

AMENDED IN SENATE JANUARY 11, 2012

AMENDED IN SENATE JANUARY 4, 2012

SENATE BILL

No. 654

Introduced by Senator Steinberg

February 18, 2011

An act to amend Sections 34171, 34176, ~~and 34177~~, *and 34178* of the Health and Safety Code, relating to redevelopment, *and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 654, as amended, Steinberg. Redevelopment.

Existing law suspends various activities of redevelopment agencies and prohibits the agencies from incurring indebtedness for a specified period. Existing law also dissolves redevelopment agencies and community development agencies, as of October 1, 2011, and designates successor agencies, as defined. Existing law requires successor agencies to wind down the affairs of the dissolved redevelopment agencies and to, among other things, repay enforceable obligations, as defined, and to remit unencumbered balances of redevelopment agency funds, including housing funds, to the county auditor-controller for distribution to taxing entities.

Existing law authorizes the city, county, or city and county that authorized the creation of a redevelopment agency to retain the housing assets, functions, and powers previously performed by the redevelopment agency, excluding amounts on deposit in the Low and Moderate Income Housing Fund.

This bill would revise the definition of the term “enforceable obligation” and modify provisions relating to the transfer of housing funds and responsibilities associated with dissolved redevelopment

agencies. The bill would provide that any amounts on deposit in the Low and Moderate Income Housing Fund of a dissolved redevelopment agency be transferred to specified entities. The bill would make conforming changes.

Existing law provides that upon a specified date, agreements, contracts, or arrangements between the city or county, or city and county that created the redevelopment agency and the redevelopment agency are invalid. Notwithstanding this provision, an agreement that provided loans or other startup funds for the agency that was entered into within 2 years of the formation of the agency is valid and binds the successor agency.

The bill would expand this exception to include an agreement involving a loan specific to a project area and other specified obligations.

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

Vote: ~~majority~~^{2/3}. 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 for the 2011–12 fiscal year and
- 10 up to 3 percent of the property tax allocated to the Redevelopment
- 11 Obligation Retirement Fund money that is allocated to the
- 12 successor agency for each fiscal year thereafter; provided, however,
- 13 that the amount shall not be less than two hundred fifty thousand
- 14 dollars (\$250,000) for any fiscal year or such lesser amount as
- 15 agreed to by the successor agency. However, the allowance amount
- 16 shall exclude any administrative costs that can be paid from bond
- 17 proceeds or from sources other than property tax.
- 18 (c) "Designated local authority" shall mean a public entity
- 19 formed pursuant to subdivision (d) of Section 34173.

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

2 (A) Bonds, as defined by Section 33602 and bonds issued
3 pursuant to Section 58383 of the Government Code, including the
4 required debt service, reserve set-asides, and any other payments
5 required under the indenture or similar documents governing the
6 issuance of the outstanding bonds of the former redevelopment
7 agency.

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

12 (C) Payments required by the federal government, preexisting
13 obligations to the state or obligations imposed by state law, other
14 than passthrough payments that are made by the county
15 auditor-controller pursuant to Section 34183, or legally enforceable
16 payments required in connection with the agencies’ employees,
17 including, but not limited to, pension payments, pension obligation
18 debt service, unemployment payments, or other obligations
19 conferred through a collective bargaining agreement.

20 (D) Judgments or settlements entered by a competent court of
21 law or binding arbitration decisions against the former
22 redevelopment agency, other than passthrough payments that are
23 made by the county auditor-controller pursuant to Section 34183.
24 Along with the successor agency, the oversight board shall have
25 the authority and standing to appeal any judgment or to set aside
26 any settlement or arbitration decision.

27 (E) Any legally binding and enforceable agreement or contract
28 that is not otherwise void as violating the debt limit or public
29 policy. However, nothing in this act shall prohibit either the
30 successor agency, with the approval or at the direction of the
31 oversight board, or the oversight board itself from terminating any
32 existing agreements or contracts and providing any necessary and
33 required compensation or remediation for such termination.

34 (F) Contracts or agreements necessary for the administration or
35 operation of the successor agency, in accordance with this part,
36 including, but not limited to, agreements to purchase or rent office
37 space, equipment and supplies, and pay-related expenses pursuant
38 to Section 33127 and for carrying insurance pursuant to Section
39 33134.

1 (G) Amounts borrowed from or payments owing to the Low
2 and Moderate Income Housing Fund of a redevelopment agency,
3 which had been deferred as of the effective date of the act adding
4 this part; provided, however, that the repayment schedule is
5 approved by the oversight board.

6 (2) For purposes of this part, “enforceable obligation” does not
7 include any agreements, contracts, or arrangements between the
8 city, county, or city and county that created the redevelopment
9 agency and the former redevelopment agency. However, written
10 agreements entered into (A) at the time of issuance, but in no event
11 later than December 31, 2010, of indebtedness obligations, and
12 (B) solely for the purpose of securing or repaying those
13 indebtedness obligations may be deemed enforceable obligations
14 for purposes of this part. Notwithstanding this paragraph, loan
15 agreements entered into between the redevelopment agency and
16 the city, county, or city and county that created it, within two years
17 of the date of creation of the redevelopment agency, or within two
18 years of the date of the creation of a project area if the loan is
19 specific to that project area, and any obligations imposed by
20 paragraph (1) of subdivision (d) of Section 33691 may be deemed
21 to be enforceable obligations.

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

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

1 (f) "Oversight board" shall mean each entity established pursuant
2 to Section 34179.

3 (g) "Recognized obligation" means an obligation listed in the
4 Recognized Obligation Payment Schedule.

5 (h) "Recognized Obligation Payment Schedule" means the
6 document setting forth the minimum payment amounts and due
7 dates of payments required by enforceable obligations for each
8 six-month fiscal period as provided in subdivision (m) of Section
9 34177.

10 (i) "School entity" means any entity defined as such in
11 subdivision (f) of Section 95 of the Revenue and Taxation Code.

12 (j) "Successor agency" means the county, city, or city and county
13 that authorized the creation of each redevelopment agency or
14 another entity as provided in Section 34173.

15 (k) "Taxing entities" means cities, counties, a city and county,
16 special districts, and school entities, as defined in subdivision (f)
17 of Section 95 of the Revenue and Taxation Code, that receive
18 passthrough payments and distributions of property taxes pursuant
19 to the provisions of this part.

20 SEC. 2. Section 34176 of the Health and Safety Code is
21 amended to read:

22 34176. (a) The city, county, or city and county that authorized
23 the creation of a redevelopment agency may elect to retain the
24 housing assets and functions previously performed by the
25 redevelopment agency. If a city, county, or city and county elects
26 to retain the responsibility for performing housing functions
27 previously performed by a redevelopment agency, all rights,
28 powers, duties, and obligations associated with the housing
29 activities of the agency, including any amounts on deposit in the
30 Low and Moderate Income Housing Fund, shall be transferred to
31 the city, county, or city and county. Any funds transferred to the
32 city, county, or city and county pursuant to this subdivision shall
33 be maintained in a separate Low and Moderate Income Housing
34 Fund and expended pursuant to the provisions of the Community
35 Redevelopment Law relating to the Low and Moderate Income
36 Housing Fund.

37 (b) If a city, county, or city and county does not elect to retain
38 the responsibility for performing housing functions previously
39 performed by a redevelopment agency, all rights, powers, assets,
40 liabilities, duties, and obligations associated with the housing

activities of the agency, including any amounts in the Low and Moderate Income Housing Fund, shall be transferred as follows:

(1) Where there is one local housing authority in the territorial jurisdiction of the former redevelopment agency, to that local housing authority.

(2) Where there is more than one local housing authority in the territorial jurisdiction of the former redevelopment agency, to the local housing authority selected by the city, county, or city and county that authorized the creation of the redevelopment agency.

(3) Where there is no local housing authority in the territorial jurisdiction of the former redevelopment agency or where the local housing authority selected does not accept the responsibility for performing housing functions previously performed by the former redevelopment agency, to the Department of Housing and Community Development.

(c) Commencing on the operative date of this part, the entity assuming the housing functions formerly performed by the redevelopment agency shall enforce affordability covenants and perform related activities pursuant to applicable provisions of the Community Redevelopment Law (Part 1 (commencing with Section 33000)), including, but not limited to, Section 33418.

SEC. 3. Section 34177 of the Health and Safety Code is amended to read:

34177. Successor agencies are required to do all of the following:

(a) Continue to make payments due for enforceable obligations.

(1) On and after October 1, 2011, and until a Recognized Obligation Payment Schedule becomes operative, only payments required pursuant to an enforceable obligations payment schedule shall be made. The initial enforceable obligation payment schedule shall be the last schedule adopted by the redevelopment agency under Section 34169. However, payments associated with obligations excluded from the definition of enforceable obligations by paragraph (2) of subdivision (d) of Section 34171 shall be excluded from the enforceable obligations payment schedule and be removed from the last schedule adopted by the redevelopment agency under Section 34169 prior to the successor agency adopting it as its enforceable obligations payment schedule pursuant to this subdivision. The enforceable obligation payment schedule may be amended by the successor agency at any public meeting and

1 shall be subject to the approval of the oversight board as soon as
2 the board has sufficient members to form a quorum.

3 (2) The Department of Finance and the Controller shall each
4 have the authority to require any documents associated with the
5 enforceable obligations to be provided to them in a manner of their
6 choosing. Any taxing entity, the department, and the Controller
7 shall each have standing to file a judicial action to prevent a
8 violation under this part and to obtain injunctive or other
9 appropriate relief.

10 (3) Commencing on January 1, 2012, only those payments listed
11 in the Recognized Obligation Payment Schedule may be made by
12 the successor agency from the funds specified in the Recognized
13 Obligation Payment Schedule. In addition, commencing January
14 1, 2012, the Recognized Obligation Payment Schedule shall
15 supersede the Statement of Indebtedness, which shall no longer
16 be prepared nor have any effect under the Community
17 Redevelopment Law.

18 (4) Nothing in the act adding this part is to be construed as
19 preventing a successor agency, with the prior approval of the
20 oversight board, as described in Section 34179, from making
21 payments for enforceable obligations from sources other than those
22 listed in the Recognized Obligation Payment Schedule.

23 (5) From October 1, 2011, to July 1, 2012, a successor agency
24 shall have no authority and is hereby prohibited from accelerating
25 payment or making any lump-sum payments that are intended to
26 prepay loans unless such accelerated repayments were required
27 prior to the effective date of this part.

28 (b) Maintain reserves in the amount required by indentures,
29 trust indentures, or similar documents governing the issuance of
30 outstanding redevelopment agency bonds.

31 (c) Perform obligations required pursuant to any enforceable
32 obligation.

33 (d) Remit unencumbered balances of redevelopment agency
34 funds to the county auditor-controller for distribution to the taxing
35 entities. In making the distribution, the county auditor-controller
36 shall utilize the same methodology for allocation and distribution
37 of property tax revenues provided in Section 34188.

38 (e) Dispose of assets and properties of the former redevelopment
39 agency as directed by the oversight board; provided, however, that
40 the oversight board may instead direct the successor agency to

1 transfer ownership of certain assets pursuant to subdivision (a) of
2 Section 34181. The disposal is to be done expeditiously and in a
3 manner aimed at maximizing value. Proceeds from asset sales and
4 related funds that are no longer needed for approved development
5 projects or to otherwise wind down the affairs of the agency, each
6 as determined by the oversight board, shall be transferred to the
7 county auditor-controller for distribution as property tax proceeds
8 under Section 34188.

9 (f) Enforce all former redevelopment agency rights for the
10 benefit of the taxing entities, including, but not limited to,
11 continuing to collect loans, rents, and other revenues that were due
12 to the redevelopment agency.

13 (g) Effectuate transfer of housing functions and assets to the
14 appropriate entity designated pursuant to Section 34176.

15 (h) Expeditiously wind down the affairs of the redevelopment
16 agency pursuant to the provisions of this part and in accordance
17 with the direction of the oversight board.

18 (i) Continue to oversee development of properties until the
19 contracted work has been completed or the contractual obligations
20 of the former redevelopment agency can be transferred to other
21 parties. Bond proceeds shall be used for the purposes for which
22 bonds were sold unless the purposes can no longer be achieved,
23 in which case, the proceeds may be used to defease the bonds.

24 (j) Prepare a proposed administrative budget and submit it to
25 the oversight board for its approval. The proposed administrative
26 budget shall include all of the following:

27 (1) Estimated amounts for successor agency administrative costs
28 for the upcoming six-month fiscal period.

29 (2) Proposed sources of payment for the costs identified in
30 paragraph (1).

31 (3) Proposals for arrangements for administrative and operations
32 services provided by a city, county, city and county, or other entity.

33 (k) Provide administrative cost estimates, from its approved
34 administrative budget that are to be paid from property tax revenues
35 deposited in the Redevelopment Property Tax Trust Fund, to the
36 county auditor-controller for each six-month fiscal period.

37 (l) (1) Before each six-month fiscal period, prepare a
38 Recognized Obligation Payment Schedule in accordance with the
39 requirements of this paragraph. For each recognized obligation,

1 the Recognized Obligation Payment Schedule shall identify one
2 or more of the following sources of payment:

3 (A) Low and Moderate Income Housing Fund.

4 (B) Bond proceeds.

5 (C) Reserve balances.

6 (D) Administrative cost allowance.

7 (E) The Redevelopment Property Tax Trust Fund, but only to
8 the extent no other funding source is available or when payment
9 from property tax revenues is required by an enforceable obligation
10 or by the provisions of this part.

11 (F) Other revenue sources, including rents, concessions, asset
12 sale proceeds, interest earnings, and any other revenues derived
13 from the former redevelopment agency, as approved by the
14 oversight board in accordance with this part.

15 (2) A Recognized Obligation Payment Schedule shall not be
16 deemed valid unless all of the following conditions have been met:

17 (A) A draft Recognized Obligation Payment Schedule is
18 prepared by the successor agency for the enforceable obligations
19 of the former redevelopment agency by November 1, 2011. From
20 October 1, 2011, to July 1, 2012, the initial draft of that schedule
21 shall project the dates and amounts of scheduled payments for
22 each enforceable obligation for the remainder of the time period
23 during which the redevelopment agency would have been
24 authorized to obligate property tax increment had such a
25 redevelopment agency not been dissolved, and shall be reviewed
26 and certified, as to its accuracy, by an external auditor designated
27 pursuant to Section 34182.

28 (B) The certified Recognized Obligation Payment Schedule is
29 submitted to and duly approved by the oversight board.

30 (C) A copy of the approved Recognized Obligation Payment
31 Schedule is submitted to the county auditor-controller and both
32 the Controller's office and the Department of Finance and be posted
33 on the successor agency's Internet Web site.

34 (3) The Recognized Obligation Payment Schedule shall be
35 forward looking to the next six months. The first Recognized
36 Obligation Payment Schedule shall be submitted to the Controller's
37 office and the Department of Finance by December 15, 2011, for
38 the period of January 1, 2012, to June 30, 2012, inclusive. Former
39 redevelopment agency enforceable obligation payments due, and
40 reasonable or necessary administrative costs due or incurred, prior

1 to January 1, 2012, shall be made from property tax revenues
2 received in the spring of 2011 property tax distribution, and from
3 other revenues and balances transferred to the successor agency.

4 *SEC. 4. Section 34178 of the Health and Safety Code is*
5 *amended to read:*

6 34178. (a) Commencing on the operative date of this part,
7 agreements, contracts, or arrangements between the city or county,
8 or city and county that created the redevelopment agency and the
9 redevelopment agency are invalid and shall not be binding on the
10 successor agency; provided, however, that a successor entity
11 wishing to enter or reenter into agreements with the city, county,
12 or city and county that formed the redevelopment agency that it
13 is succeeding may do so upon obtaining the approval of its
14 oversight board.

15 (b) Notwithstanding subdivision (a), any of the following
16 agreements are not invalid and may bind the successor agency:

17 (1) A duly authorized written agreement entered into at the time
18 of issuance, but in no event later than December 31, 2010, of
19 indebtedness obligations, and solely for the purpose of securing
20 or repaying those indebtedness obligations.

21 (2) A written agreement between a redevelopment agency and
22 the city, county, or city and county that created it that provided
23 loans or other startup funds for the redevelopment agency that
24 were entered into within two years of the formation of the
25 redevelopment agency, *or within two years of the date of the*
26 *creation of a project area if the loan is specific to that project*
27 *area, and any obligations imposed by paragraph (1) of subdivision*
28 *(d) of Section 33691.*

29 (3) A joint exercise of powers agreement in which the
30 redevelopment agency is a member of the joint powers authority.
31 However, upon assignment to the successor agency by operation
32 of the act adding this part, the successor agency's rights, duties,
33 and performance obligations under that joint exercise of powers
34 agreement shall be limited by the constraints imposed on successor
35 agencies by the act adding this part.

36 *SEC. 5. This act is an urgency statute necessary for the*
37 *immediate preservation of the public peace, health, or safety within*
38 *the meaning of Article IV of the Constitution and shall go into*
39 *immediate effect. The facts constituting the necessity are:*

1 *In order to effectuate the transfer of housing funds and*
2 *responsibilities associated with dissolved redevelopment agencies,*
3 *it is necessary that this act take immediate effect.*

O