

AMENDED IN SENATE APRIL 25, 2011

AMENDED IN SENATE APRIL 7, 2011

AMENDED IN SENATE MARCH 30, 2011

SENATE BILL

No. 449

Introduced by Senator Pavley

February 16, 2011

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

LEGISLATIVE COUNSEL'S DIGEST

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

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

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

The bill would require the Controller to convene a local agency financial review committee with a specified membership, and authorize the committee to recommend a financial recovery plan for a local agency requesting assistance. It would require the Controller to report to the

Legislature annually on the actions of the committee and the status of all engagements with local agencies pursuant to these provisions.

The bill would specify that its provisions would be repealed on January 1, 2017.

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

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

1 SECTION 1. (a) The Legislature finds all of the following:

2 (1) The economic recession has disproportionately affected
3 California and, in particular, the local agencies that deliver vital
4 services to the public. Many local agencies have been forced to
5 take unprecedented steps to avert financial crisis and maintain a
6 sound credit rating.

7 (2) The State of California has a vital financial interest in the
8 solvency of its local agencies. When insolvency occurs at a local
9 agency, the ~~state's credit rating~~ *municipal credit in the state* can
10 be negatively impacted, costing the state *and local governments*
11 millions of dollars, making borrowing more difficult, and hindering
12 the state's economic recovery.

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

17 (b) Accordingly, the Legislature declares that it is a valid public
18 purpose for the state to assist a local agency in a fiscal emergency
19 ~~situation by supporting prudent fiscal management to avert or~~
20 *manage financial problems as defined in this act*, and that the
21 authority and powers conferred by this act constitute a necessary
22 program and serve a valid public purpose.

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

26
27 Article 6. Local Agency Financial Review and Assistance
28

29 12485. (a) The Controller may conduct a preliminary review
30 to determine the existence of a local agency financial problem if
31 ~~one or more~~ of the following occur:

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

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

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

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

17 (i) There is a discrepancy between the invoice or claimed amount
18 and the provisions of the contract or grant.

19 (ii) There is a discrepancy between the invoice or claimed
20 amount and either the claimant's actual delivery of property or
21 services to the local agency or the local agency's acceptance of
22 that delivery or deliveries.

23 (iii) Additional evidence supporting the validity of the invoice
24 or claimed amount is required to be provided to the local agency
25 by the claimant.

26 (iv) The invoice has been improperly executed or needs to be
27 corrected by the claimant.

28 (v) There is a discrepancy between the refund or other payment
29 due as calculated by the person to whom the money is owed and
30 by the local agency.

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

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

39 (5)

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

4 (b) *The Controller may conduct a preliminary review to*
5 *determine the existence of a local agency financial problem if two*
6 *or more of the following occur:*

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

10 (6)

11 (2) The Controller receives notification that the local agency is
12 delinquent in the distribution of tax revenues as required by law.

13 (3) *The Controller receives notification that a local agency has*
14 *implemented retirements and layoffs constituting greater than 20*
15 *percent of the local agency's workforce, relative to the prior year*
16 *budget.*

17 (4) *The Controller receives notification that a local agency has*
18 *reduced its police or fire services funding by more than 50 percent,*
19 *relative to the prior year budget.*

20 (c) *The Controller may conduct a preliminary review to*
21 *determine the existence of a local agency financial problem if three*
22 *or more of the following occur:*

23 (7)

24 (1) The Controller receives notification that the local agency
25 has a critical cashflow situation, evidenced by a midyear borrowing
26 not anticipated in the most recently enacted budget.

27 (8)

28 (2) The Controller receives notification that a local agency has
29 enacted a midyear budget correction.

30 ~~(9) The Controller receives notification that a local agency has~~
31 ~~implemented retirements and layoffs constituting greater than 20~~
32 ~~percent of the local agency's workforce, relative to the prior year~~
33 ~~budget.~~

34 ~~(10) The Controller receives notification that a local agency has~~
35 ~~reduced its police or fire services funding by more than 50 percent,~~
36 ~~relative to the prior year budget.~~

37 ~~(11) The Controller receives notification that a local agency has~~
38 ~~had a decline in assessed property values of 10 percent or greater.~~

39 (12)

1 (3) The Controller receives notification that a local agency has
2 had a decline in year-over-year general fund collections of greater
3 than 15 percent.

4 ~~(13)~~

5 (4) The Controller receives notification that a local agency has
6 had deficits in major restricted funds, defined as providing greater
7 than 10 percent of the local agency's annual total budget.

8 ~~(14)~~

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

12 ~~(b)~~

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

18 ~~(e)~~

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

24 (f) *When conducting a preliminary review, the Controller shall*
25 *give priority consideration to preliminary reviews conducted*
26 *pursuant to subdivision (a) over subdivisions (b) and (c). The*
27 *Controller shall further give priority consideration to preliminary*
28 *reviews conducted pursuant to subdivision (b) over subdivision*
29 *(c).*

30 ~~12486. (a) Upon completion of a preliminary review conducted~~
31 ~~pursuant to Section 12485, or under the conditions specified in~~
32 ~~subdivision (b) of this section, the Controller may conduct an audit~~
33 ~~of the local agency. The local agency shall make its books and~~
34 ~~records available to the Controller for this purpose.~~

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

39 ~~12486. (a) The Controller may conduct an audit of the local~~
40 ~~agency for purposes of determining if one or more of the following~~

1 *conditions indicative of a serious financial problem have occurred,*
2 *or are likely to occur, if remedial action is not taken:*

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

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

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

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

11 (C) Any contribution required by a pension, retirement, or
12 benefit plan.

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

16 (4) The total amount of accounts payable for the current fiscal
17 year, as determined by the financial records of the local agency,
18 is in excess of 10 percent of the total expenditures of the local
19 agency in that fiscal year.

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

24 (6) Projection of a deficit in the general fund of the local agency
25 for the current fiscal year in excess of 10 percent of the budgeted
26 revenues for the general fund.

27 (b) (1) *The governing body, chief administrative officer, or*
28 *chief executive of a local agency may request an audit under this*
29 *section. The request shall be in writing and shall identify the*
30 *existing fiscal conditions that make the request necessary.*

31 (2) *If the local agency requests a review, any costs incurred*
32 *pursuant to this section shall be borne by the local agency.*

33 (c) *The local agency shall make its books and records available*
34 *to the Controller for this purpose.*

35 (d) *In conducting an audit pursuant to this section, the*
36 *Controller shall provide the local agency written notification of*
37 *the audit, and shall meet with the local agency officials to receive,*
38 *discuss, and consider information provided by the local agency*
39 *concerning the agency's financial condition.*

1 (e) The Controller shall give priority consideration to
2 conducting an audit of local agencies that meet the conditions
3 pursuant in this section, over local agencies that only meet the
4 conditions for a preliminary review pursuant to Section 12485.

5 (f) If an audit conducted pursuant to this section finds that one
6 or more conditions indicative of a serious financial problem may
7 exist within a local agency, the Controller shall provide written
8 notification to the Governor and the Legislature within 120 days
9 after beginning that audit.

10 12487. (a) The Controller shall convene a local agency
11 financial review committee to provide assistance to local agencies
12 that seek help in averting or managing a financial problem. The
13 committee shall meet no less than annually.

14 (b) The committee shall be chaired by the Controller and include
15 representatives of the office of the Treasurer and the Department
16 of Finance.

17 (c) The Controller shall utilize the services of a consultant
18 having extensive financial management and accounting experience
19 with local agencies in the state, to assist in evaluating and assisting
20 local agencies that are undergoing or facing a financial problem.

21 (d) A local agency may request assistance from the committee
22 in meeting the ordinary needs of government operations. The
23 request shall identify the existing financial conditions that make
24 the request necessary.

25 (e) A local agency that ~~meets the conditions described in Section~~
26 ~~12486~~ is subject to a preliminary review pursuant to Section 12485,
27 or an audit pursuant to Section 12486, shall receive priority
28 consideration by the local agency financial review committee.

29 (f) In consultation with the local agency requesting assistance,
30 and using any applicable data from a preliminary review or audit
31 conducted pursuant to this article if a preliminary review or audit
32 has occurred, the committee shall recommend a financial recovery
33 plan for the local agency. The financial recovery plan shall consider
34 both of the following:

35 (1) Conducting the operations of the local agency within the
36 resources available according to the data provided by the local
37 agency.

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

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

5 12488. For purposes of this article, “local agency” means a
6 city, county, city and county, special district, or redevelopment
7 agency.

8 12489. This article shall remain in effect only until January 1,
9 2017, and as of that date is repealed, unless a later enacted statute,
10 that is enacted before January 1, 2017, deletes or extends that date.