

AMENDED IN SENATE AUGUST 21, 2013

AMENDED IN SENATE AUGUST 13, 2013

AMENDED IN ASSEMBLY MAY 13, 2013

AMENDED IN ASSEMBLY APRIL 9, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 423**

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**Introduced by Assembly Member Torres**

February 15, 2013

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An act to amend Section 34171 of, and to add Section 34176.6 to, the Health and Safety Code, relating to housing, *and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 423, as amended, Torres. Multiphase affordable housing projects: enforceable obligations.

The Community Redevelopment Law authorizes the establishment of redevelopment agencies in communities to address the effects of blight, as defined. Existing law dissolved redevelopment agencies and community development agencies as of February 1, 2012, and provides for the designation of successor agencies. Existing law imposes various requirements on successor agencies and subjects successor agency actions to the review of oversight boards. Existing law requires each oversight board to direct the successor agency to, among other things, cease performance in connection with and terminate all existing agreements that do not qualify as enforceable obligations, as defined.

This bill would authorize a successor agency of a former redevelopment agency that commenced and completed construction of

portions of a multiphase affordable housing project in a county with a population over 1.7 million or in a city with a population over 160,000 to enter into a new enforceable obligation to complete the design and construction of a qualifying future phase, as specified, of a project. The bill would require that any moneys from the former redevelopment agency’s Low and Moderate Income Housing Fund that have not been remitted to the county auditor-controller, as specified, to first be allocated to the implementing entity of the new enforceable obligation to pay for the costs associated with specified agreements. The bill would require, if the remaining balance of the Low and Moderate Income Housing Fund is insufficient to pay for the costs associated with the specified agreements, any remaining costs to be included on Recognized Obligation Payment Schedules as enforceable obligations and be funded with Redevelopment Property Tax Trust Funds.

*This bill would declare that it is to take effect immediately as an urgency statute.*

Vote: ~~majority~~<sup>2/3</sup>. 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 34171 of the Health and Safety Code is  
 2 amended to read:  
 3 34171. The following terms shall have the following meanings:  
 4 (a) “Administrative budget” means the budget for administrative  
 5 costs of the successor agencies as provided in Section 34177.  
 6 (b) “Administrative cost allowance” means an amount that,  
 7 subject to the approval of the oversight board, is payable from  
 8 property tax revenues of up to 5 percent of the property tax  
 9 allocated to the successor agency on the Recognized Obligation  
 10 Payment Schedule covering the period January 1, 2012, through  
 11 June 30, 2012, and up to 3 percent of the property tax allocated to  
 12 the Redevelopment Obligation Retirement Fund money that is  
 13 allocated to the successor agency for each fiscal year thereafter;  
 14 provided, however, that the amount shall not be less than two  
 15 hundred fifty thousand dollars (\$250,000), unless the oversight  
 16 board reduces this amount, for any fiscal year or such lesser amount  
 17 as agreed to by the successor agency. However, the allowance  
 18 amount shall exclude, and shall not apply to, any administrative  
 19 costs that can be paid from bond proceeds or from sources other

1 than property tax. Administrative cost allowances shall exclude  
2 any litigation expenses related to assets or obligations, settlements  
3 and judgments, and the costs of maintaining assets prior to  
4 disposition. Employee costs associated with work on specific  
5 project implementation activities, including, but not limited to,  
6 construction inspection, project management, or actual  
7 construction, shall be considered project-specific costs and shall  
8 not constitute administrative costs.

9 (c) “Designated local authority” shall mean a public entity  
10 formed pursuant to subdivision (d) of Section 34173.

11 (d) (1) “Enforceable obligation” means any of the following:

12 (A) Bonds, as defined by Section 33602 and bonds issued  
13 pursuant to Chapter 10.5 (commencing with Section 5850) of  
14 Division 6 of Title 1 of the Government Code, including the  
15 required debt service, reserve set-asides, and any other payments  
16 required under the indenture or similar documents governing the  
17 issuance of the outstanding bonds of the former redevelopment  
18 agency. A reserve may be held when required by the bond  
19 indenture or when the next property tax allocation will be  
20 insufficient to pay all obligations due under the provisions of the  
21 bond for the next payment due in the following half of the calendar  
22 year.

23 (B) Loans of moneys borrowed by the redevelopment agency  
24 for a lawful purpose, to the extent they are legally required to be  
25 repaid pursuant to a required repayment schedule or other  
26 mandatory loan terms.

27 (C) Payments required by the federal government, preexisting  
28 obligations to the state or obligations imposed by state law, other  
29 than passthrough payments that are made by the county  
30 auditor-controller pursuant to Section 34183, or legally enforceable  
31 payments required in connection with the agencies’ employees,  
32 including, but not limited to, pension payments, pension obligation  
33 debt service, unemployment payments, or other obligations  
34 conferred through a collective bargaining agreement. Costs incurred  
35 to fulfill collective bargaining agreements for layoffs or  
36 terminations of city employees who performed work directly on  
37 behalf of the former redevelopment agency shall be considered  
38 enforceable obligations payable from property tax funds. The  
39 obligations to employees specified in this subparagraph shall  
40 remain enforceable obligations payable from property tax funds

1 for any employee to whom those obligations apply if that employee  
2 is transferred to the entity assuming the housing functions of the  
3 former redevelopment agency pursuant to Section 34176. The  
4 successor agency or designated local authority shall enter into an  
5 agreement with the housing entity to reimburse it for any costs of  
6 the employee obligations.

7 (D) Judgments or settlements entered by a competent court of  
8 law or binding arbitration decisions against the former  
9 redevelopment agency, other than passthrough payments that are  
10 made by the county auditor-controller pursuant to Section 34183.  
11 Along with the successor agency, the oversight board shall have  
12 the authority and standing to appeal any judgment or to set aside  
13 any settlement or arbitration decision.

14 (E) Any legally binding and enforceable agreement or contract  
15 that is not otherwise void as violating the debt limit or public  
16 policy. However, nothing in this act shall prohibit either the  
17 successor agency, with the approval or at the direction of the  
18 oversight board, or the oversight board itself from terminating any  
19 existing agreements or contracts and providing any necessary and  
20 required compensation or remediation for such termination. Titles  
21 of or headings used on or in a document shall not be relevant in  
22 determining the existence of an enforceable obligation.

23 (F) Contracts or agreements necessary for the administration or  
24 operation of the successor agency, in accordance with this part,  
25 including, but not limited to, agreements concerning litigation  
26 expenses related to assets or obligations, settlements and  
27 judgements, and the costs of maintaining assets prior to disposition,  
28 and agreements to purchase or rent office space, equipment and  
29 supplies, and pay-related expenses pursuant to Section 33127 and  
30 for carrying insurance pursuant to Section 33134.

31 (G) Amounts borrowed from, or payments owing to, the Low  
32 and Moderate Income Housing Fund of a redevelopment agency,  
33 which had been deferred as of the effective date of the act adding  
34 this part; provided, however, that the repayment schedule is  
35 approved by the oversight board. Repayments shall be transferred  
36 to the Low and Moderate Income Housing Asset Fund established  
37 pursuant to subdivision (d) of Section 34176 as a housing asset  
38 and shall be used in a manner consistent with the affordable  
39 housing requirements of the Community Redevelopment Law (Part  
40 1 (commencing with Section 33000)).

1 (H) Any agreement necessary to complete the design and  
2 construction of a qualifying future phase of a project pursuant to  
3 subdivision ~~(b)~~ (a) of Section 34176.6.

4 (2) For purposes of this part, “enforceable obligation” does not  
5 include any agreements, contracts, or arrangements between the  
6 city, county, or city and county that created the redevelopment  
7 agency and the former redevelopment agency. However, written  
8 agreements entered into (A) at the time of issuance, but in no event  
9 later than December 31, 2010, of indebtedness obligations, and  
10 (B) solely for the purpose of securing or repaying those  
11 indebtedness obligations may be deemed enforceable obligations  
12 for purposes of this part. Notwithstanding this paragraph, loan  
13 agreements entered into between the redevelopment agency and  
14 the city, county, or city and county that created it, within two years  
15 of the date of creation of the redevelopment agency, may be  
16 deemed to be enforceable obligations.

17 (3) Contracts or agreements between the former redevelopment  
18 agency and other public agencies, to perform services or provide  
19 funding for governmental or private services or capital projects  
20 outside of redevelopment project areas that do not provide benefit  
21 to the redevelopment project and thus were not properly authorized  
22 under Part 1 (commencing with Section 33000) shall be deemed  
23 void on the effective date of this part; provided, however, that such  
24 contracts or agreements for the provision of housing properly  
25 authorized under Part 1 (commencing with Section 33000) shall  
26 not be deemed void.

27 (e) “Indebtedness obligations” means bonds, notes, certificates  
28 of participation, or other evidence of indebtedness, issued or  
29 delivered by the redevelopment agency, or by a joint exercise of  
30 powers authority created by the redevelopment agency, to  
31 third-party investors or bondholders to finance or refinance  
32 redevelopment projects undertaken by the redevelopment agency  
33 in compliance with the Community Redevelopment Law (Part 1  
34 (commencing with Section 33000)).

35 (f) “Oversight board” shall mean each entity established pursuant  
36 to Section 34179.

37 (g) “Recognized obligation” means an obligation listed in the  
38 Recognized Obligation Payment Schedule.

39 (h) “Recognized Obligation Payment Schedule” means the  
40 document setting forth the minimum payment amounts and due

1 dates of payments required by enforceable obligations for each  
2 six-month fiscal period as provided in subdivision (m) of Section  
3 34177.

4 (i) “School entity” means any entity defined as such in  
5 subdivision (f) of Section 95 of the Revenue and Taxation Code.

6 (j) “Successor agency” means the successor entity to the former  
7 redevelopment agency as described in Section 34173.

8 (k) “Taxing entities” means cities, counties, a city and county,  
9 special districts, and school entities, as defined in subdivision (f)  
10 of Section 95 of the Revenue and Taxation Code, that receive  
11 passthrough payments and distributions of property taxes pursuant  
12 to the provisions of this part.

13 (l) “Property taxes” include all property tax revenues, including  
14 those from unitary and supplemental and roll corrections applicable  
15 to tax increment.

16 (m) “Department” means the Department of Finance unless the  
17 context clearly refers to another state agency.

18 (n) “Sponsoring entity” means the city, county, or city and  
19 county, or other entity that authorized the creation of each  
20 redevelopment agency.

21 (o) “Final judicial determination” means a final judicial  
22 determination made by any state court that is not appealed, or by  
23 a court of appellate jurisdiction that is not further appealed, in an  
24 action by any party.

25 SEC. 2. Section 34176.6 is added to the Health and Safety  
26 Code, to read:

27 ~~34176.6. (a) The Legislature finds and declares all of the~~  
28 ~~following:~~

29 ~~(1) Former redevelopment agencies provided a crucial supply~~  
30 ~~of affordable housing to the residents of California since the~~  
31 ~~inception of redevelopment and tax increment financing. Many of~~  
32 ~~these affordable housing projects were multiphase developments~~  
33 ~~spanning over decades of land assembly, planning, implementation,~~  
34 ~~and construction, and provide vital housing for thousands of~~  
35 ~~persons and families of low or moderate income. Failure to~~  
36 ~~complete the multiphase affordable housing projects because of~~  
37 ~~the dissolution of redevelopment agencies would result in a~~  
38 ~~deterioration of properties and land use, and undue disruption to~~  
39 ~~the health, safety, and well-being of the residents of completed~~  
40 ~~phases of these projects. Failure to complete these affordable~~

1 ~~housing projects would exacerbate the shortage of affordable~~  
2 ~~housing for persons and families of low or moderate income~~  
3 ~~residing and working throughout California.~~

4 ~~(2) Many of these multiphase projects were underway at the~~  
5 ~~time the dissolution of redevelopment agencies was under~~  
6 ~~consideration by the Governor, Legislature, and the courts.~~  
7 ~~Multiphase affordable housing projects that were substantially~~  
8 ~~completed but awaiting approval of the final phase have been~~  
9 ~~stymied by the dissolution of redevelopment agencies. This is~~  
10 ~~particularly true in larger communities where land assembly and~~  
11 ~~construction had been severely impacted by the recent economic~~  
12 ~~down turn and delayed the final implementation of these projects.~~

13 ~~(3) To avoid serious blight to the multiphase projects and to~~  
14 ~~ensure an adequate supply of housing for persons and families of~~  
15 ~~low or moderate income, it is necessary to enact this section. This~~  
16 ~~section shall apply only to counties with a population over 1.7~~  
17 ~~million and cities with a population over 160,000. In enacting this~~  
18 ~~section, it is the policy of the Legislature to assist these larger~~  
19 ~~communities who were negatively impacted by the recent economic~~  
20 ~~crisis and were unable to complete the final phase of large scale,~~  
21 ~~multiphase, planned, and partially implemented affordable housing~~  
22 ~~projects as a result of the dissolution of redevelopment agencies.~~

23 ~~(b)~~

24 ~~34176.6. (a) Notwithstanding Section 34177.3, or any other~~  
25 ~~law, a successor agency of a former redevelopment agency that~~  
26 ~~commenced and completed construction of portions of a multiphase~~  
27 ~~affordable housing project in a county with a population over 1.7~~  
28 ~~million or in a city with a population over 160,000 may enter into~~  
29 ~~a new enforceable obligation, as defined in paragraph (1) of~~  
30 ~~subdivision (d) of Section 34171, to complete the design and~~  
31 ~~construction of a qualifying future phase of a project.~~

32 ~~(e)~~

33 ~~(b) Notwithstanding any other law, any moneys from the former~~  
34 ~~redevelopment agency's Low and Moderate Income Housing Fund~~  
35 ~~that have not been remitted to the county auditor-controller~~  
36 ~~pursuant to the due diligence review process in Sections 34179.5~~  
37 ~~and 34179.6 shall first be allocated to the implementing entity of~~  
38 ~~the new enforceable obligation to pay for the costs associated with~~  
39 ~~any agreement permitted by subdivision ~~(b)~~ (a). The implementing~~  
40 ~~entity may be either the successor agency or the housing successor~~

1 entity, as designated pursuant to Section 34176. In the event that  
2 the remaining balance of the Low and Moderate Income Housing  
3 Fund is insufficient to pay for the costs associated with any  
4 agreements permitted by subdivision-~~(b)~~ (a), any remaining costs  
5 shall be included on Recognized Obligation Payment Schedules  
6 as enforceable obligations and shall be funded with the  
7 Redevelopment Property Tax Trust Fund.

8 ~~(d)~~

9 (c) Any agreement permitted by subdivision-~~(b)~~ (a) shall first  
10 be approved by the oversight board pursuant to Section 34180.

11 ~~(e)~~

12 (d) (1) “Qualifying future phase” shall mean a phase of a  
13 planned and partially implemented project where the previously  
14 planned phases have received a certificate of occupancy before  
15 February 1, 2012, but construction contracts had not been entered  
16 into for the final phase of the project before February 1, 2012.

17 (2) “Qualifying future phase” shall meet all of the following  
18 criteria:

19 (A) The project is for the creation of affordable housing for  
20 “persons and families of low or moderate income,” as defined in  
21 Section 50093. The project may include first floor commercial or  
22 retail space.

23 (B) Upon completion of the residential units, the residential  
24 units shall be subject to a declaration of covenants and restrictions  
25 restricting the residential units to housing for a period in  
26 compliance with the Community Redevelopment Law (Part 1  
27 (commencing with Section 33000)) and the maximum income and  
28 purchase price or rent that may be charged. The declaration of  
29 covenants and restrictions shall be recorded against the property.

30 (C) All public infrastructure including sewers, water lines, curb  
31 cuts, streets, and other customary infrastructure is currently in  
32 place for the future phase.

33 (D) At least one phase of the project had been identified as a  
34 Catalyst Project for California Sustainable Strategies Pilot Program  
35 and embodies the goals of the Sustainable Communities and  
36 Climate Protection Act of 2008 (Chapter 728 of the Statutes of  
37 2008).

38 *SEC. 3. This act is an urgency statute necessary for the*  
39 *immediate preservation of the public peace, health, or safety within*

1 *the meaning of Article IV of the Constitution and shall go into*  
2 *immediate effect. The facts constituting the necessity are:*  
3 *In order to timely provide critical funding to increase the supply*  
4 *of affordable housing, it is necessary that this act take effect*  
5 *immediately.*

O