

AMENDED IN SENATE APRIL 24, 2012

AMENDED IN SENATE APRIL 11, 2012

SENATE BILL

No. 986

Introduced by Senator Dutton
(Coauthor: Senator Cannella)

January 31, 2012

An act to amend Sections 34177 and 34180 of the Health and Safety Code, relating to redevelopment, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 986, as amended, Dutton. Redevelopment: bond proceeds.

Existing law dissolved redevelopment agencies and community development agencies, as of February 1, 2012, and provides for the designation of successor agencies, as defined. Existing law requires that successor entities perform certain duties, including, among others, remitting unencumbered funds of that agency to the county auditor-controller, and overseeing the use of bond proceeds. Existing law requires each successor agency to have an oversight board that is composed of 7 members who meet certain qualifications. Existing law requires the oversight board to approve certain actions of the successor agency.

This bill would require that unencumbered balances of funds that are derived from tax exempt bond proceeds be used in accordance with the requirements of this bill. This bill would also require that the proceeds of bonds issued by a former redevelopment agency on or before December 31, 2010, be used by the successor agency for the purposes for which the bonds were sold pursuant to an enforceable obligation, as defined, that was entered into either by the former redevelopment

agency prior to its dissolution, or is entered into by the successor agency by December 31, 2014. This bill would also provide that if the bond proceeds are not subject to an enforceable obligation, or if the purpose for which the bonds were sold can no longer be achieved, then the bond proceeds shall be used to defease the bonds or to purchase outstanding bonds on the open market for cancellation.

This bill would also authorize the oversight board to approve of the establishment of an enforceable obligation with respect to bond proceeds if certain requirements are met, including, among others, if that obligation is reasonably in furtherance of the purposes for which the bonds were sold.

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

Vote: $\frac{2}{3}$. 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 34177 of the Health and Safety Code is
2 amended to read:
3 34177. Successor agencies are required to do all of the
4 following:
5 (a) Continue to make payments due for enforceable obligations.
6 (1) On and after February 1, 2012, and until a Recognized
7 Obligation Payment Schedule becomes operative, only payments
8 required pursuant to an enforceable obligations payment schedule
9 shall be made. The initial enforceable obligation payment schedule
10 shall be the last schedule adopted by the redevelopment agency
11 under Section 34169. However, payments associated with
12 obligations excluded from the definition of enforceable obligations
13 by paragraph (2) of subdivision (e) of Section 34171 shall be
14 excluded from the enforceable obligations payment schedule and
15 be removed from the last schedule adopted by the redevelopment
16 agency under Section 34169 prior to the successor agency adopting
17 it as its enforceable obligations payment schedule pursuant to this
18 subdivision. The enforceable obligation payment schedule may
19 be amended by the successor agency at any public meeting and
20 shall be subject to the approval of the oversight board as soon as
21 the board has sufficient members to form a quorum.

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

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

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

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

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

28 (c) Perform obligations required pursuant to any enforceable
29 obligation.

30 (d) Remit unencumbered balances of redevelopment agency
31 funds to the county auditor-controller for distribution to the taxing
32 entities, including, but not limited to, the unencumbered balance
33 of the Low and Moderate Income Housing Fund of a former
34 redevelopment agency. In making the distribution, the county
35 auditor-controller shall utilize the same methodology for allocation
36 and distribution of property tax revenues provided in Section
37 34188. Notwithstanding the requirements of this subdivision, if
38 the unencumbered balance of funds is derived from tax exempt
39 bond proceeds, those balances shall be used in accordance with
40 the requirements of subdivision (i).

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

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

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

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

21 (i) Continue to oversee development of properties until the
22 contracted work has been completed or the contractual obligations
23 of the former redevelopment agency can be transferred to other
24 parties. Bond proceeds derived from bonds sold on or before
25 December 31, 2010, shall be used for the purposes for which the
26 bonds were sold, if and to the extent that the successor agency is
27 either performing an obligation required pursuant to any
28 enforceable obligation entered into by the former redevelopment
29 agency, or is performing an enforceable obligation entered into by
30 the successor agency on or before December 31, 2014, to fulfill
31 the purposes for which the bonds were sold by the dissolved
32 redevelopment agency; provided, however, that this section shall
33 not be interpreted to grant to a successor agency the power of
34 eminent domain. Any amount of bond proceeds derived from bonds
35 sold on or before December 31, 2010, not subject to an enforceable
36 obligation shall be used to defease the bonds or to purchase
37 outstanding bonds on the open market for cancellation. If the
38 purposes for which bonds that were sold by the dissolved
39 redevelopment agency on or before December 31, 2010, can no
40 longer be achieved, then the proceeds shall be used to defease the

1 bonds or to purchase outstanding bonds on the open market for
2 cancellation.

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

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

8 (2) Proposed sources of payment for the costs identified in
9 paragraph (1).

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

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

16 (l) (1) Before each six-month fiscal period, prepare a
17 Recognized Obligation Payment Schedule in accordance with the
18 requirements of this paragraph. For each recognized obligation,
19 the Recognized Obligation Payment Schedule shall identify one
20 or more of the following sources of payment:

21 (A) Low and Moderate Income Housing Fund.

22 (B) Bond proceeds.

23 (C) Reserve balances.

24 (D) Administrative cost allowance.

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

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

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

35 (A) A draft Recognized Obligation Payment Schedule is
36 prepared by the successor agency for the enforceable obligations
37 of the former redevelopment agency by March 1, 2012. From
38 October 1, 2011, to July 1, 2012, the initial draft of that schedule
39 shall project the dates and amounts of scheduled payments for
40 each enforceable obligation for the remainder of the time period

1 during which the redevelopment agency would have been
2 authorized to obligate property tax increment had that
3 redevelopment agency not been dissolved, and shall be reviewed
4 and certified, as to its accuracy, by an external auditor designated
5 pursuant to Section 34182.

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

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

12 (3) The Recognized Obligation Payment Schedule shall be
13 forward looking to the next six months. The first Recognized
14 Obligation Payment Schedule shall be submitted to the Controller's
15 office and the Department of Finance by April 15, 2012, for the
16 period of January 1, 2012, to June 30, 2012, inclusive. Former
17 redevelopment agency enforceable obligation payments due, and
18 reasonable or necessary administrative costs due or incurred, prior
19 to January 1, 2012, shall be made from property tax revenues
20 received in the spring of 2011 property tax distribution, and from
21 other revenues and balances transferred to the successor agency.

22 SEC. 2. Section 34180 of the Health and Safety Code is
23 amended to read:

24 34180. All of the following successor agency actions shall first
25 be approved by the oversight board:

26 (a) The establishment of new repayment terms for outstanding
27 loans where the terms have not been specified prior to the date of
28 this part.

29 (b) Refunding of outstanding bonds or other debt of the former
30 redevelopment agency by successor agencies in order to provide
31 for savings or to finance debt service spikes; provided, however,
32 that no additional debt is created and debt service is not accelerated.

33 (c) Setting aside of amounts in reserves as required by
34 indentures, trust indentures, or similar documents governing the
35 issuance of outstanding redevelopment agency bonds.

36 (d) Merging of project areas.

37 (e) Continuing the acceptance of federal or state grants, or other
38 forms of financial assistance from either public or private sources,
39 where assistance is conditioned upon the provision of matching

1 funds, by the successor entity as successor to the former
2 redevelopment agency, in an amount greater than 5 percent.

3 (f) (1) If a city, county, or city and county wishes to retain any
4 properties or other assets for future redevelopment activities,
5 funded from its own funds and under its own auspices, it must
6 reach a compensation agreement with the other taxing entities to
7 provide payments to them in proportion to their shares of the base
8 property tax, as determined pursuant to Section 34188, for the
9 value of the property retained.

10 (2) If no other agreement is reached on valuation of the retained
11 assets, the value will be the fair market value as of the 2011
12 property tax lien date as determined by the county assessor.

13 (g) Establishment of the Recognized Obligation Payment
14 Schedule.

15 (h) A request by the successor agency to enter into an agreement
16 with the city, county, or city and county that formed the
17 redevelopment agency that it is succeeding.

18 (i) A request by a successor agency or taxing entity to pledge,
19 or to enter into an agreement for the pledge of, property tax
20 revenues pursuant to subdivision (b) of Section 34178.

21 (j) The establishment of an enforceable obligation with respect
22 to bond proceeds from bonds sold on or before December 31, 2010,
23 pursuant to subdivision (i) of Section 34177. The oversight board
24 may approve the establishment of an enforceable obligation with
25 respect to bond proceeds if both of the following conditions are
26 met:

27 (1) The obligation is reasonably in furtherance of the purposes
28 for which the bonds were sold.

29 (2) The obligation is consistent with one or more of the
30 following:

31 (A) The obligation is required in order to meet a federal or state
32 matching funds requirement in which federal or state funds have
33 already been committed, and is specific to the project requiring
34 the obligation.

35 (B) The obligation is required in order to meet the requirements
36 for the expenditure of a local general obligation bond approved
37 by the voters.

38 (C) (i) The obligation is required to complete a project specific
39 to critical public infrastructure that is in, or provides benefit to,
40 the project area of the former redevelopment agency and the

1 evidence of the benefit to the community in proceeding with the
2 obligation substantially outweighs the resulting delay in the
3 distribution of tax increment to the impacted taxing entities.

4 (ii) For purposes of this subparagraph, “critical public
5 infrastructure” does not include any of the following:

6 (I) An automobile dealership that will be or is on a parcel of
7 land that has not previously been developed for urban use.

8 (II) A development project or business that, either directly or
9 indirectly, acquires, constructs, improves, rehabilitates, or replaces
10 property that is or would be used for a golf course or for a
11 racetrack, speedway or other racing venue.

12 (III) A development project or business that acquires, constructs,
13 improves, rehabilitates, or replaces property that is or would be
14 used for a stadium, coliseum, arena, ballpark or other sports facility
15 that is intended for use by a professional sports franchise.

16 (IV) A development project or business that, either directly or
17 indirectly, acquires, constructs, improves, rehabilitates, or replaces
18 property that is or would be used for gambling or gaming of any
19 kind whatsoever, including, but not limited to, casinos, gaming
20 clubs, bingo operations, or any facility in which banked or
21 percentage games, any form of gambling device, or lotteries, other
22 than the California State Lottery, are or will be played.

23 (V) A development project or business *that*, either directly or
24 indirectly, acquires, constructs, improves, rehabilitates, or replaces
25 property that is or would be used for retail, entertainment, or other
26 private purpose unrelated to public works, such as bridges, parks,
27 roads, municipal buildings, dams, railroads, schools, hospitals,
28 and other long-term, public physical assets and facilities.

29 SEC. 3. This act is an urgency statute necessary for the
30 immediate preservation of the public peace, health, or safety within
31 the meaning of Article IV of the Constitution and shall go into
32 immediate effect. The facts constituting the necessity are:

33 In order to provide guidance to the successor agencies on the
34 use of bond proceeds, it is necessary for this act to take effect
35 immediately.