

AMENDED IN ASSEMBLY AUGUST 15, 2011

AMENDED IN ASSEMBLY JUNE 20, 2011

AMENDED IN SENATE APRIL 11, 2011

AMENDED IN SENATE MARCH 29, 2011

SENATE BILL

No. 450

Introduced by Senator Lowenthal
(Principal coauthor: Senator DeSaulnier)
(Principal coauthor: Assembly Member Torres)
(Coauthors: Assembly Members Atkins and Norby)

February 16, 2011

An act to amend Sections 33080, 33080.1, 33080.2, 33080.8, 33334.2, 33334.3, 33334.4, 33334.12, 33334.16, 33413, 33413.5, 33418, 33487, and 33490 of, to add Sections 33080.9, 33080.11, 33080.12, 33506, and 50464.5 to, and to add Article 13 (commencing with Section 33460) to Chapter 4 of Part 1 of Division 24 of, the Health and Safety Code, relating to redevelopment.

LEGISLATIVE COUNSEL'S DIGEST

SB 450, as amended, Lowenthal. Redevelopment.

(1) The Community Redevelopment Law requires that each redevelopment agency submit the final report of any audit undertaken by any other local, state, or federal government entity to its legislative body and to additionally present an annual report to the legislative body containing specified information.

This bill would require the agency to include additional information relating to any major audit violations, as defined, any corrections to those violations, and planning and general administrative expenses of the Low and Moderate Income Housing Fund. The bill would authorize

the Controller to conduct quality control reviews of independent financial audit reports and require the Controller to publish the results of his or her reviews. The Controller would be required to comply with certain notification and referral provisions in the event that the audit was conducted in a manner that may constitute unprofessional conduct.

The bill would require the Department of Housing and Community Development to conduct audits of redevelopment agencies to ensure compliance with the housing provisions of the Community Redevelopment Law. The bill would require each agency to annually deposit 0.05% of any tax increment deposited into the Low and Moderate Income Housing Fund into the Redevelopment Agency Accountability Fund, which the bill would create, to fund the department audits.

(2) Existing law requires that funds used for purposes of increasing, improving, and preserving a community's supply of low- and moderate-income housing be held in a separate Low and Moderate Income Housing Fund until used. Existing law limits the planning and general administrative costs which may be paid with moneys from the Low and Moderate Income Housing Fund.

The bill would revise the costs and expenses which may be considered planning and general administrative costs for the purposes of being paid from the Low and Moderate Income Housing Fund. Except as provided, the bill would prohibit an agency from expending more than 15% of the tax increment deposited in the fund for planning and general administrative costs. The bill would impose other reporting and accountability measures on agencies with respect to the use of moneys in the fund for planning and administrative purposes. The bill would revise various provisions governing an action to compel agency compliance with specified provisions.

(3) Existing law requires, except as specified, each agency to expend over each 10-year period of the implementation plan, the moneys in the Low and Moderate Income Housing Fund to assist housing for persons of moderate, low, and very low income according to specified calculations.

The bill would instead require that at least 75% of the agency's expenditures from the fund directly assist the new construction, acquisition and substantial rehabilitation, or preservation of housing for persons of extremely low, very low, low, or moderate income, with at least 25% of the expenditures required to be directed towards housing for persons of extremely low income and at least 50% of the

expenditures required to be directed towards housing for persons of very low income.

(4) Existing law authorizes a redevelopment agency to merge project areas under its jurisdiction, and requires that at least 20% of specified taxes allocated to the redevelopment agency to be deposited into the Low and Moderate Income Housing Fund to assist in the construction or rehabilitation of housing units for very low, and moderate-income households, as specified. Existing law requires that if those funds have not been committed for that purpose within 6 years, the agency shall offer the funds to the housing authority that operates within the jurisdiction of the agency, as specified.

This bill would delete the requirement that the funds be offered to the housing authority.

(5) Existing law requires an agency that has failed to expend or encumber excess surplus in the Low and Moderate Income Housing Fund within one year to disburse the surplus voluntarily to the appropriate county housing authority or another public agency or to expend or encumber the surplus within 2 additional years.

The bill would delete these provisions. The bill would modify the definition of the term “excess surplus.”

(6) ~~Whenever~~ *Existing law provides that whenever* low- or moderate-income housing dwelling units are destroyed or removed from the low- and moderate-income housing market as part of a redevelopment that is subject to a written agreement with the agency, or where financial assistance has been provided by the agency, the agency is required to provide replacement housing within 4 years of the destruction or removal.

The bill would modify the agency’s obligation to provide replacement housing to low- or moderate-income persons and families and would impose new requirements on the agency with respect to the replacement housing plan and housing specifications. If a court has found that an agency has failed to comply with these provisions, the bill would require the court, at a minimum, to issue an order temporarily prohibiting the agency from issuing any debt for any project area, except as specified.

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 33080 of the Health and Safety Code is
2 amended to read:

3 33080. (a) Every redevelopment agency shall file with the
4 Controller within six months of the end of the agency's fiscal year
5 a copy of the report required by Section 33080.1. In addition, each
6 redevelopment agency shall file with the department a copy of the
7 audit report required by subdivision (a) of Section 33080.1. The
8 reports shall be made in the time, format, and manner prescribed
9 by the Controller after consultation with the department.

10 (b) The redevelopment agency shall provide a copy of the report
11 required by Section 33080.1, upon the written request of any person
12 or any taxing agency. If the report does not include detailed
13 information regarding administrative costs, professional services,
14 or other expenditures required under Section 33080.1, the person
15 or taxing agency may request, and the redevelopment agency shall
16 provide, that information, upon payment of fees covering the direct
17 costs of duplication.

18 SEC. 2. Section 33080.1 of the Health and Safety Code is
19 amended to read:

20 33080.1. Every redevelopment agency shall submit the final
21 report of any audit undertaken by any other local, state, or federal
22 government entity to its legislative body within 30 days of receipt
23 of that audit report. In addition, every redevelopment agency shall
24 present an annual report to its legislative body *at a public hearing*
25 and make the report available on its Internet Web site, or if the
26 agency does not have an Internet Web site, on the community's
27 Internet Web site, within six months of the end of the agency's
28 fiscal year. The annual report shall contain all of the following:

29 (a) (1) An independent financial audit report for the previous
30 fiscal year. "Audit report" means an examination of, and opinion
31 on, the financial statements of the agency which present the results
32 of the operations and financial position of the agency, including
33 all financial activities with moneys required to be held in a separate
34 Low and Moderate Income Housing Fund pursuant to Section
35 33334.3. This audit shall be conducted by a certified public
36 accountant or public accountant, licensed by the State of California,
37 in accordance with Government Auditing Standards adopted by
38 the Comptroller General of the United States. The audit report

1 shall meet, at a minimum, the audit guidelines prescribed by the
2 Controller's office pursuant to Section 33080.3 and also include
3 a report on the agency's compliance with laws, regulations, and
4 administrative requirements governing activities of the agency,
5 and a calculation of the excess surplus in the Low and Moderate
6 Income Housing Fund as defined in subdivision (g) of Section
7 33334.12. The audit report shall include a statement from the
8 auditor as to whether or not the agency has any major audit
9 violations, as defined in subdivision (j) of Section 33080.8.

10 (2) A statement describing each corrective measure taken in
11 that fiscal year to correct major audit violations identified during
12 or prior to that fiscal year by the agency, its auditor, or the
13 Department of Housing and Community Development.

14 (3) However, the legislative body may elect to omit from
15 inclusion in the audit report any distinct activity of the agency that
16 is funded exclusively by the federal government and that is subject
17 to audit by the federal government.

18 (b) A fiscal statement for the previous fiscal year that contains
19 the information required pursuant to Section 33080.5.

20 (c) A description of the agency's activities in the previous fiscal
21 year affecting housing and displacement that contains the
22 information required by Sections 33080.4 and 33080.7.

23 (d) A description of the agency's progress, including specific
24 actions and expenditures, in alleviating blight in the previous fiscal
25 year.

26 (e) A list of, and status report on, all loans made by the
27 redevelopment agency that are fifty thousand dollars (\$50,000) or
28 more, that in the previous fiscal year were in default, or not in
29 compliance with the terms of the loan approved by the
30 redevelopment agency.

31 (f) A description of the total number and nature of the properties
32 that the agency owns and those properties the agency has acquired
33 in the previous fiscal year.

34 (g) A list of the fiscal years that the agency expects each of the
35 following time limits to expire:

36 (1) The time limit for the commencement for eminent domain
37 proceedings to acquire property within the project area.

38 (2) The time limit for the establishment of loans, advances, and
39 indebtedness to finance the redevelopment project.

1 (3) The time limit for the effectiveness of the redevelopment
2 plan.

3 (4) The time limit to repay indebtedness with the proceeds of
4 property taxes.

5 (h) All of the following relating to the agency’s planning and
6 general administrative expenses for the most recently completed
7 fiscal year paid from the Low and Moderate Income Housing Fund:

8 (1) The *amount and* percentage of funds deposited into the Low
9 and Moderate Income Housing Fund, exclusive of debt proceeds,
10 expended for planning and general administrative costs described
11 in subparagraphs (A), ~~(B)~~, (C), (D), and (E) of paragraph (1) of
12 subdivision (d) of Section 33334.3.

13 (2) *The amount and percentage of funds deposited into the Low*
14 *and Moderate Income Housing Fund, exclusive of debt proceeds,*
15 *expended for planning and general administrative costs described*
16 *in subparagraph (B) of paragraph (1) of subdivision (d) of Section*
17 *33334.3.*

18 ~~(2)~~

19 (3) Consistent with the categories described in paragraph (1) of
20 subdivision (d) of Section 33334.3, an itemization of each category
21 of planning and general administration expenditures from the Low
22 and Moderate Income Housing Fund and an explicit description
23 of how the expenditures are necessary for the production,
24 improvement, or preservation of low- and moderate-income
25 housing.

26 ~~(3)~~

27 (4) A list of the title of any agency, city, or county employees
28 for whom any portion of his or her salary, wages, benefits, or
29 nonpersonnel costs is paid from the Low and Moderate Income
30 Housing Fund, the nature of the employee’s activities eligible to
31 be paid from the Low and Moderate Income Housing Fund, the
32 percentage of time the employee spends on activities eligible to
33 be paid from the Low and Moderate Income Housing Fund, the
34 percentage of time the employee spends on activities that are
35 directly and necessarily associated with a specific eligible housing
36 development project or to the direct administration of programs,
37 and the percentage of the employee’s salary, wages, benefits, and
38 nonpersonnel costs paid from the Low and Moderate Income
39 Housing Fund.

40 ~~(4)~~

1 (5) A list of any overhead costs that are paid directly or
2 indirectly from the Low and Moderate Income Housing Fund, an
3 identification by title and department of any other employees with
4 whom the overhead costs are shared, and a description of the total
5 cost of the shared overhead costs.

6 (i) A statement of the amount and percentage of funds deposited
7 into the Low and Moderate Income Housing Fund, exclusive of
8 debt proceeds, expended for planning and general administration
9 in each of the preceding five fiscal years that begin after December
10 31, 2011, broken down by the categories described in paragraph
11 (1) of subdivision (d) of Section 33334.3.

12 (j) A list of all real properties owned by the agency and
13 purchased with funds from the Low and Moderate Income Housing
14 Fund, the date of acquisition for each property, the agency's
15 intended purpose for each property, a statement of the amount, if
16 any, of moneys from the Low and Moderate Income Housing Fund
17 used to acquire the property, and a statement of the amount, if any,
18 of moneys from the Low and Moderate Income Housing Fund
19 used to maintain the property.

20 (k) A list of the redevelopment projects that have caused a
21 replacement obligation pursuant to subdivision (a) of Section
22 33413, the respective number of units the agency is obligated to
23 replace as a result of each project, and the location and status of
24 the replacement ~~and production~~ units. This list shall cover each
25 fiscal year from the agency's last adopted implementation plan.

26 ~~(k)~~

27 (l) A separate list of the development projects that have caused
28 a production obligation pursuant to subdivision (b) of Section
29 33413, the respective number of units the agency is obligated to
30 produce as a result of each project, and the location and status of
31 the production units. This list shall cover each fiscal year from the
32 agency's last adopted implementation plan.

33 (m) *For each housing project in which the agency provided*
34 *more than five hundred thousand dollars (\$500,000) in financing*
35 *during the fiscal year, the amount of agency financing in*
36 *comparison to the source and amount of each nonagency funding*
37 *source, including other public financing, tax credit equity, and*
38 *private financing.*

39 (n) *An agency that has deposited less than one hundred thousand*
40 *dollars (\$100,000) into its Low and Moderate Income Housing*

1 *Fund during the fiscal year is not required to provide in its annual*
2 *report the information described in subdivisions (h) to (m),*
3 *inclusive.*

4 (†)

5 (o) Any other information that the agency believes useful to
6 explain its programs, including, but not limited to, the number of
7 jobs created and lost in the previous fiscal year as a result of its
8 activities.

9 SEC. 3. Section 33080.2 of the Health and Safety Code is
10 amended to read:

11 33080.2. (a) When the agency presents the annual report to
12 the legislative body pursuant to Section 33080.1, the agency shall
13 inform the legislative body of any major audit violations of this
14 part based on the independent financial audit report or an audit
15 investigation conducted by the department. The agency shall inform
16 the legislative body that the failure to correct a major audit
17 violation of this part may result in the filing of an action by the
18 Attorney General pursuant to Section 33080.8 in a form that
19 indicates whether a referral to the Attorney General has been made.

20 (b) At the time the agency presents the annual report to the
21 legislative body pursuant to Section 33080.1, the legislative body
22 shall adopt a separate written resolution making a finding, based
23 on substantial evidence in the record, that the actual planning and
24 general administrative expenses for the most recently completed
25 fiscal year paid from the Low and Moderate Income Housing Fund
26 did not exceed the limits established in subparagraphs (A) and (B)
27 of paragraph (2) of subdivision (d) of Section 33334.3 or that the
28 exception in subparagraph (C) of paragraph (2) of subdivision (d)
29 of Section 33334.3 applies.

30 (c) The legislative body shall review any report submitted
31 pursuant to Section 33080.1 and take any action it deems
32 appropriate on that report no later than the first meeting of the
33 legislative body occurring more than 21 days from the receipt of
34 the report.

35 SEC. 4. Section 33080.8 of the Health and Safety Code is
36 amended to read:

37 33080.8. (a) On or before April 1 of each year, the Controller
38 shall compile a list of agencies that appear to have major audit
39 violations as defined in this section, based on the independent
40 financial audit reports filed with the Controller pursuant to Section

1 33080, and make the list available on the Controller’s Internet
2 Web site.

3 (b) On or before June 1 of each year, for each major audit
4 violation of each agency identified pursuant to subdivision (a), the
5 Controller shall determine if the agency has corrected the major
6 audit violation. Before making this determination, the Controller
7 shall consult with each affected agency and may consult with
8 affected local community groups. In making this determination,
9 the Controller may request and shall receive the prompt assistance
10 of public officials and public agencies, including, but not limited
11 to, the affected agencies, counties, and cities. If the Controller
12 determines that an agency has not corrected the major audit
13 violation, the Controller shall send a list of those agencies, their
14 major violations, all relevant documents, and the affidavits required
15 pursuant to subdivision (d) to the Attorney General for action
16 pursuant to this section.

17 (c) For each agency that the Controller refers to the Attorney
18 General pursuant to subdivision (b), the Controller shall notify the
19 agency and the legislative body that the agency was on the list sent
20 to the Attorney General. The Controller’s notice shall inform the
21 agency and the legislative body of the duties imposed by Section
22 33080.2.

23 (d) Within 45 days of receiving the referral from the Controller
24 pursuant to subdivision (b), the Attorney General shall determine
25 whether to file an action to compel the agency’s compliance with
26 this part. Any action filed pursuant to this section shall be
27 commenced in the superior court of any county in which the
28 Attorney General has an office. The time limit for the Attorney
29 General to make this determination is directory and not mandatory.
30 Any action shall be accompanied by an affidavit or affidavits, to
31 be provided by the Controller with the referral, setting forth facts
32 that demonstrate a likelihood of success on the merits of the claim
33 that the agency has a major audit violation. The affidavit shall also
34 certify that the agency and the legislative body were informed not
35 less than 10 days prior to the date on which the action was filed.
36 The agency shall file a response to any action filed by the Attorney
37 General pursuant to this section within 15 days of service.

38 (e) (1) On the earliest day that the business of the court will
39 permit, but not later than 45 days after the filing of an action
40 pursuant to this section, the court shall conduct a hearing to

1 determine if good cause exists for believing that the agency has a
2 major audit violation and has not corrected that violation.

3 (2) If the court determines that no good cause exists or that the
4 agency had a major audit violation but corrected the major audit
5 violation, the court shall dismiss the action.

6 (3) If the court determines that there is good cause for believing
7 that the agency has a major audit violation and has not corrected
8 that major audit violation, the court shall immediately issue an
9 order that prohibits the agency from doing any of the following:

10 (A) Encumbering any funds or expending any money derived
11 from any source except to pay the obligations designated in
12 subparagraphs (A) to (F), inclusive, of paragraph (1) of subdivision
13 (e) of Section 33334.12, or to pay amounts for the operation and
14 administration of the agency in accordance with the agency's most
15 recently adopted budget.

16 (B) Adopting a redevelopment plan.

17 (C) Amending a redevelopment plan except to correct the major
18 audit violation that is the subject of the action.

19 (D) Issuing, selling, offering for sale, or delivering any bonds
20 or any other evidence of indebtedness, except to increase, improve,
21 preserve, or assist in the construction or rehabilitation of, housing
22 units that will be occupied by and affordable to persons or families
23 of extremely low, very low, low, or moderate income, in
24 accordance with this part.

25 (E) Incurring any indebtedness, except to increase, improve,
26 preserve, or assist in the construction or rehabilitation of, housing
27 units that will be occupied by and affordable to persons or families
28 of extremely low, very low, low, or moderate income, in
29 accordance with this part.

30 (F) Exercising the power of eminent domain.

31 (f) In a case that is subject to paragraph (3) of subdivision (e),
32 the court shall also set a hearing on the matter within 60 days after
33 issuance of the order.

34 (g) If, on the basis of that subsequent hearing, the court
35 determines that the agency has a major audit violation and has not
36 corrected that violation, the court shall order the agency to comply
37 with this part within 30 days, and order the agency to forfeit to the
38 state a monetary sanction commensurate with the violation. The
39 sanction shall not be paid from the agency's Low and Moderate

1 Income Housing Fund or any other city, county, or agency special
2 fund related to housing.

3 (h) The order issued by the court pursuant to paragraph (3) of
4 subdivision (e) shall continue in effect until the court determines
5 that the agency has corrected the major audit violation. If the court
6 determines that the agency has corrected the major audit violation,
7 the court may dissolve its order issued pursuant to paragraph (3)
8 of subdivision (e) at any time.

9 (i) An action filed pursuant to this section to compel an agency
10 to comply with this part is in addition to any other remedy, and is
11 not an exclusive means to compel compliance. This section shall
12 not be construed to preclude an action to compel compliance with
13 this article by any other interested party or resident of the
14 jurisdiction.

15 (j) As used in this section, “major audit violation” means that,
16 for the fiscal year in question, an agency did not:

17 (1) File an independent financial audit report that substantially
18 conforms with the requirements of subdivision (a) of Section
19 33080.1.

20 (2) File a fiscal statement that includes substantially all of the
21 information required by Section 33080.5.

22 (3) Establish time limits, as required by Section 33333.6.

23 (4) Deposit all required tax increment revenues and all other
24 funds required to be deposited into the ~~fun~~ fund directly into the
25 Low and Moderate Income Housing Fund upon receipt, as required
26 by Section 33334.3, 33334.6, 33487, or 33492.16.

27 (5) Establish a Low and Moderate Income Housing Fund, as
28 required by subdivision (a) of Section 33334.3 or Section 33487.

29 (6) Accrue interest earned by the Low and Moderate Income
30 Housing Fund to that fund, as required by subdivision (b) of
31 Section 33334.3.

32 (7) Comply with subdivisions (d) and (e) of Section 33334.3,
33 governing eligible expenditures for planning and general
34 administration from the Low and Moderate Income Housing Fund,
35 and adopt the resolution required by subdivision (b) of Section
36 33080.2.

37 (8) Initiate development of housing on real property acquired
38 using moneys from the Low and Moderate Income Housing Fund
39 or sell the property, as required by Section 33334.16.

40 (9) Adopt an implementation plan, as required by Section 33490.

1 SEC. 5. Section 33080.9 is added to the Health and Safety
2 Code, to read:

3 33080.9. (a) (1) The department shall forward to the Attorney
4 General and the Controller a copy of any audit or investigation of
5 a redevelopment agency conducted pursuant to Section 50464.5.

6 (2) On or before April 1 of each year, the department shall
7 determine for all audits and investigations conducted the previous
8 year, including those audits and investigations conducted pursuant
9 to Section 50464.5, whether an audit or investigation contains
10 major audit violations, as defined in subdivision (j) of Section
11 33080.8. The department shall make the information available on
12 its Internet Web site.

13 (b) On or before June 1 of each year, the department shall
14 determine for each major audit violation identified pursuant to
15 subdivision (a) if the agency has corrected the major audit
16 violation. Before making this determination, the department shall
17 consult with each affected agency and may consult with affected
18 local community groups. In making this determination, the
19 department may request and shall receive the prompt assistance
20 of public officials and public agencies, including, but not limited
21 to, the affected agencies, counties, and cities. If the department
22 determines an agency has not corrected the major audit violation,
23 the department shall send a list of those agencies, their major audit
24 violations, all relevant documentation, and the affidavits required
25 pursuant to subdivision (e) to the Attorney General for any action
26 pursuant to this section.

27 (c) For each agency the department refers to the Attorney
28 General pursuant to subdivision (b), the department shall notify
29 the agency and its legislative body that the agency was on the list
30 sent to the Attorney General. The notice shall inform the agency
31 and its legislative body of the duties imposed pursuant to Section
32 33080.2.

33 (d) For each agency the department refers to the Attorney
34 General pursuant to subdivision (b), the provisions of subdivisions
35 (d) to (i), inclusive, of Section 33080.8 shall apply, except that
36 references to the Controller in those subdivisions shall be deemed
37 to refer to the department.

38 (e) Nothing in this section shall be construed to permit the
39 department to initiate or settle litigation, or to resolve any
40 departmental audit or investigation in a manner contrary to law.

1 SEC. 6. Section 33080.11 is added to the Health and Safety
2 Code, to read:

3 33080.11. (a) The Controller may conduct quality control
4 reviews of independent financial and compliance audit reports
5 required by Section 33080.1 to the extent it is feasible to do so
6 within existing budgetary resources. The Controller shall
7 communicate the results of his or her reviews to the independent
8 auditor and the agency for which the audit was conducted, and
9 shall review his or her findings with the independent auditor.

10 (b) If the quality control review specified in subdivision (a)
11 indicates the audit was conducted in a manner that may constitute
12 unprofessional conduct, as defined in Section 5100 of the Business
13 and Professions Code, including, but not limited to, gross
14 negligence resulting in a material misstatement in the audit or
15 failure to disclose noncompliant acts, the Controller shall refer the
16 case to the California Board of Accountancy. If the board
17 determines that the independent auditor conducted an audit in an
18 unprofessional manner, the independent auditor is prohibited from
19 performing any redevelopment agency audit for a period of three
20 years, in addition to any other penalties the board may impose.

21 SEC. 7. Section 33080.12 is added to the Health and Safety
22 Code, to read:

23 33080.12. (a) (1) Whenever the Controller determines through
24 two consecutive quality control reviews, pursuant to Section
25 33080.11, that audits performed by an independent auditor pursuant
26 to Section 33080.1 were not performed in substantial conformity
27 with provisions of the audit and report guidelines adopted pursuant
28 to Section 33080.3, the Controller shall notify in writing the
29 independent auditor and the California Board of Accountancy.

30 (2) If the independent auditor does not file an appeal in writing
31 to the board within 30 calendar days after receipt of the Controller's
32 notification, the Controller's determination under this section shall
33 be final.

34 (3) If an appeal is filed with the California Board of
35 Accountancy, the board shall complete an investigation of the
36 appeal. On the basis of the investigation, the board may do either
37 of the following:

38 (A) Find the Controller's determination should not be upheld
39 and has no effect.

40 (B) Schedule the appeal for a hearing.

1 (b) If the Controller’s determination pursuant to subdivision (a)
2 becomes final, the independent auditor shall be ineligible to
3 conduct audits pursuant to Section 33080.1 for a period of three
4 years, or, in the event of an appeal, for any period and subject to
5 conditions that may be ordered by the California Board of
6 Accountancy. No later than March 1 following the date on which
7 the Controller’s determination becomes final, the Controller shall
8 notify each agency of those independent auditors determined to
9 be ineligible under this section or Section 33080.11. Agencies
10 shall not use the audit services of an independent auditor ineligible
11 under this section.

12 (c) For the purposes of this section, “independent auditor” shall
13 mean any person or firm entering into a contract to conduct an
14 audit under Section 33080.1.

15 (d) This section shall not preclude the California Board of
16 Accountancy from taking any disciplinary action it deems
17 appropriate under any other provisions of law.

18 SEC. 8. Section 33334.2 of the Health and Safety Code is
19 amended to read:

20 33334.2. (a) Except as provided in subdivision (k), not less
21 than 20 percent of all taxes that are allocated to the agency pursuant
22 to Section 33670 shall be used by the agency for the purposes of
23 increasing, improving, and preserving the community’s supply of
24 low- and moderate-income housing available at affordable housing
25 cost, as defined by Section 50052.5, to persons and families of
26 low or moderate income, as defined in Section 50093, lower
27 income households, as defined by Section 50079.5, very low
28 income households, as defined in Section 50105, and extremely
29 low income households, as defined by Section 50106, that is
30 occupied by these persons and families, unless one of the following
31 findings is made annually by resolution:

32 (1) (A) That no need exists in the community to improve,
33 increase, or preserve the supply of low- and moderate-income
34 housing, including housing for very low income households in a
35 manner that would benefit the project area and that this finding is
36 consistent with the housing element of the community’s general
37 plan required by Article 10.6 (commencing with Section 65580)
38 of Chapter 3 of Division 1 of Title 7 of the Government Code,
39 including its share of the regional housing needs of very low

1 income households and persons and families of low or moderate
2 income.

3 (B) This finding shall only be made if the housing element of
4 the community's general plan demonstrates that the community
5 does not have a need to improve, increase, or preserve the supply
6 of low- and moderate-income housing available at affordable
7 housing cost to persons and families of low or moderate income
8 and to very low income households. This finding shall only be
9 made if it is consistent with the planning agency's annual report
10 to the legislative body on implementation of the housing element
11 required by subdivision (b) of Section 65400 of the Government
12 Code. No agency of a charter city shall make this finding unless
13 the planning agency submits the report pursuant to subdivision (b)
14 of Section 65400 of the Government Code. This finding shall not
15 take effect until the agency has complied with subdivision (b) of
16 this section.

17 (2) (A) That some stated percentage less than 20 percent of the
18 taxes that are allocated to the agency pursuant to Section 33670
19 is sufficient to meet the housing needs of the community, including
20 its share of the regional housing needs of persons and families of
21 low- or moderate-income and very low income households, and
22 that this finding is consistent with the housing element of the
23 community's general plan required by Article 10.6 (commencing
24 with Section 65580) of Chapter 3 of Division 1 of Title 7 of the
25 Government Code.

26 (B) This finding shall only be made if the housing element of
27 the community's general plan demonstrates that a percentage of
28 less than 20 percent will be sufficient to meet the community's
29 need to improve, increase, or preserve the supply of low- and
30 moderate-income housing available at affordable housing cost to
31 persons and families of low or moderate income and to very low
32 income households. This finding shall only be made if it is
33 consistent with the planning agency's annual report to the
34 legislative body on implementation of the housing element required
35 by subdivision (b) of Section 65400 of the Government Code. No
36 agency of a charter city shall make this finding unless the planning
37 agency submits the report pursuant to subdivision (b) of Section
38 65400 of the Government Code. This finding shall not take effect
39 until the agency has complied with subdivision (b) of this section.

1 (C) For purposes of making the findings specified in this
2 paragraph and paragraph (1), the housing element of the general
3 plan of a city, county, or city and county shall be current, and shall
4 have been determined by the department pursuant to Section 65585
5 to be in substantial compliance with Article 10.6 (commencing
6 with Section 65580) of Chapter 3 of Division 1 of Title 7 of the
7 Government Code.

8 (3) (A) That the community is making a substantial effort to
9 meet its existing and projected housing needs, including its share
10 of the regional housing needs, with respect to persons and families
11 of low and moderate income, particularly very low income
12 households, as identified in the housing element of the
13 community’s general plan required by Article 10.6 (commencing
14 with Section 65580) of Chapter 3 of Division 1 of Title 7 of the
15 Government Code, and that this effort, consisting of direct financial
16 contributions of local funds used to increase and improve the
17 supply of housing affordable to, and occupied by, persons and
18 families of low or moderate income and very low income
19 households is equivalent in impact to the funds otherwise required
20 to be set aside pursuant to this section. In addition to any other
21 local funds, these direct financial contributions may include federal
22 or state grants paid directly to a community and that the community
23 has the discretion of using for the purposes for which moneys in
24 the Low and Moderate Income Housing Fund may be used. The
25 legislative body shall consider the need that can be reasonably
26 foreseen because of displacement of persons and families of low
27 or moderate income or very low income households from within,
28 or adjacent to, the project area, because of increased employment
29 opportunities, or because of any other direct or indirect result of
30 implementation of the redevelopment plan. No finding under this
31 subdivision may be made until the community has provided or
32 ensured the availability of replacement dwelling units as defined
33 in Section 33411.2 and until it has complied with Article 9
34 (commencing with Section 33410).

35 (B) In making the determination that other financial
36 contributions are equivalent in impact pursuant to this subdivision,
37 the agency shall include only those financial contributions that are
38 directly related to programs or activities authorized under
39 subdivision (e).

1 (C) The authority for making the finding specified in this
2 paragraph shall expire on June 30, 1993, except that the expiration
3 shall not be deemed to impair contractual obligations to
4 bondholders or private entities incurred prior to May 1, 1991, and
5 made in reliance on the provisions of this paragraph. Agencies that
6 make this finding after June 30, 1993, shall show evidence that
7 the agency entered into the specific contractual obligation with
8 the specific intention of making a finding under this paragraph in
9 order to provide sufficient revenues to pay off the indebtedness.

10 (b) Within 10 days following the making of a finding under
11 either paragraph (1) or (2) of subdivision (a), the agency shall send
12 the Department of Housing and Community Development a copy
13 of the finding, including the factual information supporting the
14 finding and other factual information in the housing element that
15 demonstrates that either (1) the community does not need to
16 increase, improve, or preserve the supply of housing for low- and
17 moderate-income households, including very low income
18 households, or (2) a percentage less than 20 percent will be
19 sufficient to meet the community's need to improve, increase, and
20 preserve the supply of housing for low- and moderate-income
21 households, including very low income households. Within 10
22 days following the making of a finding under paragraph (3) of
23 subdivision (a), the agency shall send the Department of Housing
24 and Community Development a copy of the finding, including the
25 factual information supporting the finding that the community is
26 making a substantial effort to meet its existing and projected
27 housing needs. Agencies that make this finding after June 30, 1993,
28 shall also submit evidence to the department of its contractual
29 obligations with bondholders or private entities incurred prior to
30 May 1, 1991, and made in reliance on this finding.

31 (c) In any litigation to challenge or attack a finding made under
32 paragraph (1), (2), or (3) of subdivision (a), the burden shall be
33 upon the agency to establish that the finding is supported by
34 substantial evidence in light of the entire record before the agency.
35 If an agency is determined by a court to have knowingly
36 misrepresented any material facts regarding the community's share
37 of its regional housing need for low- and moderate-income housing,
38 including very low income households, or the community's
39 production record in meeting its share of the regional housing need
40 pursuant to the report required by subdivision (b) of Section 65400

1 of the Government Code, the agency shall be liable for all court
2 costs and plaintiff's attorney's fees, and shall be required to allocate
3 not less than 25 percent of the agency's tax increment revenues to
4 its Low and Moderate Income Housing Fund in each year
5 thereafter.

6 (d) Nothing in this section shall be construed as relieving any
7 other public entity or entity with the power of eminent domain of
8 any legal obligations for replacement or relocation housing arising
9 out of its activities.

10 (e) In carrying out the purposes of this section, the agency may
11 exercise any or all of its powers for the construction, rehabilitation,
12 or preservation of affordable housing for extremely low, very low,
13 low-, and moderate-income persons or families, including the
14 following:

15 (1) Acquire real property or building sites subject to Section
16 33334.16.

17 (2) (A) Improve real property or building sites with onsite or
18 offsite improvements, but only if both (i) the improvements are
19 part of the new construction or rehabilitation of affordable housing
20 units for low- or moderate-income persons that are directly
21 benefited by the improvements, and are a reasonable and
22 fundamental component of the housing units, and (ii) the agency
23 requires that the units remain available at affordable housing cost
24 to, and occupied by, persons and families of extremely low, very
25 low, low, or moderate income for the same time period and in the
26 same manner as provided in subdivision (c) and paragraph (2) of
27 subdivision (f) of Section 33334.3.

28 (B) If the newly constructed or rehabilitated housing units are
29 part of a larger project and the agency improves or pays for onsite
30 or offsite improvements pursuant to the authority in this
31 subdivision, the agency shall pay only a portion of the total cost
32 of the onsite or offsite improvement. The maximum percentage
33 of the total cost of the improvement paid for by the agency shall
34 be determined by dividing the number of housing units that are
35 affordable to low- or moderate-income persons by the total number
36 of housing units, if the project is a housing project, or by dividing
37 the cost of the affordable housing units by the total cost of the
38 project, if the project is not a housing project.

39 (3) Donate real property to private or public persons or entities.

40 (4) Finance insurance premiums pursuant to Section 33136.

1 (5) Construct buildings or structures.

2 (6) Acquire buildings or structures.

3 (7) Rehabilitate buildings or structures.

4 (8) Provide subsidies to, or for the benefit of, extremely low
5 income households, as defined by Section 50106, very low income
6 households, as defined by Section 50105, lower income
7 households, as defined by Section 50079.5, or persons and families
8 of low or moderate income, as defined by Section 50093, to the
9 extent those households cannot obtain housing at affordable costs
10 on the open market. Housing units available on the open market
11 are those units developed without direct government subsidies.

12 (9) Develop plans, pay principal and interest on bonds, loans,
13 advances, or other indebtedness, or pay financing or carrying
14 charges.

15 (10) Maintain the community's supply of mobilehomes.

16 (11) Preserve the availability to lower income households of
17 affordable housing units in housing developments that are assisted
18 or subsidized by public entities and that are threatened with
19 imminent conversion to market rates.

20 (f) The agency may use these funds to meet, in whole or in part,
21 the replacement housing provisions in Section 33413. However,
22 nothing in this section shall be construed as limiting in any way
23 the requirements of that section.

24 (g) (1) The agency may use these funds inside or outside the
25 project area. The agency may only use these funds outside the
26 project area upon a resolution of the agency and the legislative
27 body that the use will be of benefit to the project. The
28 determination by the agency and the legislative body shall be final
29 and conclusive as to the issue of benefit to the project area. The
30 Legislature finds and declares that the provision of replacement
31 housing pursuant to Section 33413 is always of benefit to a project.
32 Unless the legislative body finds, before the redevelopment plan
33 is adopted, that the provision of low- and moderate-income housing
34 outside the project area will be of benefit to the project, the project
35 area shall include property suitable for low- and moderate-income
36 housing.

37 (2) (A) The Contra Costa County Redevelopment Agency may
38 use these funds anywhere within the unincorporated territory, or
39 within the incorporated limits of the City of Walnut Creek on sites
40 contiguous to the Pleasant Hill BART Station Area Redevelopment

1 Project area. The agency may only use these funds outside the
2 project area upon a resolution of the agency and board of
3 supervisors determining that the use will be of benefit to the project
4 area. In addition, the agency may use these funds within the
5 incorporated limits of the City of Walnut Creek only if the agency
6 and the board of supervisors find all of the following:

7 (i) Both the County of Contra Costa and the City of Walnut
8 Creek have adopted and are implementing complete and current
9 housing elements of their general plans that the Department of
10 Housing and Community Development has determined to be in
11 compliance with the requirements of Article 10.6 (commencing
12 with Section 65580) of Chapter 3 of Division 1 of Title 7 of the
13 Government Code.

14 (ii) The development to be funded shall not result in any
15 residential displacement from the site where the development is
16 to be built.

17 (iii) The development to be funded shall not be constructed in
18 an area that currently has more than 50 percent of its population
19 comprised of racial minorities or low-income families.

20 (iv) The development to be funded shall allow construction of
21 affordable housing closer to a rapid transit station than could be
22 constructed in the unincorporated territory outside the Pleasant
23 Hill BART Station Area Redevelopment Project.

24 (B) If the agency uses these funds within the incorporated limits
25 of the City of Walnut Creek, all of the following requirements
26 shall apply:

27 (i) The funds shall be used only for the acquisition of land for,
28 and the design and construction of, the development of housing
29 containing units affordable to, and occupied by, low- and
30 moderate-income persons.

31 (ii) If less than all the units in the development are affordable
32 to, and occupied by, low- or moderate-income persons, any agency
33 assistance shall not exceed the amount needed to make the housing
34 affordable to, and occupied by, low- or moderate-income persons.

35 (iii) The units in the development that are affordable to, and
36 occupied by, low- or moderate-income persons shall remain
37 affordable for a period of at least 55 years.

38 (iv) The agency and the City of Walnut Creek shall determine,
39 if applicable, whether Article XXXIV of the California Constitution
40 permits the development.

1 (h) The Legislature finds and declares that expenditures or
2 obligations incurred by the agency pursuant to this section shall
3 constitute an indebtedness of the project.

4 (i) This section shall only apply to taxes allocated to a
5 redevelopment agency for which a final redevelopment plan is
6 adopted on or after January 1, 1977, or for any area that is added
7 to a project by an amendment to a redevelopment plan, which
8 amendment is adopted on or after the effective date of this section.
9 An agency may, by resolution, elect to make all or part of the
10 requirements of this section applicable to any redevelopment
11 project for which a redevelopment plan was adopted prior to
12 January 1, 1977, subject to any indebtedness incurred prior to the
13 election.

14 (j) (1) (A) An action to compel compliance with the
15 requirement of Section 33334.3 to deposit not less than 20 percent
16 of all taxes that are allocated to the agency pursuant to Section
17 33670 or other revenue in the Low and Moderate Income Housing
18 Fund shall be commenced within 10 years of the alleged violation.
19 A cause of action for a violation accrues on the last day of the
20 fiscal year in which the funds were required to be deposited in the
21 Low and Moderate Income Housing Fund.

22 (B) An action to compel compliance with the requirement of
23 this section or Section 33334.6 that money deposited in the Low
24 and Moderate Income Housing Fund be used by the agency for
25 purposes of increasing, improving, and preserving the community's
26 supply of low- and moderate-income housing available at
27 affordable housing cost shall be commenced within 10 years of
28 the alleged violation. A cause of action for a violation accrues on
29 the date of the actual expenditure of the funds.

30 (C) An agency found to have deposited less into the Low and
31 Moderate Income Housing Fund than mandated by Section 33334.3
32 or to have spent money from the Low and Moderate Income
33 Housing Fund for purposes other than increasing, improving, and
34 preserving the community's supply of low- and moderate-income
35 housing, as mandated, by this section or Section 33334.3 or
36 33334.6 shall repay the funds with interest, plus an additional 50
37 percent of that amount and interest, in one lump sum pursuant to
38 Section 970.4 or 970.5 of the Government Code or may do either
39 of the following:

1 (i) Petition the court under Section 970.6 for repayment in
2 installments.

3 (ii) Repay the portion of the judgment due to the Low and
4 Moderate Income Housing Fund in equal installments over a period
5 of five years following the judgment.

6 (D) An action to compel compliance with the requirements of
7 Section 33487 shall be commenced within 10 years of the alleged
8 violation. A cause of action accrues on the last day of the fiscal
9 year in which the funds were required to be deposited in the Low
10 and Moderate Income Housing Fund or the date of the actual
11 expenditure of the funds, as applicable. In the event the deposits
12 to the Low and Moderate Income Housing Fund are less than the
13 amounts required pursuant to Section 33487, or the expenditures
14 from the Low and Moderate Income Housing Fund are not
15 consistent with Section 33487, the repayment required by
16 subparagraph (C) is applicable. This subparagraph applies to
17 actions filed on or after January 1, 2012.

18 (2) Repayment shall not be made from the funds required to be
19 set aside or used for low- and moderate-income housing pursuant
20 to this part, or any other funds designated for affordable housing.

21 (3) Notwithstanding clauses (i) and (ii) of subparagraph (C) or
22 subparagraph (D) of paragraph (1), all costs, including reasonable
23 attorney's fees if included in the judgment, are due and shall be
24 paid upon entry of judgment or order.

25 (4) Except as otherwise provided in this subdivision, Chapter
26 2 (commencing with Section 970) of Part 5 of Division 3.6 of Title
27 1 of the Government Code for the enforcement of a judgment
28 against a local public entity applies to a judgment against a local
29 public entity that violates this section.

30 (5) Except as provided in subparagraph (D) of paragraph (1),
31 this subdivision applies to actions filed on and after January 1,
32 2006.

33 (6) The limitations period specified in subparagraphs (A), (B),
34 and (D) of paragraph (1) does not apply to a cause of action brought
35 pursuant to Chapter 9 (commencing with Section 860) of Title 10
36 of Part 2 of the Code of Civil Procedure.

37 (k) (1) From July 1, 2009, to June 30, 2010, inclusive, an agency
38 may suspend all or part of its required allocation to the Low and
39 Moderate Income Housing Fund from taxes that are allocated to
40 that agency pursuant to Section 33670.

1 (2) An agency that suspends revenue pursuant to paragraph (1)
2 shall pay back to its low- and moderate-income housing fund the
3 amount of revenue that was suspended in the 2009–10 fiscal year
4 pursuant to this subdivision from July 1, 2010, to June 30, 2015,
5 inclusive.

6 (3) An agency that suspends revenue pursuant to paragraph (1)
7 and fails to repay or have repaid on its behalf the amount of revenue
8 suspended pursuant to paragraph (2) shall, commencing July 1,
9 2015, be required to allocate an additional 5 percent of all taxes
10 that are allocated to that agency pursuant to Section 33670 for low-
11 and moderate-income housing for the remainder of the time that
12 the agency receives allocations of tax revenue pursuant to Section
13 33670.

14 (4) An agency that fails to pay or have paid on its behalf the
15 full amount calculated pursuant to subparagraph (J) of paragraph
16 (2) of subdivision (a) of Section 33690, or subparagraph (J) of
17 paragraph (2) of subdivision (a) of Section 33690.5, as the case
18 may be, shall, commencing July 1, 2010, or July 1, 2011, as
19 applicable, be required to allocate an additional 5 percent of all
20 taxes that are allocated to that agency pursuant to Section 33670
21 for low- and moderate-income housing for the remainder of the
22 time that the agency receives allocations of tax revenue pursuant
23 to Section 33670.

24 SEC. 9. Section 33334.3 of the Health and Safety Code is
25 amended to read:

26 33334.3. (a) The funds that are required by Section 33334.2
27 or 33334.6 to be used for the purposes of increasing, improving,
28 and preserving the community's supply of low- and
29 moderate-income housing shall be held in a separate Low and
30 Moderate Income Housing Fund until used.

31 (b) Any interest earned by the Low and Moderate Income
32 Housing Fund and any repayments or other income to the agency
33 for loans, advances, or grants, of any kind from the Low and
34 Moderate Income Housing Fund, shall accrue to and be deposited
35 in, the fund and may only be used in the manner prescribed for the
36 Low and Moderate Income Housing Fund.

37 (c) The moneys in the Low and Moderate Income Housing Fund
38 shall be used to increase, improve, and preserve the supply of low-
39 and moderate-income housing within the territorial jurisdiction of
40 the agency.

1 (d) (1) It is the intent of the Legislature that the Low and
2 Moderate Income Housing Fund be used to the maximum extent
3 possible to defray the actual cost of producing, improving, or
4 preserving low- and moderate-income housing and to restrict the
5 use of Low and Moderate Income Housing Fund moneys for
6 planning and general administrative costs to those which are
7 necessary for and directly related to lawful use of the Low and
8 Moderate Income Housing Fund. All of the following categories
9 of costs paid from the Low and Moderate Income Housing Fund
10 shall be considered planning and general administrative costs that
11 are subject to the restrictions set forth in paragraph (2):

12 (A) Employee compensation costs, including salaries, wages,
13 and benefits, and related nonpersonnel costs, including, but not
14 limited to, travel, training, publications, and conferences, paid to
15 or on behalf of any agency, city, or county employee whose duties
16 include activities authorized under subdivision (e) of Section
17 33334.2, except for those activities that are ~~directly and necessarily~~
18 ~~associated with~~ *necessary for and directly related to* the
19 development of a specific eligible housing development project
20 ~~and those activities necessary to directly deliver or the deliverance~~
21 ~~of eligible programs serving low- and moderate-income households.~~
22 If the employee spends any time on matters other than those
23 authorized under subdivision (e) of Section 33334.2, Low and
24 Moderate Income Housing Fund moneys may only be used to pay
25 for employee compensation and related nonpersonnel costs in
26 proportion to the actual time that the employee spends on activities
27 authorized under subdivision (e) of Section 33334.2.

28 (B) Employee compensation costs, including salaries, wages,
29 and benefits, and related nonpersonnel costs, including, but not
30 limited to, travel, training, publications, and conferences, paid to
31 or on behalf of any agency, city, or county employee for activities
32 authorized under subdivision (e) of Section 33334.2 that are
33 ~~directly and necessarily associated with~~ *necessary for and directly*
34 *related to* the development of a specific eligible housing
35 development project or ~~necessary to directly deliver eligible~~
36 ~~programs~~ *the deliverance of eligible programs that* serve low- and
37 moderate-income households. Those activities shall include
38 negotiation and project management of disposition and
39 development agreements, land leases, loan agreements, and similar
40 affordable housing agreements; redevelopment agency work on

1 entitlements for eligible affordable housing developments; loan
2 processing and servicing; inspection of new and rehabilitated units;
3 construction monitoring of an eligible housing development; and
4 monitoring of affordable housing units. If the employee spends
5 any time on matters other than those authorized under subdivision
6 (e) of Section 33334.2, Low and Moderate Income Housing Fund
7 moneys may only be used to pay for employee compensation and
8 related nonpersonnel costs in proportion to the actual time that the
9 employee spends on activities authorized under subdivision (e) of
10 Section 33334.2.

11 (C) Employee compensation costs, including salaries, wages,
12 and benefits, paid to or on behalf of any agency, city, or county
13 employee who supervises or manages the work of an employee or
14 employees specified in subparagraph (A) *or* (B) or who provides
15 general administrative services, including, but not limited to,
16 finance, legal, human resources, information technology, and other
17 administrative services, that indirectly support activities authorized
18 under subdivision (e) of Section 33334.2 and nonpersonnel costs,
19 including, but not limited to, travel, training, publications, and
20 conferences, for those employees that are directly related to those
21 activities. Employee compensation costs shall (i) be justified by
22 an independent cost allocation study no more than six years old,
23 and (ii) not represent a greater proportion of the employee's total
24 compensation than the proportion of employees working directly
25 and exclusively on activities authorized under subdivision (e) of
26 Section 33334.2 in comparison to the total number of employees
27 supervised, managed, or indirectly supported by that employee.

28 (D) Overhead costs, including, but not limited to, rent or
29 mortgage payments, equipment, and office supplies, ~~provided that~~
30 ~~if~~ *supplies. If* the overhead costs are shared with departments or
31 employees whose duties include activities other than those
32 authorized under subdivision (e) of Section ~~33334.2. The 33334.2,~~
33 *the* proportion of the overhead costs paid from the Low and
34 Moderate Income Housing Fund shall not exceed the proportion
35 of employees working directly and exclusively on activities
36 authorized under subdivision (e) of Section 33334.2 represented
37 in comparison to the total number of employees sharing the space,
38 equipment, or office supplies.

39 (E) The total value of any contracts for agency planning or
40 administrative services that are related to activities authorized

1 under subdivision (e) of Section 33334.2 ~~and that are not associated~~
2 ~~with a specific housing development project allowed pursuant to~~
3 ~~Sections 33334.2, 33334.3, and 33334.6.~~

4 *(F) Any other costs for planning and general administrative*
5 *activities that are related to activities authorized under subdivision*
6 *(e) of Section 33334.2.*

7 (2) (A) Except as provided in subparagraph (C), an agency in
8 any fiscal year shall not expend more than 10 percent of the money
9 deposited into the Low and Moderate Income Housing Fund,
10 exclusive of debt proceeds, for planning and general administrative
11 costs described in subparagraphs (A), (C), (D), ~~and (E)~~ (E), and
12 (F) of paragraph (1).

13 (B) Except as provided in subparagraph (C), an agency in any
14 fiscal year shall not expend more than 10 percent of the money
15 deposited into the Low and Moderate Income Housing Fund,
16 exclusive of debt proceeds, for planning and general administrative
17 costs described in subparagraph (B) of paragraph (1), except that
18 an agency may additionally expend for these purposes any
19 difference between the cap described in subparagraph (A) and
20 actual expenditures for those planning and general administrative
21 costs.

22 (C) Subparagraphs (A) and (B) shall not apply to a project
23 area-specific Low and Moderate Income Housing Fund during the
24 first five fiscal years after adoption of that specific project area.
25 Subparagraphs (A) and (B) shall apply to a new or amended project
26 area if tax increment for that new or amended project area is
27 deposited into an aggregate Low and Moderate Income Housing
28 Fund covering more than one project area.

29 (3) In a challenge related to the proportionality of costs, as
30 required by subparagraphs (A), (B), (C), and (D) of paragraph (1),
31 the agency shall bear the burden of proof to demonstrate that the
32 costs are proportionate. In a challenge related to compliance with
33 the requirements of paragraph (2), the agency shall bear the burden
34 of proof to demonstrate that costs are appropriately allocated to
35 subparagraph (B) of paragraph (1).

36 (e) Notwithstanding paragraph (1) of subdivision (d), the agency
37 shall not expend moneys from the Low and Moderate Income
38 Housing Fund for any of the following purposes:

- 39 (1) Code enforcement.

1 (2) Land use planning or related activities of a planning
2 department, including development or revision of the general plan
3 housing element, except for the payment of normal project-related
4 planning fees applicable to all similar development projects. This
5 limitation shall not preclude an agency from expending moneys
6 from the Low and Moderate Income Housing Fund toward the
7 cost of agency staff participation in the development of the general
8 plan housing element provided that those costs are counted towards
9 the cap described in subparagraph (A) of paragraph (2) of
10 subdivision (d).

11 (3) Lobbying. The Legislature finds and declares that this
12 paragraph is declaratory of existing law.

13 (4) Administration of nonredevelopment activities unrelated to
14 activities allowed pursuant to this section, and Sections 33334.2,
15 33334.6, and 33487.

16 (f) (1) The requirements of this subdivision apply to all new or
17 substantially rehabilitated housing units developed or otherwise
18 assisted with moneys from the Low and Moderate Income Housing
19 Fund, pursuant to an agreement approved by an agency on or after
20 January 1, 1988. Except to the extent that a longer period of time
21 may be required by other provisions of law, the agency shall require
22 that housing units subject to this subdivision shall remain available
23 at affordable housing cost to, and occupied by, persons and families
24 of low or moderate income and very low income and extremely
25 low income households for the longest feasible time, but for not
26 less than the following periods of time:

27 (A) Fifty-five years for rental units. However, the agency may
28 replace rental units with equally affordable and comparable rental
29 units in another location within the community if (i) the
30 replacement units are available for occupancy prior to the
31 displacement of any persons and families of low or moderate
32 income residing in the units to be replaced and (ii) the comparable
33 replacement units are not developed with moneys from the Low
34 and Moderate Income Housing Fund.

35 (B) Forty-five years for owner-occupied units. However, the
36 agency may permit sales of owner-occupied units prior to the
37 expiration of the 45-year period for a price in excess of that
38 otherwise permitted under this subdivision pursuant to an adopted
39 program which protects the agency's investment of moneys from
40 the Low and Moderate Income Housing Fund, including, but not

1 limited to, an equity sharing program which establishes a schedule
2 of equity sharing that permits retention by the seller of a portion
3 of those excess proceeds based on the length of occupancy. The
4 remainder of the excess proceeds of the sale shall be allocated to
5 the agency and deposited in the Low and Moderate Income
6 Housing Fund. Only the units originally assisted by the agency
7 shall be counted towards the agency's obligations under Section
8 33413.

9 (C) Fifteen years for mutual self-help housing units that are
10 occupied by and affordable to very low and low-income
11 households. However, the agency may permit sales of mutual
12 self-help housing units prior to expiration of the 15-year period
13 for a price in excess of that otherwise permitted under this
14 subdivision pursuant to an adopted program that (i) protects the
15 agency's investment of moneys from the Low and Moderate
16 Income Housing Fund, including, but not limited to, an equity
17 sharing program that establishes a schedule of equity sharing that
18 permits retention by the seller of a portion of those excess proceeds
19 based on the length of occupancy; and (ii) ensures through a
20 recorded regulatory agreement, deed of trust, or similar recorded
21 instrument that if a mutual self-help housing unit is sold at any
22 time after expiration of the 15-year period and prior to 45 years
23 after the date of recording of the covenants or restrictions required
24 pursuant to paragraph (2), the agency recovers, at a minimum, its
25 original principal from the Low and Moderate Income Housing
26 Fund from the proceeds of the sale and deposits those funds into
27 the Low and Moderate Income Housing Fund. The remainder of
28 the excess proceeds of the sale not retained by the seller shall be
29 allocated to the agency and deposited in the Low and Moderate
30 Income Housing Fund. For the purposes of this subparagraph,
31 "mutual self-help housing unit" means an owner-occupied housing
32 unit for which persons and families of very low and low income
33 contribute no fewer than 500 hours of their own labor in individual
34 or group efforts to provide a decent, safe, and sanitary ownership
35 housing unit for themselves, their families, and others authorized
36 to occupy that unit. Nothing in this subparagraph precludes the
37 agency and the developer of the mutual self-help housing units
38 from agreeing to 45-year deed restrictions.

1 (2) If land on which those dwelling units are located is deleted
2 from the project area, the agency shall continue to require that
3 those units remain affordable as specified in this subdivision.

4 (3) The agency shall require the recording in the office of the
5 county recorder of the following documents:

6 (A) The covenants or restrictions implementing this subdivision
7 for each parcel or unit of real property subject to this subdivision.
8 The agency shall obtain and maintain a copy of the recorded
9 covenants or restrictions for not less than the life of the covenant
10 or restriction.

11 (B) For all new or substantially rehabilitated units developed
12 or otherwise assisted with moneys from the Low and Moderate
13 Income Housing Fund on or after January 1, 2008, a separate
14 document called “Notice of Affordability Restrictions on Transfer
15 of Property,” set forth in 14-point type or larger. This document
16 shall contain all of the following information:

17 (i) A recitation of the affordability covenants or restrictions. If
18 the document recorded under this subparagraph is recorded
19 concurrently with the covenants or restrictions recorded under
20 subparagraph (A), the recitation of the affordability covenants or
21 restrictions shall also reference the concurrently recorded
22 document. If the document recorded under this subparagraph is
23 not recorded concurrently with the covenants or restrictions
24 recorded under subparagraph (A), the recitation of the affordability
25 covenants or restrictions shall also reference the recorder’s
26 identification number of the document recorded under subparagraph
27 (A).

28 (ii) The date the covenants or restrictions expire.

29 (iii) The street address of the property, including, if applicable,
30 the unit number, unless the property is used to confidentially house
31 victims of domestic violence.

32 (iv) The assessor’s parcel number for the property.

33 (v) The legal description of the property.

34 (4) The agency shall require the recording of the document
35 required under subparagraph (B) of paragraph (3) not more than
36 30 days after the date of recordation of the covenants or restrictions
37 required under subparagraph (A) of paragraph (3).

38 (5) The county recorder shall index the documents required to
39 be recorded under paragraph (3) by the agency and current owner.

1 (6) Notwithstanding Section 27383 of the Government Code,
2 a county recorder may charge all authorized recording fees to any
3 party, including a public agency, for recording the document
4 specified in subparagraph (B) of paragraph (3).

5 (7) Notwithstanding any other provision of law, the covenants
6 or restrictions implementing this subdivision shall run with the
7 land and shall be enforceable against any owner who violates a
8 covenant or restriction and each successor in interest who continues
9 the violation, by any of the following:

10 (A) The agency.
11 (B) The community, as defined in Section 33002.
12 (C) A resident of a unit subject to this subdivision.
13 (D) A residents’ association with members who reside in units
14 subject to this subdivision.
15 (E) A former resident of a unit subject to this subdivision who
16 last resided in that unit.
17 (F) An applicant seeking to enforce the covenants or restrictions
18 for a particular unit that is subject to this subdivision, if the
19 applicant conforms to all of the following:

20 (i) Is of low or moderate income, as defined in Section 50093.
21 (ii) Is able and willing to occupy that particular unit.
22 (iii) Was denied occupancy of that particular unit due to an
23 alleged breach of a covenant or restriction implementing this
24 subdivision.

25 (G) A person on an affordable housing waiting list who is of
26 low or moderate income, as defined in Section 50093, and who is
27 able and willing to occupy a unit subject to this subdivision.

28 (8) A dwelling unit shall not be counted as satisfying the
29 affordable housing requirements of this part, unless covenants for
30 that dwelling unit are recorded in compliance with subparagraph
31 (A) of paragraph (3).

32 (9) Failure to comply with the requirements of subparagraph
33 (B) of paragraph (3) shall not invalidate any covenants or
34 restrictions recorded pursuant to subparagraph (A) of paragraph
35 (3).

36 (g) “Housing,” as used in this section, includes residential hotels,
37 as defined in subdivision (k) of Section 37912. The definitions of
38 “lower income households,” “very low income households,” and
39 “extremely low income households” in Sections 50079.5, 50105,
40 and 50106 shall apply to this section. “Longest feasible time,” as

1 used in this section, includes, but is not limited to, unlimited
2 duration.

3 (h) “Increasing, improving, and preserving the community’s
4 supply of low- and moderate-income housing,” as used in this
5 section and in Section 33334.2, includes the preservation of rental
6 housing units assisted by federal, state, or local government on the
7 condition that units remain affordable to, and occupied by, low-
8 and moderate-income households, including extremely low and
9 very low income households, for the longest feasible time, but not
10 less than 55 years, beyond the date the subsidies and use restrictions
11 could be terminated and the assisted housing units converted to
12 market rate rentals. In preserving these units the agency shall
13 require that the units remain affordable to, and occupied by, persons
14 and families of low- and moderate-income and extremely low and
15 very low income households for the longest feasible time but not
16 less than 55 years. However, the agency may replace rental units
17 with equally affordable and comparable rental units in another
18 location within the community if (1) the replacement units in
19 another location are available for occupancy prior to the
20 displacement of any persons and families of low or moderate
21 income residing in the units to be replaced and (2) the comparable
22 replacement units are not developed with moneys from the Low
23 and Moderate Income Housing Fund.

24 (i) Agencies that have more than one project area may satisfy
25 the requirements of Sections 33334.2 and 33334.6 and of this
26 section by allocating, in any fiscal year, less than 20 percent in
27 one project area, if the difference between the amount allocated
28 and the 20 percent required is instead allocated, in that same fiscal
29 year, to the Low and Moderate Income Housing Fund from tax
30 increment revenues from other project areas. Prior to allocating
31 funds pursuant to this subdivision, the agency shall make the
32 finding required by subdivision (g) of Section 33334.2.

33 (j) Funds from the Low and Moderate Income Housing Fund
34 shall not be used to the extent that other reasonable means of
35 public, private, or commercial financing for the new construction,
36 acquisition, or substantial rehabilitation of units at the same level
37 of affordability and quantity are reasonably available to the agency
38 or to the owner of the units. Prior to the expenditure of funds from
39 the Low and Moderate Income Housing Fund for the new
40 construction, acquisition, or substantial rehabilitation of housing

1 units, where those funds will exceed 50 percent of the cost of
 2 producing the units, the agency shall find, based on substantial
 3 evidence, that the use of the funds is necessary because the agency
 4 or owner of the units has made a good faith attempt but been unable
 5 to obtain other public, private, or commercial financing of the units
 6 at the same level of affordability and quantity.

7 SEC. 10. Section 33334.4 of the Health and Safety Code is
 8 amended to read:

9 33334.4. (a) (1) Over each 10-year implementation planning
 10 period, as specified in clause (iii) of subparagraph (A) of paragraph
 11 (2) of subdivision (a) of Section 33490, that begins before January
 12 1, 2010, each agency shall expend the moneys in the Low and
 13 Moderate Income Housing Fund to assist housing for persons of
 14 low income and housing for persons of very low income in at least
 15 the same proportion as the total number of housing units needed
 16 for each of those income groups bears to the total number of units
 17 needed for persons of moderate, low, and very low income within
 18 the community, as those needs have been determined for the
 19 community pursuant to Section 65584 of the Government Code.

20 (2) Following the last 10-year implementation planning period
 21 referenced in paragraph (1), all of the following shall apply:

22 (A) At least 75 percent of each agency’s expenditures from the
 23 Low and Moderate Income Housing Fund exclusive of debt service
 24 payments shall directly assist the new construction, acquisition
 25 and substantial rehabilitation, or preservation of housing for
 26 persons of extremely low, very low, or low income.

27 (B) At least 50 percent of each agency’s expenditures from the
 28 Low and Moderate Income Housing Fund exclusive of debt service
 29 payments shall directly assist the new construction, acquisition
 30 and substantial rehabilitation, or preservation of housing for
 31 persons of extremely low or very low income.

32 (C) At least 25 percent of each agency’s expenditures from the
 33 Low and Moderate Income Housing Fund exclusive of debt service
 34 payments shall directly assist the new construction, acquisition,
 35 and substantial rehabilitation, or preservation of housing for
 36 persons of extremely low income.

37 (3) The expenditures for extremely low income housing,
 38 pursuant to subparagraph (C) of paragraph (2), shall count towards
 39 the requirements of subparagraphs (A) and (B) of paragraph (2),
 40 and the expenditures for very low and extremely low-income

1 housing pursuant to subparagraphs (B) and (C) of paragraph (2)
2 shall count towards the requirements of subparagraph (A) of
3 paragraph (2).

4 (4) An agency shall satisfy the requirements of paragraph (2)
5 by demonstrating in each implementation plan that as of the end
6 of the immediately preceding 5-year implementation planning
7 period, the agency's aggregate expenditures from the Low and
8 Moderate Income Housing Fund, exclusive of debt service
9 payments, between the end of the last 10-year implementation
10 period referenced in paragraph (1) and the end of the immediately
11 preceding 5-year implementation planning period satisfy the
12 proportionality requirements set forth in paragraph (2).

13 (5) (A) For purposes of this subdivision, "preservation" means
14 preserving the affordability of an assisted housing development
15 that is eligible for prepayment or termination or for which within
16 the expiration of rental restrictions is scheduled to occur within
17 five years, as those terms are defined in Section 65863.10 of the
18 Government Code.

19 (B) For purposes of this section, "housing for persons of
20 extremely low income" shall mean housing that is available at an
21 affordable rent or affordable housing cost to, and occupied by,
22 households earning 30 percent of the area median income or 30
23 percent of the statewide median income, whichever is greater.

24 (b) Each agency shall expend over the duration of each
25 redevelopment implementation plan, the moneys in the Low and
26 Moderate Income Housing Fund to assist housing that is available
27 to all persons regardless of age in at least the same proportion as
28 the number of low-income households with a member under age
29 65 years bears to the total number of low-income households of
30 the community as reported in the most recent census of the United
31 States Census Bureau.

32 (c) (1) An agency that has deposited an aggregate amount that
33 is less than two million dollars (\$2,000,000) in the Low and
34 Moderate Income Housing Fund over the first 5-year
35 implementation planning period following the last 10-year
36 implementation planning period referenced in paragraph (1) of
37 subdivision (a) shall have 10 years following the last 10-year
38 implementation planning period referenced in paragraph (1) of
39 subdivision (a) to meet the requirements of paragraph (2) of
40 subdivision (a).

1 (2) An agency that has deposited in the Low and Moderate
 2 Income Housing Fund over the first five years of the period of an
 3 implementation plan an aggregate amount that is less than two
 4 million dollars (\$2,000,000) shall have an extra five years to meet
 5 the requirements of subdivision (b).

6 (d) For the purposes of this section only, funds may be deemed
 7 expended if the agency has contractually obligated the funds to an
 8 entity that is independent of the agency or its community for the
 9 development of a specific eligible housing development, provided
 10 that if the contract is terminated prior to expenditure of the funds,
 11 the funds shall be discounted from the calculations required in
 12 subdivisions (a) and (b) and the provisions of subdivision (e) shall
 13 apply.

14 (e) (1) If an agency fails to comply with subdivision (a) within
 15 the required time period, it shall not expend any moneys from the
 16 Low and Moderate Income Housing Fund to assist households
 17 whose incomes exceed 50 percent of the area median income until
 18 the agency has expended the funds that it should have expended
 19 for extremely low, very low, and low-income housing, respectively,
 20 in previous implementation plan periods.

21 (2) If an agency fails to comply with subdivision (b) within the
 22 required time period, it shall not expend any moneys from the Low
 23 and Moderate Income Housing Fund to assist senior households
 24 until the agency has expended the funds that it should have
 25 expended for housing available to all persons regardless of age in
 26 previous implementation plan periods.

27 (f) *Agencies are encouraged to expend moneys in the Low and*
 28 *Moderate Income Housing Fund to assist special housing needs*
 29 *identified in the community's housing element pursuant to*
 30 *paragraph (7) of subdivision (a) of Section 65583 of the*
 31 *Government Code.*

32 SEC. 11. Section 33334.12 of the Health and Safety Code is
 33 amended to read:

34 33334.12. (a) Agencies shall expend moneys from the Low
 35 and Moderate Income Housing Fund in a manner that does not
 36 accrue an excess surplus, as defined in paragraph (1) of subdivision
 37 (c). If an agency, after three years has elapsed from the date that
 38 the moneys become excess surplus, has not expended or
 39 encumbered its excess surplus, the agency shall be subject to
 40 sanctions pursuant to subdivision (e), until the agency has expended

1 or encumbered its excess surplus plus an additional amount, equal
2 to 50 percent of the amount of the excess surplus that remains at
3 the end of the three-year period. The additional expenditure shall
4 not be from the agency's Low and Moderate Income Housing
5 Fund, or any other city, county, or agency special fund related to
6 housing, but shall be used in a manner that meets all requirements
7 for expenditures from that fund.

8 (b) For disbursements or expenditures of excess surplus made
9 prior to January 1, 2012, the housing authority or other public
10 agency to which the money is transferred shall utilize the moneys
11 for the purposes of, and subject to the same restrictions that are
12 applicable to, the redevelopment agency under this part, and for
13 that purpose may exercise all of the powers of a housing authority
14 under Part 2 (commencing with Section 34200) to an extent not
15 inconsistent with these limitations.

16 (c) For disbursements or expenditures of excess surplus made
17 prior to January 1, 2012, notwithstanding Section 34209 or any
18 other law, for the purpose of accepting a transfer of, and using,
19 moneys pursuant to this section, the housing authority of a county
20 or other public agency may exercise its powers within the territorial
21 jurisdiction of a city redevelopment agency located in that county.

22 (d) For disbursements or expenditures of excess surplus made
23 prior to January 1, 2012, the amount of excess surplus that shall
24 be transferred to the housing authority or other public agency
25 because of a failure of the redevelopment agency to expend or
26 encumber excess surplus within one year shall be the amount of
27 the excess surplus that is not so expended or encumbered. The
28 housing authority or other public agency to which the moneys are
29 transferred shall expend or encumber these moneys for authorized
30 purposes not later than three years after the date these moneys
31 were transferred from the Low and Moderate Income Housing
32 Fund.

33 (e) (1) Until a time when the agency has expended or
34 encumbered excess surplus moneys pursuant to subdivision (a),
35 the agency shall be prohibited from encumbering any funds or
36 expending any moneys derived from any source, except that the
37 agency may encumber funds and expend moneys to pay the
38 following obligations, if any, that were incurred by the agency
39 prior to three years from the date the moneys became excess
40 surplus:

1 (A) Bonds, notes, interim certificates, debentures, or other
2 obligations issued by an agency, whether funded, refunded,
3 assumed, or otherwise, pursuant to Article 5 (commencing with
4 Section 33640).

5 (B) Loans or moneys advanced to the agency, including, but
6 not limited to, loans from federal, state, or local agencies, or a
7 private entity.

8 (C) Contractual obligations which, if breached, could subject
9 the agency to damages or other liabilities or remedies.

10 (D) Obligations incurred pursuant to Section 33445.

11 (E) Indebtedness incurred pursuant to Section 33334.2 or
12 33334.6.

13 (F) Obligations incurred pursuant to Section 33401.

14 (G) An amount, to be expended for the operation and
15 administration of the agency, that may not exceed 75 percent of
16 the amount spent for those purposes in the preceding fiscal year.

17 (2) This subdivision shall not be construed to prohibit the
18 expenditure of excess surplus funds or other funds to meet the
19 requirement in subdivision (a) that the agency spend or encumber
20 excess surplus funds, plus an amount equal to 50 percent of excess
21 surplus, prior to spending or encumbering funds for any other
22 purpose.

23 (f) For purposes of this section:

24 (1) “Excess surplus” means any unexpended and unencumbered
25 amount in an agency’s Low and Moderate Income Housing Fund;
26 that exceeds the greater of one million dollars (\$1,000,000) or the
27 aggregate amount deposited into the Low and Moderate Income
28 Housing Fund pursuant to Sections 33334.2 and 33334.6 during
29 the agency’s preceding four fiscal years. The first fiscal year to be
30 included in this computation is the 1989–90 fiscal year, and the
31 first date on which an excess surplus may exist is July 1, 1994.

32 (2) Moneys shall be deemed encumbered if committed pursuant
33 to a legally enforceable contract or agreement for expenditure for
34 purposes specified in Section 33334.2 or 33334.3.

35 (3) (A) For purposes of determining whether an excess surplus
36 exists, it is the intent of the Legislature to give credit to agencies
37 which convey land for less than fair market value, on which low-
38 and moderate-income housing is built or is to be built if at least
39 49 percent of the units developed on the land are available at
40 affordable housing cost to lower income households for at least

1 the time specified in subdivision (e) of Section 33334.3, and
2 otherwise comply with all of the provisions of this division
3 applicable to expenditures of moneys from a low- and
4 moderate-income housing fund established pursuant to Section
5 33334.3. Therefore, for the sole purpose of determining the amount,
6 if any, of an excess surplus, an agency may make the following
7 calculation: if an agency sells, leases, or grants land acquired with
8 moneys from the Low and Moderate Income Housing Fund,
9 established pursuant to Section 33334.3, for an amount which is
10 below fair market value, and if at least 49 percent of the units
11 constructed or rehabilitated on the land are affordable to lower
12 income households, as defined in Section 50079.5, the difference
13 between the fair market value of the land and the amount the
14 agency receives may be subtracted from the amount of moneys in
15 an agency's Low and Moderate Income Housing Fund.

16 (B) If taxes that are deposited in the Low and Moderate Income
17 Housing Fund are used as security for bonds or other indebtedness,
18 the proceeds of the bonds or other indebtedness, and income and
19 expenditures related to those proceeds, shall not be counted in
20 determining whether an excess surplus exists. The unspent portion
21 of the proceeds of bonds or other indebtedness, and income related
22 thereto, shall be excluded from the calculation of the unexpended
23 and unencumbered amount in the Low and Moderate Income
24 Housing Fund when determining whether an excess surplus exists.

25 (C) Nothing in this subdivision shall be construed to restrict the
26 authority of an agency provided in any other provision of this part
27 to expend funds from the Low and Moderate Income Housing
28 Fund.

29 (D) The department shall develop and periodically revise the
30 methodology to be used in the calculation of excess surplus as
31 required by this section. The director shall appoint an advisory
32 committee to advise in the development of this methodology. The
33 advisory committee shall include department staff, affordable
34 housing advocates, and representatives of the California
35 Redevelopment Association, the California Society of Certified
36 Public Accountants, the Controller, and any other authorities or
37 persons interested in the field that the director deems necessary
38 and appropriate.

39 (g) Communities in which an agency has disbursed excess
40 surplus funds pursuant to this section shall not disapprove a low-

1 or moderate-income housing project funded in whole or in part by
2 the excess surplus funds if the project is consistent with applicable
3 building codes and the land use designation specified in any
4 element of the general plan as it existed on the date the application
5 was deemed complete. A local agency may require compliance
6 with local development standards and policies appropriate to and
7 consistent with meeting the quantified objectives relative to the
8 development of housing, as required in housing elements of the
9 community pursuant to subdivision (b) of Section 65583 of the
10 Government Code.

11 (h) Notwithstanding subdivision (a), any agency that has funds
12 that become excess surplus on July 1, 1994, shall have, pursuant
13 to subdivision (a), until January 1, 1995, to decide to transfer the
14 funds to a housing authority or other public agency, or until January
15 1, 1997, to expend or encumber those funds, or face sanctions
16 pursuant to subdivision (e).

17 SEC. 12. Section 33334.16 of the Health and Safety Code is
18 amended to read:

19 33334.16. (a) (1) For each interest in real property acquired
20 using moneys from the Low and Moderate Income Housing Fund,
21 the agency shall, within five years from the date of acquisition,
22 complete at least one of the following activities:

23 (A) Enter into a disposition and development agreement or a
24 land lease with a third party for the development of housing
25 affordable to persons and families of low and moderate income.

26 (B) Obtain final land use entitlements and secure full financing
27 for agency development of housing affordable to persons and
28 families of low and moderate income.

29 (C) Submit a remedial action plan for the real property to the
30 appropriate oversight agency, including, but not limited to, the
31 Department of Toxic Substances Control, ~~the Regional Water~~
32 ~~Quality Control Board~~ *a California regional water quality control*
33 *board*, or the Office of Human Health Risk Assessment, for the
34 cleanup of contamination.

35 (2) ~~If~~ *On or after January 1, 2013, if* none of the activities
36 described in paragraph (1) has been completed within five years,
37 or if less than 10 percent of the dwelling units or floor area of a
38 project is developed within 10 years from the date the agency
39 originally acquired the property, the agency shall reimburse the
40 Low and Moderate Income Housing Fund 150 percent of the

1 amount expended to acquire and maintain the property or of the
2 current fair market value of the property, whichever amount is
3 greater.

4 (3) If the agency owns two or more adjacent parcels of real
5 property that comprise a single redevelopment project for which
6 the parcels are described in the implementation plan, the date of
7 acquisition for all such parcels shall be the date of acquisition of
8 the last acquired parcel, provided that this date shall not be later
9 than 5 years after the acquisition of the first parcel.

10 (4) An agency may adopt a resolution to petition the department
11 for, and the department may grant, a single extension for up to five
12 years of the deadlines established in paragraphs (1) and (2) if the
13 department makes a finding that the failure to complete the required
14 activities is due to circumstances beyond the agency's or ~~host~~
15 ~~jurisdiction's~~ *community's* control and that the agency has a
16 feasible plan for the development of housing affordable to persons
17 and families of low and moderate income on the real property
18 within the period of the extension. The agency shall provide
19 information supporting the need for the extension and a plan for
20 development of the property. The department shall solicit
21 comments from known or expected parties interested in the petition
22 and consider comments from these and any other parties. The
23 department shall establish a schedule of fees to cover but not
24 exceed its costs under this subparagraph, and at the time the petition
25 is submitted the agency shall pay the fees with funds other than
26 those required to be set aside or used for low- and moderate-income
27 housing pursuant to this part or otherwise designated for affordable
28 housing.

29 (b) At any time, in addition to proceeds from the sale or transfer,
30 the agency shall deposit into the Low and Moderate Income
31 Housing Fund from agency revenues other than those required to
32 be deposited in the Low and Moderate Income Housing Fund an
33 amount equal to 50 percent of the fair market value of the property
34 at the time it is sold or transferred or, if the property is not sold or
35 transferred, of the fair market value of the land at the time a
36 building permit is issued for the property. This subdivision shall
37 apply only under either of the following conditions:

38 (1) A real property acquired using moneys from the Low and
39 Moderate Income Housing Fund is sold or transferred for a purpose

1 other than housing affordable to persons and families of low and
2 moderate income.

3 (2) A real property acquired using moneys from the Low and
4 Moderate Income Housing Fund is developed such that less than
5 50 percent of the floor area, or a percentage of the floor area equal
6 to the proportion that moneys from the Low and Moderate Income
7 Housing Fund represent to the total acquisition cost, whichever is
8 less, is housing affordable to persons and families of low and
9 moderate income.

10 SEC. 13. Section 33413 of the Health and Safety Code is
11 amended to read:

12 33413. (a) Whenever dwelling units affordable to or occupied
13 by persons and families of low or moderate income are destroyed
14 or removed from the low- and moderate-income housing market
15 as part of a redevelopment project that is subject to a written
16 agreement with the agency or where financial assistance has been
17 provided by the agency, the agency shall, within four years of the
18 destruction or removal, construct, or cause to be constructed, for
19 rental or sale to persons and families of low or moderate income,
20 an equal number of replacement dwelling units that have an equal
21 or greater number of bedrooms as those destroyed or removed
22 units at affordable housing costs within the territorial jurisdiction
23 of the agency, provided that if the units are provided outside the
24 project area the agency shall provide two units for each unit the
25 agency is obligated to replace. The replacement obligation shall
26 apply to all units affordable to low- or moderate-income persons
27 or families at the time of initiation of negotiations of a written
28 agreement with or financial assistance from the agency. For
29 purposes of this section, the inclusion of residential units in the
30 rehabilitation of an existing nonresidential structure shall constitute
31 construction.

32 (1) When dwelling units are destroyed or removed after
33 September 1, 1989, 75 percent of the replacement dwelling units
34 shall be available at affordable housing cost to, and occupied by,
35 persons and families in the same or a lower income level of very
36 low income households, lower income households, and persons
37 and families of low and moderate income, as the persons and
38 families displaced from those destroyed or removed units.

39 (2) When dwelling units are destroyed or removed on or after
40 January 1, 2002, 100 percent of the replacement dwelling units

1 shall be available at affordable housing cost to, and occupied by,
2 persons and families in the same or a lower income category
3 (extremely low, very low, low, or moderate), as the persons and
4 families displaced from those destroyed or removed units. This
5 paragraph is declaratory of existing law.

6 (3) On or after January 1, 2012, in the case where the agency
7 is obligated to replace vacant units, those replacement units shall
8 be available at affordable housing costs to, and occupied by,
9 persons and families in the same or lower income category
10 (extremely low, very low, low, or moderate) in the same proportion
11 as the units occupied or last occupied by low- and moderate-income
12 households in the property.

13 (4) Up to 25 percent of the replacement obligation incurred
14 during a five-year implementation plan may be satisfied in either
15 of the following ways:

16 (A) With units that have been rehabilitated such that
17 after-rehabilitation value is increased by 50 percent or more of the
18 pre-rehabilitation value, as evidenced by pre and post rehabilitation
19 appraisals and, the rehabilitated units were, at the time the dwelling
20 units to be replaced were destroyed or removed were either of the
21 following:

22 (i) At risk of demolition or closure due to substandard conditions
23 and occupied by extremely low or very low income households.

24 (ii) Vacant due to substandard conditions as defined in Section
25 1941.1 of the Civil Code.

26 (B) With substantially rehabilitated multifamily rental dwelling
27 units, as defined in paragraph (2) of subdivision (b) and evidenced
28 by pre and post rehabilitation appraisals, provided that the agency
29 shall substantially rehabilitate within the project area, two units
30 for each unit the agency is obligated to replace, or outside of the
31 project area, three units for each unit the agency is obligated to
32 replace.

33 (5) For each project containing rehabilitated replacement units,
34 the agency shall adopt a separate written resolution, after public
35 hearing and based on substantial evidence, that the rehabilitation
36 of the replacement dwelling units complies with this subdivision.

37 (b) (1) Prior to the time limit on the effectiveness of the
38 redevelopment plan established pursuant to Sections 33333.2,
39 33333.6, and 33333.10 at least 30 percent of all new and
40 substantially rehabilitated dwelling units developed by an agency

1 shall be available at affordable housing cost to, and occupied by,
2 persons and families of low or moderate income. Not less than 50
3 percent of the dwelling units required to be available at affordable
4 housing cost to, and occupied by, persons and families of low or
5 moderate income shall be available at affordable housing cost to,
6 and occupied by, very low income households.

7 (2) (A) (i) Prior to the time limit on the effectiveness of the
8 redevelopment plan established pursuant to Sections 33333.2,
9 33333.6, and 33333.10 at least 15 percent of all new and
10 substantially rehabilitated dwelling units developed within a project
11 area under the jurisdiction of an agency by public or private entities
12 or persons other than the agency shall be available at affordable
13 housing cost to, and occupied by, persons and families of low or
14 moderate income. Not less than 40 percent of the dwelling units
15 required to be available at affordable housing cost to, and occupied
16 by, persons and families of low or moderate income shall be
17 available at affordable housing cost to, and occupied by, very low
18 income households.

19 (ii) To satisfy this paragraph, in whole or in part, the agency
20 may cause, by regulation or agreement, to be available, at
21 affordable housing cost, to, and occupied by, persons and families
22 of low or moderate income or to very low income households, as
23 applicable, two units outside a project area for each unit that
24 otherwise would have been required to be available inside a project
25 area.

26 (iii) On or after January 1, 2002, as used in this paragraph and
27 in paragraph (1), “substantially rehabilitated dwelling units” means
28 all units substantially rehabilitated, with agency assistance. Prior
29 to January 1, 2002, “substantially rehabilitated dwelling units”
30 shall mean substantially rehabilitated multifamily rented dwelling
31 units with three or more units regardless of whether there is agency
32 assistance, or substantially rehabilitated, with agency assistance,
33 single-family dwelling units with one or two units.

34 (iv) As used in this paragraph and in paragraph (1), “substantial
35 rehabilitation” means rehabilitation, the value of which constitutes
36 25 percent of the after-rehabilitation value of the dwelling,
37 inclusive of the land value.

38 (v) To satisfy this paragraph, the agency may aggregate new or
39 substantially rehabilitated dwelling units in one or more project
40 areas, if the agency finds, based on substantial evidence, after a

1 public hearing, that the aggregation will not cause or exacerbate
2 racial, ethnic, or economic segregation.

3 (B) To satisfy the requirements of paragraph (1) and
4 subparagraph (A), the agency may purchase, or otherwise acquire
5 or cause by regulation or agreement the purchase or other
6 acquisition of, long-term affordability covenants on multifamily
7 units that restrict the cost of renting or purchasing those units that
8 either: (i) are not presently available at affordable housing cost to
9 persons and families of low or very low income households, as
10 applicable; or (ii) are units that are presently available at affordable
11 housing cost to this same group of persons or families, but are
12 units that the agency finds, based upon substantial evidence, after
13 a public hearing, cannot reasonably be expected to remain
14 affordable to this same group of persons or families.

15 (C) To satisfy the requirements of paragraph (1) and
16 subparagraph (A), the long-term affordability covenants purchased
17 or otherwise acquired pursuant to subparagraph (B) shall be
18 required to be maintained on dwelling units at affordable housing
19 cost to, and occupied by, persons and families of low or very low
20 income, for the longest feasible time but not less than 55 years for
21 rental units and 45 years for owner-occupied units. Not more than
22 50 percent of the units made available pursuant to paragraph (1)
23 and subparagraph (A) may be assisted through the purchase or
24 acquisition of long-term affordability covenants pursuant to
25 subparagraph (B). Not less than 50 percent of the units made
26 available through the purchase or acquisition of long-term
27 affordability covenants pursuant to subparagraph (B) shall be
28 available at affordable housing cost to, and occupied by, very low
29 income households.

30 (D) To satisfy the requirements of paragraph (1) and
31 subparagraph (A), each mutual self-help housing unit, as defined
32 in subparagraph (C) of paragraph (1) of subdivision (f) of Section
33 33334.3, that is subject to a 15-year deed restriction shall count as
34 one-third of a unit.

35 (3) The requirements of this subdivision shall apply
36 independently of the requirements of subdivision (a). The
37 requirements of this subdivision shall apply, in the aggregate, to
38 housing made available pursuant to paragraphs (1) and (2),
39 respectively, and not to each individual case of rehabilitation,

1 development, or construction of dwelling units, unless an agency
2 determines otherwise.

3 (4) Each redevelopment agency, as part of the implementation
4 plan required by Section 33490, shall adopt a plan to comply with
5 the requirements of this subdivision for each project area. The plan
6 shall be consistent with, and may be included within, the
7 community's housing element. The plan shall be reviewed and, if
8 necessary, amended at least every five years in conjunction with
9 the plan implementation cycle. The plan shall ensure that the
10 requirements of this subdivision are met every 10 years. If the
11 requirements of this subdivision are not met by the end of each
12 10-year period, the agency shall meet these goals on an annual
13 basis until the requirements for the 10-year period are met. If the
14 agency has exceeded the requirements within the 10-year period,
15 the agency may count the units that exceed the requirement in
16 order to meet the requirements during the next 10-year period. The
17 plan shall contain the contents required by paragraphs (2), (3), and
18 (4) of subdivision (a) of Section 33490.

19 (c) (1) The agency shall require that the aggregate number of
20 replacement dwelling units and other dwelling units rehabilitated,
21 developed, constructed, or price restricted pursuant to subdivision
22 (a) or (b) remain available at affordable housing cost to, and
23 occupied by, persons and families of extremely low income, very
24 low income, low income, and moderate income, respectively, for
25 the longest feasible time, but for not less than 55 years for rental
26 units, 45 years for home ownership units, and 15 years for mutual
27 self-help housing units, as defined in subparagraph (C) of paragraph
28 (1) of subdivision (f) of Section 33334.3, except as set forth in
29 paragraph (2). Nothing in this paragraph precludes the agency and
30 the developer of the mutual self-help housing units from agreeing
31 to 45-year deed restrictions.

32 (2) Notwithstanding paragraph (1), the agency may permit sales
33 of owner-occupied units prior to the expiration of the 45-year
34 period, and mutual self-help housing units prior to the expiration
35 of the 15-year period, established by the agency for a price in
36 excess of that otherwise permitted under this subdivision pursuant
37 to an adopted program that protects the agency's investment of
38 moneys from the Low and Moderate Income Housing Fund,
39 including, but not limited to, an equity sharing program that
40 establishes a schedule of equity sharing that permits retention by

1 the seller of a portion of those excess proceeds, based on the length
2 of occupancy. The remainder of the excess proceeds of the sale
3 shall be allocated to the agency, and deposited into the Low and
4 Moderate Income Housing Fund. The agency shall, within three
5 years from the date of sale pursuant to this paragraph of each home
6 ownership or mutual self-help housing unit subject to a 45-year
7 deed restriction, and every third mutual self-help housing unit
8 subject to a 15-year deed restriction, expend funds to make
9 affordable an equal number of units at the same or lowest income
10 level as the unit or units sold pursuant to this paragraph, for a
11 period not less than the duration of the original deed restrictions.
12 Only the units originally assisted by the agency shall be counted
13 towards the agency's obligations under Section 33413.

14 (3) The requirements of this section shall be made enforceable
15 in the same manner as provided in paragraph (7) of subdivision
16 (f) of Section 33334.3.

17 (4) If land on which the dwelling units required by this section
18 are located is deleted from the project area, the agency shall
19 continue to require that those units remain affordable as specified
20 in this subdivision.

21 (5) For each unit counted towards the requirements of ~~or~~
22 *subdivision (a) or (b)*, the agency shall require the recording in the
23 office of the county recorder of covenants or restrictions that ensure
24 compliance with this subdivision. With respect to covenants or
25 restrictions that are recorded on or after January 1, 2008, the agency
26 shall comply with the requirements of paragraphs (3) and (4) of
27 subdivision (f) of Section 33334.3.

28 (d) (1) This section applies only to redevelopment projects for
29 which a final redevelopment plan is adopted pursuant to Article 5
30 (commencing with Section 33360) on or after January 1, 1976,
31 and to areas that are added to a project area by amendment to a
32 final redevelopment plan adopted on or after January 1, 1976. In
33 addition, subdivision (a) shall apply to any other redevelopment
34 project with respect to dwelling units destroyed or removed from
35 the low- and moderate-income housing market on or after January
36 1, 1996, irrespective of the date of adoption of a final
37 redevelopment plan or an amendment to a final redevelopment
38 plan adding areas to a project area. Additionally, any agency may,
39 by resolution, elect to make all or part of the requirements of this
40 section applicable to any redevelopment project of the agency for

1 which the final redevelopment plan was adopted prior to January
2 1, 1976. In addition, subdivision (b) shall apply to redevelopment
3 plans adopted prior to January 1, 1976, for which an amendment
4 is adopted pursuant to Section 33333.10, except that subdivision
5 (b) shall apply to those redevelopment plans prospectively only
6 so that the requirements of subdivision (b) shall apply only to new
7 and substantially rehabilitated dwelling units for which the building
8 permits are issued on or after the date that the ordinance adopting
9 the amendment pursuant to Section 33333.10 becomes effective.

10 (2) An agency may, by resolution, elect to require that whenever
11 dwelling units housing persons or families of low or moderate
12 income are destroyed or removed from the low- and
13 moderate-income housing market as part of a redevelopment
14 project, the agency shall replace each dwelling unit with up to
15 three replacement dwelling units pursuant to subdivision (a).

16 (e) Except as otherwise authorized by law, this section does not
17 authorize an agency to operate a rental housing development
18 beyond the period reasonably necessary to sell or lease the housing
19 development.

20 (f) Notwithstanding subdivision (a), the agency may replace
21 destroyed or removed dwelling units with a fewer number of
22 replacement dwelling units if the replacement dwelling units meet
23 both of the following criteria:

24 (1) The total number of bedrooms in the replacement dwelling
25 units equals or exceeds the number of bedrooms in the destroyed
26 or removed units. Destroyed or removed units having one or no
27 bedroom are deemed for this purpose to have one bedroom.

28 (2) The replacement units are affordable to and occupied by the
29 same income level of households as the destroyed or removed
30 units.

31 (g) “Longest feasible time,” as used in this section, includes,
32 but is not limited to, unlimited duration.

33 (h) If a court finds that an agency has failed to comply with the
34 requirements of this section, the court, at a minimum, shall issue
35 an order that prohibits the agency from issuing any debt for any
36 project area, except debt from which all the proceeds will be
37 deposited into the Low and Moderate Income Housing Fund or
38 otherwise used to comply with the requirements of this section,
39 until such time as the court finds that the agency has fully complied
40 with the requirements of this section.

1 SEC. 14. Section 33413.5 of the Health and Safety Code is
2 amended to read:

3 33413.5. Not less than 30 days prior to the execution of an
4 agreement for acquisition of real property, the execution of an
5 agreement for the disposition and development of property, the
6 execution of an owner participation agreement, or other agreement
7 or assistance that would lead to the destruction or removal of
8 dwelling units from the low- and moderate-income housing market,
9 the agency shall adopt by resolution a replacement housing plan.
10 For a reasonable time prior to adopting a replacement housing plan
11 by resolution, the agency shall make available a draft of the
12 proposed replacement housing plan for review and comment by
13 the tenants to be displaced, the project area committee, other public
14 agencies, and the general public.

15 The replacement housing plan shall include (1) the general
16 location of housing to be rehabilitated or constructed pursuant to
17 Section 33413, (2) a description of the occupancy and affordability
18 restrictions to be imposed on the replacement dwelling units, (3)
19 substantial evidence supporting a finding that the replacement
20 dwelling units will meet the needs of households in the income
21 categories of the households displaced from the dwelling units that
22 the replacement units are intended to replace, (4) a declaration of
23 whether the agency intends to rehabilitate existing dwelling units
24 pursuant to paragraph (5) of subdivision (a) of Section 33413, (5)
25 an adequate means of financing such rehabilitation or construction,
26 (6) a finding that the replacement housing does not require the
27 approval of the voters pursuant to Article XXXIV of the California
28 Constitution, or that such approval has been obtained, (7) the
29 number of dwelling units housing persons and families of low or
30 moderate income planned for construction or rehabilitation, and
31 (8) the timetable for meeting the plan's relocation, rehabilitation,
32 and replacement housing objectives. A dwelling unit whose
33 replacement is required by Section 33413 but for which no
34 replacement housing plan has been prepared, shall not be destroyed
35 or removed from the low- and moderate-income housing market
36 until the agency has by resolution adopted a replacement housing
37 plan.

38 Nothing in this section shall prevent an agency from destroying
39 or removing from the low- and moderate-income housing market
40 a dwelling unit which the agency owns and which is an immediate

1 danger to health and safety. The agency shall, as soon as
2 practicable, adopt by resolution a replacement housing plan with
3 respect to such dwelling unit.

4 SEC. 14.5. Section 33418 of the Health and Safety Code is
5 amended to read:

6 33418. (a) An agency shall monitor, on an ongoing basis, any
7 housing affordable to persons and families of low or moderate
8 income developed or otherwise made available pursuant to any
9 provisions of this part. As part of this monitoring, an agency shall
10 require owners or managers of the housing to submit an annual
11 report to the agency. The annual reports shall include for each
12 rental unit the rental rate and the income and family size of the
13 occupants, and for each owner-occupied unit whether there was a
14 change in ownership from the prior year and, if so, the income and
15 family size of the new owners. The income information required
16 by this section shall be supplied by the tenant in a certified
17 statement on a form provided by the agency.

18 (b) The data specified in subdivision (a) shall be obtained by
19 the agency from owners and managers of the housing specified
20 therein and current data shall be included in any reports required
21 by law to be submitted to the Department of Housing and
22 Community Development or the Controller. The information on
23 income and family size that is required to be reported by the owner
24 or manager shall be supplied by the tenant and shall be the only
25 information on income or family size that the owner or manager
26 shall be required to submit on his or her annual report to the
27 agency.

28 (c) (1) The agency shall compile and maintain a database of
29 existing, new and substantially rehabilitated, housing units
30 developed or otherwise assisted with moneys from the Low and
31 Moderate Income Housing Fund, or otherwise counted towards
32 the requirements of subdivision (a) or (b) of Section 33413. The
33 database shall be made available to the public on the Internet and
34 updated on an annual basis and shall include the date the database
35 was last updated. The database shall require all of the following
36 information for each owner-occupied unit or rental unit, or for
37 each group of units, if more than one unit is subject to the same
38 covenant:

39 (A) The street address and assessor’s parcel number of the
40 property.

1 (B) The size of each unit, measured by the number of bedrooms.

2 (C) The year in which the construction or substantial
3 rehabilitation of the unit was completed.

4 (D) The date of recordation and document number of the
5 affordability covenants or restrictions required under subdivision
6 (f) of Section 33334.3.

7 (E) The date on which the covenants or restrictions expire.

8 (F) For owner-occupied units that have changed ownership
9 during the reporting year, as described in subdivision (a), the date
10 and document number of the new affordability covenants or other
11 documents recorded to ~~assure~~ *ensure* that the affordability
12 restriction is enforceable and continues to run with the land.

13 (G) Whether occupancy in the unit or units is restricted to any
14 special population, including senior citizens.

15 (H) The affordability level of each unit.

16 (I) Whether the unit is a rental or ownership unit.

17 (J) Whether the unit is being counted towards a replacement
18 obligation pursuant to subdivision (a) of Section 33413 or towards
19 a production obligation pursuant to subdivision (b) of Section
20 33413.

21 (K) The project type, including, but not limited to, new
22 construction, substantial rehabilitation, preservation, or the
23 purchase of long-term affordability covenants.

24 (2) Notwithstanding subparagraphs (A) and (D) of paragraph
25 (1), the database shall omit any property used to confidentially
26 house victims of domestic violence.

27 (3) Upon establishment of a database under this section, the
28 agency shall provide reasonable notice to the community regarding
29 the existence of the database.

30 (d) The agency shall adequately fund its monitoring activities
31 as needed to insure compliance of applicable laws and agreements
32 in relation to affordable units. For purposes of defraying the cost
33 of complying with the requirements of this section and the changes
34 in reporting requirements of Section 33080.4 enacted by the act
35 enacting this section, an agency may establish and impose fees
36 upon owners of properties monitored pursuant to this section.

37 (e) The agency shall continue to monitor and enforce the
38 covenants covered by this section for the entire period of the
39 covenant. In the event the agency ceases its activities prior to the
40 entire period of the covenants, then its designated successor agency

1 shall monitor and enforce the covenants for the remaining period
2 of the covenant. If a successor agency is not designated at the time
3 the agency ceases its activities, then the community shall monitor
4 and enforce the covenants for the remaining period of the covenant.

5 SEC. 15. Article 13 (commencing with Section 33460) is added
6 to Chapter 4 of Part 1 of Division 24 of the Health and Safety
7 Code, to read:

8

9

Article 13. Accountability Audits

10

11 33460. (a) The Legislature hereby finds and declares both of
12 the following:

13 (1) Past department audits of redevelopment agencies have
14 uncovered errors, omissions, and violations that have resulted in
15 significant repayments to agencies' Low and Moderate Income
16 Housing Fund, thereby providing additional resources for
17 increasing, improving, and preserving the supply of low- and
18 moderate-income housing available at affordable housing cost.

19 (2) Providing funding for future department audits of
20 redevelopment agencies will ensure that tax increment, interest,
21 and debt proceeds are appropriately deposited into the Low and
22 Moderate Income Housing Fund and that agencies make only legal
23 expenditures from the fund, thereby providing additional resources
24 for increasing, improving, and preserving the supply of low- and
25 moderate-income housing available at affordable housing cost. As
26 a result, the deposits required by this section are permissible
27 pursuant to paragraph (7) of subdivision (a) of Section 25.5 of
28 Article XIII of the California Constitution.

29 (b) Immediately upon receipt, each agency shall annually deposit
30 one-half of one-tenth (.0005) percent of any tax increment
31 deposited into the Low and Moderate Income Housing Fund into
32 the Redevelopment Agency Accountability Fund created pursuant
33 to Section 50464.5 to be used solely for the purpose described in
34 subdivision (b) of that section.

35 SEC. 16. Section 33487 of the Health and Safety Code is
36 amended to read:

37 33487. (a) Subject to subdivisions (a) and (b) of Section 33486,
38 not less than 20 percent of all taxes that are allocated to the
39 redevelopment agency pursuant to Section 33670 for
40 redevelopment projects merged pursuant to this article, irrespective

1 of the date of adoption of the final redevelopment plans, shall be
2 deposited by the agency in the Low and Moderate Income Housing
3 Fund established pursuant to Section 33334.3, or which shall be
4 established for purposes of this section. The agency shall use the
5 moneys in this fund to assist in the construction or rehabilitation
6 of housing units that will be available to, or occupied by, persons
7 and families of low or moderate income, as defined in Section
8 50093, and very low income households, as defined in Section
9 50105, at an affordable housing cost for the longest feasible time
10 period but not less than 55 years for rental units and 45 years for
11 owner-occupied units. For the purposes of this subdivision,
12 “construction and rehabilitation” shall include acquisition of land,
13 improvements to land; the acquisition, rehabilitation, or
14 construction of structures; or the provision of subsidies necessary
15 to provide housing for persons and families of low or moderate
16 income, as defined in Section 50093, and very low income
17 households, as defined in Section 50105.

18 (b) The agency may use the funds set aside by subdivision (a)
19 inside or outside the project area. However, the agency may only
20 use these funds outside the project area upon a resolution of the
21 agency and the legislative body that the use will be of benefit to
22 the project. This determination by the agency and the legislative
23 body shall be final and conclusive as to the issue of benefit to the
24 project area. The Legislature finds and declares that the provision
25 of replacement housing pursuant to Section 33413 is of benefit to
26 a project.

27 The Legislature finds and declares that expenditures or
28 obligations incurred by the agency pursuant to this section shall
29 constitute an indebtedness of the project.

30 (c) If the agency deposits less than 20 percent of taxes allocated
31 pursuant to Section 33670, due to the provisions of subdivisions
32 (a) and (b) of Section 33486, in any fiscal year, a deficit shall be
33 created in the Low and Moderate Income Housing Fund in an
34 amount equal to the difference between 20 percent of the taxes
35 allocated pursuant to Section 33670 and the amount deposited in
36 that year. The deficit, if any, created pursuant to this section
37 constitutes an indebtedness of the project. The agency shall
38 eliminate the deficit by expending taxes allocated in years
39 subsequent to creation of the deficit and, until the time when that
40 deficit has been eliminated, an agency shall not incur new

1 obligations for purposes other than those set forth in Section 33487,
2 except to comply with the terms of any resolution or other
3 agreement pledging taxes allocated pursuant to Section 33670 that
4 existed on the date of merger pursuant to this article.

5 (d) Notwithstanding subdivision (d) of Section 33413, any
6 agency that merges its redevelopment project areas pursuant to
7 this article shall be subject to subdivisions (a) and (c) of Section
8 33413.

9 SEC. 17. Section 33490 of the Health and Safety Code is
10 amended to read:

11 33490. (a) (1) (A) On or before December 31, 1994, and each
12 five years thereafter, each agency that has adopted a redevelopment
13 plan prior to December 31, 1993, shall adopt, after a public hearing,
14 an implementation plan that shall contain the specific goals and
15 objectives of the agency for the project area, the specific programs,
16 including potential projects, and estimated expenditures proposed
17 to be made during the next five years, and an explanation of how
18 the goals and objectives, programs, and expenditures will eliminate
19 blight within the project area and implement the requirements of
20 Section 33333.10, if applicable, and Sections 33334.2, 33334.4,
21 33334.6, ~~and 33413 33413, and 33487~~. After adoption of the first
22 implementation plan, the parts of the implementation plan that
23 address Section 33333.10, if applicable, and Sections 33334.2,
24 33334.4, 33334.6, and 33413 shall be adopted every five years
25 either in conjunction with the implementation plan cycle and shall
26 be made available to the public on the Internet. The agency may
27 amend the implementation plan after conducting a public hearing
28 on the proposed amendment. If an action attacking the adoption,
29 approval, or validity of a redevelopment plan adopted prior to
30 January 1, 1994, has been brought pursuant to Chapter 5
31 (commencing with Section 33500), the first implementation plan
32 required pursuant to this section shall be adopted within six months
33 after a final judgment or order has been entered. Subsequent
34 implementation plans required pursuant to this section shall be
35 adopted pursuant to the terms of this section, and as if the first
36 implementation plan had been adopted on or before December 31,
37 1994.

38 (B) Adoption of an implementation plan shall not constitute an
39 approval of any specific program, project, or expenditure and shall
40 not change the need to obtain any required approval of a specific

1 program, project, or expenditure from the agency or community.
2 The adoption of an implementation plan shall not constitute a
3 project within the meaning of Section 21000 of the Public
4 Resources Code. However, the inclusion of a specific program,
5 potential project, or expenditure in an implementation plan
6 prepared pursuant to subdivision (c) of Section 33352 in
7 conjunction with a redevelopment plan adoption shall not eliminate
8 analysis of those programs, potential projects, and expenditures
9 in the environmental impact report prepared pursuant to subdivision
10 (k) of Section 33352 to the extent that it would be otherwise
11 required. In addition, the inclusion of programs, potential projects,
12 and expenditures in an implementation plan shall not eliminate
13 review pursuant to the California Environmental Quality Act
14 (Division 13 (commencing with Section 21000) of the Public
15 Resources Code), at the time of the approval of the program,
16 project, or expenditure, to the extent that it would be otherwise
17 required.

18 (2) (A) A portion of the implementation plan shall address the
19 agency housing responsibilities and shall contain a section
20 addressing Section 33333.10, if applicable, and Sections 33334.2,
21 33334.4, ~~and 33334.6~~ 33334.6, *and* 33487, the Low and Moderate
22 Income Housing Fund, and, if subdivision (b) of Section 33413
23 applies, a section addressing agency developed and project area
24 housing. The section addressing the Low and Moderate Income
25 Housing Fund shall contain:

26 (i) The amount available in the Low and Moderate Income
27 Housing Fund and the estimated amounts which will be deposited
28 in the Low and Moderate Income Housing Fund during each of
29 the next five years.

30 (ii) A housing program with estimates of the number of new,
31 rehabilitated, or price restricted units to be assisted during each of
32 the five years and estimates of the expenditures of moneys from
33 the Low and Moderate Income Housing Fund during each of the
34 five years.

35 (iii) A description of how the housing program will implement
36 the requirement for expenditures of moneys in the Low and
37 Moderate Income Housing Fund over a 10-year period or 5-year
38 period, as applicable, for various groups as required by Section
39 33334.4. For project areas to which subdivision (b) of Section
40 33413 applies, the 10-year period within which subdivision (b) of

1 Section 33413 is required to be implemented shall coincide with
2 the 10-year period or with two 5-year periods, as applicable, within
3 which Section 33334.4 is required to be implemented.
4 Notwithstanding the first sentence of Section 33334.4 and the first
5 sentence of this clause, in order to allow these two 10-year time
6 periods to coincide for the first time period, the time to implement
7 the requirements of Section 33334.4 shall be extended two years,
8 and project areas in existence on December 31, 1993, shall
9 implement the requirements of Section 33334.4 on or before
10 December 31, 2014, rather than December 31, 2012. For project
11 areas to which subdivision (b) of Section 33413 does not apply,
12 the requirements of Section 33334.4 shall be implemented on or
13 before December 31, 2014.

14 (iv) This requirement to include a description of how the housing
15 program will implement Section 33334.4 in the implementation
16 plan shall apply to implementation plans adopted pursuant to
17 subdivision (a) on or after December 31, 2002.

18 (B) For each project area to which subdivision (b) of Section
19 33413 applies, the section addressing the agency developed and
20 project area housing shall contain:

21 (i) Estimates of the number of new, substantially rehabilitated
22 or price restricted residential units to be developed or purchased
23 within one or more project areas, both over the life of the plan and
24 during the next 10 years.

25 (ii) Estimates of the number of units of very low, low-, and
26 moderate-income households required to be developed within one
27 or more project areas in order to meet the requirements of
28 paragraph (2) of subdivision (b) of Section 33413, both over the
29 life of the plan and during the next 10 years.

30 (iii) A statement of the number of units of very low, low-, and
31 moderate-income households which have been developed over the
32 life of the plan within one or more project areas which meet the
33 requirements of subdivision (b) of Section 33413.

34 (iv) Estimates of the number of agency developed residential
35 units which will be developed during the next five years, if any,
36 which will be governed by paragraph (1) of subdivision (b) of
37 Section 33413.

38 (v) Estimates of the number of agency developed units for very
39 low, low-, and moderate-income households which will be

1 developed by the agency during the next five years to meet the
2 requirements of paragraph (1) of subdivision (b) of Section 33413.

3 (C) The section addressing Section 33333.10, if applicable, and
4 Section 33334.4 shall contain all of the following:

5 (i) The proposed amount of expenditures from the Low and
6 Moderate Income Housing Fund for the new construction,
7 acquisition and substantial rehabilitation, or preservation of housing
8 for persons of extremely low, very low, or low income during each
9 year of the implementation plan period.

10 (ii) The total population of the community and the population
11 under 65 years of age as reported in the most recent census of the
12 United States Census Bureau.

13 (iii) A housing program that provides a detailed schedule of
14 actions the agency is undertaking or intends to undertake to ensure
15 expenditure of the Low and Moderate Income Housing Fund in
16 the proportions required by Section 33333.10, if applicable, and
17 Section 33334.4.

18 (iv) For the previous implementation plan period, the number,
19 the location, and level of affordability of units newly constructed
20 without agency assistance and that are required to be affordable
21 to, and occupied by, persons of low, very low, or extremely low
22 income for at least 55 years for rental housing or 45 years for home
23 ownership housing, and the amount of Low and Moderate Income
24 Housing Fund moneys utilized to assist housing units available to
25 families with children, and the number, location, and level of
26 affordability of those units.

27 (v) A demonstration, based on substantial evidence in the plan,
28 that as of the end of the immediately preceding 5-year
29 implementation planning period, the agency's aggregate
30 expenditures from the Low and Moderate Income Housing Fund,
31 exclusive of debt service payments, between the end of the last
32 10-year implementation period referenced in paragraph (1) of
33 subdivision (a) of Section 33334.4 and the end of the immediately
34 preceding 5-year implementation planning period satisfy the
35 proportionality requirements set forth in paragraph (2) of
36 subdivision (a) of Section 33334.4.

37 (3) If the implementation plan contains a project that will result
38 in the destruction or removal of dwelling units that will have to
39 be replaced pursuant to subdivision (a) of Section 33413, the
40 implementation plan shall identify proposed locations suitable for

1 those replacement dwelling units. If the implementation plan
2 contains a project that has resulted in the destruction or removal
3 of dwelling units that must be replaced pursuant to subdivision (a)
4 of Section 33413, the implementation plan shall identify either of
5 the following:

6 (A) The replacement dwelling units that satisfy each replacement
7 housing obligation.

8 (B) In the case where dwelling units have been destroyed or
9 removed, but replacement units are not yet complete, the proposed
10 location of the replacement dwelling units.

11 (4) The implementation plan shall include a complete accounting
12 for compliance with the agency's affordable housing obligations
13 over the life of the plan, including the total number of units the
14 agency is obligated to replace pursuant to subdivision (a) of Section
15 33413, the number of units the agency is obligated to produce
16 pursuant to subdivision (b) of Section 33413, and the number of
17 dwelling units that satisfy these obligations.

18 (A) For each owner-occupied unit or rental unit counted towards
19 meeting the agency obligations under subdivision (a) or (b) of
20 Section 33413 and required to be included in the database required
21 pursuant to subdivision (c) of Section 33418, or for each group of
22 such units, if more than one unit is subject to the same covenant,
23 the implementation plan shall identify all of the following:

24 (i) The street address and assessor's parcel number of the
25 property and, for properties where units are listed as a group, the
26 number of units.

27 (ii) The size of each unit, measured by the number of bedrooms.

28 (iii) The affordability level of each unit, according to the
29 categories required by Section 33413.

30 (iv) The year in which the construction or substantial
31 rehabilitation of the unit was completed.

32 (v) The date of recordation and document number of the
33 affordability covenants or restrictions required under subdivision
34 (f) of Section 33334.3 or subdivision (c) of Section 33413.

35 (vi) The date on which the covenants or restrictions expire.

36 (vii) For the projects developed prior to January 1, 2002, a
37 statement of the effective period of the land use controls established
38 in the plan at the time each unit was developed, *in order to*
39 *demonstrate that the duration of the covenants or restrictions*

1 *extends for a period not less than the applicable period of land*
2 *use controls, in accordance with then applicable law.*

3 (viii) For owner-occupied units that have changed ownership
4 during the previous implementation plan period, the date and
5 document number of the new affordability covenants or other
6 documents recorded to ensure that the affordability restriction is
7 enforceable and continues to run with the land.

8 (ix) Whether the unit counts towards a replacement obligation
9 pursuant to subdivision (a) of Section 33413 or towards a
10 production obligation pursuant to subdivision (b) of Section 33413.
11 Units counted towards a replacement obligation shall reference
12 the destroyed units they are replacing.

13 (B) For each owner-occupied unit or rental unit counted towards
14 meeting the agency obligations under subdivision (a) or (b) of
15 Section 33413 and not required to be included in the database
16 required pursuant to subdivision (c) of Section 33418, or for each
17 group of such units, if more than one unit is subject to the same
18 covenant, the implementation plan shall identify all of the
19 following:

20 (i) The street address and, if available, assessor's parcel number
21 of the property.

22 (ii) For properties where units are listed as a group, the number
23 of units.

24 (iii) The affordability level of each unit, according to the
25 categories required by Section 33413.

26 (iv) The year in which the construction or substantial
27 rehabilitation of the unit was completed.

28 (v) The date of recordation and document number of the
29 affordability covenants or restrictions required under subdivision
30 (f) of Section 33334.3 or subdivision (c) of Section 33413.

31 (vi) The date on which the covenants or restrictions expired.

32 (vii) Whether the unit counts towards a replacement obligation
33 pursuant to subdivision (a) of Section 33413 or towards a
34 production obligation pursuant to subdivision (b) of Section 33413.
35 Units counted towards a replacement obligation shall reference
36 the destroyed units they are replacing.

37 (5) Notwithstanding subparagraphs (A) and (E) of paragraph
38 (4), the implementation plan shall omit any property used to
39 confidentially house victims of domestic violence.

1 (6) For a project area that is within six years of the time limit
2 on the effectiveness of the redevelopment plan established pursuant
3 to Section 33333.2, 33333.6, 33333.7, or 33333.10, the portion of
4 the implementation plan addressing the housing responsibilities
5 shall specifically address the ability of the agency to comply, prior
6 to the time limit on the effectiveness of the redevelopment plan,
7 with subdivision (a) of Section 33333.8, subdivision (a) of Section
8 33413 with respect to replacement dwelling units, subdivision (b)
9 of Section 33413 with respect to project area housing, and the
10 disposition of the remaining moneys in the Low and Moderate
11 Income Housing Fund.

12 (7) The implementation plan shall identify the fiscal year that
13 the agency expects each of the following time limits to expire:

14 (A) The time limit for the commencement for eminent domain
15 proceedings to acquire property within the project area.

16 (B) The time limit for the establishment of loans, advances, and
17 indebtedness to finance the redevelopment project.

18 (C) The time limit for the effectiveness of the redevelopment
19 plan.

20 (D) The time limit to repay indebtedness with the proceeds of
21 property taxes.

22 (b) For a project area for which a redevelopment plan is adopted
23 on or after January 1, 1994, the implementation plan prepared
24 pursuant to subdivision (c) of Section 33352 shall constitute the
25 initial implementation plan and thereafter the agency after a public
26 hearing shall adopt an implementation plan every five years
27 commencing with the fifth year after the plan has been adopted.
28 Agencies may adopt implementation plans that include more than
29 one project area.

30 (c) Every agency, at least once within the five-year term of the
31 plan, shall conduct a public hearing and hear testimony of all
32 interested parties for the purpose of reviewing the redevelopment
33 plan and the corresponding implementation plan for each
34 redevelopment project within the jurisdiction and evaluating the
35 progress of the redevelopment project. The hearing required by
36 this subdivision shall take place no earlier than two years and no
37 later than three years after the adoption of the implementation plan.
38 For a project area that is within three years of the time limit on the
39 effectiveness of the redevelopment plan established pursuant to
40 Section 33333.2, 33333.6, 33333.7, or 33333.10, the review shall

1 specifically address those items in paragraph (4) of subdivision
2 (a). An agency may hold one hearing for two or more project areas
3 if those project areas are included within the same implementation
4 plan.

5 (d) Notice of public hearings conducted pursuant to this section
6 shall be published pursuant to Section 6063 of the Government
7 Code, mailed at least three weeks in advance to all persons and
8 agencies that have requested notice, and posted in at least four
9 permanent places within the project area for a period of three weeks
10 and concurrently posted on the Internet. Publication, mailing, and
11 posting shall be completed not less than 10 days prior to the date
12 set for hearing.

13 SEC. 18. Section 33506 is added to the Health and Safety Code,
14 to read:

15 33506. (a) A failure to meet any of the following obligations
16 shall be an ongoing violation until the agency has fully met the
17 obligation:

18 (1) The obligation to eliminate project deficits pursuant to
19 Sections 33334.6, 33487, 33492.16, and other similar and related
20 provisions of law.

21 (2) The obligation to expend or encumber excess surplus funds
22 pursuant to Section 33334.12 and other similar and related
23 provisions of law.

24 (3) The obligation to provide relocation assistance pursuant to
25 Article 9 (commencing with Section 33410), Section 7260 of the
26 Government Code, or other applicable relocation laws.

27 (4) The obligation to provide replacement housing pursuant to
28 subdivision (a) of Section 33413, Article 9 (commencing with
29 Section 33410), and other similar and related provisions of law.

30 (5) The obligation to provide housing pursuant to subdivision
31 (b) of Section 33413 and other similar and related provisions of
32 law.

33 (6) The obligation to monitor and enforce affordability covenants
34 required pursuant to Section 33418.

35 (7) The obligation to continue the project past the effectiveness
36 date of the redevelopment plan pursuant to Section 33333.8.

37 (8) The obligation to expend funds proportionately to assist
38 housing for persons of extremely low, very low, or low income or
39 to assist housing available to all persons regardless of age pursuant
40 to Section 33334.4.

1 (9) The obligations to record covenants that run with the land
2 pursuant to subdivision (f) of Section 33334.3 and subdivision (c)
3 of Section 33413(c).

4 (b) This section is declaratory of existing law.

5 SEC. 19. Section 50464.5 is added to the Health and Safety
6 Code, to read:

7 50464.5. (a) The Redevelopment Agency Accountability Fund
8 is hereby created in the State Treasury and is available, upon
9 appropriation, to the department for the purposes of subdivision

10 (b). Notwithstanding Section 16305.7 of the Government Code,
11 any moneys received by the department pursuant to Section 33460,
12 and any other sources, repayments, interest, or new appropriations,
13 shall be deposited in the fund. Moneys in the fund shall not be
14 subject to transfer to any other fund pursuant to any provision of
15 Part 2 (commencing with Section 16300) of Division 4 of Title 2
16 of the Government Code, except the Surplus Money Investment
17 Fund. The department may require the transfer of moneys in the
18 fund to the Surplus Money Investment Fund for investment
19 pursuant to Article 4 (commencing with Section 16470) of Chapter
20 3 of Part 2 of Division 4 of Title 2 of the Government Code.
21 Notwithstanding Section 16305.7 of the Government Code, all
22 interest, dividends, and pecuniary gains from the investments shall
23 accrue to the fund.

24 (b) With funds made available pursuant to subdivision (a), the
25 department shall conduct audits of redevelopment agencies to
26 ensure compliance with the housing provisions of the Community
27 Redevelopment Law. The department shall include in the audits
28 a review of agency compliance with production and replacement
29 housing obligations, recording and monitoring of affordability
30 covenants, provision of relocation assistance, propriety of deposits
31 to and expenditures from the Low and Moderate Income Housing
32 Fund, compliance with the debt limit of the agency, adoption of a
33 legally sufficient implementation plan, each of the major audit
34 violations pursuant to subdivision (j) of Section 33080.8, and any
35 other accounting practice or provision of the Community
36 Redevelopment Law in the discretion of the department. The
37 department shall require that each agency take action to correct
38 the audit violations. If the department determines that an agency
39 has not corrected the audit violations within 180 days of a final
40 audit report, it shall forward all relevant documents to the Attorney

- 1 General for action pursuant to Section 33080.9. The department
- 2 shall make available on its Internet Web site the final audit reports,
- 3 a statement of any resolution of audit reports, or if not resolved,
- 4 the date audit reports were forwarded to the Attorney General.

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