

**ASSEMBLY BILL**

**No. 941**

---

---

**Introduced by Assembly Member Rendon**

February 22, 2013

---

---

An act to amend Sections 12463, 12464, 53890, and 53895 of, to add Article 6 (commencing with Section 12486) to Chapter 5 of Part 2 of Division 3 of Title 2 of, and to repeal Sections 53895.5 and 53895.7 of, the Government Code, relating to state and local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 941, as introduced, Rendon. Controller: reports.

(1) Existing law requires the Controller to annually compile and publish reports of the financial transactions of each county, city, and school district within the state, together with other matters he or she deems of public interest.

This bill would change the definition of a special district subject to the reporting requirements of the Controller to include a public entity, agency, or board provided for by a joint powers agreement that is separate from the parties to the agreement and is responsible for the administration of the agreement.

(2) Existing law provides that if the county, city, or district reports are not made in a specified manner, or there is reason to believe that the report is false, the Controller is required to appoint a qualified accountant to make an investigation and to obtain the information required for the annual report of financial transactions. Existing law provides that if a similar investigation is made of any county, city, or district for 2 successive years, then a copy of the results of those investigations shall be transmitted to the grand jury of the county investigated or in which the local agency investigated is situated.

Existing law requires any costs incurred by the Controller in carrying out those audits to be paid by the local agency.

This bill would also authorize the Controller to perform an audit or investigation of any county, city, or special district, if the Controller has made findings, supported by documentation, that the local agency is not complying with the financial requirements in state law, state grant agreements, local charters, or local ordinances and require the Controller to prepare a report of the results of the audit or investigation and to file a copy with the local legislative body, as specified. This bill would require that if the results of those audits determine that the financial report filed by the local agency did not contain false, incomplete, or incorrect information, then the Controller shall waive the costs of the investigation, and would authorize the Controller to establish a payment program, as specified, to assist a local agency to pay for any costs that cannot be waived.

(3) Existing law provides that an officer of a local agency who fails or refuses to make and file his or her financial report within 20 days after receipt of a written notice of the failure from the Controller forfeits to the state a specified amount depending on the amount of total revenue of that local agency. Existing law raises these amounts in the case of a community redevelopment agency and a joint powers agency that issues conduit revenue bonds in the 2nd and 3rd consecutive year.

This bill would raise the forfeiture amounts for all local agencies, as specified. The bill would double these fines if the agency fails to submit the report to the Controller for 2 consecutive years, and would triple the fines if the agency fails to submit the report to the Controller for 3 consecutive years. This bill would remove other specified provisions that provide penalties for an agency that fails to submit a report.

This bill would also make technical, nonsubstantive changes and remove references to redevelopment agencies.

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

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

1 SECTION 1. Section 12463 of the Government Code is  
2 amended to read:  
3 12463. (a) The Controller shall compile and publish reports  
4 of the financial transactions of each county, city, and special  
5 district, respectively, within this state, together with any other

1 matter he or she deems of public interest. The reports shall include  
2 the appropriations limits and the total annual appropriations subject  
3 to limitation of the counties, cities, and special districts. The reports  
4 to the Controller shall be made in the time, form, and manner  
5 prescribed by the Controller.

6 (b) Effective January 1, 2005, the Controller shall compile and  
7 publish reports of the financial transactions of each county, city,  
8 and special district pursuant to subdivision (a) on or before August  
9 1, September 1, and October 1 respectively, of each year following  
10 the end of the annual reporting period. The Controller shall make  
11 data collected pursuant to this subdivision available upon request  
12 to the Legislature and its agents, on or before April 1 of each year.

13 (c) The Controller shall annually publish, on the Internet Web  
14 site of the Controller, reports of the financial transactions of each  
15 school district within this state, together with any other matter he  
16 or she deems of public interest. The reports shall include the  
17 appropriations limit and the total annual appropriations subject to  
18 limitation of the school district. The reports to the Controller shall  
19 be made in the time, form, and manner prescribed by the Controller.

20 (d) As used in this section, the following terms have the  
21 following meanings:

22 (1) "School district" means a school district as defined in Section  
23 80 of the Education Code.

24 (2) "Special district" means any of the following:

25 (A) A special district as defined in Section 95 of the Revenue  
26 and Taxation Code.

27 (B) A *public entity, agency, commission, or board* provided for  
28 by a joint powers agreement pursuant to Chapter 5 (commencing  
29 with Section 6500) of Division 7 of Title 1 *that is separate from*  
30 *the parties to the agreement and is responsible for the*  
31 *administration of the agreement.*

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

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

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

39 (iii) Is wholly owned by a public agency.

1 SEC. 2. Section 12464 of the Government Code is amended  
2 to read:

3 12464. (a) If the county, city, or *special* district reports are  
4 not made in the time, form, and manner required or there is reason  
5 to believe that a report is false, incomplete, or incorrect, the  
6 Controller shall appoint a qualified accountant to make an  
7 investigation and to obtain the information required. The  
8 accountant appointed shall report to the Controller the results of  
9 investigation, and a copy shall be filed with the legislative body  
10 of the county, city, or *special* district, the accounts of which were  
11 investigated. If a similar investigation has to be made of the  
12 accounts of any county, city, or *special* district, for two successive  
13 years, a certified copy of the results of the investigation last made  
14 shall be transmitted to the grand jury of the county that was  
15 investigated or in which the city or *special* district investigated is  
16 situated, or, if the district is situated in more than one county, in  
17 the county in which any portion of the *special* district is situated.

18 (b) (1) *If the Controller has made findings pursuant to*  
19 *subdivision (c) that a county, city, or special district is not*  
20 *complying with the financial requirements in state law, state grant*  
21 *agreements, local charters, or local ordinances, he or she may*  
22 *audit or investigate the issue if he or she determines that sufficient*  
23 *funds exist within his or her budget to conduct the audit or*  
24 *investigation.*

25 (2) *The Controller shall prepare a report of the results of the*  
26 *audit or investigation that shall include detailed documentation*  
27 *of the material basis for the findings included in the audit or*  
28 *investigation. A copy of the report shall be filed with the legislative*  
29 *body of the city, county, or special district subject to the audit or*  
30 *investigation. A finding of illegal acts or fraud shall be*  
31 *communicated to the appropriate authorities, including the county*  
32 *grand jury.*

33 (c) (1) *Prior to an audit or investigation being conducted*  
34 *pursuant to subdivision (b), the Controller, after consultation with*  
35 *the local agency, shall make written findings that explain the legal*  
36 *and factual basis supporting the decision to conduct the audit or*  
37 *investigation and the Controller shall give the local agency a*  
38 *reasonable opportunity to respond to these findings.*

39 (2) (A) *In cases in which the Controller seeks to audit or*  
40 *investigate compliance with the financial requirements in local*

1 *charters or local ordinances, the Controller shall first share with*  
2 *the local agency documentation of evidence relied upon in*  
3 *determining the need for the audit or investigation and provide*  
4 *the local agency the opportunity to conduct its own audit or*  
5 *investigation of the matter in a reasonable period of time. If the*  
6 *local agency elects to conduct an audit or investigation, the local*  
7 *agency shall provide the results to the Controller promptly upon*  
8 *completion. If the Controller subsequently proceeds with his or*  
9 *her own audit or investigation, he or she shall make specific written*  
10 *findings concerning the evidence relied upon in determining the*  
11 *need for the audit or investigation and confirming that each issue*  
12 *to be audited or investigated has not been or is not likely to be*  
13 *addressed by local means, which may include, but are not limited*  
14 *to, a grand jury or district attorney.*

15 *(B) The Controller shall not audit or investigate compliance*  
16 *with the financial requirements in local charters or local*  
17 *ordinances if the matter involves a pending policy or administrative*  
18 *decision, such as adoption of a budget, negotiations of labor or*  
19 *other contracts, or a pending decision on an unpaid claim. The*  
20 *Controller shall not audit or investigate the matter until a final*  
21 *decision has been adopted by the local agency.*

22 *(C) The Controller shall not audit or investigate compliance*  
23 *with the financial requirements of local charters or local*  
24 *ordinances if the matter is the subject of actual or completed*  
25 *litigation.*

26 *(3) For purposes of this subdivision, documentation means a*  
27 *writing, photograph, photostat, email or facsimile transmission,*  
28 *or any other means of recording upon a tangible thing in any form*  
29 *of communication or representation, including letters, words,*  
30 *pictures, sounds, or symbols, or combinations thereof, or a record*  
31 *thereby created, regardless of the manner in which the record has*  
32 *been stored.*

33 *(4) The Controller shall not initiate or conduct an audit or*  
34 *investigation pursuant to subdivision (b) or (c) of a local agency*  
35 *that falls within the date the local agency has initiated the neutral*  
36 *evaluation process, pursuant to Article 5 (commencing with Section*  
37 *53760) of Chapter 4 of Part 1 of Title 2, and the date that process*  
38 *has been completed.*

39 ~~(b)~~

1 (d) (1) Any costs incurred by the Controller pursuant to  
 2 subdivision (a), including contracts with, or employment of,  
 3 certified public accountants or public accountants, in compiling a  
 4 financial report pursuant to Section 12463 ~~or 12463.3~~ shall be  
 5 borne by the county, city, *or special* district, ~~or redevelopment~~  
 6 ~~agency~~, and shall be a charge against any unencumbered funds of  
 7 the county, city, *or special* district, ~~or redevelopment~~ agency. Any  
 8 forfeiture imposed by Section 53895 ~~or 53895.5~~ may be offset up  
 9 to the total costs incurred by the Controller. Any remaining balance  
 10 shall be forfeited in accordance with Sections 53895 and 53895.5.  
 11 Any costs incurred by the Controller in excess of the forfeiture  
 12 imposed shall be a charge against any unencumbered funds of the  
 13 county, city, *or special* district, ~~or redevelopment~~ agency.

14 (2) *If an investigation conducted pursuant to subdivision (a)*  
 15 *determines that the financial report filed by the county, city, or*  
 16 *special district did not contain materially false, incomplete, or*  
 17 *incorrect information, the Controller shall waive the costs of the*  
 18 *investigation. The Controller may establish a payment program,*  
 19 *with interest, for up to five years to assist a local agency to pay*  
 20 *for the costs that cannot be waived.*

21 SEC. 3. Article 6 (commencing with Section 12486) is added  
 22 to Chapter 5 of Part 2 of Division 3 of Title 2 of the Government  
 23 Code, to read:

24  
 25 Article 6. Voluntary Local Agency Financial Review

26  
 27 12486. (a) At the written request of the governing body, chief  
 28 administrative officer, or chief executive of a local agency, the  
 29 Controller may convene a local agency financial review committee  
 30 to provide assistance to the local agency in reviewing and assessing  
 31 its financial condition and related internal controls to avert or  
 32 manage a serious financial problem.

33 (b) The request shall include a description of the factors that  
 34 warrant the need for review and assessment.

35 (c) The local agency shall reimburse the Controller for any costs  
 36 incurred by the Controller in conducting a review pursuant to this  
 37 section. The Controller may establish a payment program for up  
 38 to five years, with interest.

39 (d) A local agency financial review committee shall be chaired  
 40 by the Controller and both state and local government

1 representatives selected by the Controller. The Controller shall  
2 allow at least two local government representatives to serve on the  
3 committee, selected as follows:

4 (1) If the local agency is a city, representatives selected by the  
5 League of California Cities.

6 (2) If the local agency is a county, representatives selected by  
7 the California State Association of Counties.

8 (3) If the local agency is a special district, representatives  
9 selected by the California Special Districts Association.

10 (e) The Controller shall use the services of a consultant that has  
11 extensive financial management and accounting experience with  
12 local agencies in the state to assist the local agency financial review  
13 committee in evaluating and assisting the local agency.

14 (f) In consultation with the local agency requesting assistance,  
15 the local agency financial review committee shall provide a written  
16 report to the local agency, which may include its recommendations  
17 and an assessment of the local agency's financial practices and  
18 conditions and internal controls related to its financial condition.

19 (g) Assistance provided pursuant to this section shall not include  
20 direct financial payments or loans to local agencies that are not  
21 otherwise authorized by statute.

22 (h) If the local agency notifies the Controller that it has initiated  
23 the neutral evaluation process pursuant to Article 5 (commencing  
24 with Section 53780) of Chapter 4 of Part 1 of Title 2, the Controller  
25 shall suspend all activities under this section, unless the local  
26 agency requests that the activities be continued. The local agency  
27 shall be liable for costs under subdivision (c).

28 12487. For purposes of this article, "local agency" means a  
29 city, county, city and county, or special district.

30 SEC. 4. Section 53890 of the Government Code is amended  
31 to read:

32 53890. As used in this article, "local agency" means any city,  
33 county, ~~any and special~~ district, ~~and any community redevelopment~~  
34 ~~agency~~ required to furnish financial reports pursuant to Section  
35 ~~12463.1 or 12463.3~~ 12463.

36 SEC. 5. Section 53895 of the Government Code is amended  
37 to read:

38 53895. (a) An officer of a local agency who fails or refuses to  
39 make and file his or her report within 20 days after receipt of a

1 written notice of the failure from the Controller shall forfeit to the  
 2 state:

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

7 (2) ~~Two~~ *Five thousand five hundred* dollars ~~(\$2,500)~~ *(\$5,500)*  
 8 in the case of a local agency with total revenue, in the prior year,  
 9 of at least one hundred thousand dollars (\$100,000) but less than  
 10 two hundred fifty thousand dollars (\$250,000), as reported in the  
 11 Controller’s annual financial reports.

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

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

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

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

26 (d) *If an officer of a local agency fails or refuses to make and*  
 27 *file his or her report within 20 days after receipt of a written notice*  
 28 *pursuant to subdivision (a) for three consecutive years, the*  
 29 *forfeiture or fine assessed pursuant to paragraphs (1), (2), and*  
 30 *(3) of subdivision (a) in the third year shall be tripled.*

31 SEC. 6. Section 53895.5 of the Government Code is repealed.

32 ~~53895.5. (a) An officer of a community redevelopment agency~~  
 33 ~~who fails or refuses to make and file his or her report within 20~~  
 34 ~~days after receipt of a written notice of the failure from the~~  
 35 ~~Controller shall forfeit to the state:~~

36 (1) ~~One thousand dollars (\$1,000) in the case of a community~~  
 37 ~~redevelopment agency with total revenue, in the prior year, of less~~  
 38 ~~than one hundred thousand dollars (\$100,000), as reported in the~~  
 39 ~~Controller’s annual financial reports.~~

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

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

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

14     ~~(1) Two thousand dollars (\$2,000) in the case of a community~~  
15 ~~redevelopment agency with total revenue, in the prior year, of less~~  
16 ~~than one hundred thousand dollars (\$100,000), as reported in the~~  
17 ~~Controller's annual financial reports.~~

18     ~~(2) Five thousand dollars (\$5,000) in the case of a community~~  
19 ~~redevelopment agency with total revenue, in the prior year, of at~~  
20 ~~least one hundred thousand dollars (\$100,000), but less than two~~  
21 ~~hundred fifty thousand dollars (\$250,000), as reported in the~~  
22 ~~Controller's annual financial reports.~~

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

27    ~~(e) In the case of a community redevelopment agency that fails~~  
28 ~~or refuses to make and file its report within 20 days after receipt~~  
29 ~~of a written notice of the failure from the Controller in the third~~  
30 ~~or more consecutive year, the Controller shall conduct or cause to~~  
31 ~~be conducted an independent financial audit report consistent with~~  
32 ~~the requirements of Section 33080.1 of the Health and Safety Code.~~  
33 ~~The community redevelopment agency shall reimburse the~~  
34 ~~Controller for the cost of complying with this subdivision. The~~  
35 ~~community redevelopment agency shall not use any of the funds~~  
36 ~~in the Low and Moderate Income Housing Fund to reimburse the~~  
37 ~~Controller.~~

38    ~~(d) (1) Upon the request of the Controller, the Attorney General~~  
39 ~~shall prosecute an action for the forfeiture in the name of the people~~  
40 ~~of the State of California.~~

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

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

6     SEC. 7. Section 53895.7 of the Government Code is repealed.

7     ~~53895.7. (a) For the purpose of this section, “agency” means~~  
8     ~~any agency or entity formed pursuant to the Joint Exercise of~~  
9     ~~Powers Act (Article 1 (commencing with Section 6500) of Chapter~~  
10    ~~5 of Division 7 of Title 1) that issues conduit revenue bonds.~~

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

15    ~~(1) One thousand dollars (\$1,000) in the case of an agency with~~  
16    ~~total revenue, in the prior year, of less than one hundred thousand~~  
17    ~~dollars (\$100,000), as reported in the Controller’s annual financial~~  
18    ~~reports.~~

19    ~~(2) Two thousand five hundred dollars (\$2,500) in the case of~~  
20    ~~an agency with total revenue, in the prior year, of at least one~~  
21    ~~hundred thousand dollars (\$100,000), but less than two hundred~~  
22    ~~fifty thousand dollars (\$250,000), as reported in the Controller’s~~  
23    ~~annual financial reports.~~

24    ~~(3) Five thousand dollars (\$5,000) in the case of an agency with~~  
25    ~~total revenue, in the prior year, of at least two hundred fifty~~  
26    ~~thousand dollars (\$250,000), as reported in the Controller’s annual~~  
27    ~~financial reports.~~

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

32    ~~(1) Two thousand dollars (\$2,000) in the case of an agency with~~  
33    ~~total revenue, in the prior year, of less than one hundred thousand~~  
34    ~~dollars (\$100,000), as reported in the Controller’s annual financial~~  
35    ~~reports.~~

36    ~~(2) Five thousand dollars (\$5,000) in the case of an agency with~~  
37    ~~total revenue, in the prior year, of at least one hundred thousand~~  
38    ~~dollars (\$100,000), but less than two hundred fifty thousand dollars~~  
39    ~~(\$250,000), as reported in the Controller’s annual financial reports.~~

1 ~~(3) Ten thousand dollars (\$10,000) in the case of an agency~~  
2 ~~with total revenue, in the prior year, of at least two hundred fifty~~  
3 ~~thousand dollars (\$250,000), as reported in the Controller's annual~~  
4 ~~financial reports.~~

5 ~~(d) In the case of an agency that fails or refuses to make and~~  
6 ~~file its report within 20 days after receipt of a written notice of the~~  
7 ~~failure from the Controller in the third or more consecutive year,~~  
8 ~~the Controller shall conduct, or cause to be conducted, an~~  
9 ~~independent financial audit report consistent with the requirements~~  
10 ~~of Section 6505. The agency shall reimburse the Controller for the~~  
11 ~~cost of complying with this subdivision.~~

12 ~~(e) (1) Upon the request of the Controller, the Attorney General~~  
13 ~~shall prosecute an action for the forfeiture in the name of the people~~  
14 ~~of the State of California.~~

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

17 ~~(f) An agency that makes a forfeiture or payment pursuant to~~  
18 ~~this section shall still file the report required pursuant to Section~~  
19 ~~53891.~~