

Summary of AB 101 and SB 77

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Introduction

On February 23, 2011, the California Department of Finance (the “DOF”) circulated draft legislation to implement the redevelopment provisions of the Governor’s proposed 2011-12 budget (the “Draft Language”). Richards, Watson & Gershon prepared a summary of the Draft Language entitled, *Summary of Draft Legislation to Implement the Governor’s Budget Proposal to Eliminate Redevelopment*, dated March 4, 2011, which is available at www.rwglaw.com.

To date, two budget trailer bills, AB 101 and SB 77, have been introduced to set forth the legislation that would implement the Governor’s proposal to eliminate redevelopment. AB 101 and SB 77 contain essentially identical language; both were introduced on January 10, 2011 in a shell format and amended on March 15, 2011, to set forth the specific proposed legislation that would implement the Governor’s redevelopment proposal.

Both AB 101 and SB 77 (the “Proposed Legislation”) are styled as bills providing for appropriations related to the Budget Act of 2011, meaning that they both would become effective immediately upon the signature of the Governor. The Legislative Counsel’s Digest states that the Proposed Legislation requires a two-thirds vote of each house of the Legislature for passage because the Proposed Legislation changes the pro rata shares in which ad valorem property tax revenues are allocated among local agencies in a county.

The Proposed Legislation supersedes the Draft Language. The Proposed Legislation is similar to the Draft Language in many respects but there are some significant differences. Of particular significance, the Proposed Legislation provides that all contracts between a city and a redevelopment agency are void (a successor entity wishing to enter or reenter into agreements with the city may do so upon obtaining approval of the oversight board). In addition, the Proposed Legislation generally provides for the unwinding of asset transfers between a redevelopment agency and a city or other public entity that occurred after January 1, 2011. The Proposed Legislation also provides that 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 an existing agreement relating to the construction or use of such an asset.

As with the Draft Language, many provisions of the Proposed Legislation are unclear and the Proposed Legislation, as a whole, raises significant legal issues. The purpose of this *Summary of AB 101 and SB 77* is to highlight significant differences between the Draft Language and the Proposed Legislation.

Part 1.8. Restrictions on Redevelopment Agency Operations

Chapter 1: Suspension of Agency Activities and Prohibition on Creation of New Debts

The Draft Language provided that upon its passage agencies would immediately be prohibited from undertaking a number of actions such as incurring new or expanding existing monetary or legal obligations. The Proposed Legislation maintains the prohibitions set forth in the Draft Language and expands the list of prohibited activities by specifying that agencies may not undertake the following activities:

- 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.
- 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.
- 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.
- Loaning money or anything of value to provide financing for residential construction, improvement, or rehabilitation pursuant to Health and Safety Code Section 33750, et seq.
- 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.
- Transferring funds out of the Low and Moderate Income Housing Fund except to meet the minimum housing-related obligations that existed as of January 1,

2011, to make SERAF payments, or in connection with a borrowing as described on page 7 of this Summary.

- Acquiring real property, improvements on real property, or any interest in real property by any means for any purpose, provided, however, that 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 the Proposed Legislation.
- 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.
- 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.

Part 1.8, Chapter 1, of the Proposed Legislation sets forth additional provisions that were not included in the Draft Language, as described below.

MOU with Employee Organization

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

Unwinding Asset Transfers

The Proposed Legislation provides for the State Controller to determine whether an asset transfer has occurred between each agency and the city or another public entity between January 2, 2011 and the date the Governor signs the Proposed Legislation and to order the return of the transferred assets to the redevelopment agency or successor agency to the extent not prohibited by state or federal law. The only exception to this requirement is in cases where 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

The Draft Language provided that commencing immediately upon its passage and continuing until July 1, 2011, redevelopment agencies would be required to undertake a number of actions. The Proposed Legislation maintains these agency responsibilities and adds a requirement for agencies to adopt an Enforceable Obligation Payment Schedule within 60 days of the Governor signing the Proposed Legislation. 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 DOF. Upon the earlier of adoption of the Enforceable Obligation Schedule or 60 days after the Governor signs the Proposed Legislation, 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.

The Proposed Legislation also adds a requirement for each agency to prepare and submit to the successor agency a preliminary draft of the initial Recognized Obligation Payment Schedule (the document that governs payments by successor agencies) by June 30, 2011.

The DOF may review Enforceable Obligation Payment Schedules and initial Recognized Obligation Payment Schedules. In such case, any schedule that is disapproved by the DOF must be modified and resubmitted for approval.

Part 1.85. Dissolution of Redevelopment Agencies and Designation of Successor Agencies

Like Part 1.85 of the Draft Language, Part 1.85 of the Proposed Legislation will take effect on July 1, 2011 unless otherwise specified. Part 1.85 continues to define a number of terms used in the Proposed Legislation (Chapter 1); provides for the creation of funds (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); and describes the effect of Part 1.85 on the Redevelopment Law (Chapter 6). The Proposed Legislation also adds a Chapter 7 that deals with the stabilization of labor and employment relations.

Chapter 1: Effective Date, Creation of Funds, and Definition of Terms

The Proposed Legislation modifies some of the definitions set forth in the Draft Language.

The definition of “administrative cost allowance” is modified to provide that the amount will not be less than \$250,000 for any fiscal year or such lesser amount as agreed to by the successor agency.

The definition of an “approved development project” is modified to specify that an enforceable obligation with respect to the project must have been entered into between the agency and a third party prior to January 1, 2011. The Proposed Legislation also modifies the basis for the oversight board to approve the continuation of a project where there has not been substantial performance under the applicable agreement. The determinations of the oversight board will be subject to approval by the State Controller, the Treasurer, and the DOF.

The definition of an “enforceable obligation” is modified as follows:

- An “enforceable obligation” includes amounts borrowed from the Low and Moderate Income Housing Fund or payments owing to the fund on account of previous deferrals so long as the oversight board approves the repayment schedule.
- For purposes of Part 1.85, an “enforceable obligation” excludes any agreement, contract, or arrangement between a city and the former redevelopment agency.
- Contracts between a former redevelopment agency and other public agencies to perform services or provide funding for governmental or private services or capital projects outside of a project area that do not provide benefit to the project area will be deemed void; however, contracts for the provision of housing properly authorized under the Redevelopment Law will not be deemed void.

Chapter 2. Effect of Redevelopment Agency Dissolution

The Draft Language provided that all redevelopment agencies are dissolved as of July 1, 2011, and their authority to transact business or exercise powers under the Redevelopment Law is withdrawn. The Proposed Legislation retains these provisions and specifies that the legislation does not dissolve or otherwise affect the authority of a community redevelopment commission other than in its authority to act as a redevelopment agency (some communities govern their redevelopment agency and housing authority under a single operating entity called a community development commission).

The Draft Language provided that except for those provisions of the Redevelopment Law that are repealed, restricted, or revised by the Draft Language, all authority, power, and obligations previously vested with agencies under the Redevelopment Law are vested in successor agencies

as of July 1, 2011. The Proposed Legislation clarifies that such vesting is only to the extent necessary to affect the expeditious wind down of the affairs of the dissolved redevelopment agencies.

The Proposed Legislation adds a new provision specifying that the liability of any successor agency, acting pursuant to the powers granted under the Proposed Legislation, will be limited to the extent of the total sum of property tax revenues it receives pursuant to the Proposed Legislation and the value of assets transferred to it as a successor agency.

Chapter 3. Successor Agencies

The Draft Language provided that each successor agency will be required to do a number of specified things, including continuing to make payments due for enforceable obligations. The Proposed Legislation maintains these responsibilities and also provides that commencing on January 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. The schedule may be amended by the successor agency at a public meeting and will be subject to the approval of the oversight board. Any taxing entity, 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.

The Draft Language provided that a successor agency must dispose of assets and properties of the former redevelopment agency, as directed by the oversight board. While unclear, the Proposed Legislation may be read as applying this requirement only to assets and properties that were funded by tax increment revenues.

The Proposed Legislation provides that 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.

The Proposed Legislation provides that commencing on the effective date of Part 1.85, agreements, contracts, or arrangements between the city and the agency are invalid and will not be binding on the successor agency; however, a successor entity wishing to enter or reenter into agreements with the city may do so upon obtaining approval of the oversight board.

Borrowing by City

The Proposed Legislation provides that a city that had an active project area as of the effective date of Part 1.85 may elect to borrow a maximum of 2% of the total tax increment revenue that its former redevelopment agency received during fiscal year 2009-10 for the following purposes:

- 1) To avert the imminent danger of bankruptcy that is caused by or substantially contributed to by the elimination of the redevelopment agency.
- 2) To mitigate the immediate impact of a significant and substantial reduction of essential core public services (including police, fire and public health services) occurring because of the elimination of the redevelopment agency.
- 3) To meet an urgent need to fund a current project where the local government faces damages, costs, or other financial harm or injury by the delay of the activity that is necessary for the project to progress.

The Proposed Legislation provides that the borrowing shall be without prejudice as to whether the funds are being spent pursuant to an enforceable obligation. A city must submit an application to borrow funds to the county auditor-controller by June 30, 2011. The city must agree to repay the loan from its future property tax revenues if it does not otherwise timely repay the loan. The auditor-controller must act on applications by August 31, 2011, and may not unreasonably withhold approval of an application that meets the foregoing requirements.

Loans will be funded from amounts in the Low and Moderate Income Housing Fund. If the fund contains an insufficient amount, the city may receive an advance on its future allocation of property tax revenues. If those funds are insufficient, the source of the remaining borrowed funds will be the county-wide allocation of property taxes.

Chapter 4. Oversight Boards

The Draft Language provided that each successor agency will have an oversight board composed of seven members. The Proposed Legislation maintains the oversight board provisions, but provides that one member that was to be appointed by the county superintendent of education is instead to be appointed by the mayor from the recognized employee organization representing the largest number of former agency employees employed by the successor agency at that time. The Proposed Legislation specifies that the successor agency will be responsible for the necessary costs of meetings of the oversight board (as opposed to necessary expenses) and that the successor agency may include such costs in its administrative budget.

The Proposed Legislation provides for the DOF to review the actions of oversight boards. 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 and the recognized employee organization member will be appointed by the organization.

The Draft Language provided that the oversight board must direct the successor agency to do certain things. The Proposed Legislation expands the directives to include the following:

- Terminate any agreement between the dissolved redevelopment agency and any public entity located in the same county, obligating 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.
- Submit all repayment schedules for repayment of amounts borrowed or deferred from the Low and Moderate Income Housing Fund. The oversight board will not have authority to approve a repayment schedule that results in a reduction in the amounts transferred to the Public Health and Safety Fund.

Chapter 5. Duties of County Auditor-Controllers

Under the Draft Language, each county auditor-controller has certain responsibilities, including allocating moneys in the Redevelopment Property Tax Trust Fund. The Proposed Legislation maintains these responsibilities but provides that the State Controller may audit and review any actions taken by auditor-controllers pursuant to Part 1.85. In such case, any disapproved action must be modified and resubmitted for approval.

Chapter 6. Effect of Part 1.85 on the Redevelopment Law

Chapter 6 of the Draft Legislation provided that commencing on the effective date of Part 1.85, provisions of the Redevelopment Law that depend on the use of tax increment allocable to any taxing jurisdiction other than a city or county operating a redevelopment plan under its own auspices will be inoperative. The Proposed Legislation instead provides that all provisions of the Redevelopment Law that depend on the allocation of tax increment to redevelopment agencies shall be inoperative.

Chapter 7. Stabilization of Labor and Employment Relations

The Proposed Legislation adds Chapter 7 to Part 1.85. Chapter 7 provides that nothing in the Proposed Legislation 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 3 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.

Miscellaneous Provisions

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 made after January 1, 2011 is two years (as opposed to three years as provided for in the Draft Language). 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 (as opposed to three years as provided for in the Draft Language).

We will continue to closely monitor the Proposed Legislation. 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, or Trisha Ortiz at 415.421.8484 or tortiz@rwglaw.com.