

ASSEMBLY BILL

No. 276

Introduced by Assembly Member Alejo

February 7, 2011

An act to amend Sections 12463, 53890 and 53895, of, and to repeal Sections 53892.1, 53895.5, and 53895.7 of, the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 276, as introduced, Alejo. Local government: financial reports.

(1) Existing law requires the officer of each local agency, who has charge of the financial records of the agency, to furnish to the Controller a report of all the financial transactions of the local agency during the next preceding fiscal year within 90 days of the close of each fiscal year, as specified. Existing law defines local agency, for purposes of these financial reports to mean any city, county, district, and specified community redevelopment agencies.

This bill would also include within the definition of local agency any joint powers agency, formed pursuant to the Joint Exercise of Powers Act, that issues conduit revenue bonds, and would require these joint powers agencies to furnish the Controller with the required financial reports.

(2) Existing law provides that an officer of a local agency who fails or refuses to make and file his or her report within 20 days after receipt of a written notice of the failure from the Controller forfeits to the state \$1,000 in the case of a local agency with total revenue, in the prior year, of less than \$100,000; \$2,500 in the case of a local agency with total revenue, in the prior year, of at least \$100,000 but less than \$250,000; and \$5,000 in the case of a local agency with total revenue in the prior

year of at least \$250,000. Existing law raises these amounts in the case of a community redevelopment agency, and a joint powers agency that issues conduit revenue bonds in the second and third consecutive year.

This bill would raise the forfeiture amounts for all local agencies to \$2,500 in the case of a local agency with total revenue, in the prior year, of less than \$100,000; \$5,000 in the case of a local agency with total revenue, in the prior year, of at least \$100,000 but less than \$250,000; and \$10,000 in the case of a local agency with total revenue, in the prior year, of at least \$250,000. The bill would double these fines if the agency fails to submit the report to the Controller for 2 consecutive years, and would triple the fines if the agency fails to submit the report to the Controller for 3 consecutive years. The bill would also require the Controller to conduct an audit, as specified, of the local agency if the local agency fails to provide the financial reports for 3 consecutive years.

(3) Existing law requires the Superintendent of Public Instruction to make available to the Controller, on an as-needed basis, data and other matters required to permit the compilation of the financial transactions of school districts by the Controller.

This bill would repeal this provision.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12463 of the Government Code is
 2 amended to read:
 3 12463. (a) The Controller shall compile and publish reports
 4 of the financial transactions of each county, city, ~~and~~ special
 5 district, *and joint powers agency formed pursuant to the Joint*
 6 *Exercise of Powers Act (Article 1 (commencing with Section 6500)*
 7 *of Chapter 5 of Division 7 of Title 1) that issues conduit revenue*
 8 *bonds*, respectively, within this state, together with any other matter
 9 he or she deems of public interest. The reports shall include the
 10 appropriations limits and the total annual appropriations subject
 11 to limitation of the counties, cities, and special districts. The reports
 12 to the Controller shall be made in the time, form, and manner
 13 prescribed by the Controller.
 14 (b) Effective January 1, 2005, the Controller shall compile and
 15 publish reports of the financial transactions of each county, city,

1 and special district pursuant to subdivision (a) on or before August
2 1, September 1, and October 1 respectively, of each year following
3 the end of the annual reporting period. The Controller shall make
4 data collected pursuant to this subdivision available upon request
5 to the Legislature and its agents, on or before April 1 of each year.

6 ~~(e) The Controller shall annually publish reports of the financial
7 transactions of each school district within this state, together with
8 any other matter he or she deems of public interest. The reports
9 shall include the appropriations limit and the total annual
10 appropriations subject to limitation of the school district. The
11 reports to the Controller shall be made in the time, form, and
12 manner prescribed by the Controller.~~

13 ~~(d) As used in this section, the following terms have the
14 following meanings:~~

15 ~~(1) "School district" means a school district as defined in Section
16 80 of the Education Code.~~

17 ~~(2) "Special~~

18 ~~(c) As used in this section, "special district" means any of the
19 following:~~

20 ~~(A) A special district as defined in Section 95 of the Revenue
21 and Taxation Code.~~

22 ~~(B) A commission provided for by a joint powers agreement
23 pursuant to Chapter 5 (commencing with 6500) of Division 7 of
24 Title 1.~~

25 ~~(C) A nonprofit corporation that is any of the following:~~

26 ~~(i) Was formed in accordance with the provisions of a joint
27 powers agreement to carry out functions specified in the agreement.~~

28 ~~(ii) Issued bonds, the interest on which is exempt from federal
29 income taxes, for the purpose of purchasing land as a site for, or
30 purchasing or constructing, a building, stadium, or other facility,
31 that is subject to a lease or agreement with a local public entity.~~

32 ~~(iii) Is wholly owned by a public agency.~~

33 SEC. 2. Section 53890 of the Government Code is amended
34 to read:

35 53890. As used in this article, "local agency" means any city,
36 county, any district, ~~and~~ any community redevelopment agency
37 required to furnish financial reports pursuant to Section 12463.1
38 or 12463.3, *and a joint powers agency formed pursuant to the*
39 *Joint Exercise of Powers Act (Article 1 (commencing with Section*

1 6500) of Chapter 5 of Division 7 of Title 1) that issues conduit
2 revenue bonds.

3 SEC. 3. Section 53892.1 of the Government Code is repealed.

4 ~~53892.1. For the purpose of permitting the compilation of the~~
5 ~~financial transactions of school districts by the Controller, the~~
6 ~~Superintendent of Public Instruction shall make available to the~~
7 ~~Controller, on an as-needed basis, data and other matters required~~
8 ~~by this article by the Controller. The Superintendent shall derive~~
9 ~~the data and other matters required for purposes of this article by~~
10 ~~the Controller from reports furnished by school districts or by~~
11 ~~county officials to the Superintendent as provided by law. No~~
12 ~~school district or county superintendent of schools shall be required~~
13 ~~to furnish separate reports to the Controller by the provisions of~~
14 ~~this article. The Superintendent shall furnish average daily~~
15 ~~attendance or enrollment data in lieu of the general population data~~
16 ~~required of counties and other municipal corporations by this~~
17 ~~article. The Superintendent shall add to the report forms furnished~~
18 ~~by him or her items or other matters as may be agreed by the~~
19 ~~Superintendent and the Controller to be needed for the purposes~~
20 ~~of this article.~~

21 SEC. 4. Section 53895 of the Government Code is amended
22 to read:

23 53895. (a) An officer of a local agency who fails or refuses to
24 make and file his or her report within 20 days after receipt of a
25 written notice of the failure from the Controller shall forfeit to the
26 state:

27 (1) ~~One~~ *Two thousand five hundred dollars* (~~(\$1,000)~~ *(\$2,500)*),
28 in the case of a local agency with total revenue, in the prior year,
29 of less than one hundred thousand dollars (\$100,000), as reported
30 in the Controller's annual financial reports.

31 (2) ~~Two~~ *Five thousand five hundred dollars* (~~(\$2,500)~~ *(\$5,000)*),
32 in the case of a local agency with total revenue, in the prior year,
33 of at least one hundred thousand dollars (\$100,000) but less than
34 two hundred fifty thousand dollars (\$250,000), as reported in the
35 Controller's annual financial reports.

36 (3) ~~Five~~ *Ten thousand dollars* (~~(\$5,000)~~ *(\$10,000)*), in the case of
37 a local agency with total revenue, in the prior year, of at least two
38 hundred fifty thousand dollars (\$250,000), as reported in the
39 Controller's annual financial reports.

1 (b) (1) Upon the request of the Controller, the Attorney General
2 shall prosecute an action for the forfeiture in the name of the people
3 of the State of California.

4 (2) Upon a satisfactory showing of good cause, the Controller
5 may waive the penalties for late filing provided in this section.

6 (c) *If an officer of a local agency fails or refuses to make and*
7 *file his or her report within 20 days after receipt of a written notice*
8 *pursuant to subdivision (a) for two consecutive years, the forfeiture*
9 *or fine assessed pursuant to paragraphs (1), (2), and (3) of*
10 *subdivision (a) in the second year shall be doubled.*

11 (d) (1) *If an officer of a local agency fails or refuses to make*
12 *and file his or her report within 20 days after receipt of a written*
13 *notice pursuant to subdivision (a) for three consecutive years, the*
14 *forfeiture or fine assessed pursuant to paragraphs (1), (2), and*
15 *(3) of subdivision (a) in the third year shall be tripled. The*
16 *Controller shall also conduct or cause to be conducted an*
17 *independent financial audit report. In the case of a community*
18 *redevelopment agency, the audit report shall be consistent with*
19 *the requirements of Section 33080.1 of the Health and Safety Code,*
20 *and in the case of a joint powers agency, the audit report shall be*
21 *consistent with Section 6505. The agency shall reimburse the*
22 *Controller for the cost of complying with this subdivision.*

23 (2) *A redevelopment agency shall not use any of the funds in*
24 *the Low and Moderate Income Housing Fund to fund any forfeiture*
25 *or fine assessed pursuant to this section.*

26 (e) *An agency that makes a forfeiture or payment pursuant to*
27 *this section shall still file the report required pursuant to Section*
28 *53891.*

29 (f) *The Legislature finds and declares all of the following:*

30 (1) *Conduit financing providers annually provide billions of*
31 *dollars of tax-exempt financing to the private sector at a cost to*
32 *the state caused by a lack of tax revenues on the interest earned*
33 *on these investments, for projects that are intended to fulfill a*
34 *public benefit purpose, including, but not limited to, educational*
35 *facilities, pollution control facilities, health care facilities,*
36 *industrial development, and affordable housing.*

37 (2) *Testimony and information provided to the Senate Committee*
38 *on Local Government at its February 6, 2008, informational*
39 *hearing on “Conduit Financing: Transparency and Accountability”*

1 *demonstrated the need to provide for greater public awareness of,*
2 *and participation in, the activities of conduit financing providers.*

3 *(3) Statutory ambiguities and discrepancies make it difficult to*
4 *determine whether all conduit financing providers are complying*
5 *with audit, annual financial reporting, and other public*
6 *accountability requirements.*

7 *(4) It is the intent of the Legislature in enacting these provisions*
8 *to ensure that all conduit financing providers make their activities*
9 *sufficiently transparent and accountable to the public by extending*
10 *sufficient opportunities for participation in public meetings and*
11 *providing useful information about their financial activities.*

12 SEC. 5. Section 53895.5 of the Government Code is repealed.

13 ~~53895.5. (a) An officer of a community redevelopment agency~~
14 ~~who fails or refuses to make and file his or her report within 20~~
15 ~~days after receipt of a written notice of the failure from the~~
16 ~~Controller shall forfeit to the state:~~

17 ~~(1) One thousand dollars (\$1,000) in the case of a community~~
18 ~~redevelopment agency with total revenue, in the prior year, of less~~
19 ~~than one hundred thousand dollars (\$100,000), as reported in the~~
20 ~~Controller's annual financial reports:~~

21 ~~(2) Two thousand five hundred dollars (\$2,500) in the case of~~
22 ~~a community redevelopment agency with total revenue, in the prior~~
23 ~~year, of at least one hundred thousand dollars (\$100,000), but less~~
24 ~~than two hundred fifty thousand dollars (\$250,000), as reported~~
25 ~~in the Controller's annual financial reports:~~

26 ~~(3) Five thousand dollars (\$5,000) in the case of a community~~
27 ~~redevelopment agency with total revenue, in the prior year, of at~~
28 ~~least two hundred fifty thousand dollars (\$250,000), as reported~~
29 ~~in the Controller's annual financial reports:~~

30 ~~(b) An officer of a community redevelopment agency who fails~~
31 ~~or refuses to make and file his or her report within 20 days after~~
32 ~~receipt of a written notice of the failure from the Controller in the~~
33 ~~second or more consecutive year shall forfeit to the state:~~

34 ~~(1) Two thousand dollars (\$2,000) in the case of a community~~
35 ~~redevelopment agency with total revenue, in the prior year, of less~~
36 ~~than one hundred thousand dollars (\$100,000), as reported in the~~
37 ~~Controller's annual financial reports:~~

38 ~~(2) Five thousand dollars (\$5,000) in the case of a community~~
39 ~~redevelopment agency with total revenue, in the prior year, of at~~
40 ~~least one hundred thousand dollars (\$100,000), but less than two~~

1 ~~hundred fifty thousand dollars (\$250,000), as reported in the~~
2 ~~Controller's annual financial reports:~~

3 ~~(3) Ten thousand dollars (\$10,000) in the case of a community~~
4 ~~redevelopment agency with total revenue, in the prior year, of at~~
5 ~~least two hundred fifty thousand dollars (\$250,000), as reported~~
6 ~~in the Controller's annual financial reports:~~

7 ~~(e) In the case of a community redevelopment agency that fails~~
8 ~~or refuses to make and file its report within 20 days after receipt~~
9 ~~of a written notice of the failure from the Controller in the third~~
10 ~~or more consecutive year, the Controller shall conduct or cause to~~
11 ~~be conducted an independent financial audit report consistent with~~
12 ~~the requirements of Section 33080.1 of the Health and Safety Code.~~
13 ~~The community redevelopment agency shall reimburse the~~
14 ~~Controller for the cost of complying with this subdivision. The~~
15 ~~community redevelopment agency shall not use any of the funds~~
16 ~~in the Low and Moderate Income Housing Fund to reimburse the~~
17 ~~Controller.~~

18 ~~(d) (1) Upon the request of the Controller, the Attorney General~~
19 ~~shall prosecute an action for the forfeiture in the name of the people~~
20 ~~of the State of California:~~

21 ~~(2) Upon a satisfactory showing of good cause, the Controller~~
22 ~~may waive the penalties for late filing provided in this section:~~

23 ~~(e) A community redevelopment agency that makes a forfeiture~~
24 ~~or payment pursuant to this section shall still file the report required~~
25 ~~pursuant to Section 53891.~~

26 SEC. 6. Section 53895.7 of the Government Code is repealed.

27 ~~53895.7. (a) For the purpose of this section, "agency" means~~
28 ~~any agency or entity formed pursuant to the Joint Exercise of~~
29 ~~Powers Act (Article 1 (commencing with Section 6500) of Chapter~~
30 ~~5 of Division 7 of Title 1) that issues conduit revenue bonds:~~

31 ~~(b) An officer of an agency who fails or refuses to make and~~
32 ~~file his or her report pursuant to this article within 20 days after~~
33 ~~receipt of a written notice of the failure from the Controller shall~~
34 ~~forfeit to the state:~~

35 ~~(1) One thousand dollars (\$1,000) in the case of an agency with~~
36 ~~total revenue, in the prior year, of less than one hundred thousand~~
37 ~~dollars (\$100,000), as reported in the Controller's annual financial~~
38 ~~reports:~~

39 ~~(2) Two thousand five hundred dollars (\$2,500) in the case of~~
40 ~~an agency with total revenue, in the prior year, of at least one~~

1 hundred thousand dollars (\$100,000), but less than two hundred
2 fifty thousand dollars (\$250,000), as reported in the Controller's
3 annual financial reports:

4 (3) Five thousand dollars (\$5,000) in the case of an agency with
5 total revenue, in the prior year, of at least two hundred fifty
6 thousand dollars (\$250,000), as reported in the Controller's annual
7 financial reports:

8 (e) An officer of an agency who fails or refuses to make and
9 file his or her report within 20 days after receipt of a written notice
10 of the failure from the Controller in the second or more consecutive
11 year shall forfeit to the state:

12 (1) Two thousand dollars (\$2,000) in the case of an agency with
13 total revenue, in the prior year, of less than one hundred thousand
14 dollars (\$100,000), as reported in the Controller's annual financial
15 reports:

16 (2) Five thousand dollars (\$5,000) in the case of an agency with
17 total revenue, in the prior year, of at least one hundred thousand
18 dollars (\$100,000), but less than two hundred fifty thousand dollars
19 (\$250,000), as reported in the Controller's annual financial reports:

20 (3) Ten thousand dollars (\$10,000) in the case of an agency
21 with total revenue, in the prior year, of at least two hundred fifty
22 thousand dollars (\$250,000), as reported in the Controller's annual
23 financial reports:

24 (d) In the case of an agency that fails or refuses to make and
25 file its report within 20 days after receipt of a written notice of the
26 failure from the Controller in the third or more consecutive year,
27 the Controller shall conduct, or cause to be conducted, an
28 independent financial audit report consistent with the requirements
29 of Section 6505. The agency shall reimburse the Controller for the
30 cost of complying with this subdivision.

31 (e) (1) Upon the request of the Controller, the Attorney General
32 shall prosecute an action for the forfeiture in the name of the people
33 of the State of California:

34 (2) Upon a satisfactory showing of good cause, the Controller
35 may waive the penalties for late filing provided in this section:

36 (f) An agency that makes a forfeiture or payment pursuant to
37 this section shall still file the report required pursuant to Section
38 53891.

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