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SUMMARY OF ENACTED STATE BUDGET LEGISLATION REGARDING REDEVELOPMENT

(ABX1 26 AND ABX1 27)

UPDATED JULY 20, 2011

The laws described below could be impacted by proposed cleanup legislation and other bills described in this summary. Goldfarb & Lipman intends to update this summary as appropriate, but please contact us to get the most up-to-date information on the status and content of this legislation.

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PART A. INTRODUCTION AND PURPOSE

I. Introduction and Overview of Redevelopment Restructuring Acts

Governor Brown has now signed several budget trailer bills to implement the State Budget for Fiscal Year (FY) 2011-2012 that was approved by the Legislature and sent to the Governor on the evening of June 28, 2011.

Among the signed trailer bills are two addressing redevelopment that significantly modify the California Community Redevelopment Law (the "CRL"): ABx1 26 (the "Dissolution Act") and ABx1 27 (the "Voluntary Program Act"; and together with the Dissolution Act, the "Redevelopment Restructuring Acts").¹ If upheld against anticipated constitutional challenge, the Redevelopment Restructuring Acts will fundamentally alter the future of California redevelopment.

Working in tandem:

- (1) The Dissolution Act immediately suspends all new redevelopment activities and incurrence of indebtedness,² and dissolves redevelopment agencies ("RDAs") effective October 1, 2011; and
- (2) The Voluntary Program Act allows RDAs to avoid dissolution under the Dissolution Act by opting into an "alternative voluntary redevelopment program" (the "Voluntary Program") requiring specified substantial annual contributions to local school and special districts. If all RDAs were to opt-in to the Voluntary Program, these contributions would amount to \$1.7 Billion for FY 2011-2012 and appear intended to amount to \$400 Million in each succeeding year (subject to certain adjustments described below).

Following this Part A overview, this summary describes the Dissolution Act (Part B) and the Voluntary Program Act (Part C), and concludes with a schedule of key dates set forth in the Redevelopment Restructuring Acts (Part D).

¹ The Governor signed the Redevelopment Restructuring Acts before midnight on June 28. The Redevelopment Restructuring Acts were chaptered by the Secretary State on June 29 as Chapter 5 and Chapter 6 of the 2011-2012 First Extraordinary Session. On June 30 the Governor signed the main budget bill (SB 87) and certain other budget trailer bills acted upon by the Legislature. Under these circumstances, there is uncertainty among legal experts as to whether the effective date of the Redevelopment Restructuring Acts is the date the Governor signed the acts (June 28) or the date the Governor signed the main budget bill to which the Redevelopment Restructuring Acts are related trailer bills (June 30). It is the view of the California Redevelopment Association that the Redevelopment Restructuring Acts became effective on the date the Governor signed the main budget bill.

² It is highly questionable under the "contract clauses" of the Federal and State Constitutions whether the Dissolution Act could be retroactive to 12:01 a.m. of its effective date, thereby purporting to render invalid contracts entered into by a RDA earlier in the day on which the Dissolution Act becomes effective.

II. Litigation

On July 18, 2011, the California Redevelopment Association, the League of California Cities, the Cities of Union City and San Jose, and John Shirey (in his individual capacity as a taxpayer) (collectively, the "Petitioners") challenged in court the validity and constitutionality of the Redevelopment Restructuring Acts on numerous grounds, including that the acts violate the following provisions of the California Constitution:

- Article XIII A, Section 25.5, which prohibits city or county property tax from being used for schools, indirect allocation of tax increment to schools, transit districts and fire protection districts and city and county property tax from being transferred to special districts without a 2/3 vote;
- Article XIII, Section 24, which prohibits the Legislature from restricting the use of taxes imposed by local governments for their local purposes; and
- Article XIII B, which prohibits the use of property tax to fund state mandates.

The Petitioners have requested to have their lawsuit heard initially by the California Supreme Court to accelerate the ultimate court decision, and to seek a court "stay" or injunction to prevent the Redevelopment Restructuring Acts from being operative in part pending the final court decision on the merits of the lawsuit. Goldfarb & Lipman will monitor and provide information to clients regarding the major steps in this anticipated litigation.

Given the complexity and magnitude of impact of the Redevelopment Restructuring Acts, it is also highly likely that these acts will engender litigation from additional individual RDAs regarding the constitutionality and applicability of various provisions of the acts to the litigating RDA's individual situation.

III. Additional Potential Redevelopment Legislation

The Voluntary Program Act itself states the legislative intent to enact legislation later in the current legislative session to address the RDA special payment formula for fiscal years after the FY 2011-2012 Budget, as described further below.

In addition, a number of "clean-up" provisions to the Redevelopment Restructuring Acts have been suggested by various legislators and interest groups. Some of the more commonly mentioned "clean-up" suggestions are noted in the following analysis.

Finally, separate from the Redevelopment Restructuring Acts, but also important to the future of California Redevelopment for those RDAs that opt-in to the Voluntary Program and continue to operate, the following key bills have been introduced in the 2011 legislative session:

- SB 450 (Lowenthal), which would enact major reforms to the affordable housing provisions of the CRL;³ and
- SB 286 (Wright) and AB 1250 (Alejo), similar legislation that would address major CRL reforms related to non-housing redevelopment activities and the adoption of future redevelopment plans.⁴

Goldfarb & Lipman will continue to carefully monitor and provide timely information regarding the progress of these various legislative actions that could affect the CRL for RDAs that choose to opt-in to continued existence under the Voluntary Program.

³ SB 450 was passed out of the Senate on June 2, 2011 by a 39-0 vote. SB 450 was passed out of the Assembly Committee on Housing and Community Development on June 29, 2011 by a 7-0 vote and has been sent to the Assembly Committee on Appropriations.

⁴ SB 286 is being held in the Senate Committee on Governance and Finance and AB 1250 has been sent to the Assembly Committee on Rules.

PART B. DISSOLUTION ACT

I. Introduction

As detailed in this Part B, the Dissolution Act:

- Immediately suspends and prohibits most redevelopment activities;⁵
- Dissolves RDAs as of October 1, 2011 (unless a RDA opts in to continued existence under the Voluntary Program);
- Creates successor agencies (“Successor Agency” or “Successor Agencies”) and oversight boards (“Oversight Board” or “Oversight Boards”) to continue to satisfy enforceable obligations of a former RDA, and administer the dissolution and wind down of each dissolved RDA; and
- Establishes roles for the County-Auditor Controller, the Department of Finance and the State Controller’s Office in the dissolution process and satisfaction of enforceable obligations of former RDAs.

II. Suspension of RDA Activities and Preservation of RDA Assets and Revenues

Upon effectiveness of the Dissolution Act, a RDA is generally no longer authorized to:

- Incur new indebtedness or other obligations or restructure existing indebtedness and other obligations;
- Make loans or grants;
- Enter into contracts;
- Amend existing agreements, obligations or commitments;
- Renew or extend leases or other agreements;

⁵ This suspension will become permanent on the dissolution date of October 1, 2011 for RDAs not participating in the Voluntary Program, and will be lifted for RDAs that opt-in to continued existence under the Voluntary Program upon enactment of the Sponsoring Community’s opt-in ordinance (see Part C.I). See also footnotes 1 and 2.

- Transfer funds out of the Low and Moderate Income Housing Fund;
- Dispose of or transfer assets;
- Acquire real property in most circumstances;
- Prepare, adopt, amend or merge redevelopment plans;
- Approve any program, project or expenditure;
- Prepare or amend implementation plans, relocation plans or other planning documents;
- Cause development or rehabilitation of housing units;
- Join a joint powers authority;
- Form or join a separate legal entity;
- Bring a validation action in connection with issuance of revenue bonds;
- Commence an eminent domain proceeding;
- Prepare a draft EIR;
- Undertake various affordable housing activities;
- Accept financial assistance; or
- Increase employee compensation, bonuses or number of RDA employees and officials.

According to the Dissolution Act, this suspension and prohibition of most redevelopment activities is intended, to the maximum extent possible, to preserve the revenues and assets of RDAs so that those assets and revenues that are not needed to pay for enforceable obligations may be used by local governments to fund core governmental services including police and fire protection services and schools.

III. Permitted and Required RDA Activities Prior to Dissolution

Until October 1, 2011 (when RDAs are dissolved unless they opt-in to continued existence under the Voluntary Program), a RDA is authorized to:

- Make scheduled payments on and perform obligations required under its "Enforceable Obligations,"⁶ which include:
 - Bonds;
 - Loans borrowed by a RDA;
 - Payments required by federal or state government or for employee pension obligations;
 - Judgments or settlements;
 - Legally binding and enforceable agreements or contracts that are "not otherwise void as violating the debt limit or public policy"; and
 - Contracts for administration or operation of the RDA.
- Set aside reserves as required for bonds;
- Preserve all assets and records and minimize RDA obligations and liabilities;
- Cooperate with its Successor Agency and auditing entities (as described below); and
- Avoid triggering defaults under Enforceable Obligations.

In addition, during this suspension period the Dissolution Act requires each RDA to:

- Prepare an Enforceable Obligation Payment Schedule no later than late August, 2011, setting forth specified information about the RDA's Enforceable Obligations;

⁶ With one exception, "Enforceable Obligations" are defined in the same way during the suspension period and the post-dissolution period. During the suspension period, the definition of "Enforceable Obligations" does not exclude agreements between a RDA and its Sponsoring Community (although asset transfers under such agreements may be subject to unwinding), while following dissolution most types of agreements between a RDA and its Sponsoring Community are excluded from the definition of "Enforceable Obligations" (see further discussion in Section IV below).

- Adopt the Enforceable Obligation Payment Schedule at a public meeting;
- Post the Enforceable Obligation Payment Schedule on the RDA’s or its Sponsoring Community’s website;
- Transmit the Enforceable Obligation Payment Schedule by mail or electronic means to the County Auditor-Controller, the State Controller and the Department of Finance;⁷
- Designate an RDA official to whom the department⁸ may make information requests;
- Prepare a preliminary draft of the initial Recognized Obligation Payment Schedule and deliver such schedule to the Successor Agency; and
- Produce documents associated with Enforceable Obligations upon request of the State Controller or Department of Finance.

The Department of Finance may review a RDA action or Successor Agency action pursuant to an Enforceable Obligation Payment Schedule or a Recognized Obligation Payment Schedule, and such actions will not be effective for three business days, pending a request for review by the department. If the department requests a review of a given RDA action, the department shall have ten days from the date of its request to approve the RDA action or return it to the RDA for reconsideration.⁹

IV. Treatment of Agreements between a RDA and its Sponsoring Community or Other Public Agency/Public Entity

With limited exceptions, the Dissolution Act expressly states that Enforceable Obligations to be paid by Successor Agencies do not include agreements, contracts or arrangements between a RDA and the city, the county or the city and county that created the RDA (the “Sponsoring Community”), and that such agreements,

⁷ Notification providing the Website location of the Payment Schedule will suffice to meet this requirement.

⁸ It is unclear whether the reference in the Dissolution Act to the “department” is intended to refer to the California Department of Housing and Community Development (which is the normal meaning of that term in the CRL) or, more likely, to the Department of Finance which is the department to which responsibilities are given under the Dissolution Act.

⁹ It appears difficult to reconcile the Dissolution Act’s requirement that RDAs continue to pay scheduled Enforceable Obligations with the provision that payments under a Payment Schedule are not effective for 3 business days.

contracts or arrangements are invalid and not binding on Successor Agencies upon dissolution of the RDA. These provisions do not apply to the following agreements, which may be deemed Enforceable Obligations and binding upon Successor Agencies:

- A duly authorized written agreement entered into at the time of issuance, but in no event later than December 31, 2010, of bonds, notes, certificates of participation or other similar indebtedness, and solely for the purpose of securing or repaying such indebtedness;
- A written agreement between a RDA and its Sponsoring Community that provided loans or other startup funds for the RDA that was entered into within two years of the formation of the RDA; or
- A joint exercise of powers agreement in which the RDA is a member of the joint powers authority.¹⁰

Beginning upon effectiveness of the Dissolution Act, the State Controller is directed to review RDA activities and determine whether an asset transfer has occurred after January 1, 2011 between the RDA and its Sponsoring Community or other public agency. If the State Controller determines that such an asset transfer did occur and the recipient has not contractually committed such assets to a third party to expend or otherwise encumber those assets, such assets will be ordered returned to the RDA or Successor Agency for payment of recognized obligations or distribution as property taxes.

In any instance where the Oversight Board has found that early termination would be in the best interest of the taxing entities, the Dissolution Act directs Oversight Boards to ensure that Successor Agencies terminate any agreement between the former RDA and any local public entity within the same county that obligates the former RDA to provide funding for debt service obligations of such local public entity or for the construction or operation of facilities owned or operated by such local public entity.

¹⁰ However, upon assignment to the Successor Agency by operation of the Dissolution Act, the Successor Agency's rights, duties and performance obligations under that joint exercise of powers agreement will be limited by the constraints imposed on Successor Agencies by the Dissolution Act.

V. Dissolution of RDAs/Creation of Successor Agencies

For each RDA that has not opted in to the Voluntary Program, under the Dissolution Act, as of October 1, 2011:

- The RDA will be dissolved; and
- A Successor Agency will be created for each RDA.

The Successor Agency will be the Sponsoring Community of the RDA unless it elects not to serve in that capacity. In that case, the Successor Agency will be the first taxing entity submitting to the County Auditor-Controller a duly adopted resolution electing to become the Successor Agency.

The actions of the Successor Agency will be monitored, and in some cases approved, by the Oversight Board as described in Section VIII below.

All assets, properties, contracts, leases, records, buildings and equipment of former RDAs would be transferred to the control of the Successor Agency, except as described in Section VII below for affordable housing assets.

VI. Transfer of Housing Functions of Former RDA

The Sponsoring Community may elect to assume the housing functions and take over the housing assets of the former RDA, excluding amounts in the former RDA's Low and Moderate Income Housing Fund,¹¹ along with related rights, powers, liabilities, duties and obligations.¹²

If the Sponsoring Community does not elect to assume the former RDA's housing functions, such housing functions and all related assets would be transferred to the local Housing Authority (or Department of Housing and Community Development, if there is no local Housing Authority).

The entity that assumes the housing functions of former RDA will be able to use its inherent powers (not limited by the Dissolution Act's restrictions on Successor

¹¹ Clean up legislation has been proposed, but not yet introduced, to reverse this provision so that existing Low and Moderate Income Housing Fund deposits would be transferred to the Sponsoring Community (as was the case in the predecessor bill to the Dissolution Act).

¹² However, in what is believed to be inadvertent drafting, the Dissolution Act makes it less clear how the former RDA's housing assets, such as property, would be transferred.

Agencies) to fulfill housing obligations and will be able to exercise Redevelopment Law housing powers to fulfill such obligations.

The Dissolution Act requires Successor Agencies to repay amounts previously borrowed from the Low and Moderate Income Housing Fund (i.e. to make SERAF payments in prior years), repayment of which had been deferred as of the effective date. These repaid funds would presumably be paid to the entity that assumes the housing functions of the former RDA.

The Dissolution Act requires Oversight Boards to direct Successor Agencies to list amounts owed to the Low and Moderate Income Housing Fund on the Recognized Obligation Payment Schedule.

VII. Role of Successor Agencies

The Dissolution Act requires a Successor Agency to perform the following functions.

A Successor Agency is required to make payments and perform other obligations due for Enforceable Obligations¹³ of the former RDA, which include:

- Bonds;
- Loans borrowed by the RDA (including amounts borrowed in past years from the Low and Moderate Income Housing Fund);
- Payments required by federal or state government or for employee pension obligations;
- Judgments or settlements; and
- Legally binding and enforceable agreements or contracts¹⁴ that are "not otherwise void as violating the debt limit or public policy" (at Oversight Board direction, a Successor Agency may terminate existing agreements and pay required compensation or remediation for such termination).

¹³ With one exception described in footnote 6 above, "Enforceable Obligations" are defined in the same way during the post-dissolution period and during the suspension period.

¹⁴ See Section IV above regarding the exception that most contracts between a former RDA and its Sponsoring Community will be void and will not constitute an Enforceable Obligation upon dissolution of the RDA.

To facilitate this payment of Enforceable Obligations, a Successor Agency is required to prepare a Recognized Obligation Payment Schedule for each six month period of each fiscal year, including identifying the funding source for all Enforceable Obligations of the former RDA.

A Successor Agency is required to dispose of the former RDA's assets or properties expeditiously and in a manner aimed at maximizing value (proceeds to be distributed similar to normal property tax proceeds).¹⁵

A Successor Agency is required to effectuate the transfer of housing functions of the former RDA to its Sponsoring Community (or applicable Housing Authority or the Department of Housing and Community Development).

A Successor Agency is required to wind up all other affairs of the former RDA.

A Successor Agency is required to prepare administrative budgets for Oversight Board approval and pay administrative costs. Subject to the approval of the Oversight Board, the Successor Agency's annual administrative costs will be an amount up to five percent of the property tax allocated to the Successor Agency for FY 2011-12 and up to three percent of the property tax allocated to the Successor Agency each succeeding fiscal year; provided, however, that the annual amount shall not be less than \$250,000 for any fiscal year (or such lesser amount as agreed to by the Successor Agency).

¹⁵ The Oversight Board may 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 related to the construction or use of such asset.

VIII. Oversight Boards

An Oversight Board is generally intended to supervise the activities of the Successor Agency. The Oversight Board has a fiduciary responsibility to holders of Enforceable Obligations and the taxing entities that benefit from distributions of property tax and other revenues as described in Section X below.

The Oversight Board of the Successor Agency will consist of 7 members appointed by/representing:^{16 17}

- County Board of Supervisors (two members);
- Mayor (one member);
- County Superintendent of Education (one member);
- Chancellor of California Community Colleges (one member);
- Largest special district taxing entity (one member); and
- A former RDA employee appointed by Mayor/Board of Supervisors (one member).

The Dissolution Act requires the Oversight Board to direct the Successor Agency to determine whether contracts, agreements or other arrangements between the former RDA and private parties should be terminated or renegotiated to reduce the Successor Agency's liabilities and to increase net revenues to the taxing entities.

The actions of the Oversight Board of each Successor Agency will in turn be overseen by the Director of the Department of Finance and may be subject to disapproval or modification.

Oversight Board actions will not be effective for three business days pending a request for review by the Department of Finance. If the department requests a review of a given Oversight Board action, the department shall have ten days from the date of its request to approve the Oversight Board action or return it to the

¹⁶ Different rules apply for the composition of the Oversight Board for the former RDA of a city and county (i.e., the City and County of San Francisco).

¹⁷ Commencing July 1, 2016, all of the Oversight Boards for the various former RDAs in a particular county will be consolidated into a single county-wide Oversight Board of specified composition.

Oversight Board for reconsideration. The Oversight Board has specified obligations with respect to maintaining a Website and providing specified notification to various state officials.

IX. Role of County Auditor-Controller

The Dissolution Act requires the County Auditor-Controller to:

- By March 1, 2012, conduct an audit of former RDA assets and liabilities, including pass-through payment obligations and the amount and terms of any RDA indebtedness, and provide the State Controller's Office with a copy of such audit by March 15, 2012;
- Annually determine the amount of property tax increment that would have been allocated to the RDA and deposit that amount in a Redevelopment Property Tax Trust Fund (the "Trust Fund"); and
- Administer the Trust Fund for the benefit of holders of former RDA debt, taxing entities that receive pass-through payments and distributions of property taxes, as described in Section X below.

Actions of the County Auditor-Controller will not be effective for three business days pending a request for review by the State Controller. If the department requests a review of a given County Auditor-Controller action, the department will have ten days from the date of its request to approve the County Auditor-Controller action or return it to the County Auditor-Controller for reconsideration.

X. Payments from Trust Fund

The Dissolution Act requires the County Auditor-Controller to allocate moneys in the Trust Fund established for each former RDA as follows:

- To pay pass-through payments to affected taxing entities in the amounts that would have been owed had the former RDA not been dissolved;
- To the Successor Agency to enable the Successor Agency to pay Enforceable Obligations of the former RDA, including bonds;
- To the Successor Agency to pay for administrative costs under the administrative budget approved by the Oversight Board; and

- Any remaining balance in the Trust Fund, to school entities and other local taxing entities as property taxes.

If a Successor Agency determines, and the County Auditor-Controller and the State Controller verify, that the Successor Agency will not have sufficient funds to pay all amounts above, then the deficiencies shall be deducted in the following order from the Trust Fund payments to:

- School entities and local agencies (as normal property taxes);
- Administrative costs of the Successor Agency;
- Pass-through payments to school entities and local entities that have been subordinated to the payment of Enforceable Obligations;
- Enforceable Obligations payable by the Successor Agency; and
- Non-subordinated pass-through payments to school entities and local entities.

The Dissolution Act allows statutory pass-through payments received by school districts, community college districts and offices of education between FY 2011-2012 and FY 2015-2016 to be used for land acquisition, construction, reconstruction, remodeling, maintenance or deferred maintenance of educational facilities.

XI. Miscellaneous

The Dissolution Act clarifies that community development commissions may continue their housing authority and other local community development functions (other than redevelopment) unaffected by the Act.

The Dissolution Act provides that a former RDA's obligations to its employees pursuant to a collective bargaining agreement become Enforceable Obligations of the Successor Agency. An employee's civil service status and classification remain the same for a minimum of two years.

The Dissolution Act includes a provision lengthening the period to challenge RDA actions taken after January 1, 2011 from ninety days to two years.

The Dissolution Act requires that any action contesting the validity of portions of the Dissolution Act or challenging acts taken pursuant to the Dissolution Act be brought in the Sacramento County Superior Court.

If any legal challenge to invalidate a provision of the Dissolution Act is successful, a RDA shall be prohibited from issuing new bonds, notes, interim certificates, debentures or other obligations, whether funded, refunded, assumed or otherwise pursuant to the financing provisions of the CRL.

The Dissolution Act appropriates \$500,000 to the Department of Finance for allocation to the State Controller, State Treasurer and Director of Finance to undertake the duties listed above.

If a RDA is dissolved pursuant to the Dissolution Act, the Sponsoring Community may not establish a new RDA until all debts of the dissolved RDA have been retired by the applicable Successor Agency, and the Sponsoring Community has enacted an ordinance agreeing to make the payments required under the Voluntary Program.

PART C. ALTERNATIVE VOLUNTARY REDEVELOPMENT PROGRAM ACT

I. "Alternative Voluntary Redevelopment Program" Opt-In

To avoid being dissolved and to lift the suspension of new redevelopment activities and indebtedness under the Dissolution Act, a RDA and its Sponsoring Community may elect to continue operating under the current CRL if they make specified substantial payments ("Remittances") to their County Auditor-Controller beginning in FY 2011-2012 and in all succeeding years the RDA's redevelopment program continues to operate.

To avoid dissolution, by November 1, 2011, the RDA's Sponsoring Community must enact an ordinance in which it agrees to comply with the Voluntary Program by making the Remittances and must notify the Department of Finance, the State Controller and the County Auditor-Controller of its agreement to comply with the Voluntary Program.

If the Sponsoring Community does not enact such an ordinance before October 1, 2011, but intends to do so by November 1, it must, prior to October 1, indicate that intention by adopting a non-binding resolution of intent and notifying the Department of Finance, the State Controller and the County Auditor-Controller.

Once a Sponsoring Community enacts the appropriate opt-in ordinance, its RDA will no longer be subject to the provisions of the Dissolution Act and may immediately recommence normal redevelopment activities under the CRL, such as entering into contracts, disposing of assets and incurring new indebtedness and obligations.¹⁸

II. Sources and Uses of Remittances

The Remittances are technically required to be made by a RDA's Sponsoring Community on behalf of the RDA. Remittances may be made from any available funds of the Sponsoring Community, including funds made available by its RDA, as follows:

- A RDA and its Sponsoring Community may enter into an agreement whereby the RDA transfers a portion of its tax increment to the Sponsoring Community in an amount not-to-exceed the required annual

¹⁸ If the Sponsoring Community subsequently fails to make a required Remittance, its RDA will then become subject to the Dissolution Act again and will be dissolved (see Section VI. below).

Remittance for the purpose of financing activities within a redevelopment area that are related to accomplishing the RDA's project goals;¹⁹

- For FY 2011-2012 only, a RDA will be exempt from making its full deposit into the Low and Moderate Income Housing Fund (and not required to repay unmade deposits²⁰), but only to the extent that it makes a finding that there are insufficient other monies to meet its debt and other obligations, current priority program needs or its obligations to reimburse the Sponsoring Community for that year's Remittance;
- The Remittances payable by a Sponsoring Community and its RDA participating in the Voluntary Program are due in equal installments each fiscal year by January 15 and May 15; and
- By November 1 of each year commencing in 2012, a Sponsoring Community must notify the Department of Finance, the State Controller and the County Auditor-Controller of the Remittance amount for the applicable fiscal year. Those entities may audit and verify the Remittance amount, and if it is determined that a Sponsoring Community has miscalculated the Remittance amount, the next Remittance amount will be adjusted accordingly. County Auditor-Controller costs for overseeing this process are subject to reimbursement by the Sponsoring Community.

Remittances received by the County Auditor-Controller from a participating RDA/Sponsoring Community are to be distributed as follows:

- Through a special district allocation fund, a minor portion of FY 2011-2012 Remittances (and thereafter 15% of annual Remittances) would be distributed to special districts that provide fire protection services to the participating RDA's project area(s) and transit districts that serve the participating RDA's project area(s); and

¹⁹ The Voluntary Program Act does not provide an exemption for amounts paid by a RDA towards Remittances against any dollar cap limitations on the participating RDA's receipt of tax increment.

²⁰ There may be clean-up legislation to require RDAs to repay any Low and Moderate Income Housing Fund proceeds used to make payments under the Voluntary Program.

- Through the Educational Revenue Augmentation Fund, the balance of all Remittances would be distributed to school entities²¹ that serve the participating RDA's project area(s).

III. Calculation of FY 2011-2012 Remittances

The Voluntary Program Act is designed to generate \$1.7 Billion for FY 2011-2012 if every Sponsoring Community/RDA agrees to participate in the Voluntary Program.

The formula for calculating each Sponsoring Community/RDA's FY 2011-2012 Remittance is similar, but not identical, to the formula used to calculate each RDA's share of the statewide \$1.7 Billion Special Educational Revenue Augmentation Fund ("SERAF") obligations in FY 2009-2010.

For FY 2011-2012, the Voluntary Program Act formula works as follows:

- First, each participating RDA's share of statewide net tax increment²² revenue for FY 2008-2009 is determined and multiplied by \$1.7 Billion (the "Net Tax Increment Share");
- Second, each participating RDA's share of statewide gross tax increment for FY 2008-2009 is determined and multiplied by \$1.7 Billion (the "Gross Tax Increment Share"); and
- Third, each participating RDA's Net Tax Increment Share and Gross Tax Increment Share are averaged to determine the Sponsoring Community/RDA's Remittance for FY 2011-2012.

By August 1, 2011 the Department of Finance is directed to specify the required Remittance amount for FY 2011-2012 to each Sponsoring Community and the County Auditor-Controller. The Sponsoring Community may appeal the amount of the Remittance to the Director of Finance by August 15, 2011 on the basis that the information in the FY 2008-2009 State Controller's Annual Report was an error or the percentage of tax increment necessary to pay for tax allocation bonds

²¹ For FY 2011-2012, such Remittances would count against the State's Proposition 98 obligations (thereby providing State general fund relief), but for FY 2012-2013 and beyond, such Remittances would not count against the State's Proposition 98 obligations.

²² Net tax increment means the RDA's gross tax increment less various forms of pass-through payments and required debt service payments in FY 2008-2009 (the SERAF formula did not net-out debt service payments for this portion of the formula).

and interest payments have increased by 10 percent or more over the percentage calculated pursuant to the State Controller's FY 2008-2009 Annual Report. The Voluntary Program Act then provides for the Director of the Department of Finance to resolve such appeals by September 15, 2011 (or up to October 15, 2011 if the Director of the Department of Finance elects to extend the period to decide the appeal).

IV. Calculation of FY 2012-2013 Remittances

The Voluntary Program Act appears to be designed to generate \$400 Million if every Sponsoring Community/RDA agreed to participate in the Voluntary Program. However, the FY 2012-2013 formula is complex and appears to be incorrectly drafted, thereby requiring a certain degree of good-faith interpretation. The formula is intended to require an RDA to increase its Remittance to account for the State budget impact of having to backfill foregone school entity property taxes attributable to new non-housing RDA obligations or indebtedness incurred on or after November 1, 2011.

For FY 2012-2013, each participating Sponsoring Community/RDA must make a Remittance equal to the sum of the following two amounts:

- Amount 1 equals the Sponsoring Community/RDA's:

$$(\text{FY 2011-2012 Remittance amount}) \times (23.52\%^{23}) \times \frac{(\text{FY 2012-2013 Adjusted Tax Increment})}{(\text{FY 2011-2012 Year Adjusted Tax Increment})}$$

For the purpose of calculating Amount 1,

“*Adjusted Tax Increment*” for a given fiscal year means the RDA’s total tax increment minus the amount of debt service or other payments for new non-housing fund payable debt or obligations incurred by the RDA on or after November 1, 2011 (see footnote 25 below).

- Amount 2 equals:

$$(\text{Net School Share}) \times (\text{New Debt Service}) \times (\text{Percentage Factor})$$

For the purposes of calculating Amount 2,

²³ This percentage reflects the ratio of \$400 Million to \$1.7 Billion.

"*Net School Share*" means the school entities' (defined as "school districts, community college districts, the educational revenue augmentation fund, and county superintendents of schools") "share of the property tax increment revenues, less any pass-through payments to school entities, that would have been received by the school entities in the absence of redevelopment";²⁴

"*New Debt Service*" means the debt service or other payments made by the RDA in FY 2012-2013 for new non-housing fund payable debt or obligations that are displayed on a RDA's statement of indebtedness for the first time after the statement of indebtedness filed on October 1, 2011;²⁵ and

"*Percentage Factor*" means 80%, or such lesser percentage as may be determined by subsequent legislation, it being the stated intent of the legislature under the Voluntary Program Act to enact legislation setting forth reduced percentages that will apply to 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 protection and remediation and climate change, including, projects that are consistent with the Sustainable Communities Strategies developed pursuant to SB 375.

These definitions also apply to Amount 2 for Remittances for FY 2013-2014 and beyond; see Section V below.

V. Calculation of Remittances for FY 2013-2014 and Beyond

For FY 2013-2014 and beyond, each participating Sponsoring Community/RDA must make a Remittance equal to the sum of the following two amounts (terms used below have the same meaning as defined in Section IV above):

- Amount 1 equals the sponsoring community/RDA's:

$$(Amount\ 1\ for\ the\ previous\ fiscal\ year) \times \frac{(Current\ Fiscal\ Year\ Adjusted\ Tax\ Increment)}{(Previous\ Fiscal\ Year\ Adjusted\ Tax\ Increment)}$$

²⁴ This definition appears to combine concepts of percentage shares and absolute dollar amounts in a technically incompatible fashion, and would benefit from clarification through clean-up legislation.

²⁵ This definition appears to be inconsistent with the operative provision regarding the Amount 2 payment in the preceding sentence of the Voluntary Program Act, which refers to "debt or obligations issued or incurred on or after November 1, 2011." Clarification of this apparent inconsistency would be appropriate.

- Amount 2 equals:

$$(Net\ school\ share) \times (New\ Debt\ Service) \times (Percentage\ Factor)$$

VI. Sanctions for Failure to Make Remittances

If a Sponsoring Community/RDA fails to make a Remittance, the RDA will become subject to the Dissolution Act and will be dissolved. In addition, by participating in the Voluntary Program, the Sponsoring Community agrees that, upon failure to make a timely Remittance, any agreement between the Sponsoring Community and its RDA to receive RDA funds will be assigned to the State. As a result, upon a failure to make a timely Remittance, amounts that the Sponsoring Community might otherwise have received under an agreement with its RDA will then become payable to the State for purposes of mitigating the fiscal impact to the State related to the failure of a Sponsoring Community to make required Remittances.

Any new debts incurred by the RDA or obligations entered into by the RDA on or after January 1 of the calendar year preceding the year the Sponsoring Community/RDA fails to make a Remittance would be subject to the same limitations and sanctions set forth in the Dissolution Act.

VII. Miscellaneous

If any legal challenge to invalidate a provision of the Voluntary Program Act is successful, a RDA shall be prohibited from issuing new bonds, notes, interim certificates, debentures or other obligations, whether funded, refunded, assumed or otherwise pursuant to the financing provisions of the Community Redevelopment Law.

If a RDA is dissolved pursuant to the Dissolution Act, the Sponsoring Community may not establish a new RDA until all debts of the dissolved RDA have been retired by the applicable Successor Agency, and the Sponsoring Community has enacted an ordinance agreeing to make the Remittances required under the Voluntary Program.

PART D. KEY MILESTONES FOR IMPLEMENTATION OF REDEVELOPMENT RESTRUCTURING ACTS

I. Milestones Related To Voluntary Program Act

- By August 1, 2011: Department of Finance ("DOF") notifies Sponsoring Community of 2011-2012 Remittance amount.
- By August 15, 2011: Sponsoring Community may appeal the amount of 2011-2012 Remittance to DOF director.
- Within 60 days after effectiveness of the Dissolution Act: RDA adopts at public meeting an Enforceable Obligation Payment Schedule for obligations through December 1, 2011. Posts schedule on website and notifies DOF, State Controller and County Auditor-Controller. After this date, RDA permitted to make payments only if listed on Enforceable Obligation Payment Schedule or if Sponsoring Community has opted into the Voluntary Program.
- By September 15, 2011: DOF director notifies Sponsoring Community and County Auditor-Controller of the decision on the appeal, unless director extends deadline to October 15, 2011.
- By September 30, 2011: RDA files Statement of Indebtedness.
- Before October 1, 2011: Sponsoring Community adopts a non-binding resolution of intent to opt-in to Voluntary Program if unable to adopt ordinance to that effect by October 1, 2011, and notifies DOF, State Controller and County Auditor-Controller of adoption of resolution. This action delays the dissolution of a RDA until November 1, 2011.
- November 1, 2011: Sponsoring Community enacts ordinance to opt-in to Voluntary Program, and notifies DOF, State Controller and County Auditor-Controller of adoption of ordinance. (December 1, 2011 if DOF director has extended time for decision of appeal of Remittance amount.)
- Commencing January 15, 2012 and May 15, 2012 and every January 15 and May 15 thereafter, the Sponsoring Community shall pay one-half of the Remittance amount for the applicable year. County Auditor-Controller notifies the DOF director of any failure to make the payment within 30 days of due date.

- November 1, 2012 and each November 1 thereafter, Sponsoring Community notifies DOF, State Controller and County Auditor-Controller of Remittance amounts for each fiscal year.

II. Milestones Related To Dissolution Act

Upon effectiveness of the Dissolution Act: State Controller commences review of RDA asset transfers after January 1, 2011.

- Upon effectiveness of the Dissolution Act: Redevelopment activities suspended except for limited specified activities.
- No specified date: State Controller may order the assets improperly transferred by a RDA to its Sponsoring Community after January 1 to be returned to the RDA (or to its Successor Agency).
- No specified date: RDA informs DOF of a designated contact person and related contact information for the purpose of communicating with the DOF.
- In August 2011: Sponsoring Community decides whether to serve as a Successor Agency by resolution.
- Within 60 days after effectiveness of the Dissolution Act: RDA adopts at public meeting an Enforceable Obligation Payment Schedule for obligations through December 1, 2011. Posts schedule on website and notifies DOF, State Controller and County Auditor-Controller. After this date, RDA permitted to make payments only if listed on Enforceable Obligation Payment Schedule.
- September 1, 2011: Sponsoring Community that elects not to serve as a Successor Agency files a copy of resolution to that effect with the County Auditor-Controller.
- No later than September 30, 2011: RDA prepares a preliminary draft of the initial Recognized Obligation Payment Schedule and provides it to the Successor Agency.
- September 30, 2011: The existing terms of any memorandum of understanding with an employee organization expires, unless a new agreement is reached with a recognized employee organization prior to that date.

- By September 30, 2011: RDA files last Statement of Indebtedness.
- No specified date but prior to October 1, 2011: Sponsoring Community decides whether to serve as successor housing entity by resolution.
- October 1, 2011: RDA is dissolved if its Sponsoring Community has not enacted an ordinance opting in to Voluntary Program. (November 1, 2011 if Sponsoring Community adopted non-binding resolution of intent before October 1, 2011.)
- October 1, 2011: RDA agreements with Sponsoring Community void (with limited exceptions).
- October 1, 2011: All dissolved RDA assets (including properties, contracts, leases, books and records, buildings and equipment), except housing assets, transferred to Successor Agency. RDA delivers Enforceable Obligation Payment Schedule to Successor Agency. Transfer of RDA housing assets (excluding existing Housing Fund balances) to successor housing entity.
- On and after October 1, 2011: Successor Agencies permitted to make payments only as listed on Enforceable Obligation Payment Schedule.
- From October 1, 2011 to July 1, 2012: Successor Agency prohibited from accelerating payments or making any lump sum payments that are intended to prepay loans unless such accelerated repayments were required prior to October 1, 2011.
- By November 1, 2011: Successor Agency prepares initial draft of Recognized Obligation Payment Schedule for the Enforceable Obligations of the former RDA, subject to review and certification by external auditor as to accuracy and approval by Oversight Board.
- No later than December 1, 2011 and May 1, 2012, and each December 1 and May 1 thereafter: Successor Agency reports to the County Auditor-State Controller if the total amount available to the Successor Agency is insufficient to fund the specified payments in the next six-month fiscal period. County Auditor-Controller notifies State Controller and DOF no later than 10 days from the date of that notification from the Successor Agency.

- December 15, 2011: Successor Agency submits first Recognized Obligation Payment Schedule to State Controller and DOF for the period of January 1, 2012 to June 30, 2012. Successor Agency prepares new Recognized Obligation Payment Schedule for each six month period thereafter for approval by Oversight Board. Approved Recognized Obligation Payment Schedules are posted on Successor Agency website and submitted to DOF, Controller and County Auditor-Controller.
- Commencing on January 1, 2012: Successor Agency may pay only those payments listed in the approved Recognized Obligation Payment Schedule. Statements of Indebtedness are no longer recognized for dissolved RDAs.
- By January 1, 2012: Oversight Board elects and reports name of chairperson and other members to DOF.
- No specified date but after formation of Oversight Board: Each Oversight Board informs DOF of a designated contact person and related contact information for the purpose of communicating with DOF.
- January 15, 2012: Governor appoints persons to unfilled positions on Oversight Board (or any member position that remains vacant for more than 60 days).
- No later than January 16, 2012 and June 1, 2012, and each January 16 and June 1 thereafter: County Auditor-Controller transfers from the Redevelopment Property Tax Trust Fund of each Successor Agency into the Redevelopment Obligation Retirement Fund of that Successor Agency, an amount of property tax revenues equal to that specified in the Recognized Obligation Payment Schedule. Successor Agency makes payments on listed Recognized Obligation Payment Schedule from those funds.
- By March 1, 2012: County Auditor-Controller completes audit of each dissolved RDA.
- By March 15, 2012: County Auditor-Controller provides the State Controller copy of all audits performed on dissolved RDAs.
- By October 1, 2012: County Auditor-Controller reports specified financial information to the Controller and DOF.

- January 1, 2013: California Law Revision Commission drafts a Community Redevelopment Law cleanup bill for consideration by the Legislature.
- July 1, 2016: Consolidation of all Oversight Boards into one county-wide Oversight board in each county where more than one Oversight Board was created.
- After July 15, 2016: Governor appoints persons to unfilled positions on county-wide Oversight Board (or any member position that remains vacant for more than 60 days).