

AMENDED IN SENATE MARCH 30, 2011

**SENATE BILL**

**No. 449**

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**Introduced by Senator Pavley**

February 16, 2011

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An act to add and repeal Article 6 (commencing with Section 12485) of Chapter 5 of Part 2 of Division 3 of Title 2 of the Government Code, relating to state government.

LEGISLATIVE COUNSEL'S DIGEST

SB 449, as amended, Pavley. Controller: local agency financial review.

Existing law requires certain local agencies to furnish reports to the Controller concerning financial transactions of the local agency, subject to uniform accounting and reporting procedures prescribed by the Controller. The Controller may provide for the investigation of certain local agency finances if a report is not made in the time, form, and manner required or there is reason to believe that a report is false, incomplete, or incorrect.

This bill would additionally authorize the Controller to conduct a preliminary review to determine the existence of a local agency financial problem, and perform an audit upon completion of that review, subject to specified criteria.

The bill would require the Controller to convene a local agency financial review committee with a specified membership, and authorize the committee to recommend a financial recovery plan for a local agency requesting assistance. It would require the committee to report to the Legislature annually on the actions of the committee and the status of all engagements with local agencies pursuant to these provisions.

The bill would specify that its provisions would be repealed on January 1, ~~2015~~ 2017.

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. (a) The Legislature finds all of the following:

2 (1) The economic recession has disproportionately affected  
3 California and, in particular, the local agencies that deliver vital  
4 services to the public. Many local agencies have been forced to  
5 take unprecedented steps to avert financial crisis and maintain a  
6 ~~sound credit rating. Revenue pressures precipitated by the recession~~  
7 ~~have exposed financial mismanagement at many local agencies.~~  
8 *sound credit rating.*

9 (2) The State of California has a vital financial interest in the  
10 solvency of its local agencies. When insolvency occurs ~~or is even~~  
11 ~~intimated by~~ *at* a local agency, the state’s credit rating ~~is often~~ *can*  
12 *be* negatively impacted, costing the state millions of dollars,  
13 making borrowing more difficult, and hindering the state’s  
14 economic recovery.

15 (3) The health and welfare of the citizens of the state would be  
16 adversely affected by the insolvency of local agencies. Therefore,  
17 ~~the survival~~ *fiscal health* of local agencies is vitally necessary to  
18 the interests of this state in providing necessary governmental  
19 services.

20 (b) Accordingly, the Legislature declares that it is a valid public  
21 purpose for the state to assist a local agency in a fiscal emergency  
22 situation by ~~requiring~~ *supporting* prudent fiscal management, and  
23 that the authority and powers conferred by this act constitute a  
24 necessary program and serve a valid public purpose.

25 SEC. 2. Article 6 (commencing with Section 12485) is added  
26 to Chapter 5 of Part 2 of Division 3 of Title 2 of the Government  
27 Code, to read:

28  
29 Article 6. Local Agency Financial Review and Assistance  
30

31 12485. (a) The Controller may conduct a preliminary review  
32 to determine the existence of a local agency financial problem if  
33 one or more of the following occur:

1 (1) (A) The governing body or the chief administrative officer,  
2 *chief administrative officer, or chief executive* of a local agency  
3 requests a preliminary review under this section. The request shall  
4 be in writing and shall identify the existing fiscal conditions that  
5 make the request necessary.

6 ~~(B) Any costs incurred pursuant to this paragraph shall be borne~~  
7 ~~by the local agency requesting the review and shall be a charge~~  
8 ~~against any unencumbered funds of the local agency.~~

9 *(B) If the local agency requests a review, any costs incurred*  
10 *pursuant to this paragraph shall be borne by the local agency.*

11 (2) (A) The Controller receives a written request from a creditor  
12 with an undisputed claim ~~that remains unpaid six months after its~~  
13 ~~due date~~ against the local agency that exceeds the greater of ten  
14 thousand dollars (\$10,000) or 1 percent of the annual general fund  
15 budget of the local agency, *and that remains unpaid six months*  
16 *after its due date*, provided that no less than 30 days prior to  
17 submitting the request, the creditor notifies the local agency in  
18 writing of his or her intention to submit the request.

19 *(B) For purposes of this subdivision, a claim shall be deemed*  
20 *undisputed unless the local agency has made a determination that*  
21 *any of the following conditions are present:*

22 *(i) There is a discrepancy between the invoice or claimed*  
23 *amount and the provisions of the contract or grant.*

24 *(ii) There is a discrepancy between the invoice or claimed*  
25 *amount and either the claimant's actual delivery of property or*  
26 *services to the local agency or the local agency's acceptance of*  
27 *that delivery or deliveries.*

28 *(iii) Additional evidence supporting the validity of the invoice*  
29 *or claimed amount is required to be provided to the local agency*  
30 *by the claimant.*

31 *(iv) The invoice has been improperly executed or needs to be*  
32 *corrected by the claimant.*

33 *(v) There is a discrepancy between the refund or other payment*  
34 *due as calculated by the person to whom the money is owed and*  
35 *by the local agency.*

36 (3) The Controller receives notification from the trustee, actuary,  
37 or at least 10 percent of the beneficiaries of a local agency pension  
38 fund alleging that the local agency has not timely deposited its  
39 minimum obligation payment to the pension fund as required by  
40 law.

1 (4) The Controller receives notification that employees of the  
2 local agency have not been paid and it has been at least seven days  
3 after the scheduled date of payment.

4 (5) The Controller receives notification from a trustee, paying  
5 agent, or bondholder of a default in a bond payment, or a violation  
6 of one or more bond covenants, by a local agency.

7 (6) The Controller receives notification that the local agency is  
8 delinquent in the distribution of tax revenues as required by law.

9 (7) The local agency fails to provide an annual financial report  
10 or audit that conforms with the minimum procedures and standards  
11 of the Controller as required by law.

12 ~~(8) The Controller is requested by either house of the Legislature  
13 to conduct a preliminary review under this section.~~

14 (b) In conducting a preliminary review pursuant to this section,  
15 the Controller shall provide the local agency written notification  
16 of the review, and shall meet with the local agency officials to  
17 receive, discuss, and consider information provided by the local  
18 agency concerning the agency's financial condition.

19 (c) The Controller shall ~~report~~ *provide written notification* to  
20 the Governor and the Legislature within 120 days after beginning  
21 a preliminary review pursuant to this section, ~~on whether~~ *when*  
22 the review has determined that one or more conditions indicative  
23 of a serious financial problem may exist within the local agency.

24 12486. (a) Upon completion of a preliminary review conducted  
25 pursuant to Section 12485, the Controller may conduct an audit  
26 of the local agency that was the subject of the preliminary review.  
27 The local agency shall make its books and records available to the  
28 Controller for this purpose.

29 (b) The audit shall be conducted for purposes of determining if  
30 one or more of the following conditions indicative of a serious  
31 financial problem have occurred, or are likely to occur, if remedial  
32 action is not taken:

33 (1) A default in the payment of principal or interest upon bonded  
34 indebtedness for which no funds, or insufficient funds, are on hand  
35 and segregated in a special trust fund.

36 (2) Failure for a period of 30 days or more beyond the due date  
37 to transfer one or more of the following to the appropriate agency:

38 (A) Taxes withheld on the income of employees.

39 (B) Taxes collected by the local agency as agent for another  
40 governmental entity or taxing authority.

1 (C) Any contribution required by a pension, retirement, or  
2 benefit plan.

3 (3) Failure for a period of 30 days or more to pay wages and  
4 salaries or other compensation or benefits owed to local agency  
5 employees or retirees.

6 (4) The total amount of accounts payable for the current fiscal  
7 year, as determined by the ~~local agency treasurer's uniform chart~~  
8 ~~of accounts~~ *financial records of the local agency*, is in excess of  
9 10 percent of the total expenditures of the local agency in that  
10 fiscal year.

11 (5) Failure to eliminate an existing deficit in any fund of the  
12 local agency within the two-year period preceding the end of the  
13 local agency's fiscal year for which a preliminary review was  
14 conducted pursuant to Section 12485.

15 (6) Projection of a deficit in the general fund of the local agency  
16 for the current fiscal year in excess of 10 percent of the budgeted  
17 revenues for the general fund.

18 12487. (a) The Controller shall convene a local agency  
19 financial review committee to provide assistance to local agencies  
20 who seek help in averting or managing a financial problem. The  
21 committee shall meet no less than ~~quarterly~~ *annually*.

22 (b) The committee shall be chaired by the Controller and include  
23 representatives of the office of the Treasurer and the Department  
24 of Finance.

25 (c) The Controller shall utilize the services of a consultant  
26 having extensive financial management and accounting experience  
27 with local agencies *in the state*, to assist in evaluating and assisting  
28 local agencies who are undergoing or facing a financial problem.

29 (d) A local agency may request assistance from the committee  
30 in meeting the ordinary needs of government operations. The  
31 request shall identify the existing financial conditions that make  
32 the request necessary.

33 (e) In consultation with the local agency requesting assistance,  
34 and using any applicable data from a preliminary review or audit  
35 conducted pursuant to this article, the committee shall recommend  
36 a financial recovery plan for the local agency. The financial  
37 recovery plan shall consider both of the following:

38 (1) Conducting the operations of the local agency within the  
39 resources available according to the data provided by the local  
40 agency.

1 (2) The payment in full of the scheduled debt service  
2 requirements on all bonded and other indebtedness and other  
3 uncontested legal obligations of the local agency.

4 (f) The Controller shall report to the Legislature, no later than  
5 June 30, 2012, and annually thereafter, on the actions of the  
6 committee and status of all engagements with local agencies  
7 pursuant to this section.

8 12488. For purposes of this article, “local agency” means a  
9 city, county, city and county, special district, or redevelopment  
10 agency.

11 12489. This article shall remain in effect only until January 1,  
12 ~~2015~~ 2017, and as of that date is repealed, unless a later enacted  
13 statute, that is enacted before January 1, ~~2015~~ 2017, deletes or  
14 extends that date.