.
2. Do not participate in the Alternative Voluntary Redevelopment Program, which includes steps e. and f. from above, as well as additional future steps required by AB X1 26.

Attachment: AB X1 26 and AB X1 27 Summary



## **Summary of AB X1 26 and AB X1 27**

Los Angeles

Orange County

San Francisco

June 22, 2011

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## **Summary of AB X1 26 and AB X1 27**

### **Introduction**

On June 15, 2011, both houses of the California State Legislature passed AB X1 26 and AB X1 27. AB X1 26 is substantially similar (with some important differences) to AB 101 and SB 77, the two budget trailer bills that were introduced on January 10, 2011 in a shell format and amended on March 15, 2011 to provide for the elimination of redevelopment agencies. Like AB 101 and SB 77, AB X1 26 adds Parts 1.8 and 1.85 to the Community Redevelopment Law. Part 1.8 provides for the immediate curtailing of redevelopment agency activities while Part 1.85 provides for redevelopment agencies to be dissolved as of October 1, 2011 and for successor agencies to wind up the affairs of the agencies.

AB X1 27 adds Part 1.9 to the Redevelopment Law. Part 1.9 provides that a city may participate in a program to make specified annual monetary contributions to exempt its redevelopment agency from Parts 1.8 and 1.85 and permit the agency to continue to exist and to carry out the provisions of the Redevelopment Law. Participation will require the city to adopt an ordinance by November 1, 2011. The city's failure to continue to make the annual payments will mean that the Department of Finance can determine that the agency becomes subject to Parts 1.8 and 1.85.

Part 1.9 provides that a city and agency can enter into an agreement whereby the agency will transfer a portion of its tax increment to the city, in an amount not to exceed the annual remittance required that year pursuant to Part 1.9, "for the purpose of financing activities within the redevelopment area that are related to accomplishing the redevelopment agency project goals." The quoted language is unclear, but may mean that a city could only use the transferred tax increment revenues to pay for financing projects that qualify for tax increment financing under the Redevelopment Law.

Part 1.9 is also unclear regarding the duration of the city's obligation to make annual remittances. Part 1.9 provides that the State will be entitled to an assignment of the city's rights to any payments from the agency to which the city is entitled in the event the city fails to make a remittance required by Part 1.9.

A more in depth discussion of Part 1.9 begins on page 18.

Although the Legislature passed AB X1 26 and AB X1 27 on June 15, 2011, the bills are not effective until signed by the Governor. As of this date, however, the Legislature has not presented the bills to the Governor for his signature because AB X1 26 and AB X1 27 are bills related to the State Budget and on June 16, 2011, the Governor vetoed the State budget bills. AB X1 26 and AB X1 27 are linked, meaning that if the bills are

presented to the Governor for his signature, the bills will not become effective unless the Governor signs both bills.

AB X1 26 and AB X1 27 raise significant legal issues, and many provisions of the bills are ambiguous or contradictory. This summary does not attempt to address all these issues and ambiguities.

## **AB X1 26**

### **Part 1.8: Restrictions on Redevelopment Agencies Operations**

Part 1.8 provides that effective immediately upon the enactment of AB X1 26, the authorized activities of agencies are severely curtailed. For example, agencies will be precluded from incurring new debt or entering into or modifying contractual obligations. In addition, Part 1.8 imposes various responsibilities on agencies prior to their dissolution.

#### **Chapter 1. Suspension of Agency Activities and Prohibition on Creation of New Debts**

Upon passage of AB X1 26, agencies<sup>1</sup> will immediately be prohibited from undertaking a number of actions, including the following:

- Incurring new monetary or legal obligations or expanding existing obligations except as provided for in Part 1.8.
- Incurring debt, including issuing bonds.
- Except in very limited circumstances, refunding or restructuring debt or obligations that existed as of January 1, 2011 (including refunding bonds, exercising the right of optional redemption, or purchasing their own bonds).
- Modifying or amending the terms and conditions, payment schedules, amortization, or maturity dates of any of the agency's bonds or other obligations that are outstanding or exist as of January 1, 2011.
- Accepting loans or advances from any source for any purpose, including advances pursuant to an administrative overhead reimbursement agreement.

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<sup>1</sup> An agency includes a community development commission, but Part 1.8 does not affect the authority of a commission to act in its capacity as a housing authority or for any other community development purpose of the jurisdiction in which it operates.



- Executing trust deeds or mortgages on any real or personal property owned or acquired by the agency.
- Pledging or encumbering (i.e., granting a lien on and a security interest in) any of the agency's revenues or assets for any purpose, including, but not limited to, tax revenues, project revenues, deeds of trust and mortgages held by the agency, rents, fees, charges, moneys, accounts receivable, contracts rights, and other rights to payment or other real or personal property.
- Making loans, advances or grants, or entering into agreements to provide financial assistance for any purpose.
- Loaning money or anything of value or making commitments to provide financing to nonprofit organizations to finance the acquisition, construction, rehabilitation, refinancing, or development of multifamily rental housing or the acquisition of commercial property for lease pursuant to Health and Safety Code Section 33741, et seq.
- Entering into contracts with or making commitments for any purpose (e.g., leases, DDA's, and service contracts).
- Purchasing mortgage or construction loans from mortgage lenders or other entities.
- Forgiving all or part of the balance owed to the agency on existing loans or extending or changing the terms and conditions of existing loans.
- Increasing deposits to the Low and Moderate Income Housing Fund beyond the minimum level applicable to the agency as of January 1, 2011.
- Amending or modifying existing agreements, obligations or commitments for any purpose. Exceptions include extending lease space for the agency's own use for six months, with no more than a five percent rate increase, and transferring funds from the Low and Moderate Income Housing Fund to meet the "minimum housing-related obligations" that existed as of January 1, 2011 to make SERAF payments, or in connection with a borrowing pursuant to 34168.5.<sup>2</sup>
- Disposing of assets by any means for any purpose. Assets include, but are not limited to, real property and improvements, cash, deeds, mortgages, accounts receivable, contract rights, and rights to receive rents.
- Acquiring real property, improvements on real property, or any interest in real property by any means for any purpose, provided, however, that

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<sup>2</sup>AB X1 26 does not contain a section 34168.5, and there is no section 34168.5 under existing law.

such prohibition is not intended to prohibit the acceptance or transfer of title for real property acquired by the agency prior to the Governor signing AB X1 26.

- Transferring, assigning, vesting, or delegating any of the agency's assets, funds, rights, powers, ownership interests, or obligations for any purpose to any entity, individual, or group.
- Accepting financial or other assistance from any source if it involves incurring debt by the agency.
- Engaging in redevelopment activities, including preparing, approving, adopting, amending or merging redevelopment plans; approving any program, project or expenditure where such approval is not required by law; preparing or modifying implementation plans, relocation plans (unless required by law) or housing plans; developing, rehabilitating or constructing housing units unless required to do so by an enforceable obligation; and providing relocation assistance (unless required by law) or financial assistance.
- Entering into new partnerships, becoming a member of a joint powers authority, creating a new entity, becoming a member of a new entity, or taking on or agreeing to take on any new duties or obligations of an entity.
- Increasing the pay, benefits, or contributions of any sort for any officer, employee, consultant, contractor, or any other goods or service provider that had not previously been contracted.
- Providing optional or discretionary bonuses to any officers, employees, consultants, contractors, or any other service or goods providers.
- Increasing the number of staff employed by the agency beyond the number employed as of January 1, 2011.
- Bringing a validation action to determine the validity of revenue bonds.
- Commencing any condemnation proceeding.
- Preparing or having prepared a draft environmental impact report.

### **MOU with Employee Organization**

The existing terms of any memorandum of understanding with an employee organization representing employees of the agency adopted pursuant to the Meyers-Millias-Brown Act that is in force on the date AB X1 26 is signed by the Governor will continue in force until September 30, 2011, unless a new agreement is reached with a recognized employee organization prior to that date.

## **Unwinding Asset Transfers**

The State Controller will review the activities of agencies to determine whether an asset transfer has occurred after January 1, 2011 between each agency and the city or another public entity. To the extent not prohibited by state or federal law, the State Controller will order the return of the available assets transferred after January 1, 2011, to the redevelopment agency or, on or after October 1, 2011, to the successor agency if one has been established. The only exception will be if the government agency that received the asset is contractually committed to a third party for the expenditure or encumbrance of the asset.

### **Chapter 2. Redevelopment Agency Responsibilities**

Commencing immediately upon the enactment of AB X1 26 and continuing until October 1, 2011, agencies will be required to undertake a number of actions, including the following:

- Make all scheduled payments with respect to enforceable obligations.

An "enforceable obligation" includes (A) bonds issued by an agency (including debt service, reserve set-asides, and any other payments required by the bond documents); (B) loans incurred for a lawful purpose, including moneys borrowed from the Low and Moderate Income Housing Fund, to the extent they are legally required to be repaid pursuant to a required repayment schedule or other mandatory loan terms; (C) payments required by the Federal Government, pre-existing obligations to the State, or obligations imposed by State law, or legally enforceable payments required in connection with the agency's employees, including pension payments and unemployment payments; (D) judgments or settlements entered by a court or binding arbitration decisions; (E) any legally binding and enforceable contract that is not otherwise void as violating the debt limit or public policy; and (F) contracts necessary for the administration or operation of the agency to the extent permitted by AB X1 26 (but note that Chapter 1 of Part 1.8 provides that an agency is prohibited from accepting loans or advances from any source for any purpose, including advances pursuant to an administrative overhead reimbursement agreement).

An agency must adopt an Enforceable Obligation Payment Schedule within 60 days of the date the Governor signs AB X1 26. Each schedule must list all of the agency's enforceable obligations and include certain information about each obligation, including the amount of payments obligated to be made, by month, through December 2011. Each schedule must be adopted at a public meeting and must be posted on the agency's internet web site or, if the agency does not have a site, on the city's site. The schedule must be transmitted (by mail or electronically)

to the county auditor-controller, the State Controller and the Department of Finance (DOF).

Upon the earlier of adoption of the Enforceable Obligation Schedule or 60 days after the Governor signs AB X1 26, an agency will not be able to make a payment unless it is listed in the adopted schedule. An exception is provided for payments required to meet obligations with respect to bonds. The DOF and the State Controller can require an agency to provide them with documents that are associated with the agency's enforceable obligations. Any taxing entity, the DOF and the State Controller all will have standing to file a judicial action to prevent a violation under Part 1.8 and to obtain injunctive or other appropriate relief.

- Perform obligations required pursuant to enforceable obligations, including observing covenants related to continuing disclosure and preserving the tax-exempt status of outstanding bonds.
- Set aside or maintain reserves in the amount required by bond documents.
- Preserve all of the agency's assets and records, and minimize all liabilities.
- Cooperate with the successor agency, if established, and provide all records and information necessary or desirable for audits, making of payments required by enforceable obligations, and performance of enforceable obligations by the successor agency.
- Take all reasonable measures to avoid triggering an event of default under enforceable obligations.
- Prepare and submit to the successor agency, if one is established, a preliminary draft of the initial Recognized Obligation Payment Schedule (the document that will govern payments by successor agencies) by September 30, 2011.

The DOF may review Enforceable Obligation Payment Schedules and initial Recognized Obligation Payment Schedules. Agency actions will not be effective for three business days pending a request for review by the DOF. Each agency must designate an official to whom the DOF may make requests. In the event that the DOF requests a review of a given agency action, the DOF will have 10 days from the date of its request to approve the agency action or return it to the agency for reconsideration and the action will not be effective until approved by the DOF.

### **Chapter 3. Application of Part 1.8 to Former Participants of the Alternative Voluntary Redevelopment Program**

As discussed beginning on page 18, an agency will be exempt from the provisions of Parts 1.8 and 1.85 if the city participates in the Alternative Voluntary Redevelopment Program established by Part 1.9 and complies with all the requirements and obligations set forth in Part 1.9. An agency that operates pursuant to the Alternative Voluntary Redevelopment Program under Part 1.9 can become subject to the provisions of Part 1.8 if the city fails to make a required annual payment. In such case, the dates and deadlines specified in Part 1.8 are appropriately modified to reflect the date that the agency becomes subject to Part 1.8. References to "January 1, 2011" will be construed to mean January 1 of the year preceding the year that the agency became subject to Part 1.8 (but not earlier than January 1, 2011). Any reference to a date "60 days from the effective date of this part" will be construed to mean 60 days from the date that the agency becomes subject to Part 1.8. Except as specified in the two preceding sentences, any reference to a date certain will be construed to be the date measured from the date the agency became subject to Part 1.8 that is equivalent to the duration of time between the effective date of Part 1.8 and the date certain identified in AB X1 26.

### **Part 1.85: Dissolution of Redevelopment Agencies and Designation of Successor Agencies**

Part 1.85 provides that unless otherwise specified, its provisions will take effect on October 1, 2011. Part 1.85 defines a number of terms used in AB X1 26 (Chapter 1); provides for the creation of funds to be held by agencies or successor agencies (Chapter 1); describes the effect of the dissolution of agencies (Chapter 2); provides for the designation of successor agencies and their responsibilities (Chapter 3); provides for the creation of oversight boards and their responsibilities (Chapter 4); specifies the duties of the county auditor-controller (Chapter 5); describes the effect of Part 1.85 on the Redevelopment Law (Chapter 6); provides for the stabilization of labor and employment relations (Chapter 7); and provides for the application of Part 1.85 to agencies if the DOF determines that this part applies because the city has ceased making payments under Part 1.9's Alternative Voluntary Redevelopment Program (Chapter 8).

#### **Chapter 1. Creation of Funds**

AB X1 26 provides for the establishment of the following funds:

- A Redevelopment Obligation Retirement Fund is created in the treasury of each successor agency.
- A Redevelopment Property Tax Trust Fund is created for the property tax revenues related to each former agency in each county, to be administered by the county auditor-controller.

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**Chapter 2. Effect of Redevelopment Agency Dissolution**

All redevelopment agencies (and redevelopment agency components of community development commissions) are dissolved as of October 1, 2011, and their authority to transact business or exercise powers under the Redevelopment Law is withdrawn.<sup>3</sup> The city may not create a new redevelopment agency if its agency has been dissolved unless and until the successor entity has paid off all of the former agency's enforceable obligations and the city adopts an ordinance to participate in the Alternative Voluntary Redevelopment Program.

Except for those provisions of the Redevelopment Law that are repealed, restricted, or revised by AB X1 26, all authority, power, and obligations previously vested with agencies under the Redevelopment Law are vested in successor agencies as of October 1, 2011.

In the case of a city redevelopment agency, the successor agency will be the city unless the city elects not to become the successor agency. If the city so elects, it must file a copy of a duly authorized resolution of the city council with the county auditor-controller by September 1, 2011. The county or a special district in the county can elect to become the successor agency if the city declines. If neither the county nor a special district so elects, a "designated local authority" will be created and the Governor will appoint three residents of the county to serve as its governing board. The designated local authority will serve unless the city, county, or a special district elect to become the successor agency.

The liability of any successor agency, acting pursuant to the powers granted under AB X1 26, will be limited to the extent of the total sum of property tax revenues it receives pursuant to AB X1 26 and the value of assets transferred to it as a successor agency.

All assets, properties, contracts, leases, books and records, buildings, and equipment of the agency, including cash and amounts owed to the agency as of October 1, 2011, are transferred on October 1, 2011 to the control of the successor agency for administration pursuant to AB X1 26.

The city may elect to retain the housing assets and functions previously performed by the agency (presumably the city may make this election even if it elects not to become the successor agency). If the city elects to retain the responsibility for performing housing functions, all rights, powers, duties, and obligations (excluding any amounts on deposit in the Low and Moderate Income Housing Fund) will be transferred to the city.

If the city does not elect to retain the responsibility for performing housing functions, the rights, powers, assets, liabilities, duties, and obligations associated with the housing activities of the agency (excluding amounts on deposit in the Low and Moderate Income Housing Fund), will be transferred as follows:

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<sup>3</sup> For non-redevelopment purposes, a community development commission derives its authority solely from federal or local laws, or from state laws other than the Redevelopment Law.

- If there is no local housing authority in the territorial jurisdiction of the agency, to the Department of Housing and Community Development.
- If there is only one local housing authority in the territorial jurisdiction of the agency, to that housing authority.
- If there is more than one local housing authority in the territorial jurisdiction of the agency, to the housing authority selected by the city.

The entity assuming the housing functions of the agency may enforce affordability covenants and perform related activities pursuant to the applicable provisions of the Redevelopment Law.

### **Chapter 3. Successor Agencies**

Each successor agency will be required to do a number of things, including the following:

- Continue to make payments due for enforceable obligations and prepare Recognized Obligation Payment Schedules.

On or after October 1, 2011, and until a Recognized Obligation Payment Schedule becomes operative, only payments required pursuant to an Enforceable Obligation Payment Schedule may be made. The initial Enforceable Obligation Payment Schedule will be the last such schedule adopted by the redevelopment agency. However, with certain exceptions, an enforceable obligation will not include any agreements, contracts, or arrangements between the city and agency. The exceptions are as follows:

- Written agreements entered into at the time of issuance of indebtedness obligations<sup>4</sup> (but not later than December 31, 2010) solely for the purpose of securing or repaying those indebtedness obligations may be deemed enforceable obligations by the successor agency.

- Loan agreements entered into between a city and agency within two years of the date of creation of agency may also be deemed to be enforceable obligations.

- A joint exercise of powers agreement in which the agency is a member, provided the successor agency's rights, duties and performance obligations under the agreement will be limited by the constraints imposed upon successor agencies by Part 1.85.

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<sup>4</sup> "Indebtedness obligations" means bonds, notes, certificates of participation or other evidence of indebtedness issued or delivered by the agency or by a joint exercise of powers authority created by the agency to third party investors or bondholders to finance or refinance redevelopment projects.

The obligations excluded from the definition of enforceable obligations will be excluded from the Enforceable Obligation Payment Schedule and removed from the last schedule adopted by the 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 a public meeting, will be subject to the approval of the oversight board, and must be posted on the agency's Internet web site or, if no such web site exists, on the Internet web site of the city. Any taxing entity<sup>5</sup>, the DOF, and the State Controller will each have standing to file a judicial action to prevent a violation under Part 1.85 and to obtain injunctive or other appropriate relief.

Successor agencies are required to prepare Recognized Obligation Payment Schedules before each six-month fiscal period. A draft schedule must be prepared by November 1, 2011. Schedules must be approved by the oversight board, submitted to the county auditor-controller, the State Controller and the DOF, and posted on the successor agency's Internet web site. The first Recognized Obligation Payment Schedule must be submitted by December 15, 2011, and will be for the period of January 1, 2012, to June 30, 2012. Former agency enforceable obligation payments due, and reasonable or necessary administrative costs due or incurred, prior to January 1, 2012, will 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.

Commencing on the operative date of Part 1.85, agreements, contracts, or arrangements between the city and agency are invalid and will not be binding on the successor agency; provided, however, that a successor agency wishing to enter or reenter into agreements with the city may do so upon obtaining approval of the oversight board. Notwithstanding the foregoing, the three types of city/agency contracts described above on page 9 are not invalid and may bind the successor agency.

Commencing on January 1, 2012, only those payments listed in a Recognized Obligation Payment Schedule may be made by a successor agency. The successor agency must use the funds specified in the Schedule unless the oversight board approves the use of other funds. There are a number of details associated with preparing and adhering to the Schedules. From October 1, 2011 to July 1, 2012, a successor agency is prohibited from accelerating payment or making any lump sum

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<sup>5</sup> ABX1 26 defines "taxing entities" to mean cities, counties, special districts, school districts, community college districts, and county offices of education that receive pass through payments and distributions of property taxes pursuant to Part 1.85.



payments that are intended to prepay loans unless such accelerated repayments were required prior to October 1, 2011.

For each obligation listed on a Recognized Obligation Payment Schedule, the Schedule must identify one or more of the following sources of payment: (A) The Low and Moderate Income Housing Fund; (B) bond proceeds; (C) reserve balances; (D) the administrative cost allowance<sup>6</sup>; (E) moneys in the Redevelopment Property Tax Trust Fund, but only to the extent no other funding source is available or payment from current property tax revenues is required by an enforceable obligation or AB X1 26; or (F) other sources approved by the oversight board.

Each Schedule must be approved by the oversight board and the initial Schedule must be reviewed and certified by an external auditor.

- Maintain reserves in the amounts required by indentures or similar bond documents.
- Perform obligations required pursuant to enforceable obligations.
- Remit unencumbered balances of agency funds to the county auditor-controller for distribution to taxing entities, including but not limited to the unencumbered balance of the Low and Moderate Income Housing Fund.
- Dispose of agency assets and properties as directed by the oversight board. Proceeds from asset sales and related funds that are no longer needed to wind up the affairs of the agency, as determined by the oversight board, must be transferred to the county auditor-controller for distribution to taxing entities. The oversight board may direct the successor agency to transfer ownership of assets that were constructed and used for a governmental purpose 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 will be governed by the agreements relating to the construction or use of that asset.
- Enforce all agency rights for the benefit of taxing entities, including the continued collection of loans, rents, and other revenues that were due to the agency.

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<sup>6</sup> The administrative cost allowance is an amount that, subject to the approval of the oversight board, is payable from property tax revenues of up to 5% of the property tax allocated to the successor agency for the 2011-12 fiscal year and up to 3% of the property tax allocated to the Redevelopment Obligation Retirement Fund money that is allocated to the successor agency for each fiscal year thereafter. However, the amount shall not be less than \$250,000 for any fiscal year or such lesser amount as agreed to by the successor agency. The allowance amount will exclude any administrative costs that can be paid from bond proceeds or from sources other than property tax.

- Effectuate transfer of housing functions and assets to the appropriate entity.
- Expediently wind down the affairs of the agency in accordance with the direction of the oversight board.
- Continue to oversee development of properties until the contracted work has been completed or the contractual obligations of the agency can be transferred to other parties. In connection with the completion of contracted work, bond proceeds must be used for the purposes for which the bonds were sold if the purposes can still be achieved, and if not, the bond proceeds may be used to defease the bonds.
- Prepare a proposed administrative budget for approval by the oversight board, which includes estimated amounts for successor agency administrative costs for the upcoming six month fiscal period, proposed sources of payments for such costs, and proposals for arrangements for administrative and operations services provided by the city.
- Provide administrative cost estimates, from its approved 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.

#### **Chapter 4. Oversight Boards**

Each successor agency will have an oversight board composed of seven members. Two members are to be selected by the mayor; one of these two members does not need to meet any particular qualifications while the other member will represent the employees of the agency from the recognized employee organization representing the largest number of former agency employees employed by the successor agency at that time. One member is to be selected by the largest non-enterprise special district, by property tax share, with territory in the city (if none, then the county may appoint an additional member to represent the public). One member is to be appointed by the superintendent of education to represent schools. One member is to be appointed by the Chancellor of the California Community Colleges to represent community college districts. The board of supervisors is to appoint two members, with one member to represent the public. Any positions that have not been filled by January 15, 2012, or which remain vacant for more than 60 days, are to be filled by the Governor.

The oversight board may direct the staff of the successor agency in furtherance of their duties and responsibilities under AB X1 26. The successor agency must pay for all costs of meetings of the oversight board and may include such costs in its administrative budget. Members of the oversight board are to serve without compensation or reimbursement for expenses.

AB X1 26 provides for the DOF to review the actions of oversight boards and actions of the oversight board will not be effective for three business days pending a request for review by the DOF. If the DOF returns an action to the oversight board for reconsideration, the oversight board must get approval of its modified action.

Commencing on July 1, 2016, the individual oversight boards for each dissolved redevelopment agency will be replaced with a single oversight board for each county. The appointment of members will be the same as for the individual boards, except the city and special district members will be appointed by the respective selection committees established pursuant to the Government Code<sup>7</sup> and the recognized employee organization member will be appointed by the organization instead of the mayor.

The oversight board must approve a number of actions of the successor agency including the following:

- Establishment of new repayment terms for outstanding loans where such terms have not been specified prior to the date of Part 1.85.
- Issuance of refunding bonds.
- The set aside of reserves as required by bond documents.
- Acceptance of federal or state grants or other forms of financial assistance from public or private sources if the assistance is conditioned upon the provision of matching funds by the successor agency in an amount greater than five percent.
- Establishment of the Recognized Obligation Payment Schedule.
- A request by a successor agency or taxing entity to pledge, or to enter into an agreement for the pledge of, property tax revenues.

The oversight board must direct the successor agency to do certain things, including the following:

- Dispose of all assets and properties of the agency that were funded by tax increment revenues of the agency, except 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 to the appropriate public jurisdiction pursuant to any existing agreements relating to the construction or use of the asset.
- Cease performance in connection with and terminate all existing agreements that do not qualify as enforceable obligations.

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<sup>7</sup> A city selection committee consists of the mayors of each incorporated city in the county.

- 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 (note, however, that other provisions of AB X1 26 provide for the unencumbered balance of the Low and Moderate Income Housing Fund to be disbursed to taxing entities).
- Terminate any agreement between the dissolved redevelopment agency and any public entity located in the same county that obligates the 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.
- Determine whether any contracts or other arrangements between the dissolved redevelopment agency and any private parties should be terminated or renegotiated to reduce liabilities and increase the revenues to the taxing entities, and present proposed termination or amendment agreements to the oversight board for its approval. The oversight board may approve any amendments to or early termination of such agreements where it finds that this would be in the best interests of the taxing entities.

#### **Chapter 5. Duties of County Auditor-Controllers**

The county auditor-controller must conduct (or cause to be conducted) a financial audit of each agency subject to Part 1.85 by March 1, 2012. The purpose of the audits is to establish each agency's assets, liabilities, and pass through payment obligations, and the amounts and terms of any indebtedness.

The county auditor-controller must determine the amount of property taxes that would have been allocated to each agency in the absence of dissolution, using current assessed values on the roll last equalized on August 20<sup>th</sup> and pursuant to statutory formulas or contractual agreements with other taxing agencies, and deposit that amount in the respective Redevelopment Property Tax Trust Fund. Each county auditor-controller is to administer the Redevelopment Property Tax Trust Fund for the benefit of the holders of former agency enforceable obligations and the taxing entities that receive pass through payments and distributions of property taxes pursuant to Part 1.85.

The county auditor-controller must disburse proceeds of asset sales or reserve balances received from successor agencies to the taxing entities.

From October 1, 2011<sup>8</sup> to July 1, 2012, and for each fiscal year thereafter, each county auditor-controller will, after deducting allowable administrative costs, allocate moneys in the Redevelopment Property Tax Trust Fund as follows:

First, by no later than January 16, 2012<sup>9</sup>, and June 1, 2012 and each January 16 and June 1 thereafter, to each local agency and school entity an amount of property tax revenues in an amount equal to that which would have been received pursuant to Health and Safety Code Sections 33401, 33492.140, 33607, 33607.5, 33607.7 or 33676 as those sections read on January 1, 2011, or pursuant to any pass through agreement with a taxing jurisdiction entered into prior to January 1, 1994 that would be in force during that fiscal year if the agency existed at that time. The portion of tax increment that is attributable to an override tax rate levied to repay bonds for the acquisition or improvement of real property will be paid to the taxing entity that levied the override tax.<sup>10</sup>

Second, on January 16, 2012, and June 1, 2012, and each January 16 and June 1 thereafter, to each successor agency for payments listed in its Recognized Obligation Payment Schedule for the six month fiscal period beginning January 1, 2012, or July 1, 2012, and each January 16 and June 1 thereafter in the following order of priority:

- debt service payments scheduled to be made for tax allocation bonds;
- 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 were also pledged for the repayment of the bonds; and
- 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.

Third, on January 16, 2012, and June 1, 2012, and each January 16 and June 1 thereafter, to each successor agency for the administrative cost allowance for administrative costs set forth in an approved administrative budget for those payments required to be paid from former tax increment revenues.

Fourth, on January 16, 2012, and June 1, 2012, and each January 16 and June 1 thereafter, any moneys remaining in the Redevelopment Property Tax Trust Fund after

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<sup>8</sup> Note that this date falls before the March 1, 2012 deadline for the completion of the financial audit of each agency conducted, or caused to be conducted, by the county auditor-controller.

<sup>9</sup> Again, this date falls prior to the deadline for completing financial audits of redevelopment agencies.

<sup>10</sup> In some instances, tax increment revenues derived from an override tax have been pledged to the repayment of bonds. ABX1 26 contains a provision stating that it is the intent of Part 1.85 that pledges of revenues associated with enforceable obligations of former redevelopment agencies are to be honored and that the cessation of any agency will not affect either the pledge, the legal existence of that pledge, or the stream of revenues available to meet the requirements of that pledge.

the payments and transfers authorized above have been made, shall be distributed to local agencies and school entities.

If the successor agency reports, no later than December 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 (i) the Redevelopment Property Tax Trust Fund allocation to that successor agency's Redevelopment Obligation Retirement Fund, (ii) other funds transferred from each redevelopment agency, and (iii) funds that have or will become available through asset sales and all redevelopment operations are insufficient to fund the payments required by the First through Third paragraphs on page 15 in the next six month fiscal period, the county auditor-controller will notify the State Controller and the DOF no later than 10 days from the date of that notification. The county auditor-controller will verify whether the successor agency will have sufficient funds. If the State Controller concurs that there are insufficient funds, the amount of the deficiency will be deducted from the amount remaining to be distributed to the taxing entities pursuant to the Fourth paragraph. If that amount is exhausted, the amount of deficiency will be deducted from amounts available for administrative costs pursuant to the Third paragraph. If the agency's pass through payments were subordinated to debt service payments, funds for debt service may be deducted from the amounts for pass through payments pursuant to the First paragraph to the extent that the amounts remaining to be distributed to taxing entities and the amounts for administrative costs have all been exhausted.

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

Commencing on January 16, 2012, and on each January 16 and June 1 thereafter, the county auditor-controller will transfer, from 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 set forth in AB X1 26. Differences between actual payments and past estimated obligations on Recognized Obligation Payment Schedules must be reported in subsequent Recognized Obligation Payment Schedules and the amount to be transferred to the Redevelopment Obligation Retirement Fund will be adjusted.

Commencing January 1, 2012, whenever an obligation on a Recognized Obligation Payment Schedule is paid off or retired, either through early payment or payment at maturity, the county auditor-controller must distribute to the taxing entities all property tax revenues that the agency would have been entitled to receive before enactment of AB X1 26. This provision is unclear, but may mean that once an obligation is paid off, the amount of property tax revenues that were used to pay debt service on the defeased obligation will subsequently be distributed to taxing entities.<sup>11</sup>

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<sup>11</sup> In such case, this would create a problem with respect to subordinate obligations that are payable from excess tax increment revenues that remain after paying debt service on senior obligations. See

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**Chapter 6. Effect of Part 1.85 on the Redevelopment Law**

Chapter 6 provides that commencing on the effective date of Part 1.85, provisions of the Redevelopment Law that depend on the allocation of tax increment to redevelopment agencies will be inoperative, except with respect to agencies operating pursuant to Part 1.9 (i.e., the Alternative Voluntary Redevelopment Program).

**Chapter 7. Stabilization of Labor and Employment Relations**

Chapter 7 provides that nothing in AB X1 26 is intended to relieve any redevelopment agency of its obligations under Section 3500 *et seq.* of the Government Code (which relate to local public employee organizations). Subject to the limitations described above on page 4 with respect to salaries, benefits, bonuses and numbers of staff, prior to its dissolution, an agency will retain the authority to meet and confer and to bargain over matters within the scope of representation. Chapter 7 imposes various obligations on successor agencies with respect to collective bargaining agreements and successor agencies will be deemed to have assumed the obligations under any memorandum of understanding in effect between the agency and a recognized employee organization as of the date of the agency's dissolution.

**Chapter 8. Application of Part 1.85 to Former Participants of the Alternative Voluntary Redevelopment Program**

As discussed below, AB X1 27 adds Part 1.9 to the Redevelopment Law, which provides that the provisions of Part 1.8 and 1.85 will not apply to a redevelopment agency if the city participates in the Alternative Voluntary Redevelopment Program. Chapter 8 provides that if a redevelopment agency subsequently becomes subject to the provisions of Part 1.85, the dates and deadlines set forth in Part 1.8 will be appropriately modified to reflect the date that the agency becomes subject to the provisions of Part 1.85.

**Miscellaneous Provisions**

**Clean Up Bill.** A clean up bill must be produced by the California Law Revision Commission for consideration by the Legislature no later than January 1, 2013.

**Statute of Limitations.** The time period to challenge the adoption or amendment of a redevelopment plan or the validity of findings or determinations by an agency or city council adopted or made after January 1, 2011 is extended to two years. An action that is commenced after January 1, 2011 to challenge the validity of bonds can be brought within two years after the date of the triggering event.

**Poison Pill.** If a legal challenge to invalidate any provision of AB X1 26 is successful, redevelopment agencies shall be prohibited from issuing new bonds, notes,

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footnote no. 10 regarding the intent of AB X1 26 that pledges associated with enforceable obligations be honored.

interim certificates, debentures or other obligations, whether funded or refunded, assumed or otherwise.

## **AB X1 27**

### **Part 1.9: Alternative Voluntary Redevelopment Program**

AB X1 27 provides for the continued existence of a redevelopment agency upon the adoption of an ordinance by the city to comply with AB X1 27.

#### **Chapter 1. Application of Part 1.9**

An agency will be exempt from the provisions of Parts 1.8 and 1.85 if the city participates in the Alternative Voluntary Redevelopment Program established by Part 1.9 and complies with all the requirements and obligations set forth in Part 1.9.

#### **Chapter 2. Continued Agency Existence**

Participation in the Alternative Voluntary Redevelopment Program will require a city to adopt an ordinance on or before November 1, 2011. If the city intends to adopt the ordinance after October 1, 2011, it must adopt a nonbinding resolution of intent prior to October 1, 2011 and notify the DOF, the State Controller, and the county auditor-controller before October 1, 2011 concerning the resolution. This action will delay the dissolution of an agency until November 1, 2011.

On or before November 1, 2011, a city that has adopted an ordinance must notify the county auditor-controller, the State Controller and the DOF that the city agrees to comply with the provisions of Part 1.9.

Participation in the Alternative Voluntary Redevelopment Program constitutes an agreement by the city that it assigns its rights to any payments owed from the agency, including but not limited to, payments from loan agreements, to the State in the event the city fails to make a remittance required pursuant to Part 1.9.

If the city has adopted an ordinance pursuant to the Alternative Voluntary Redevelopment Program, the actions of the agency taken after the date of adoption of the ordinance will not be subject to the new two year statute of limitations provided for by AB X1 26.

#### **Chapter 3: Community Remittances**

For each fiscal year, commencing with fiscal year 2011-12, the city must remit to the county auditor-controller the amounts required pursuant to Part 1.9.



For fiscal year 2011-12, the DOF will determine the amount of the remittance. The calculation is similar to the SERAF calculation for 2009-10 (using information from the State Controller's 2008-09 report and determining each agency's proportionate share of \$1.7 billion). The DOF will notify each city of its remittance amount on or before August 1, 2011. After receiving this notification, a city may appeal the amount of its remittance to the DOF on or before August 15, 2011, on the basis that the information in the State Controller's report was in error or that the percentage of tax increment necessary to pay for tax allocation bonds and interest payments has increased by 10 percent or more over the percentage calculated pursuant to the Controller's 2008-09 report. The DOF may reject or approve the appeal at the DOF's discretion. The DOF must notify the city of its decision by September 15, 2011. The DOF can extend the date to October 15, 2011, in which case the city will have until December 1, 2011, to adopt an ordinance. The DOF must recalculate the remittance amount if it determines that the percentage of tax increment necessary to pay for tax allocation bonds or interest payments has increased by 10 percent or more.

For the 2012-13 fiscal year and subsequent fiscal years, a participating city must remit an amount equal to the sum of the amounts specified in paragraphs 1 and 2 below.

1. A base payment equal to the base payment in the prior fiscal year, increased by the percentage growth or decreased by the percentage reduction, as appropriate, from the prior fiscal year in the total "adjusted amount of property tax increment revenue" allocated to the agency with respect to project areas that were in existence, and from which the agency received allocations of tax increment revenue during the 2011-12 fiscal year.

For fiscal year 2012-13, the base payment in the prior fiscal year will be the remittance amount for the fiscal year 2011-12 multiplied by the ratio of \$400 million to \$1.7 billion.

The "adjusted amount of property tax increment revenue" means an amount of property tax increment in any fiscal year for a project area that is calculated by subtracting the amount of any debt service or other payments for new debt issuances or obligations from the total amount of property tax increment revenue allocated in that year to the agency with respect to that project area.

2. An amount equivalent to 80%, or any lesser amount as may be authorized by law for qualifying projects<sup>12</sup>, of the total "net school share", of debt service or other payments made in that fiscal year for new debt or obligations issued or incurred on or after November 1, 2011, as shown on the agency's statement

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<sup>12</sup> AB X1 27 provides that it is the intent of the Legislature to enact legislation in the 2011-12 session to prescribe a schedule of reductions in the community remittance that will authorize payments of less than 80% of the school share of property taxes to the ERAF. The reductions will apply for bonds issued for the purpose of funding projects that advance the achievement of statewide goals with respect to transportation, housing, economic development and job creation, environmental protections and remediation and climate change.

of indebtedness (SOI), excluding any debts issued or incurred on behalf of the Low and Moderate Income Housing Fund. "New debt" means debt that is displayed on a SOI filed after a SOI filed on October 1, 2011, that was not displayed on the SOI filed on October 1, 2011.

The "net school share" will be the school share of the property tax increment revenues, less any pass through payments to school entities, that would have been received in the absence of redevelopment by school entities.

On or before November 1 of each year, the city must notify the DOF, the State Controller and the county auditor-controller of the remittance amount, and they will each be authorized to audit and verify the remittance amount that is determined by the city. If it determined that the city has miscalculated its remittance payment amount, the auditor-controller will adjust the amount of the next remittance payment to be paid by the city to reflect the correct amount payment previously owed by the city.

The city must pay one-half of the total remittance amount on or before January 15 of each year and pay the remaining one-half on or before May 15 of each year. If the city fails to make its remittance payment, the auditor-controller will notify the DOF within 30 days. Upon receipt of the notification, the DOF may then determine that the agency will be subject to the requirements of Parts 1.8 and 1.85.

To make the remittances, a city may use any available funds not otherwise obligated for other uses. A city may enter into an agreement with the agency whereby the agency will transfer a portion of its tax increment to the city in an amount not to exceed the annual remittance required that year for the purpose of financing activities within the project area that are related to accomplishing the agency project goals.

For fiscal year 2011-12 only, the agency in a participating city will be exempt from making the full allocation required to be made to the Low and Moderate Income Housing Fund if the agency makes a finding that there are insufficient other moneys to meet its debt and other obligations, current priority program needs, or its obligations under the agreement with the city to transfer tax increment to the city for the remittances.

### **Chapter 3.5. Post Dissolution Voluntary Redevelopment Program Participation**

No city may establish a new redevelopment agency if its former agency has been dissolved pursuant to Part 1.85 until the successor entity has retired all existing enforceable obligations and debts of the former agency and then only after the city adopts the ordinance providing for the payment of remittances pursuant to the Alternative Voluntary Redevelopment Program.

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**Chapter 4. Enforcement and Sanctions**

In the event a city fails to make a remittance and the DOF determines that the agency is to be subject to the requirements of Parts 1.8 and 1.85, then:

The city will no longer be authorized to engage in voluntary redevelopment and the agency will become immediately subject to the provisions of Parts 1.8 and 1.85.

The state will be entitled to an assignment of any rights of a city to any payments from the agency to which the city is entitled for the purpose of mitigating the fiscal impact to the State related to the failure of the city to make the required remittance payment.

**Chapter 5. Auditor-Controller Fee**

The auditor-controller may charge a city a fee that does not exceed the reasonable costs of the auditor-controller to implement the provisions of Part 1.9.

**Poison Pill.**

If any legal challenge to invalidate a provision of Section 2 of AB X1 27 (i.e., the provisions of the Alternative Voluntary Redevelopment Program) is successful, redevelopment agencies will be prohibited from issuing new obligations, including bonds and notes. AB X1 27 provides that the provisions of Section 2 are distinct and severable from the provisions of Parts 1.8 and 1.85 and the provisions of Parts 1.8 and 1.85 will continue in effect if any provision of AB X1 27 is held invalid.

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We will continue to closely monitor the budget process related to the Governor's redevelopment proposal. If you have any questions about this summary, please do not hesitate to contact Robin D. Harris at 213.626.8484 or [rharris@rwglaw.com](mailto:rharris@rwglaw.com), or Trisha Ortiz at 415.421.8484 or [tortiz@rwglaw.com](mailto:tortiz@rwglaw.com).