

AMENDED IN ASSEMBLY APRIL 4, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 276

Introduced by Assembly Member Alejo

February 7, 2011

An act to amend Sections 12463, ~~53890 and 53895~~, 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 amended, 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, special district,
5 and joint powers agency formed pursuant to the Joint Exercise of
6 Powers Act (Article 1 (commencing with Section 6500) of Chapter
7 5 of Division 7 of Title 1) that issues conduit revenue bonds,
8 respectively, within this state, together with any other matter he
9 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.

1 (b) Effective January 1, 2005, the Controller shall compile and
2 publish reports of the financial transactions of each county, city,
3 and special district pursuant to subdivision (a) on or before August
4 1, September 1, and October 1 respectively, of each year following
5 the end of the annual reporting period. The Controller shall make
6 data collected pursuant to this subdivision available upon request
7 to the Legislature and its agents, on or before April 1 of each year.

8 (c) As used in this section, “special district” means any of the
9 following:

10 (A)

11 (1) A special district as defined in Section 95 of the Revenue
12 and Taxation Code.

13 (B)

14 (2) A commission provided for by a joint powers agreement
15 pursuant to Chapter 5 (commencing with 6500) of Division 7 of
16 Title 1.

17 (C)

18 (3) A nonprofit corporation that is any of the following:

19 (i)

20 (A) Was formed in accordance with the provisions of a joint
21 powers agreement to carry out functions specified in the agreement.

22 (ii)

23 (B) Issued bonds, the interest on which is exempt from federal
24 income taxes, for the purpose of purchasing land as a site for, or
25 purchasing or constructing, a building, stadium, or other facility,
26 that is subject to a lease or agreement with a local public entity.

27 (iii)

28 (C) Is wholly owned by a public agency.

29 SEC. 2. Section 53890 of the Government Code is amended
30 to read:

31 53890. As used in this article, “local agency” means any city,
32 county, any district, any community redevelopment agency
33 required to furnish financial reports pursuant to Section 12463.1
34 or 12463.3, and a joint powers agency formed pursuant to the Joint
35 Exercise of Powers Act (Article 1 (commencing with Section 6500)
36 of Chapter 5 of Division 7 of Title 1) that issues conduit revenue
37 bonds.

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

39 SEC. 4. Section 53895 of the Government Code is amended
40 to read:

1 53895. (a) An officer of a local agency who fails or refuses to
2 make and file his or her report within 20 days after receipt of a
3 written notice of the failure from the Controller shall forfeit to the
4 state:

5 (1) Two thousand five hundred dollars (\$2,500), in the case of
6 a local agency with total revenue, in the prior year, of less than
7 one hundred thousand dollars (\$100,000), as reported in the
8 Controller's annual financial reports.

9 (2) Five thousand dollars (\$5,000), in the case of a local agency
10 with total revenue, in the prior year, of at least one hundred
11 thousand dollars (\$100,000) but less than two hundred fifty
12 thousand dollars (\$250,000), as reported in the Controller's annual
13 financial reports.

14 (3) Ten thousand dollars (\$10,000), in the case of a local agency
15 with total revenue, in the prior year, of at least two hundred fifty
16 thousand dollars (\$250,000), as reported in the Controller's annual
17 financial reports.

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

28 (d) (1) If an officer of a local agency fails or refuses to make
29 and file his or her report within 20 days after receipt of a written
30 notice pursuant to subdivision (a) for three consecutive years, the
31 forfeiture or fine assessed pursuant to paragraphs (1), (2), and (3)
32 of subdivision (a) in the third year shall be tripled. The Controller
33 shall also conduct or cause to be conducted an independent
34 financial audit report. In the case of a community redevelopment
35 agency, the audit report shall be consistent with the requirements
36 of Section 33080.1 of the Health and Safety Code, and in the case
37 of a joint powers agency, the audit report shall be consistent with
38 Section 6505. The agency shall reimburse the Controller for the
39 cost of complying with this subdivision.

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

4 (e) An agency that makes a forfeiture or payment pursuant to
5 this section shall still file the report required pursuant to Section
6 53891.

7 ~~(f) The Legislature finds and declares all of the following:~~

8 ~~(1) Conduit financing providers annually provide billions of~~
9 ~~dollars of tax-exempt financing to the private sector at a cost to~~
10 ~~the state caused by a lack of tax revenues on the interest earned~~
11 ~~on these investments, for projects that are intended to fulfill a~~
12 ~~public benefit purpose, including, but not limited to, educational~~
13 ~~facilities, pollution control facilities, health care facilities, industrial~~
14 ~~development, and affordable housing.~~

15 ~~(2) Testimony and information provided to the Senate~~
16 ~~Committee on Local Government at its February 6, 2008,~~
17 ~~informational hearing on “Conduit Financing: Transparency and~~
18 ~~Accountability” demonstrated the need to provide for greater public~~
19 ~~awareness of, and participation in, the activities of conduit~~
20 ~~financing providers.~~

21 ~~(3) Statutory ambiguities and discrepancies make it difficult to~~
22 ~~determine whether all conduit financing providers are complying~~
23 ~~with audit, annual financial reporting, and other public~~
24 ~~accountability requirements.~~

25 ~~(4) It is the intent of the Legislature in enacting these provisions~~
26 ~~to ensure that all conduit financing providers make their activities~~
27 ~~sufficiently transparent and accountable to the public by extending~~
28 ~~sufficient opportunities for participation in public meetings and~~
29 ~~providing useful information about their financial activities.~~

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

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