

AMENDED IN ASSEMBLY APRIL 23, 2013

AMENDED IN ASSEMBLY APRIL 1, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 941

Introduced by Assembly Member Rendon

February 22, 2013

An act to amend Sections 12463, ~~12464~~, *12463.3*, 53890, and 53895, and 53895.7 of, *to amend, repeal and add Section 12464 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~~ *Section* 53895.5 and 53895.7 of, the Government Code, relating to state and local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 941, as amended, 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, *including redevelopment agency 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, *until January 1, 2019*, authorize the Controller to perform an audit or investigation of any county, city, ~~or~~ special district, *or community redevelopment agency*, 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~~ *increase* penalties for an agency that fails to submit a report, *as specified*.

This bill would also make technical, nonsubstantive, *and conforming* 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
6 matter he or she deems of public interest. The reports shall include
7 the appropriations limits and the total annual appropriations subject
8 to limitation of the counties, cities, and special districts. The reports
9 to the Controller shall be made in the time, form, and manner
10 prescribed by the Controller.

11 (b) Effective January 1, 2005, the Controller shall compile and
12 publish reports of the financial transactions of each county, city,
13 and special district pursuant to subdivision (a) on or before August
14 1, September 1, and October 1 respectively, of each year following
15 the end of the annual reporting period. The Controller shall make
16 data collected pursuant to this subdivision available upon request
17 to the Legislature and its agents, on or before April 1 of each year.

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

25 (d) As used in this section, the following terms have the
26 following meanings:

27 (1) "School district" means a school district as defined in Section
28 80 of the Education Code.

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

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

32 (B) A public entity, agency, commission, or board provided for
33 by a joint powers agreement pursuant to Chapter 5 (commencing
34 with Section 6500) of Division 7 of Title 1 that is separate from
35 the parties to the agreement ~~and is responsible for the~~
36 ~~administration of the agreement.~~

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

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

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

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

8 *SEC. 2. Section 12463.3 of the Government Code is amended*
9 *to read:*

10 12463.3. On or before May 1 of each year, the Controller shall
11 compile and publish annually reports of the financial transactions
12 of each ~~community redevelopment~~ agency created pursuant to
13 Division 24 (commencing with Section 33000) of the Health and
14 Safety Code. The Controller shall make the data available to the
15 Legislature and its agents upon request, on or before April 1 of
16 each year. The Controller shall publish this information for each
17 project area of each ~~redevelopment~~ agency. The reports shall be
18 made in the time, form, and manner prescribed by the Controller,
19 after consultation with the Department of Housing and Community
20 Development and the advisory committee created pursuant to
21 Section 12463.1.

22 ~~SEC. 2.~~

23 *SEC. 3. Section 12464 of the Government Code is amended*
24 *to read:*

25 12464. (a) If the *reports of a county, city, or special district*
26 *reports, or agency, created pursuant to Division 24 (commencing*
27 *with Section 33000) of the Health and Safety Code* are not made
28 in the time, form, and manner required or there is reason to believe
29 that a report is false, incomplete, or incorrect, the Controller shall
30 appoint a qualified accountant to make an investigation and to
31 obtain the information required. The accountant appointed shall
32 report to the Controller the results of investigation, and a copy
33 shall be filed with the legislative body of the county, city, or special
34 district, *or agency*, the accounts of which were investigated. If a
35 similar investigation has to be made of the accounts of any county,
36 city, or special district, *or agency*, for two successive years, a
37 certified copy of the results of the investigation last made shall be
38 transmitted to the grand jury of the county that was investigated
39 or in which the city, or special district, *or agency* investigated is
40 situated, or, if the *special district or agency* is situated in more

1 than one county, in the county in which any portion of the special
2 district *or agency* is situated.

3 (b) (1) If the Controller has made findings pursuant to
4 subdivision (c) that a county, city, or special district is not
5 complying with the financial requirements in state law, state grant
6 agreements, local charters, or local ordinances, he or she may audit
7 or investigate the issue if he or she determines that sufficient funds
8 exist within his or her budget to conduct the audit or investigation.

9 (2) The Controller shall prepare a report of the results of the
10 audit or investigation that shall include detailed documentation of
11 the material basis for the findings included in the audit or
12 investigation. A copy of the report shall be filed with the legislative
13 body of the city, county, or special district subject to the audit or
14 investigation. A finding of illegal acts or fraud shall be
15 communicated to the appropriate authorities, including the county
16 grand jury.

17 (c) (1) Prior to an audit or investigation being conducted
18 pursuant to subdivision (b), the Controller, after consultation with
19 the local agency, shall make written findings that explain the legal
20 and factual basis supporting the decision to conduct the audit or
21 investigation and the Controller shall give the local agency a
22 reasonable opportunity to respond to these findings.

23 (2) (A) In cases in which the Controller seeks to audit or
24 investigate compliance with the financial requirements in local
25 charters or local ordinances, the Controller shall first share with
26 the local agency documentation of evidence relied upon in
27 determining the need for the audit or investigation and provide the
28 local agency the opportunity to conduct its own audit or
29 investigation of the matter in a reasonable period of time. If the
30 local agency elects to conduct an audit or investigation, the local
31 agency shall provide the results to the Controller promptly upon
32 completion. If the Controller subsequently proceeds with his or
33 her own audit or investigation, he or she shall make specific written
34 findings concerning the evidence relied upon in determining the
35 need for the audit or investigation and confirming that each issue
36 to be audited or investigated has not been or is not likely to be
37 addressed by local means, which may include, but are not limited
38 to, a grand jury or district attorney.

39 (B) The Controller shall not audit or investigate compliance
40 with the financial requirements in local charters or local ordinances

1 if the matter involves a pending policy or administrative decision,
2 such as adoption of a budget, negotiations of labor or other
3 contracts, or a pending decision on an unpaid claim. The Controller
4 shall not audit or investigate the matter until a final decision has
5 been adopted by the local agency.

6 (C) The Controller shall not audit or investigate compliance
7 with the financial requirements of local charters or local ordinances
8 if the matter is the subject of actual or completed litigation.

9 (3) For purposes of this subdivision, documentation means a
10 writing, photograph, photostat, email or facsimile transmission,
11 or any other means of recording upon a tangible thing in any form
12 of communication or representation, including letters, words,
13 pictures, sounds, or symbols, or combinations thereof, or a record
14 thereby created, regardless of the manner in which the record has
15 been stored.

16 (4) The Controller shall not initiate or conduct an audit or
17 investigation pursuant to subdivision (b) or (c) of a local agency
18 that falls within the date the local agency has initiated the neutral
19 evaluation process, pursuant to Article 5 (commencing with Section
20 53760) of Chapter 4 of Part 1 of Division 2 of Title 5, and the date
21 that process has been completed.

22 (d) (1) Any costs incurred by the Controller pursuant to
23 subdivision (a), including contracts with, or employment of,
24 certified public accountants or public accountants, in compiling a
25 financial report pursuant to Section 12463 *or* 12463.3 shall be
26 borne by the county, city, ~~or~~ special district, *or agency* and shall
27 be a charge against any unencumbered funds of the county, city,
28 ~~or~~ special district, *or agency*. Any forfeiture imposed by Section
29 53895 may be offset up to the total costs incurred by the Controller.
30 Any remaining balance shall be forfeited in accordance with
31 Sections 53895 and ~~53895.5~~ 53895.7. Any costs incurred by the
32 Controller in excess of the forfeiture imposed shall be a charge
33 against any unencumbered funds of the county, city, ~~or~~ special
34 district, *or agency*.

35 (2) If an investigation conducted pursuant to subdivision (a)
36 determines that the financial report filed by the county, city, or
37 special district did not contain materially false, incomplete, or
38 incorrect information, the Controller shall waive the costs of the
39 investigation. The Controller may establish a payment program,

1 with interest, for up to five years to assist a local agency to pay
2 for the costs that cannot be waived.

3 *(e) This section shall remain in effect only until January 1, 2019,*
4 *and as of that date is repealed, unless a later enacted statute, that*
5 *is enacted before January 1, 2019, deletes or extends that date.*

6 SEC. 4. Section 12464 is added to the Government Code, to
7 read:

8 12464. (a) *If the reports of the county, city, special district,*
9 *or agency created pursuant to Division 24 (commencing with*
10 *Section 33000) of the Health and Safety Code are not made in the*
11 *time, form, and manner required or there is reason to believe that*
12 *a report is false, incomplete, or incorrect, the Controller shall*
13 *appoint a qualified accountant to make an investigation and to*
14 *obtain the information required. The accountant appointed shall*
15 *report to the Controller the results of the investigation, and a copy*
16 *shall be filed with the legislative body of the county, city, special*
17 *district, or agency the accounts of which were investigated. If a*
18 *similar investigation has to be made of the accounts of any county,*
19 *city, special district, or agency for two successive years, a certified*
20 *copy of the results of the investigation last made shall be*
21 *transmitted to the grand jury of the county that was investigated*
22 *or in which the city, special district, or agency investigated is*
23 *situated, or, if the special district or agency is situated in more*
24 *than one county, in the county in which any portion of the special*
25 *district or agency is situated.*

26 (b) *Any costs incurred by the Controller pursuant to subdivision*
27 *(a), including contracts with, or employment of, certified public*
28 *accountants or public accountants, in compiling a financial report*
29 *pursuant to Section 12463 or 12463.3 shall be borne by the county,*
30 *city, special district, or agency and shall be a charge against any*
31 *unencumbered funds of the county, city, special district, or agency.*
32 *Any forfeiture imposed by Section 53895 may be offset up to the*
33 *total costs incurred by the Controller. Any remaining balance shall*
34 *be forfeited in accordance with Sections 53895 and 53895.7. Any*
35 *costs incurred by the Controller in excess of the forfeiture imposed*
36 *shall be a charge against any unencumbered funds of the county,*
37 *city, special district, or agency.*

38 (c) *This section shall become operative on January 1, 2019.*

1 ~~SEC. 3.~~

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

5

6 Article 6. Voluntary Local Agency Financial Review

7

8 12486. (a) At the written request of the governing body, chief
9 administrative officer, or chief executive of a local agency, the
10 Controller may convene a local agency financial review committee
11 to provide assistance to the local agency in reviewing and assessing
12 its financial condition and related internal controls to avert or
13 manage a serious financial problem.

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

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

20 (d) A local agency financial review committee shall be chaired
21 by the Controller and both state and local government
22 representatives selected by the Controller. The Controller shall
23 allow at least two local government representatives to serve on the
24 committee, selected as follows:

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

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

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

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

35 (f) In consultation with the local agency requesting assistance,
36 the local agency financial review committee shall provide a written
37 report to the local agency, which may include its recommendations
38 and an assessment of the local agency’s financial practices and
39 conditions and internal controls related to its financial condition.

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

4 (h) If the local agency notifies the Controller that it has initiated
5 the neutral evaluation process pursuant to Article 5 (commencing
6 with Section 53760) of Chapter 4 of Part 1 of Division 2 of Title
7 5, the Controller shall suspend all activities under this section,
8 unless the local agency requests that the activities be continued.
9 The local agency shall be liable for costs under subdivision (c).

10 12487. For purposes of this article, “local agency” means a
11 city, county, city and county, or special district.

12 ~~SEC. 4.~~

13 *SEC. 6.* Section 53890 of the Government Code is amended
14 to read:

15 53890. As used in this article, “local agency” means any city,
16 county, ~~and~~ special district, *and agency, created pursuant to*
17 *Division 24 (commencing with Section 33000) of the Health and*
18 *Safety Code, required to furnish financial reports pursuant to*
19 *Section 12463 or 12463.3.*

20 ~~SEC. 5.~~

21 *SEC. 7.* Section 53895 of the Government Code is amended
22 to read:

23 53895. (a) An officer of a local agency *to which Section*
24 *53895.7 does not apply* who fails or refuses to make and file his
25 or her report within 20 days after receipt of a written notice of the
26 failure from the Controller shall forfeit to the state:

27 (1) Two thousand five hundred dollars (\$2,500), in the case of
28 a local agency with total revenue, in the prior year, of less than
29 one hundred thousand dollars (\$100,000), as reported in the
30 Controller’s annual financial reports.

31 (2) Five thousand five hundred dollars (\$5,500) in the case of
32 a local agency with total revenue, in the prior year, of at least one
33 hundred thousand dollars (\$100,000) but less than two hundred
34 fifty thousand dollars (\$250,000), as reported in the Controller’s
35 annual financial reports.

36 (3) Ten thousand dollars (\$10,000) in the case of a local agency
37 with total revenue, in the prior year, of at least two hundred fifty
38 thousand dollars (\$250,000), as reported in the Controller’s annual
39 financial reports.

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

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

6 ~~(e)~~

7 ~~(b) If an officer of a local agency fails or refuses to make and~~
 8 ~~file his or her report within 20 days after receipt of a written notice~~
 9 ~~pursuant to subdivision (a) for two consecutive years, the forfeiture~~
 10 ~~assessed pursuant to paragraphs paragraph (1), (2), and or (3) of~~
 11 ~~subdivision (a) in the second year shall be doubled.~~

12 ~~(d)~~

13 ~~(c) If an officer of a local agency fails or refuses to make and~~
 14 ~~file his or her report within 20 days after receipt of a written notice~~
 15 ~~pursuant to subdivision (a) for three or more consecutive years,~~
 16 ~~the forfeiture or fine assessed pursuant to paragraphs paragraph~~
 17 ~~(1), (2), and or (3) of subdivision (a) in the third year shall be~~
 18 ~~tripled.~~

19 ~~(e)~~

20 ~~(d) An~~ *Notwithstanding any amount forfeited pursuant to*
 21 *subdivision (a), (b), or (c), the agency that is assessed a forfeiture*
 22 *pursuant to this section shall still be required to file the report*
 23 *pursuant to Section 53891.*

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

27 ~~(2) Upon satisfactory showing of good cause to the Controller,~~
 28 ~~the forfeiture provided in this section shall not be imposed.~~

29 ~~SEC. 6.~~

30 *SEC. 8. Section 53895.5 of the Government Code is repealed.*

31 ~~SEC. 7. Section 53895.7 of the Government Code is repealed.~~

32 *SEC. 9. Section 53895.7 of the Government Code is amended*
 33 *to read:*

34 *53895.7. (a) For the purpose of this section, “agency” means*
 35 *any agency or entity formed pursuant to the Joint Exercise of*
 36 *Powers Act (Article 1 (commencing with Section 6500) of Chapter*
 37 *5 of Division 7 of Title 1) that issues conduit revenue bonds.*

38 ~~(b) An officer of an agency who fails or refuses to make and~~
 39 ~~file his or her report pursuant to this article within 20 days after~~

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

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

7 (2) ~~Two-Five~~ thousand five hundred dollars ~~(\$2,500)~~ (\$5,500)
8 in the case of an agency with total revenue, in the prior year, of at
9 least one hundred thousand dollars (\$100,000), but less than two
10 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 an 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 (c) An officer of an agency who fails or refuses to make and
17 file his or her report within 20 days after receipt of a written notice
18 of the failure from the Controller in the second ~~or more~~ consecutive
19 year shall forfeit to the state:

20 (1) ~~Two-Five~~ thousand dollars ~~(\$2,000)~~ (\$5,000) in the case of
21 an agency with total revenue, in the prior year, of less than one
22 hundred thousand dollars (\$100,000), as reported in the Controller's
23 annual financial reports.

24 (2) ~~Five-Eleven~~ thousand dollars ~~(\$5,000)~~ (\$11,000) in the case
25 of an agency with total revenue, in the prior year, of at least one
26 hundred thousand dollars (\$100,000), but less than two hundred
27 fifty thousand dollars (\$250,000), as reported in the Controller's
28 annual financial reports.

29 (3) ~~Ten-Twenty~~ thousand dollars ~~(\$10,000)~~ (\$20,000) in the case
30 of an agency with total revenue, in the prior year, of at least two
31 hundred fifty thousand dollars (\$250,000), as reported in the
32 Controller's annual financial reports.

33 (d) In the case of an agency that fails or refuses to make and
34 file its report within 20 days after receipt of a written notice of the
35 failure from the Controller ~~in the third~~ *for three* or more
36 consecutive ~~year, the years,~~ *the forfeiture pursuant to paragraph*
37 *(1), (2), or (3) of subdivision (b) shall be tripled.* The Controller
38 shall conduct, or cause to be conducted, an independent financial
39 audit report consistent with the requirements of Section 6505. The

1 agency shall reimburse the Controller for the cost of complying
2 with this subdivision.

3 (e) (1) Upon the request of the Controller, the Attorney General
4 shall prosecute an action for the forfeiture in the name of the people
5 of the State of California.

6 (2) Upon a satisfactory showing of good ~~cause~~, *cause* to the
7 Controller ~~may waive the penalties for late filing~~, *the forfeiture*
8 provided in this section *shall not be imposed*.

9 (f) ~~An~~ *Notwithstanding any amount forfeited pursuant to*
10 *subdivision (a), (b), (c), or (d) the agency that makes a forfeiture*
11 *or payment pursuant to this section shall still file the report be*
12 *required to file the report required pursuant to Section 53891.*