

Team Oakland,

Below is a summary of AB 1484, the RDA Trailer bill. The final bill is 73 pages and this summary is an attempt to give you background, framework, and highlight some key provisions. If you would like more specifics, I suggest we itemize our questions and we will address these matters.

The backdrop of this bill is that approximately \$1.7 billion will be received by K-14 education and serve to offset the state's Prop 98 General Fund obligation, with an additional \$1.5 billion to be received from freed-up former RDA cash and cash-equivalent assets during the budget year.

We have already heard that additional legislative action may be taken in August (the Legislature will be on recess from July 6 to August 6th) on potential tweaks.

1. Property Assets, Loans and Bond Proceeds

Section 34191.1 (page 68 of the bill).

The legislation allows Successor Agencies (SA), who have received a "finding of completion" (FOC) from the Department of Finance (DOF) additional discretion regarding former RDA real property assets, loan repayments and use of proceeds from bonds issued by the former RDA. The FOC is the carrot and is an indication that all amounts determined to be due from the former RDA or the Successor Agency have been paid and satisfied. Once you get a FOC you can:

A. Retain non-governmental physical assets in a separate trust until DOF has approved a long-range property management plan. The retention plan must be submitted to the oversight board (OB) and DOF no more than six months after the FOC has been issued. The plan must also address the use or disposition of all the properties in the trust, including: retention for future development; sale of property; or use of property to fulfill an enforceable obligation (EO).

B. Include as enforceable obligations loans between the former RDA and the RDA community, subject to approval of the Oversight Board. These repayments would be subordinated to loan repayments to the Low and Moderate Income Housing Fund (LMIHF) and subject to a 20 percent set-aside for affordable housing.

C. Use certain existing proceeds stemming from bonds issued by the former RDA on or before December 31, 2010 for purposes for which the bonds were sold. If remaining bond proceeds cannot be spent in a manner consistent with the bond covenant, the proceeds would be used to defease the bond.

In order to get your FOC, you need to:

1. Submit unencumbered cash as determined in audit to the Department of Finance.
2. Submit amounts transferred to public agencies without enforceable obligations as determined in audit
3. Submit LMIHF cash as determined in audit
4. Submit pass through payments not made in 2011-12
5. Submit taxing entity distribution for the period January 1, 2012 – January 30, 2012 (Payment due to counties by July 12).

2. Bond Issuance.

The legislation refines the circumstances under which refunding or other types of refinancing bonds to be issued by the SA would be allowed. This includes limitations and restrictions regarding: principal amount of debt; payment acceleration or restructuring; total interest costs; and amount of property taxes

pledged as security. SA's may seek a waiver from DOF of the two-year statute of limitations that would generally apply.

3. Housing Successor Assets.

The bill requires that a listing of housing assets be submitted to DOF by August 1, 2012, with such assets to include those transferred between February 1, 2012 and the submission date of the listing. The bill requires that DOF review and object to any asset or transfer, with any objections potentially subject to a meet and confer resolution process. Assets transferred to the housing successor entity are to be used for affordable housing activities, while disallowed assets would go to the SA for disposal or retention pursuant to an approved property management plan. Housing assets includes:

- A. Real and personal property acquired for low and moderate income housing with any source of funds.
- B. Funds encumbered by an enforceable obligation to build or acquire low and moderate income housing.
- C. Loans or grant receivables funded from the LMIHF from homebuyers, homeowners, developers, or other parties.
- D. Funds derived from rents or operation of properties acquired for low and moderate income housing purposes by other parties financed with any source of funds.
- E. Streams of rents or other payments from low and moderate income housing financed with any source of funds.
- F. Repayments of loans or deferrals owed to the LMIHF.
- G. Certain other properties deemed at the OBs discretion to be housing assets, such as mixed use developments that contribute to community value or benefit local governments.

4. Housing Fund Loans and Bonds.

The bill allows repayment of loans made from the LMIHF, which repayments could begin in 2013-14, but would be limited to one-half of the annual growth over the 2012-13 level in property taxes distributed to local governments. These repayments would take priority over loan repayments to RDA communities (20 percent of those latter loan repayments are to be set aside for affordable housing activities). The housing successor may use certain bond proceeds derived from bonds issued before January 1, 2011, and secured by the LMIHF, for affordable housing projects.

5. Validation Actions.

Under the legislation, the two-year time limit for validation actions related to findings determinations of a former RDA, redevelopment bonds and similar financings, and various related redevelopment plans and efforts, would be tolled until DOF has issued a FOC. The two-year limit would not apply once the FOC has been issued by DOF.

6. Assets and Transfers.

The legislation directs the Controller to examine asset transfers that occurred after January 31, 2012. The bill directs each SA to retain a licensed accountant to conduct a due diligence review (DDR), or arrange for an audit by the county-auditor controller, of unobligated cash or cash equivalent balances that would be available for transfer to local governments. The review must include value of assets previously transferred from either the former RDA or the SA and the entity to which such assets were transferred. DOF may adjust amounts available for distribution to local governments and must provide an explanation for any adjustment. The SA may request a meet and confer resolution process for any disputed amounts. The SA is required to transfer determined amounts to the county auditor-controller and report such

amounts to DOF. Assets identified for transfer but not transferred could be subject to offset in an amount equivalent to asset value (as discussed further below). The DDR must:

- A. Reconcile assets, balances and liabilities of the SA with amounts previously reported to the Controller.
- B. Specify total funds, including the LMIHF, identified for distribution to local governments after subtracting restricted amounts and non-cash items.
- C. Indicate the asset sum available for distribution to local governments.
- D. Be submitted to the OB, the county auditor-controller and DOF for review.

7. Property Tax Allocations.

The bill specifies that if the former RDA or SA did not pay property tax or certain pass-through payments due to local governments for the 2011-12 fiscal year, or these amounts were not remitted by the county auditor controller, such amounts will be offset (as discussed further below) through future reductions in property tax allocations, from available SA reserves or other funds, by reductions in sales taxes allocable to the county, or by other means as appropriate. The bill requires the county auditor-controller to provide a report to DOF for each SA regarding the distribution that includes the total funds available for allocation, the pass-through amounts, the amounts distributed to SAs, and the amounts distributed to local governments. The bill makes no changes in the current treatment of pass-through amounts, and expresses the intent that full payment of pass-through amounts are to be made.

8. Offsets for Unpaid Amounts.

Under the bill, if amounts due to local governments pursuant to the DDR, prior property tax allocations, and pass-through payments are not remitted, these amounts may be recovered by actions directed to the entity to which the funds were transferred, the RDA community or the SA. These actions could include an offset of either sales and use tax or property tax allocations, or legal actions against any third party in receipt of the funds. Offsets amounts found to be unwarranted by a court would result in a reimbursement of that amount or a reversal of the offset, and a penalty imposed on the state.

9. Successor Agencies.

The bill clarifies that SAs are local public entities separate from the RDA community, and which succeed to the organizational status of the former RDA but without redevelopment powers except those related to and necessary for the payment of EOs. Under the bill, SAs are required to provide an annual post-audit of SA financial transactions, and when all RDA debt is retired, dispose of all assets, end pass-through payments and terminate. For SAs that do not have a FOC from DOF, assets are to be disposed of with proceeds benefiting local governments.

10. Oversight Boards.

The bill clarifies OB membership qualifications of the representative of the former employees of the RDA. It provides that OB members are protected by the immunities applicable to public entities and actions are to be taken by resolution. The bill allows OBs to contract for administrative support and specifies that OBs cannot reestablish loan agreements between the SA and community.

11. Polanco Act Provisions.

The legislation provides that existing clean-up plans and liability limits authorized under the Polanco Redevelopment Act shall be transferred to the SA and may be transferred to the successor housing entity at the respective entity's request.

12. RDA Communities.

The bill would allow RDA communities that elected not to be the SA to opt back in at a later date. It allows RDA communities to grant loans to the SA for certain costs and be repaid out of administrative costs or the property tax increment, upon approval of the OB. In addition, the bill provides that RDA communities may use the land use plans and functions of the RDA, provided that no new project areas or expanded boundaries of project areas are created or increase the amount of obligated property tax results.

13. Administrative Costs.

The bill clarifies that the five percent limit on administrative costs is based initially on the property tax allocated for the Recognized Obligation Payment Schedule (ROPS) and allows the OB to reduce this amount upon SA approval. In addition, administrative costs would exclude certain litigation expenses and expenses related to employees costs associated with project specific activities.

14. Enforceable Obligations.

The bill allows for required bond reserves to be included as EOs, along with costs associated with collective bargaining agreements for layoffs or terminations, the transfer of employees to the housing successor entity, and repayments of loans from the LMIHF. It also specifies that once funding for an EO is deleted or reduced by DOF, the funding may not be restored except as agreed to through the meet and confer resolution process or pursuant to court order. The bill allows SAs to petition DOF to provide written confirmation that its determination regarding an enforceable obligation is final and conclusive.

15. ROPS Timing and Reporting Issues.

The bill provides for certain changes regarding filing and reporting requirements for ROPS, including: allowing SAs to amend the initial Enforceable Obligation Payment Schedule (EOPS) to provide for continued payment of EOs until the ROPS is approved by the OB and DOF; requiring the submission by SAs of each ROPS to the county administrative officer, county auditor-controller, and DOF at the same time it is submitted to the OB; specifying ROPS for the January 1, 2012 through June 30, 2012 period are to include payments made or to be made by the former RDA and SA from January 1 2012 and June 30, 2012; and directing SAs to submit ROPS for the January 1, 2013 through June 30, 2013 period by September 1, 2012, and to submit the OB-approved ROPS for the July 1, 2013 through December 31, 2013 to DOF and county auditor-controller 90 days before the property tax distribution. Under the bill, DOF is provided 45 days to make its determination of the EOs on the ROPS and SAs are given the ability to request additional review and a meet and confer resolution process with five days.

16. Other ROPS Issues.

The bill specifies, if an SA that does not submit ROPS by the deadlines, it may be fined or have its administrative cost allowance reduced and DOF may direct the county-auditor controller withhold amounts for payments on EOs. SAs must submit a copy of the ROPS to DOF in a manner provided by DOF. The bill indicates that if DOF reviews and eliminates or modifies any item approved by the OB, DOF shall provide notice to the SA and the county auditor-controller as to the reasons for the action.

17. Severability.

The bill states that if any provision of the act is held invalid, the invalidity shall not affect other provisions of the act which can be given effect without the invalid provision. Thus, provisions of the act are severable.

18. Appropriation.

The bill appropriates \$22 million from the General Fund for allocation by the Director of Finance, including an amount of up to \$2 million for allocation by the Administrative Office of the Courts to the

Superior Court of California, Sacramento. Allocation of funds by the Director of Finance shall be effective no sooner than 30 days following after the director notifies the Joint Legislative Budget Committee.

19. Additional items to be aware of.

- A. Sales tax and property tax offsets can be applied to:
- Failure to make unencumbered asset payment (P.T. or S.T.)(34179.6(h))
 - Failure to get money back transferred from successor agency to public agency (P.T. or S.T.)
 - Failure to make taxing entity payment for January 1, 2012 through June 2012 (S.T.) by JULY 12, 2012.
 - County sales tax payment suspended if auditor-controller doesn't tell successor agency how much owed for taxing entity payment by JULY 9, 2012.
 - DOF Penalty: If property tax or sales tax offsets are challenged, and public agency prevails, then public agency awarded penalty of up to 10% of amount offset.
- B. Auditor-controller can dispute any item on ROPS or source of funding for item on ROPS (34182.5)
- C. Housing entity must submit list of housing assets to DOF. If DOF objects, meet and confer. If DOF continues to object, housing asset returned to successor agency (34176(a)(2))
- D. Failure to submit to DOF ROPS for January – June 2013 by September 1 subject to civil penalty of \$10,000 per day. Penalty paid to taxing entities. If not submitted within 10 days, 25% reduction in administrative cost allowance. (34177(m))
- E. OB cannot reauthorize enforceable obligations that were deleted or reduced by DOF.
- F. DOF can review and object to OB order for successor agency to dispose of real property assets and for successor agency to transfer housing assets.
- G. DOF can eliminate or modify any item on OB-approved ROPS. If successor agency disputes, item can remain on ROPS until dispute resolved.
- H. If resolved in favor of successor agency, no effect on past property tax allocation and no liability created for any affected taxing entity. (34179(h)).
- I. For purposes of determining unencumbered cash balance, enforceable obligations entered into on June 28 are NOT recognized. (34179.5(b)(2)).