

SPECIAL CITY COUNCIL MEETING FOR MARCH 2, 2011

SPECIAL JOINT MEETING OF THE CITY COUNCIL AND REDEVELOPMENT AGENCY Council Chambers - 7:00 PM

CALL TO ORDER Pledge of Allegiance Council/RA Member Peixoto

ROLL CALL

PUBLIC COMMENTS: *(The Public Comment section provides an opportunity to address the City Council on items not listed on the agenda or Work Session, or Informational Staff Presentation items. The Council welcomes your comments and requests that speakers present their remarks in a respectful manner, within established time limits, and focus on issues which directly affect the City or are within the jurisdiction of the City. As the Council is prohibited by State law from discussing items not listed on the agenda, your item will be taken under consideration and may be referred to staff.)*

ACTION ITEMS: *(The Council will permit comment as each item is called for the Consent Calendar, Public Hearings, and Legislative Business. In the case of the Consent Calendar, a specific item will need to be pulled by a Council member in order for the Council to discuss the item or to permit public comment on the item. Please notify the City Clerk anytime before the Consent Calendar is voted on by Council if you wish to speak on a Consent Item.)*

The following order of business applies to items considered as part of Public Hearings and Legislative Business:

- *Disclosures*
 - *Staff Presentation*
 - *City Council Questions*
 - *Public Input*
 - *Council Discussion and Action*
-

HAYWARD CITY COUNCIL, 777 B STREET, HAYWARD, CA 94541
[HTTP://WWW.HAYWARD-CA.GOV](http://www.hayward-ca.gov)

LEGISLATIVE BUSINESS

1. Authorization for Redevelopment Agency Operating Budget Adjustments and Inter-fund Transfers; and Approval of Resolution Authorizing City Manager/Executive Director to Execute Property Transfers Between the Agency and the City and to Take Other Identified Actions to Respond to Anticipated State Actions (**Report from Assistant City Manager/Interim Redevelopment Director Morariu**)
Resolution
Redevelopment Agency Resolution

COUNCIL REPORTS, REFERRALS, AND FUTURE AGENDA ITEMS

Oral reports from Council Members on their activities, referrals to staff, and suggestions for future agenda items

ADJOURNMENT

PUBLIC COMMENT RULES: The Mayor may, at the beginning of the hearing, limit testimony to three (3) minutes per individual and five (5) minutes per an individual representing a group of citizens or organization. Speakers will be asked for their name and their address before speaking and are expected to honor the allotted time. A Speaker's Card must be completed by each speaker and is available from the City Clerk at the meeting.

PLEASE TAKE NOTICE that if you file a lawsuit challenging any final decision on any public hearing or legislative business item listed in this agenda, the issues in the lawsuit may be limited to the issues that were raised at the City's public hearing or presented in writing to the City Clerk at or before the public hearing. PLEASE TAKE FURTHER NOTICE that the City Council has adopted Resolution No. 87-181 C.S., which imposes the 90 day deadline set forth in Code of Civil Procedure section 1094.6 for filing of any lawsuit challenging final action on an agenda item which is subject to Code of Civil Procedure section 1094.5.

****Materials related to an item on the agenda submitted to the Council after distribution of the agenda packet are available for public inspection in the City Clerk's Office, City Hall, 777 B Street, 4th Floor, Hayward, during normal business hours. An online version of this agenda and staff reports are available on the City's website. All Council Meetings are broadcast simultaneously on the website and on Cable Channel 15, KHRT. ****

NEXT SPECIAL MEETING – 7:00 PM, TUESDAY, MARCH 8, 2011

Assistance will be provided to those requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Interested persons must request the accommodation at least 48 hours in advance of the meeting by contacting the City Clerk at (510) 583-4400 or TDD (510) 247-3340.

MARCH 2, 2011





CITY OF
HAYWARD
HEART OF THE BAY

DATE: March 2, 2011

TO: City Council/Redevelopment Agency Board

FROM: Assistant City Manager/Interim Redevelopment Agency Director

SUBJECT: Authorization for Redevelopment Agency Operating Budget Adjustments and Inter-fund Transfers; Approval of Resolutions Authorizing City Manager/Executive Director to Execute Property Transfers Between the Agency and the City; and Authorizing City Manager/Executive Director to Take Other Identified Actions to Respond to Anticipated State Actions.

RECOMMENDATION

That the Agency Board and City Council take the following actions:

- 1) Adopt the attached Resolution authorizing Agency Operating Budget adjustments and Inter-fund transfers as outlined in this report;
- 2) Adopt the attached Resolution (Attachment V) authorizing the Executive Director to execute and deliver one or more grant deeds for the conveyance of the Agency Properties to the City, and to take any other actions and execute other documents necessary to implement this action; and that Council adopt the Resolution (Attachment VA) authorizing the City Manager to take any and all actions deemed necessary to complete this transaction for the City;
- 3) Adopt resolution authorizing Executive Director to transfer funds allowing payment of Water Fund loan in amount totaling \$1,041,075 from Redevelopment Agency (RDA) Tax Increment (TI) fund balance (Attachment VI);
- 4) Adopt resolution authorizing Executive Director to transfer funds allowing payment of Sewer Fund loan in amount totaling \$831,877 from RDA TI fund balance (Attachment VI);
- 5) Adopt resolution authorizing Executive Director to transfer funds allowing partial back payment of prior year installments of the General Fund loan in an amount totaling \$720,000 from RDA TI fund balance (Attachment VI); and
- 6) Adopt resolution authorizing the City Manager to execute loan agreements between the Sewer and Water Funds and the General Fund in amounts totaling \$831,877 and \$1,041,075 respectively; and to establish a reserve in the General Fund with one-time funding totaling \$1,872,952 to serve as an organizational transition fund (Attachment VII).

With the exception of item 1 (which would take effect immediately upon adoption of the resolution), the Executive Director/City Manager would only execute these documents if and when

adoption of State legislation threatening Agency assets and obligations (with substantially the same language and intent as in the current proposed legislation...or worse) appears imminent.

SUMMARY

Following Council and Agency Board direction on February 22, 2011, staff is returning with recommendations regarding a series of actions needed to protect Agency assets and obligations from potential State action targeted at eliminating redevelopment agencies across the state, including the Hayward Redevelopment Agency. The recommended actions can be summarized succinctly as follows:

- 1) Adjust the RDA and Low and Moderate Housing Fund (Low-Mod) operating budgets to accommodate expenses anticipated through the remainder of the fiscal year.
- 2) Transfer all RDA-owned properties to the City.
- 3) Do not proceed with the previously outlined possible securitization of the loans with the General, Sewer, Water, and Low-Mod Funds.
- 4) Use remaining RDA TI fund balance to pay off existing Water and Sewer Fund loans totaling \$1,872,952 and to transfer funds allowing partial back payment of prior year installments of the General Fund loan in an amount totaling \$720,000.
- 5) Approve a loan from the Water and Sewer Funds to the General Fund in an amount totaling \$1,872,952 to be set aside in a reserve to assist the City's transition process if and when the State eliminates the Redevelopment Agency.

The Discussion section of this report contains an analysis of this recommended course of action along with potential risks and concerns. As mentioned above, with the exception of item 1 (which would take effect immediately upon adoption of the resolution), the Executive Director/City Manager would only take these actions if and when adoption of State legislation threatening Agency assets and obligations (with substantially the same language and intent as in the current proposed legislation) appears imminent. The recommended approach is reasonable and prudent and protects the Agency's assets and obligations to the best extent possible under the current circumstances. If the Agency takes these actions based on the triggers outlined and then circumstances change between now and July 1, 2011, it would be relatively easy to unwind the recommended actions.

BACKGROUND

On February 22, 2011, the City Council/Agency Board considered potential Hayward responses to the Governor's budget proposal to eliminate redevelopment agencies throughout the State. After a robust discussion, the Council/Board provided staff with direction to pursue the following options (in order of priority):

- 1) Development of necessary documents to transfer land from the Agency to the City and to evaluate whether this can be done without consideration as repayment of an outstanding obligation. We believe this can legally be accomplished.
- 2) Development of bond documents (indenture, bond purchase agreement and appropriate city and redevelopment resolutions) for the Agency to issue bonds (purchased by the City) to replace existing loan arrangements for each of the three creditors of the Agency (the General Fund, the Sewer Fund and the Water Fund).

Redevelopment Agency Operating Budget Adjustments and Inter-Fund Transfers; Property Transfer Agreements; and Other Identified Actions to Respond to Anticipated State Actions

- 3) Evaluation of how much existing fund balances can be applied towards outstanding loans prior to any creation of a bond as described in (2) above.

This report presents Council with additional information about these options. Additionally, since our discussion with Council/Agency Board at the February 22 meeting, the State Legislature has released draft legislation regarding the elimination of redevelopment agencies. Based on the preliminary analysis of this draft legislation and on multiple and in-depth conversations with financial advisors, bond counsel, RDA counsel, and others, staff is proposing some variations to the options outlined above that will provide a clearer path to allow the Agency to protect its assets and obligations while still meeting the intent of the Council's previous direction. The remainder of this report discusses this proposed path.

Draft Legislation on Redevelopment Elimination

As anticipated, the State Legislature released the Conference Committee legislation language relating to the elimination of redevelopment agencies late in the evening on February 23. The full text of the legislation is attached (see Attachment I).

On February 28, staff received an analysis of this proposal from the California Redevelopment Association, attached hereto as Attachment II. In addition, the Agency's outside affordable housing counsel, Goldfarb & Lipman, has prepared a synopsis of the legislation for their clients (see Attachment IIA). Meyers Nave, another law firm specializing in redevelopment law, also put a summary of the legislation on their website: <http://www.meyersnave.com/publications/proposed-legislation-address-governors-proposal-destablish-redevelopment-agencies>.

In essence, generally accepted interpretation of intent of the legislation does the following:

- As of the effective date of the legislation (the date the legislation is enacted), prohibits redevelopment agencies from entering into any new obligations or commitments or taking any action related to assets or funds of the agency, (e.g. issuing bonds, entering into or amending contracts and development agreements, disposing of assets, transferring funds, approving any new expenditures, joining Joint Powers Authority, etc.)
- As of July 1, 2011, redevelopment agencies throughout the State would be dissolved and a successor agency (consisting of the City that formed the Agency) would be formed. All assets, properties, contracts, and other obligations of the RDA would transfer to the successor agency, with the exception of housing functions. The successor agency would be overseen by a seven-member Oversight Board primarily appointed by County and School officials as follows:
 - County Board of Supervisors (2 members)
 - County Superintendent of Schools (3 members)
 - City Council (1 member)
 - Largest Non-Enterprise Special District (1 member)
 - This Board would, in turn, receive oversight from the State department of Finance

- Successor agencies would make payments and perform all other contractual obligations due for “Enforceable Obligations.” The legislation attempts to define “Enforceable Obligations” but the intent behind the definition is still under debate. For example, the legislation includes loans borrowed by RDAs as an “Enforceable Obligation” and doesn’t differentiate between loans between the RDA and external third-parties and loans between the RDA and say the General Fund. Our sources have indicated that the actual intent is that only external third-party loans and obligations will be honored by the State, and that loans between the RDA and the City will be subject to close examination and possible nullification.
- Successor agencies would also perform the following functions:
 - Dispose of former RDA assets or properties expeditiously and in a manner aimed at maximizing value
 - Effectuate transfer of housing functions
 - Wrap up the affairs of the former RDA
 - Oversee completion of approved development projects
 - Prepare various budgets and reports
- The City may retain housing functions of the former redevelopment agency, including any funds in the former RDA’s housing fund or these functions and assets can be transferred to the local Housing Authority. There does not appear to be a provision that would allow for continued tax increment revenues to be set aside for low and moderate income housing functions.
- The legislation then goes on to explain functions the County Auditor-Controller would have with respect to allocation of funds, audits, and administration of Trust Funds established to distribute property taxes.

Summary of timing and next steps on legislation

The proposed Redevelopment legislation as summarized above has not been formally introduced yet. The legislation will be considered by the Joint Conference Committee over the coming week and may still change significantly. The redevelopment language could be passed as urgency legislation (meaning it would take effect immediately upon passage) and this would require a 2/3 vote of both houses. The legislation could also be folded into the budget legislation, which would only require a simple majority vote. The Governor has indicated a goal of introducing budget legislation to the Assembly and Senate by the middle of next week with anticipated passage as early as March 4th, but no later than March 10th.

DISCUSSION

There are several separate but related discussion items for the Council and Agency Board this evening. Staff has presented each item separately below and has identified recommended Council and Agency actions associated with each. While the actions are related, the Council and the Agency can choose to take certain of the actions and not others.

Agency Operating Budget adjustments and Inter-fund transfers

Redevelopment Agency Operating Budget Adjustments and Inter-Fund Transfers; Property Transfer Agreements; and Other Identified Actions to Respond to Anticipated State Actions

During the fiscal year, there are often items that arise in the normal course of the business that necessitate additional appropriations due to unanticipated cost increases or unexpected expenses. Historically, the Council has acted on these items as part of the mid-year budget review. However, given the other actions being taken with respect to the RDA budget, staff chose to incorporate these items into this report. The adjustments being proposed are as follows:

- a) Cinema Place Maintenance and Environmental Work: As part of the City's agreement for the Cinema Place project, the City has certain obligations with respect to the ongoing maintenance expenses related to the parking garage and the groundwater remediation work below the site. Staff is requesting that the \$2,000 currently budgeted under Special Services for landscape maintenance be transferred to Expense Transfers- Employee Services as this work is now being done by City staff instead of an outside contractor. In addition, staff is requesting a transfer of \$98,000 from unencumbered funds within the RDA operating budget (Programs 5080 and 4416) to the Cinema Place Environmental Remediation Program (5123). This will allow the City to complete the second phase of the required groundwater remediation for the Cinema Place site with the existing contractor on site. The first phase included a pilot program to ensure that the remediation methods would be successful. The pilot program methods were successful so this additional cost will enable the installation of the remaining borings to complete the site remediation. This remediation method has preliminarily been accepted as adequate in addressing the remaining concerns given the success of the pilot program. If the remaining borings are installed, the ongoing liability and exposure will be minimal.
- b) Townsend Public Affairs contract: On October 26, 2010, the Redevelopment Agency authorized the Executive Director to negotiate and execute an agreement with Townsend Public Affairs, Inc. to assist in securing state and federal funding for redevelopment activities, housing, and public facilities in an amount not to exceed \$90,000. The Low-Mod Housing Fund is paying for 25% of this agreement (\$22,500). When this item originally went to the Agency for approval, staff inadvertently omitted the appropriation from Low-Mod Housing funds to cover this cost. As such, staff is now requesting an appropriation and transfer of \$22,500 from Low-Mod Housing Fund Balance to Special Services.
- c) First Time Homebuyer Down Payment Assistance Program: Stricter underwriting guidelines from mortgage lenders, the relative affordability of homes in Hayward, and the increased marketing efforts of the Program Administrator have all sparked a resurgence in demand for the First-Time Homebuyer Down Payment Assistance Program. As of December 31, seventeen loans have closed, four more applications are in the pipeline, and the Program Administrator continues to receive applications for loans. Therefore, it is likely that funds originally budgeted for the Program, which anticipated twenty loans, will run out soon. Because the increase in sales of homes in Hayward may translate into an increase in City revenues from property and real property transfer taxes, staff is requesting budget authority for an additional \$150,000 to fund approximately five more loans. There are existing funds in the First Time Homebuyer Program to cover this budget authority increase. Although the pending State legislation

may freeze any further activity on this program for the remainder of the fiscal year, there are several loans currently pending for which there is no funding authority available. This additional authority would allow staff to execute these transactions immediately prior to any State action. Any remaining funds in this program would return to the First Time Homebuyer Program Fund Balance for use in the next fiscal year.

- d) Route 238 Settlement Administration Costs: In the 1960s and 1970s, the California Department of Transportation (CalTrans) purchased properties along the State Route 238 Corridor (Foothill Boulevard/Mission Boulevard) for a proposed Hayward Bypass project. After years of study and planning and various legal challenges, the Bypass project was abandoned. The final legal Settlement Agreement (“Agreement”) that ended legal issues surrounding the Bypass project was signed on December 17, 2009 by the Corridor residential tenant representatives, the City of Hayward, and Caltrans. As part of the Settlement Agreement, the City of Hayward is implementing the Agreement and incurring administrative costs that must be advanced by the City/Agency with eventual reimbursement from land sale proceeds as CalTrans divests its property interests along the Mission Boulevard Corridor. Administrative fees have not been available in advance from the SR238 settlement fund.

Specifically, Section 8 of the Agreement (Page 28) allows for the reimbursement of costs related to surveying SR238 tenants to determine settlement funds, meetings, translation services, property appraisals and home inspections, and staff costs directly related to implementing the Agreement. In addition, as part of the legal settlement, the agencies party to the Settlement Agreement stipulated to paying Class Counsel (attorneys for the corridor tenants) for negotiated legal costs within one year of the Court Order that validated the Agreement (April of 2011), or pay 5% annual interest charges. The City, as the Agreement Administrator, agreed to pay those fees on behalf of the agency partners. As mentioned and pursuant to the Settlement Agreement, CalTrans will reimburse the City for these costs once the corridor properties are sold. Staff recommends that \$1.5 million be transferred and appropriated from the Low-Mod Housing Fund Balance to cover the costs outlined below.

The cost breakdown for both administration and attorney fees is detailed below:

- \$424,409 (2011-2012 administrative costs including staff time for Agreement implementation and Bunker Hill area analysis, home appraisals, home inspections, tenant interviews, tenant appeal hearings, meetings, and translation expenses)
- \$302,935 (2010-2011 administrative costs for area mapping and planning analysis, legal services, tenant interview start-up, and supplies)

Subtotal – Administrative Costs: \$727,344

- \$750,000 (negotiated legal fee with Class Counsel)

TOTAL: \$1,477,344

Redevelopment Agency Operating Budget Adjustments and Inter-Fund Transfers; Property Transfer Agreements; and Other Identified Actions to Respond to Anticipated State Actions

Recommended Agency Board Actions:

- 1) Transfer \$2,000 from RDA Special Services to Expense Transfers- Employee Services (Cinema Place Landscaping)**
- 2) Transfer \$\$64,000 from RDA Program 5080 and \$33,000 from RDA Program 4416 to RDA Program 5123 (Cinema Place Environmental Remediation)**
- 3) Transfer \$22,500 from Low-Mod Housing Fund Balance to fund Townsend Associates contract.**
- 4) Increase budget authority for First Time Homebuyer Program by \$150,000.**
- 5) Transfer \$1,477,344 from Low-Mod Housing Fund Balance to SR238 Project Budget.**

Triggers for these actions: These actions would take effect immediately upon Agency Board adoption of the attached resolution (Attachment III).

Property Transfer Agreements

At the February 22 meeting, staff identified a list of Agency-owned properties potentially at risk under the Governor's budget proposal. In preparing to bring back further analysis of proposed property transfers from the Agency to the City, staff completed the identification of all properties, some of which were not included on the original hastily compiled list. Attachment IV provides a list of these properties by parcel number or address and by the current/intended use of the property. Staff originally proposed the transfer of the Agency properties to the City to avoid losing control of these properties and to provide flexibility to preserve local assets. Given the additional research performed concerning the disposition process for City-owned land, staff recommends that the Agency Board adopt the attached resolutions authorizing the Executive Director to execute and deliver one or more grant deeds for the conveyance of the Agency Properties to the City and to take any other action and execute other documents necessary to implement this action, and directing the City Manager to accept the transfers.

In addition, the Council/Agency Board asked for an analysis of the impacts on current projects being negotiated for development on Agency land (namely the residual Burbank property and the B & Grand affordable housing sites); and, more globally, an analysis of the land disposition process if the properties are transferred to the City. Under state law, cities have broad discretion to dispose of land, provided that the disposition is for the "common benefit" and processed in a manner consistent with local law. There is no requirement that cities declare property "surplus" before disposition. However, if property is declared surplus, then cities must observe some formalities prior to disposition, as prescribed by state law. With respect to the residual Burbank property, the agreement with the HUD under which the Agency acquired the property, contemplated that the property would ultimately be conveyed for private development. Regarding the B and Grand property, the Agency acquired the property to satisfy, in part, the developer's obligation to provide affordable housing under the City's Inclusionary Housing Ordinance. Both these objectives satisfy the "common benefit" requirement for disposition.

Based on the analysis, staff believes that, once the properties are transferred to the City, the City can continue to negotiate with the current developers on both sites and execute the necessary documents to approve these projects.

There is one additional point of note regarding the transfer of Agency-owned properties. By transferring the parking lots and garages to the City, the maintenance obligation becomes the General Fund's to bear. Currently, the Agency is only paying about \$143,000 annually for the various costs associated with the Cinema Place garage. The Agency does not pay any other ongoing maintenance or operations costs for any other properties.

There is another point to consider with respect to the transfer of the properties to the City, particularly as it relates to the properties along Mission Boulevard: Once the City acquires title to the Agency properties, the City may be responsible for clean-up costs if the properties are contaminated, whether or not the City caused the contamination. The Agency has similar liability, but, under State Redevelopment Law, it can control some potential exposure by obtaining clearance from state regulatory agencies. Both the City and the Agency can seek contribution from the owner causing the contamination, if the source of the contamination can be established and provided that the owner has the resources to pay for the clean-up costs. The extent of contamination of the Agency properties is not fully known at this time. However, staff believes that the benefit of retaining the properties under local control outweighs the risks of acquiring property that may be contaminated.

Recommended Council/Agency Board Action:

- 1) Adopt the attached Resolution (Attachment V) authorizing the Executive Director to execute and deliver one or more grant deeds for the conveyance of the Agency Properties to the City and to take any other action and execute other documents necessary to implement this action; and that Council adopt the attached resolution (Attachment VA) authorizing the City Manager to accept the transfers and take any and all actions deemed necessary to complete this transaction for the City.**

Triggers for these actions: The Executive Director would only execute these documents if and when adoption of State legislation (with substantially the same language and intent as in the current proposed legislation...or worse) appears imminent.

Repayment of Outstanding RDA Loans and Issuance of Bonds

At the February 22 meeting, the Council directed staff to research options for securitizing the four outstanding loans between the Agency and various other City funds. Currently, there are four loans outstanding:

General Fund: \$9,144,570

Sewer Fund: \$831,877

Water Fund: \$1,041,075

Low-Mod Housing Fund (for SERAF payment): \$4,421,374

Redevelopment Agency Operating Budget Adjustments and Inter-Fund Transfers; Property Transfer Agreements; and Other Identified Actions to Respond to Anticipated State Actions

After further discussions with bond counsel and the City's financial advisor, staff no longer recommends securitizing any of these loans through the bond sale outlined at the February 22 meeting. There are numerous interpretations of the language as it currently exists in the proposed State legislation. However, on its face, it appears that the legislation would honor "enforceable obligations" and that loans, such as the ones outlined above, would constitute "enforceable obligations." Staff believes that the existing obligations are long standing and well documented. (i.e., none of these loans were established in the past ninety days under the threat of State elimination of redevelopment agencies, and all were for legitimate purposes, including payment of the State takeaway under ERAF in FY 2010.) Staff believes that any attempt to change the status of these loans, including securitization, would weaken their protection and increases their vulnerability to a State taking. In addition, securitization comes associated with some additional costs, which cannot be recouped, and, it is highly unlikely that the actions can be correctly started and completed in the time available to us.

The Agency Board also asked staff to explore prepayment of the loans with existing RDA funds if possible. After analyzing the existing fund balance in the Agency, staff recommends that the Agency Board uses remaining RDA TI fund balance to pay off the existing water and sewer loans and transfer funds allowing partial back payment of prior year installments of the General Fund loan. Based on estimates of salary and project savings, staff projects that there will be approximately \$2.6 million in TI fund balance at the end of the fiscal year. Paying off the Water and Sewer Fund loans would consume \$1,872,952 of this fund balance, leaving approximately \$720,000. Staff recommends that this \$720,000 be used to allow partial back payment of prior year installments of the General Fund loan to the Agency (which is \$800,000 annually). The \$800,000 payment for FY2011 has already been made and is posted to the General Fund. Sufficient funds do not exist in the Redevelopment Agency to repay the General Fund and the Low-Mod Housing Fund loans other than what is outlined in the paragraph above.

Staff is proposing another related action that would assist in the organization's transition if and when the State eliminates the Redevelopment Agency. After repayment of the Sewer and Water loans, staff recommends that the Council authorize the City Manager to execute a loan agreement between the Sewer and Water funds and the General Fund in an amount totaling \$1,872,952. This would be a new agreement with different terms and payment schedules to be negotiated if and when execution of the loan becomes necessary. These funds would be set up as a reserve in the General Fund to ease the financial burden on the General Fund if the State eliminates the Redevelopment Agency as of July 1, 2011. The approximately \$1.9 million would be sufficient to cover the equivalent of one year of RDA payment of administrative costs to the General Fund (approximately \$800,000) and one year of repayment of the loan between the Agency and the General Fund (\$800,000), leaving approximately \$300,000 as additional contingency funds in this reserve. Whatever remaining funds might exist after transition, would be returned to the Water and Sewer funds in proportion relative to their respective loan amounts.

Recommended Council/Agency Board Action:

- 1) **Do not pursue securitization of current Agency loans.**

- 2) Adopt resolution authorizing Executive Director to transfer funds allowing payment of Water Fund loan in amount totaling \$1,041,075 from RDA TI fund balance (Attachment VI).
- 3) Adopt resolution authorizing Executive Director to transfer funds allowing payment of Sewer Fund loan in amount totaling \$831,877 from RDA TI fund balance (Attachment VI).
- 4) Adopt resolution authorizing Executive Director to transfer funds allowing partial back payment of prior year installments of the General Fund loan in an amount totaling \$720,000 from RDA TI fund balance (Attachment VI).
- 5) Adopt resolution authorizing the City Manager to execute loans agreements between the Sewer and Water Funds and the General Fund in amounts totaling \$831,877 and \$1,041,075 respectively and to establish a reserve in the General Fund with one-time funding totaling \$1,872,952 to serve as an organizational transition fund (Attachment VII).

Triggers for these actions:

- 1) N/A
- 2) The Executive Director would only execute this fund transfer if and when adoption of State legislation (with substantially the same language and intent as in the current proposed legislation...or worse) appears imminent.
- 3) The Executive Director would only execute this fund transfer if and when adoption of State legislation (with substantially the same language and intent as in the current proposed legislation...or worse) appears imminent.
- 4) The Executive Director would only execute this fund transfer if and when adoption of State legislation (with substantially the same language and intent as in the current proposed legislation...or worse) appears imminent.
- 5) The City Manager would only execute this loan agreement and transfer of funds if the Agency is forced to take the actions outlined in Items 2-4.

ENVIRONMENTAL REVIEW

Agency staff has determined that the Agency's authorization of the transfer of the Agency Properties is exempt from CEQA, pursuant to the CEQA Guidelines set forth in California Code of Regulations, Title 14, Section 15378(b)(5), which provides that such authorizations are not considered a project subject to CEQA review because the transfer of the Agency Properties is an organizational activity that will not result in direct or indirect physical changes in the environment. Any future development of these properties would be subject to CEQA review at the time of development.

In addition, staff has determined that the transfer of funds and repayment of loan obligations is also not considered a project subject to CEQA review.

FISCAL IMPACT

Redevelopment Agency Operating Budget Adjustments and Inter-Fund Transfers; Property Transfer Agreements; and Other Identified Actions to Respond to Anticipated State Actions

The State's proposed actions to eliminate redevelopment agencies statewide represents more of the same misguided and illegal State budget raids of local government funds that voters have repeatedly sought to end. It will bring little financial benefit to the State, but will permanently destroy hundreds of thousands of jobs, billions in local economic activity and a key local tool to meet the state's infill land-use objectives. In November 2010, more than 5.7 million voters, a resounding 60.7%, voted to pass Prop. 22, to stop the State from taking, borrowing, or redirecting local government funds - including those from local redevelopment. Cities and local governments want to work with the State as partners to balance the State budget and in the important effort to realign services and revenue to the best service level of government. However, this proposal creates a toxic environment that city and other local government officials have no choice but to oppose.

Hayward has utilized RDA funds in a comprehensive, productive, and lawful way to accomplish a great deal in our community from building new schools, reclaiming brown-fields, building affordable housing, revitalizing our downtown, increasing urban parks, building market-rate housing, and leading the way on transit oriented development (TOD). The State continues to demand that local government produce affordable housing and then proposes to take away the very mechanism that provides the funds, staffing, and pathways to actually build the housing. RDAs have the ability to compile and/or buy the land necessary for these developments. It has the mechanism to encourage affordable housing in market-rate developments. It has the ability to partner with private developers to assure parks and other amenities are included in each and every development. RDAs have been the single most effective mechanism by which affordable housing gets built.

Under the State's proposed legislation, the Hayward Redevelopment Agency stands to lose approximately \$2.3 million annually in property tax increment revenue that can be used for local redevelopment and economic development purposes, as well as approximately \$1.6 million annually in property tax increment revenue dedicated to affordable housing. In addition, the Redevelopment Agency supports legitimate and related General Fund activities in an amount totaling almost \$800,000.

The State's proposed legislation would enable the State to take well over \$30 million in Agency-held land and could potentially jeopardize loans between the Agency and various City funds totaling close to \$15.5 million. The actions outlined in this report are reasonable and prudent steps for the Agency and the City to take to protect local assets and funds from further illegal State takeaways.

Additionally, this report does not address the \$900,000 payment the Agency is required to make to the State under the Supplemental ERAF program in May 2011. Given the current circumstances, the Agency does not anticipate having to make the SERAF payment for FY2011. However, staff has left these funds in the operating budget.

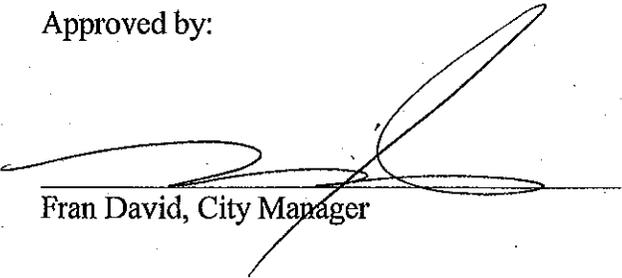
NEXT STEPS

Redevelopment Agency Operating Budget Adjustments and Inter-Fund Transfers; Property Transfer Agreements; and Other Identified Actions to Respond to Anticipated State Actions

Upon approval by the Agency Board and Council of the recommendations contained herein, staff will monitor State actions and take the necessary steps to implement the Agency Board and Council direction.

Prepared by: Kelly McAdoo Morariu, Assistant City Manager, Interim Redevelopment Agency Director

Approved by:



Fran David, City Manager

Attachments:

- Attachment I: Proposed Legislation on Redevelopment Elimination
- Attachment II: California Redevelopment Association Analysis of Proposed Legislation
- Attachment IIA: Goldfarb & Lipman Analysis of Proposed Legislation
- Attachment III: Resolution Authorizing RDA Operating Budget Transfers (to be distributed Wednesday, March 2)
- Attachment IV: List of Agency-Owned Properties
- Attachment V: Agency Board Resolution Approving the Transfer of Certain Properties to the City of Hayward and Making Certain Findings Relating Thereto
- Attachment VA: Council Resolution Directing the City Manager to Accept the Property Transfers
- Attachment VI: Agency Board Resolution Authorizing the Executive Director to Transfer Funds Allowing Payment of Loan Obligations to the Sewer, Water and General Funds (to be distributed Wednesday, March 2)
- Attachment VII: Council Resolution Authorizing the City Manager to Negotiate and Execute a Loan Agreement Between the City and the Sewer and Water Funds (to be distributed Wednesday, March 2)

Redevelopment Agency Dissolution and Succession

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) The economy and the residents of this state are slowly recovering from the worst recession since the Great Depression.

(b) State and local governments are still facing incredibly significant declines in revenues and increased need for core governmental services.

(c) Local governments across this state continue to confront difficult choices and have had to reduce fire and police protection among other services.

(d) Schools have faced reductions in funding that have caused school districts to increase class size, layoff teachers as well as make other hurtful cuts.

(e) Redevelopment agencies have expanded over the years in California. The expansion of redevelopment agencies has increasingly shifted property taxes away from services provided schools, counties, special districts, and cities.

(f) Redevelopment agencies take in approximately twelve percent all of the property taxes collected across California.

(g) It is estimated that under current law, redevelopment agencies will divert \$5 billion in property tax revenue from other taxing agencies in fiscal year 2011-12.

(h) These difficult times demand that a reexamination of resources and priorities be undertaken. This reexamination demonstrates that the state's investment in local economic development and redevelopment agencies is less critical than providing for police and fire protection and is less critical than preventing additional harm to public education.

(i) Therefore, the Legislature finds that the existence of redevelopment agencies which redirect property tax dollars from core services and does so without a vote of the people must cease. The Legislature further finds that these existing tax dollars must be returned to schools, fire districts, and the other local entities from which they have been diverted.

(j) The Legislature has all legislative power not explicitly restricted to it. The Constitution does not explicitly state that redevelopment agencies must exist and, unlike other entities such as counties, does not limit the Legislature's control over that existence. Redevelopment agencies were created by statute and can therefore be eliminated by statute.

(k) It is the intent of the Legislature to do the following in this act:

(1) Bar existing redevelopment agencies from incurring new obligations that would divert any more money from core functions and dissolve all existing redevelopment. It is the intent of the Legislature that the greatest amount of funding be realized from these actions to fund core governmental services.

(2) Beginning with 2012-13 fiscal year, allocate these funds according to the existing property tax allocation, except for enterprise special districts, to make the funds available for cities, counties, special districts, school and community college districts to provide core governmental services. As a result of these actions, it is estimated that, by fiscal year 2012-13, these local entities will receive \$1.9 billion per year in new resources to use for their core priorities.

(3) Require a successor entity to settle the affairs of the redevelopment agencies.

(4) Require the protection of contractual rights by successor agencies, which will be required to retire redevelopment agency debts in accord with existing payment schedules. No existing contractual obligations will be impaired.

SEC 2. Section 33500 of the Health and Safety Code is amended to read:

33500. (a) Notwithstanding any other provision of law, including Section 33501, an action may be brought to review the validity of the adoption or amendment of a redevelopment plan at any time within 90 days after the date of the adoption of the ordinance adopting or amending the plan, if the adoption of the ordinance occurred prior to January 1, 2011.

(b) Notwithstanding any other provision of law, including Section 33501, an action may be brought to review the validity of any findings or determinations by the agency or the legislative body at any time within 90 days after the date on which the agency or the legislative body made those findings or determinations, if the finding or determinations occurred prior to January 1, 2011.

(c) Notwithstanding any other provision of law, including Section 33501, an action may be brought to review the validity of the adoption or amendment of a redevelopment plan at any time within three years after the date of the adoption of the ordinance adopting or amending the plan, if the adoption of the ordinance occurred after January 1, 2011.

(d) Notwithstanding any other provision of law, including Section 33501, an action may be brought to review the validity of any findings or determinations by the agency or the legislative body at any time within three years after the date on which the agency or the legislative body made those findings or determinations, if the finding or determinations occurred after January 1, 2011.

SEC. 3 Section 33501 of the Health and Safety Code is amended to read:

33501. (a) An action may be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure to determine the validity of bonds and the redevelopment plan to be financed or refinanced, in whole or in part, by the bonds, or to determine the validity of a redevelopment plan not financed by bonds, including without limiting the generality of the foregoing, the legality and validity of all proceedings theretofore taken for or in any way connected with the establishment of the agency, its authority to transact business and exercise its powers, the designation of the survey area, the selection of the project area, the formulation of the preliminary plan, the validity of the finding and determination that the project area is predominantly urbanized, and the validity of the adoption of the redevelopment plan, and also including the legality and validity of all proceedings theretofore taken and (as provided in the bond resolution) proposed to be taken for the authorization, issuance, sale, and delivery of the bonds, and for the payment of the principal thereof and interest thereon.

(b) Notwithstanding subdivision (a), an action to determine the validity of a redevelopment plan, or amendment to a redevelopment plan that was adopted prior to January 1, 2011, may be brought within 90 days after the date of the adoption of the ordinance adopting or amending the plan.

(c) Any action that is commenced on or after January 1, 2011 which is brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure to determine the validity or legality of any issue, document, or action described in subdivision (a) may be brought within three years after the date of the triggering event.

~~(e)~~ (d) For the purposes of protecting the interests of the state, the Attorney General and the Department of Finance are interested persons pursuant to Section 863 of the Code of Civil Procedure in any action brought with respect to the validity of an ordinance adopting or amending a redevelopment plan pursuant to this section.

~~(d)~~ (e) For purposes of contesting the inclusion in a project area of lands that are enforceably restricted, as that term is defined in Sections 422 and 422.5 of the Revenue and Taxation Code, or lands that are in agricultural use, as defined in subdivision (b) of Section 51201 of the Government Code, the Department of Conservation, the county agricultural commissioner, the county farm bureau, the California Farm Bureau Federation, and agricultural entities and general farm organizations that provide a written request for notice, are interested persons pursuant to Section 863 of the Code of Civil Procedure, in any action brought with respect to the validity of an ordinance adopting or amending a redevelopment plan pursuant to this section.

SEC. 4. Section 33604 of the Health and Safety Code is repealed.

SEC. 5. Part 1.8 of Division 24 of the Health and Safety Code is added to read:

Restrictions on Redevelopment Agencies Operations

Chapter 1 Suspension of Agency Activities and Prohibition on Creation of New Debts

Section 34161 Notwithstanding Part 1 (commencing with Section 33000), Part 1.5 (commencing with Section 34000), Part 1.6 (commencing with Section 34050), and Part 1.7 (commencing with Section 34100), or any other law, commencing on the effective date of this part, no agency shall incur new or expand existing monetary or legal obligations except as provided in this part. All of the provisions of this part shall take effect and be operative on the effective date of the act adding this part.

Section 34162 (a) Notwithstanding Part 1 (commencing with Section 33000), Part 1.5 (commencing with Section 34000), Part 1.6 (commencing with Section 34050), and Part 1.7 (commencing with Section 34100), or any other law, commencing on the effective date of this Act, an agency shall be unauthorized, and shall not take action, to incur indebtedness, including, but not limited to, all of the following:

(1) Issue or sell bonds, for any purpose, regardless of the source of repayment of such bonds. As used in this section, "bonds", includes but is not limited to any bonds, notes, bond anticipation notes, interim certificates, debentures, certificates of participation, refunding bonds, or other obligations issued by an agency pursuant to the Part 1 (commencing with Section 33000), and Section 53583 of the Government Code, pursuant to any charter city authority, or any revenue bond law,

(2) Incur indebtedness payable from any of the following prohibited sources of repayment, which include, but are not limited to, income and revenues of an agency's redevelopment projects, taxes allocated to the agency, taxes imposed by the agency pursuant to Section 7280.5 of the Revenue and Taxation Code, assessments imposed by the agency, loan repayments made to the agency pursuant to Section 33746, fees or charges imposed by the agency, other revenues of the agency, and any contributions or other financial assistance from the state or federal government.

(3) Refund, restructure or refinance indebtedness or obligations that existed as of January 1, 2011, including but, not limited to, all of the following:

(A) Refunding bonds previously issued by the agency or by another political subdivision of the state, including, but not limited to those issued by a city, a housing authority or a nonprofit corporation acting on behalf of a city or a housing authority.

(B) Exercise the right of optional redemption or of any of its outstanding bonds or elect to purchase any of its own outstanding bonds.

(4) Take out or accept loans or advances, for any purpose, from the state or the federal government or any other public agency or any private lending institution or from any other source. For purposes of this section, "loans" include, but, are not limited to, agreements with the community or any other entity for the purpose of refinancing a redevelopment project and moneys advanced to the agency by the community or any other entity for the expenses of redevelopment planning, expenses for dissemination of redevelopment information, other administrative expenses and overhead of the agency.

(b) Any actions taken that conflict with this section are void ab initio and shall have no force or effect.

(c) Notwithstanding subdivision (a), the agency may issue refunding bonds Emergency Refunding Bonds, only where all of the following conditions are met:

(1) The issuance of Emergency Refunding Bonds is the only means available to the agency to avoid a default on outstanding agency bonds

(2) The county treasurer has approved the issuance of Emergency Refunding Bonds

(3) Emergency Refunding Bonds are issued only to provide funds for any single debt service payment that is due prior to June 30, 2011 and that is more than 20 percent larger than a level debt service payment would be for that bond.

(4) The principal amount of outstanding agency bonds is not increased.

Section 34163. (a) Notwithstanding Part 1 (commencing with Section 33000), Part 1.5 (commencing with Section 34000), Part 1.6 (commencing with Section 34050), and Part 1.7 (commencing with Section 34100), or any other law, commencing on the effective date of this part, an agency shall not have the authority to, and shall not, do any of the following:

(1) Make loans or advances or grant or enter into agreement to provide funds or provide financial assistance of any sort to any entity or person for any purpose.

(2) Enter into contracts with, incur obligations or make commitments to any entity (whether governmental, tribal, or private) or any individual or groups of individuals for any purpose, including, but not limited to, loan agreements, pass-through agreements, regulatory agreements, services contracts, leases, disposition and development agreements, joint exercise of powers agreements, contracts for the purchase of capital equipment, agreements for redevelopment activities, including, but not limited to agreements for, planning, design, redesign, development, demolition, alteration, construction, reconstruction, rehabilitation, site remediation, site development or improvement, removal of graffiti, land clearance and seismic retrofits.

(3) Amend or modify existing agreements, obligations or commitments with any entity, for any purpose, including, but not limited to, all of the following:

(A) Renewing or extending term of leases or other agreements, except that the agency may extend lease space for their own use to a date not to exceed six months after the effective date of this Act and for a rate no more than five percent above the rate the agency currently pays on a monthly basis.

(B) Modifying terms and conditions of existing agreements, obligations or commitments.

(C) Transfer funds out of the Low and Moderate Income Housing Fund, except to meet the minimum housing-related obligations that existed as of January 1, 2011.

(4) Dispose of assets by sale, long-term lease, gift, grant, exchange, transfer, assignment or otherwise, for any purpose, including, but not limited to, all of the following:

(A) Assets including, but not limited to real property, deeds of trust and mortgages held by the agency, moneys, accounts receivable, contract rights, proceeds of insurance claims, grant proceeds, settlement payments and rights to receive rents any other rights to payment of whatever kind.

(B) Real property including but not limited to land, land under water and waterfront property, buildings, structures, fixtures, and improvements on the land, any property appurtenant to or used in connection with the land, every estate, interest, privilege, easement, franchise, and right in land, including rights-of-way, terms for years, and liens, charges, or encumbrances by way of judgment, mortgage, or otherwise and the indebtedness secured by such liens.

(5) Accept financial or other assistance from the state or federal government or any public or private source if such acceptance necessitates or is conditioned upon the agency incurring indebtedness as that term is described in this part.

Section 34164. (a) Notwithstanding Part 1 (commencing with Section 33000), Part 1.5 (commencing with Section 34000), Part 1.6 (commencing with Section 34050), and Part 1.7 (commencing with Section 34100), or any other law, commencing on the effective date of this

part, an agency shall lack the authority to, and shall not, engage in any of the following redevelopment activities:

- (1) Prepare, approve, adopt, amend, or merge a redevelopment plan, including, but not limited to, modifying, extending or otherwise changing the time limits on the effectiveness of a redevelopment plan.
- (2) Create, designate, merge, expand or otherwise change the boundaries of a project area.
- (3) Designate a new survey area or modify, extend or otherwise change the boundaries of an existing survey area.
- (4) Approve or direct or cause the approval of any program, project or expenditure where such approval is not required by law.
- (5) Prepare, formulate amend or otherwise modify a preliminary plan or cause the preparation, formulation, modification or amendment of a preliminary plan.
- (6) Prepare, formulate amend or otherwise modify an implementation plan or cause the preparation, formulation, modification or amendment of an implementation plan.
- (7) Prepare, formulate amend or otherwise modify a relocation plan or cause the preparation, formulation, modification or amendment of a relocation plan where such approval is not required by law.
- (8) Prepare, formulate amend or otherwise modify a redevelopment housing plan or cause the preparation, formulation, modification or amendment of a redevelopment housing plan.
- (9) Direct or cause the development, rehabilitation or construction of housing units within the community, unless required to do so by an Enforceable Obligation.
- (10) Making or modifying a declaration or finding of blight, blighted areas, or slum and blighted residential areas.
- (11) Make any new findings or declarations that any areas of blight cannot be remedied or redeveloped by private enterprise alone.
- (12) Provide or commit to provide relocation assistance, except where the provision of such relocation assistance is required by law.
- (13) Provide or commit to provide financial assistance.

Section 34165. Notwithstanding Part 1 (commencing with Section 33000), Part 1.5 (commencing with Section 34000), Part 1.6 (commencing with Section 34050), and Part 1.7 (commencing with Section 34100), or any other law, commencing on the effective date of this part, an agency shall lack the authority to, and shall not, do any of the following:

- (a) Enter into new partnerships, become a member in a joint powers authority, form a joint powers authority, create new entities or become a member of any entity of which it is not

currently a member nor take on nor agree to any new duties or obligations as a member or otherwise of any entity to which the agency belongs to or is in any way associated with.

(b) Impose new assessments pursuant to Section 7280.5 of the Revenue and Taxation Code.

(c) Bring an action pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure to determine the validity of any issuance or proposed issuance of revenue bonds under this chapter and the legality and validity of all proceedings previously taken or proposed in a resolution of an agency to be taken for the authorization, issuance, sale, and delivery of the revenue bonds and for the payment of the principal thereof and interest thereon.

(c) Begin any condemnation proceeding or begin the process to acquire real property by eminent domain.

(e) Prepare or have prepared a draft environmental impact report. This subdivision does not alter or eliminate any requirements of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code.

Section 34166. No legislative body or local governmental entity has any statutory authority to create or otherwise establish a new redevelopment agency or community development commission. No chartered city or chartered county may exercise the powers granted in Part 1 (commencing with Section 33000) to create or otherwise establish a redevelopment agency.

Section 34167. (a) This part is intended to preserve, to the maximum extent possible, the revenues and assets of the redevelopment agencies so that those assets and revenues that are not needed to pay for enforceable obligations may be used by local governments to fund core governmental services such as police, fire protection and schools. It is the intent of the Legislature that redevelopment agencies take no actions that would further deplete the corpus of the agencies' funds regardless of their original source. All provisions of this part should be read as broadly as possible to support this intent and to restrict the expenditure of funds to the fullest extent possible.

(b) For purposes of this part "agency" means a redevelopment agency created or formed pursuant to Part I (commencing with Section 33000) or its predecessor or a community development commission created or formed pursuant to part 1.7 (commencing with Section 34100) or its predecessor.

(c) (1) For purposes of this part, "enforceable obligation" means any of the following:

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

(B) Loans of monies borrowed by the redevelopment agency for a lawful purpose.

(C) Payments required by the federal government, pre-existing obligations to the State or obligations imposed by state law, other than pass through payments that are made by the county auditor-controller pursuant to section 34183, or legally enforceable payments required in connection with the agencies' employees, including, but not limited, to pension payments and unemployment payments.

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

(E) Any legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy.

(F) Contracts or agreements necessary for the administration or operation of the redevelopment agency, to the extent permitted by this part, including, but not limited to, agreements purchase or rent office space, equipment and supplies and to pay related expenses pursuant to Section 33127 and for carrying insurance pursuant to section 33134.

(d) To the extent that any provision of Part 1 (commencing with Section 33000), Part 1.5 (commencing with Section 34000), Part 1.6 (commencing with Section 34050), and Part 1.7 (commencing with Section 34100) conflict with this part the provisions of this part shall control. Further, if any provision in Part 1 (commencing with Section 33000), Part 1.5 (commencing with Section 34000), Part 1.6 (commencing with Section 34050), and Part 1.7 (commencing with Section 34100) provides an authority that this part is restricting or eliminating, the restriction and elimination provisions of this part shall control.

(e) Nothing herein shall be construed to interfere with an agency's authority to (1) make payments due, (2) enforce existing covenants and obligations or (3) perform its obligations, all pursuant to enforceable obligations as defined in this section.

Section 34168. (a) Notwithstanding any other law, any action contesting the validity of this part or Part 1.85 (commencing with Section 34170) or challenging acts taken pursuant to these parts shall be brought in the Superior Court of the County of Sacramento.

(b) If any provision of this part or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this part which can be given effect without the invalid provision or application, and to this end, the provisions of this part are severable.

Chapter 2 Redevelopment Agency Responsibilities

Section 34169. Until successor agencies are empowered pursuant to Part 1.85, redevelopment agencies shall do all of the following:

(a) Continue to make all scheduled payments for enforceable obligations as defined in subdivision (c) of Section 34167.

(b) Perform obligations required pursuant to any enforceable obligations, including, but not limited to, observing covenants for continuing disclosure obligations and those aimed at preserving the tax-exempt status of interest payable on any outstanding agency bonds.

(c) Set aside or maintain reserves in the amount required by indentures, trust indentures or similar documents governing the issuance of outstanding redevelopment agency bonds

(d) Preserve all assets, minimize all liabilities and preserve all records of the redevelopment agency.

(e) Cooperate with the successor agencies and provide all records and information necessary or desirable for audits, making of payments required by enforceable obligations and performance of enforceable obligations by the successor agencies.

(6) Take all reasonable measures to avoid triggering an event of default under any enforceable obligations as such term is defined in subdivision (c) of Section 34167.

SEC. 6. Part 1.85 (commencing with Section 34170) is added to Division 24 of the Health and Safety Code, to read:

Part 1.85 Dissolution of Redevelopment Agencies and Designation of Successor Agencies

Chapter 1 Effective Date, Creation of Funds, and Definition of Terms

Section 34170. (a) Unless otherwise specified, all provisions of this part shall take effect on July 1, 2011.

(b) If any provision of this part or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this part which can be given effect without the invalid provision or application, and to this end, the provisions of this part are severable.

Section 34170.5 (a) The following funds are hereby created:

(1) The "Public Health and Safety Fund" is hereby created in each county that contains a redevelopment agency, for administration by the county auditor-controller or such other entity as provided in section 34182.

(2) A "Redevelopment Obligation Retirement Fund" is hereby created in the treasury of each successor agency.

(3) A "Redevelopment Property Tax Trust Fund" is hereby created for the property tax revenues related to each former redevelopment agency, in each county, for administration by the county auditor-controller.

34171. The following terms shall have the following meanings:

(a) "Administrative budget" means the budget for administrative costs of the successor agencies as provided in section 34177.

(b) "Administrative cost allowance" means an amount that, subject to the approval of the oversight board, is payable from property tax increment revenues equal to the greater of five percent of the property tax allocated to the successor agency for the 2011-12 fiscal year and three percent of the property tax allocated to the successor agency for each fiscal year thereafter, or \$250,000 for any fiscal year. However, the allowance amount shall exclude any administrative costs that can be paid from bond proceeds or from sources other than property tax.

(c) "Approved development project" means a project where construction, site remediation, design, or environmental assessment work or property acquisition is required by the former redevelopment agency pursuant to an enforceable obligation between the former redevelopment agency and parties other than the entities that created the redevelopment agency and either (1) substantial performance under the applicable agreements had taken place prior to the effective date of the act adding this part or (2) the oversight board determines that it would be beneficial for the taxing entities or the communities to continue the project even though there had not been substantial performance under the applicable agreements. An approved development project does not include an agreement for any of the following: planning, financing services, site search, or other staff or consulting activities in preparation for redevelopment work.

(d) "Designated local authority" shall mean a public entity formed pursuant to subdivision (d) of Section 34173.

(e) "Enforceable obligation" means any of the following:

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

(2) Loans of moneys borrowed by the redevelopment agency for a lawful purpose.

(3) Payments required by the federal government, pre-existing obligations to the state or obligations imposed by state law, other than passthrough payments that are made by the county auditor-controller pursuant to section 34183, or legally enforceable payments required in connection with the agencies' employees, including, but not limited, to pension payments and unemployment payments.

(4) Judgments or settlements entered by a competent court of law or binding arbitration decisions against the former redevelopment agency, other than pass through payments that are made by the county auditor-controller pursuant to section 34183. Along with the successor agency, the oversight board shall have the authority and standing to appeal any judgment or to set aside any settlement or arbitration decision.

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

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

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

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

(h) "Recognized Obligation Payment Schedule" means the document setting forth the minimum payment amounts and due dates of payments required by enforceable obligations for each half-year fiscal period as provided in subdivision (m) of Section 34177(13).

(i) "Retained development project" is a project planned by the redevelopment agency prior to dissolution that the city, county, or city and county that created the redevelopment agency wishes to continue to develop, utilizing its own funds, but which the successor agency would otherwise be directed by the oversight board to terminate due to its failure to qualify as an approved development project.

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

(k) "Taxing entities" means cities, counties, cities and counties, special districts, school districts, community college districts, and county offices of education that receive passthrough payments and distributions of property taxes pursuant to the provisions of this part.

Chapter 2. Effect of Redevelopment Agency Dissolution

Section 34172. (a) All redevelopment agencies and community development agencies created under Part 1 (commencing with Section 33000), Part 1.5 (commencing with Section 34000), Part 1.6 (commencing with Section 34050), and Part 1.7 (commencing with Section 34100) that were in existence on the effective date of this part are hereby dissolved and shall no longer exist as a public body, corporate or politic.

(b) All authority to transact business or exercise powers previously granted under Part 1 (commencing with Section 33000) are hereby withdrawn from the former redevelopment agencies.

Solely for purposes Section 16 of Article XVI of the California Constitution, the Redevelopment Property Tax Trust Fund shall be deemed to be a special fund of the redevelopment agency to pay the principal of and interest on loans, moneys advanced to, or indebtedness, whether

funded, refunded, assumed or otherwise incurred by the redevelopment agency to finance or refinance in whole or in part, the redevelopment projects of each redevelopment agency dissolved pursuant to this part.

Section 34173. (a) Successor agencies, as defined in this part, are hereby designated as successor entities to the former redevelopment agencies.

(b) Except for those provisions of the community redevelopment law that are repealed, restricted, or revised pursuant the act adding this part, all authority, rights, powers, duties and obligations previously vested with the former redevelopment agencies, under the Community Redevelopment Law, are hereby vested in the successor agencies.

(c) Where the redevelopment agency was in the form of a joint powers authority, and where the joint powers agreement governing the formation of the joint powers authority addresses the allocation of assets and liabilities upon dissolution of the joint powers authority, then each of the entities that created the former redevelopment agency may be a successor agency within the meaning of this part and each shall have a share of assets and liabilities based on the provisions of the joint powers agreement.

Where the redevelopment agency was in the form of a joint powers authority, and where the joint powers agreement governing the formation of the joint powers authority does not address the allocation of assets and liabilities upon dissolution of the joint powers authority, then each of the entities that created the former redevelopment agency may be a successor agency within the meaning of this part, a proportionate share of the assets and liabilities shall be based on the assessed value in the project areas within each entity's jurisdiction, as determined by county assessor, in its jurisdiction as compared to the assessed value within the boundaries of the project areas of the former redevelopment agency.

(d) (1) A city, county, city and county or the entities forming a joint powers authority that authorized the creation of each redevelopment agency may elect not to serve as a successor agency under this part. A city, county, city and county or any member of a joint powers authority that elects not to serve as a successor agency under this part must file a copy of a duly authorized resolution of its governing board to that effect with the county auditor-controller no later than June 1, 2011.

(2) (A) If a city, county, city and county or any member of a joint powers authority that authorized the creation of the redevelopment agency elects not to serve as a successor agency under this part, it shall not receive any property tax allocation from the funds disbursed from the Redevelopment Property Tax Trust Fund pursuant to paragraph (5) of subdivision (a) and paragraph (4) of subdivision (e) of Section 34183. Instead, that share of property tax shall be allocated to the first local agency in the county that elects to become the successor agency by submitting to the county auditor-controller a duly adopted resolution of its governing body to that effect.

(B) The determination of the first local agency that elects to become the successor agency shall be made by the county auditor-controller based on the earliest receipt by it of a copy of a duly

adopted resolution of the local agency's governing board authorizing such an election. As used in this section, "local agency" means any city, county, city and county or special district in the county of the former redevelopment agency.

(3) If no local agency elects to serve as a successor agency for a dissolved redevelopment agency, a public body, referred to herein as a "designated local authority" shall be immediately formed, pursuant to this part, in such county and shall be vested with all the powers and duties of a successor agency as described in this part. The Governor of the state shall appoint three residents of the county to serve as the governing board of such authority. Such designated local authority shall serve as successor agency until a local agency elects to become the successor agency in accordance with this section.

Section 34174. (a) Solely for the purposes of Section 16 of Article XVI of the California Constitution, commencing on the effective date of this part, all agency loans, advances or indebtedness, and interest thereon, shall be deemed extinguished and paid; provided, however, that nothing herein is intended to absolve the successor agency of payment or other obligations due or imposed pursuant to the enforceable obligations; and provided further, that nothing herein is intended to be construed as an action or circumstance that may give rise to an event of default under any of the documents governing the enforceable obligations.

(b) Nothing in this part, including, but not limited to, the dissolution of the redevelopment agencies the designation of successor agencies and the transfer of redevelopment agency assets and properties, shall be construed as a voluntary or involuntary insolvency of any redevelopment agency for purposes of the indenture, trust indenture, or similar document governing its outstanding bonds.

Section 34175. (a) Any legally binding obligations that were entered into with a pledge of tax increment shall continue to have the revenues that were formerly tax increment and which are deposited into the Redevelopment Obligation Retirement Fund. It is intended that such pledges and payment streams continue to be protected under law and that the cessation of the agency shall not effect either the pledge, the legal existence of that pledge, nor the stream of revenue available to make good on that pledge.

(b) All assets, properties, contracts, leases, books and records, buildings, and equipment of the former redevelopment agency are transferred on July 1, 2011 to the control of the successor agency, for administration pursuant to the provisions of this part. This includes all cash or cash equivalents and amounts owed to the redevelopment agency as of July 1, 2011.

Section 34176. (a) The county or city that authorized the creation of a redevelopment agency may elect to retain the housing assets and functions previously performed by the redevelopment agency. If a county or city elects to retain the responsibility for performing housing functions previously performed by an redevelopment agency, all rights, powers, assets, liabilities, duties, and obligations associated with the housing activities of the agency, along with any amounts in the Low and Moderate Income Housing Fund shall be transferred to such city, or county, or city and county.

(b) If a county, or city, or city and county does not elect to retain the responsibility for performing housing functions previously performed by a redevelopment agency, all rights, powers, assets, liabilities, duties and obligations along with any amounts in the Low and Moderate Income Housing Fund, shall be transferred as follows:

(1) Where there is no local housing authority in the territorial jurisdiction of the former redevelopment agency, to the Department of Housing and Community Development.

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

(3) 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, or county, or city and county that authorized the creation of the redevelopment agency.

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

Chapter 3 Successor Agencies

Section 34177. (a) Successor agencies are required to do all of the following:

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

(1) Commencing on January 1, 2012, only those payments listed in the Recognized Obligation Payment Schedule may be made by the successor agency from the funds specified in the Recognized Obligation Payment Schedule.

(2) Nothing herein is to be construed as preventing a successor agency, with the prior approval of the oversight board, as described in Section 34179, from making payments from sources other than those listed in the Recognized Obligation Payment Schedule.

(3) For fiscal year 2011-12, a successor agency shall have no authority and is hereby prohibited from accelerating payment or making any lump sum payments that are intended to prepay loans unless such accelerated repayments were required prior to the effective date of this part.

(b) Set aside or maintain reserves in the amount required by indentures, trust indentures or similar documents governing the issuance of outstanding redevelopment agency bonds.

(c) Perform obligations required pursuant to any enforceable obligations.

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

(e) Dispose of assets and properties of the former redevelopment agency as directed by the oversight board. Such disposal is to be done expeditiously and in a manner aimed at maximizing value. Proceeds from asset sales and related funds that are no longer needed for to wind up the affairs of the agency, as determined by the oversight board, shall be transferred to the county auditor-controller for distribution as property tax proceeds under Section 34188.

(f) Negotiate compensation agreements with other taxing entities for any retained development projects.

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

(h) Effectuate transfer of housing functions and funds to the appropriate entity designated pursuant to Section 34176.

(i) Wind up the affairs of the redevelopment agency in pursuant to the provisions of part and the direction of oversight board.

(j) Continue to oversee development activities for approved development projects including continuing to oversee development of properties until the contracted work has been completed or the contractual obligations of the former redevelopment agency can be transferred to other parties. Bond proceeds must be used for the purposes for which bonds were sold unless the purposes can no longer be achieved, in which case, the proceeds may be used to defease the bonds.

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

(1) Estimated amounts for successor agency administrative costs for the upcoming six-month fiscal period; and

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

(3) (A) Proposals for arrangements for administrative and operations services provided by such city, county, or other entity.

(B) Costs for staff employed by the city, or county, or city and county to continue redevelopment activities associated with retained development projects shall be excluded from the administrative budget.

(l) Provide administrative cost estimates, from its approved administrative budget that are to be paid from property tax allocations, to the county auditor-controller for each six month fiscal period.

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

obligation, the Recognized Obligation Payment Schedule shall identify one or more of the following sources of payment:

(A) Low and Moderate Income Housing Fund.

(B) Bond proceeds.

(C) Reserve balances.

(D) Administrative cost allowance.

(E) Only to the extent no other funding source is available or when payment from current property tax revenues is required by an enforceable obligation, or the provisions of this part, the Redevelopment Property Tax Trust Fund.

(F) Other sources approved by the oversight board in accordance with this part.

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

(A) A draft Recognized Obligation Payment Schedule is prepared by the successor agency for the Enforceable Obligations of the former redevelopment agency. For the 2011-12 fiscal year, the initial draft shall project the dates and amounts of scheduled payments for each enforceable obligation for the remainder of the time period during which the redevelopment agency would have been authorized to obligate tax increment, and must be reviewed and certified, as to its accuracy, by an external auditor.

(B) The certified schedule is submitted to and duly approved by the oversight board.

(3) A copy of the approved Recognized Obligation Payment Schedule is submitted to the county auditor-controller and both the Controller's office and the Department of Finance.

(3) The schedule shall be forward looking to the next six months. The first schedule shall be transmitted to the Controller's office and the Department of Finance by December 1, 2011 for the January 1, 2012 through June 30, 2012, inclusive, period. Former redevelopment agency obligation payments due prior to that will be made from revenues received in the spring of 2011 property tax distribution, and balances transferred to the successor agency.

Section 34178. (a)

A successor agency shall have the power, but not the obligation, to employ any of the former employees or officers of the redevelopment agency, or other staff, as necessary to conduct the required duties associated with making payments due for enforceable obligations, for enforcing rights and performing duties under enforceable obligations and overseeing work associated with approved development projects.

(c) Former redevelopment agency employees or officers may not be compensated at a rate in excess of the level of total compensation received in calendar year 2010 unless approved by the oversight board.

Chapter 4. Oversight Boards

Section 34179. (a) Each successor agency shall have an oversight board composed of 7 members. Members shall be selected as follows:

- (1) One member may be selected by the county board of supervisors.
 - (2) One member may be selected by the city council for the city that formed the redevelopment agency.
 - (3) One member may be selected by the largest non-enterprise special district, by property tax share, with territory in the territorial jurisdiction of the former redevelopment agency.
 - (4) One member may be appointed by the county superintendent of education to represent schools.
 - (5) One member may be appointed by the county superintendent of education to represent community college districts.
 - (6) Additionally the county and the county superintendent of education may each appoint one member from the public, for a total of two members.
 - (7) If the county or a joint powers agency formed the redevelopment agency, then the largest city by acreage in the territorial jurisdiction of the former redevelopment agency may select one member. If there are no cities with territory in a project area of the redevelopment agency, the county superintendent of schools may appoint an additional member to represent the public.
 - (8) If there are no non-enterprise special districts in the territorial jurisdiction of the former redevelopment agency, then the county may appoint one additional member to represent the public.
 - (9) The Governor may appoint individuals to fill any oversight board member position that has not been filled by July 15, 2011 or any member positions that remains vacant for more than 60 days.
- (b) The oversight board may direct the staff of the successor agency in furtherance of their duties and responsibilities under this part and the successor agency shall provide for all of the expenses of meetings and other necessary expenses of the board. Board members shall serve without compensation or reimbursement for expenses.
- (c) Board members shall have personal immunity from suit for their actions taken within the scope of their responsibilities as oversight board members.
- (d) A quorum of the oversight board shall be a majority of members present at a meeting. The oversight board shall be deemed to be a local entity for purposes of the Ralph M. Brown Act, the California Public Records Act and the Political Reform Act of 1974.

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

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

(b) (1) Issuance of refunding bonds by successor agency, pursuant to authority granted to successor agencies under this part.

(2) Successor Agencies may refund outstanding bonds or other debt of the former redevelopment agency in order to provide for savings or to finance debt service spikes; provided, however, that no additional debt is created and debt service is not accelerated.

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

(d) Merging of project areas.

(e) Continuing the acceptance of federal or state grants or other forms of financial assistance from either public or private sources where such assistance is conditioned upon the provision of matching funds, by the successor entity as successor to the former redevelopment agency, in an amount greater than five percent.

(f) (1) For a city, county or city and county acting under its own auspices, approval to have certain projects be deemed retained development projects under this part.

(2) If the successor agency wishes to retain any properties or other assets for future redevelopment activities, funded from its own funds and under its own auspices, it must reach a compensation agreement with the other taxing entities to provide payments to them in proportion to their shares of the property tax, as determined pursuant to section 34188, for the value of the property retained.

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

(g) Establishment of the Recognized Obligation Payment Schedule.

(h) Approval of a request by the successor agency to hold portions of the moneys of the Low and Moderate Income Housing Funds in reserve in order to provide cash to fund recognized obligations.

(i) Approval of a request by the successor agency to enter into an agreement with the city, county or city and county that formed the redevelopment agency that it is succeeding.

Section 34181. The oversight board shall direct the successor agency to do all of the following:

(a) Dispose of all assets and properties of the former redevelopment agency except for assets and properties deemed part of approved development projects. Such disposal is to be done expeditiously and in a manner aimed at maximizing value.

(b) Cease performance in connection with and terminate all existing agreements that do not qualify as enforceable obligations.

(c) Transfer housing responsibilities and all rights, powers, duties and obligations along with any amounts on deposit in the Low and Moderate Income Housing Fund to the appropriate entity pursuant to Section 34176.

(4) Negotiate compensation agreements with other taxing entities for retained development projects.

Chapter 5. Duties of County Auditor-Controllers

Section 34182. (a) (1) The county auditor-controller shall conduct or cause to be conducted a financial audit of each redevelopment agency in the county, to be completed by October 1, 2011.

(2) The purpose of the audits shall be to establish each redevelopment agency's assets and liabilities, to document and determine each redevelopment agency's passthrough payment obligations to other taxing agencies, and to document and determine both the amount and the terms of any indebtedness incurred by the redevelopment agency and certify the initial Recognized Obligation Payment Schedule.

(3) The county auditor-controller may charge the Redevelopment Property Tax Trust Fund for any costs incurred by the county auditor-controller pursuant to this part.

(b) By October 15, 2011, the county auditor-controller shall provide the Controller's office a copy of all audits performed pursuant to this subdivision. The county auditor controller shall maintain a copy of all documentation and working papers for use by the Controller.

(c)(1) The county auditor-controller shall determine the amount of property tax increment that would have been allocated to each redevelopment agency in the county, using current assessed values, pursuant to statutory formulas or contractual agreements with other taxing agencies, as of the effective date of this section, and deposit that amount in the Redevelopment Property Tax Trust Fund.

(2) Each county auditor-controller shall administer the Redevelopment Property Tax Trust Fund for the benefit of the holders of former redevelopment agency debt, the beneficiaries of the Public Health and Safety Fund, and the taxing entities that receive pass-through payments and distributions of property taxes pursuant to this part.

(3) In connection with the allocation by the county auditor-controller of funds deposited in the Redevelopment Property Tax Trust Fund, in compliance with this part, the county auditor-controller shall prepare estimates of amounts to be distributed, and provide such estimates to, both the entities receiving the distributions, and the Department of Finance, no later than November 1, and May 1, of each year.

(4) Each county auditor-controller shall disburse proceeds of asset sales or reserve balances, which have been received from the successor entities pursuant to Sections 34177 and 34187, to the taxing entities. In making such a distribution, the county auditor-controller shall utilize the

same methodology for allocation and distribution of property tax revenues provided in section 34188.

(d) By August 1, 2012 the county auditor-controller shall report the following information to the Controller's office and the Director of Finance:

(1) The sum remitted to the Redevelopment Property Tax Trust Fund related to each former redevelopment agency.

(2) The sums remitted to each agency under paragraph (1) of subdivision (a) of section 34183.

(3) The sum remitted in each county to the Public Health and Safety Fund.

(4) The sums remitted to each successor agency pursuant to paragraph (3) of subdivision (a) of Section 34183.

(5) The sums paid to each successor agency pursuant to paragraph (4) of subdivision (a) of Section 34183.

(6) The sums paid to each city, county, special district, and the total amount allocated for schools and community colleges pursuant to paragraph (5) of subdivision (a) of Section 34183

(7) Any amounts reallocated pursuant to subdivision (b) of Section 34183.

(e) A county auditor-controller may charge the Redevelopment Property Tax Trust Fund for their costs of administering the provisions of this part.

Section 34183. (a) For fiscal year 2011-12, the county auditor-controller shall allocate moneys in each Redevelopment Property Tax Trust Fund as follows:

(1) First, the county auditor-controller shall remit from the Redevelopment Property Tax Trust Fund to each local agency, school or community college district an amount of property tax equal to what would have been received under Section 33670, 33401, 33607, 33607.5, 33607.7, 33676 or pursuant to any passthrough agreement between a redevelopment agency and a taxing jurisdiction that was entered into prior to January 1, 1994 that would be in force in 2011-12 but for the operation of this law in the 2011-12 fiscal year if the redevelopment agency would have been in existence but for the operation of this law. These allocations shall occur no later than December 31, 2011 and June 1, 2012.

(2) (A) Second, to the Public Health and Safety Fund. As a condition of receipt of funds pursuant to this paragraph, paragraph (4) and (5) of subdivision (e), the county auditor-controller shall transfer grants of funds from the Redevelopment Property Tax Trust Fund to the Public Health and Safety Fund in an amount not to exceed one billion, seven hundred million dollars (\$1,700,000,000) on a statewide basis specified by the Director of the Department of Finance from the amounts deposited in the Redevelopment Property Tax Trust Fund comprised of the revenues that would otherwise have been allocated to each redevelopment agency, but for the operation of this part. The Director shall use the 2008-09 Report of Financial Transactions of Redevelopment Agencies to estimate an amount for each redevelopment agency that may be

available for the Public Health and Safety Fund after needs for enforceable obligations and passthrough amounts are taken into account. These transfers shall occur on January 2, 2012 and June 1, 2012 or any later date specified by Director of Finance.

(B) The county board of supervisors may elect that the county auditor-controller not administer the Public Health and Safety Fund. In the event that the county elects not to administer the Public Health and Safety Fund, it shall notify the Director of the Department of Finance no later than September 1, 2011 whereupon the Director of the Department of Finance shall designate another entity to perform such administration functions. In such circumstance, all references relating to the administration of the Public Health and Safety Fund by the county auditor-controller for that county shall be construed as references to the entity designated by the Director of Finance.

(C) If a county does not accept responsibility for administration of the Public Health and Safety Fund, any other local agency in the county may by submitting a copy of a duly adopted resolution of its governing board, elect to perform such duties and that agency shall receive the county share of any property tax allocable under paragraph (4) and (5) of subdivision (e). In the event of multiple submissions, the Director of Finance may designate an entity from amongst those entities electing entities to be responsible for the administration of the Public Health and Safety Fund in that county.

(D) These grants to the Public Health and Safety Fund may be adjusted by the Director as additional information regarding the availability and demands upon money in each Redevelopment Property Tax Trust Fund becomes available. Funds in the Public Health and Safety Fund shall be used in amounts and for those purposes as directed by the Director of the Department of Finance, exclusively to reimburse the state for the costs of providing health care or trial court services in the county, until those monies are exhausted. These transfers shall occur no later than 15 days after the Department provides the information necessary for the payment.

(E) Entities of state government, including the Administrative Office of the Courts, that are responsible for the functions funded with monies transferred pursuant to this subdivision shall keep records, as required by the Department of Finance, of expenditures made in the county pursuant to that paragraph, and shall provide to the Department of Finance any information required by the Department with respect to those expenditures.

(3) Third, on January 2, 2012 and June 1, 2012, to successor agencies for payments listed in the Recognized Obligation Payment Schedule for the six-month fiscal period beginning January 1 or July 1, 2012, in following priority order:

(A) Debt service payments scheduled to be made for tax allocation bonds.

(B) Payments scheduled to be made on revenue bonds, but only to the extent the revenues pledged for them are insufficient to make the payments and only where the agency's tax increment revenues were also pledged for the repayment of such bonds.

(C) Payments scheduled for other debts and obligations listed in the Recognized Obligation Payment Schedule that are required to be paid from former tax increment revenue.

(4) Fourth, on January 2, 2012 and June 1, 2012, to each successor agency for the administrative cost allowance as defined in Section 34171 for administrative costs set forth in an approved administrative budget for those payments required to be paid from former tax increment revenues.

(5) Fifth, on January 2, 2012, and June 1, 2012, any moneys remaining in the Redevelopment Tax Trust Fund after the payments and transfers authorized by paragraphs (1) through (4), inclusive, shall be distributed to cities, counties, and non-enterprise special districts in accordance with Section 34188. If a successor agency is other than the agency that formed a redevelopment agency, the share that would have been allocated to that agency shall instead be allocated to the agency that is the successor agency. If a local agency other than the county auditor-controller has accepted responsibility for administering the Public Health and Safety Fund in a county, the county share shall be allocated to that local agency.

(b) If the successor agency reports, no later than December 1, 2011 and May 1, 2012, to county auditor-controller that the total amount available to the successor agency from the Redevelopment Property Tax Trust Fund allocation to that successor agency's Redevelopment Obligation Retirement Fund, from other funds transferred from the each redevelopment agency, and from funds that have or will become available through asset sales and all redevelopment operations are insufficient to fund the payments required by subdivision (a) in the next six month fiscal period, the county auditor-controller shall notify the State Controller and the Department of Finance no later than December 10, 2011 and May 10, 2012. The county auditor shall verify whether the successor agency will have sufficient funds from which to service debts according to the schedule and shall report the findings to the state Controller. If the State Controller concurs that there are insufficient funds to pay required debt service, the amount of such deficiency shall be deducted first from the amount remaining to be distributed to taxing entities pursuant to paragraph (5), and if that amount is exhausted, from amounts available for distribution for administrative costs in paragraph (4) and third from amounts available for allocation to the Public Health and Safety Fund. If an agency, pursuant to the provisions of sections 33492.15, 33492.72, 33607.5, 33671.5, 33681.15 or 33688, made pass through payment obligations subordinate to debt service payments required for enforceable obligations, funds for servicing bond debt may be deducted from the amounts for pass-through payments under paragraph (1), as provided in those sections, if the amounts remaining to be distributed to taxing entities pursuant to paragraph (5), the amounts available for distribution for administrative costs in paragraph (4) and the amounts available for allocation to the Public Health and Safety Fund have all been exhausted.

(c) The county treasurer may loan any funds from the county treasury that are necessary to ensure prompt payments of redevelopment agency debts.

(d) The State Controller may recover its costs of audit and oversight required under this part from the Redevelopment Property Tax Trust fund by presenting an invoice there for to the county auditor-controller who shall set aside sufficient funds for and disburse such claimed

amounts prior to making the next distributions to the taxing jurisdictions pursuant to section 34188. Subject to the approval of the Director of Finance, the budget of the State Controller may be augmented to reflect such reimbursement, pursuant to Section 28.00 of the Budget Act.

(e) For fiscal years 2012-13 and following, the county auditor-controller shall allocate moneys in each Redevelopment Property Tax Trust Fund as follows:

(1) First, the county auditor-controller shall remit from the Redevelopment Property Tax Trust Fund to each school or community college district an amount of property tax equal to what would have been received by that district, using current assessed values, under Sections 33670, 33401, 33607, 33607.5, 33607.7, 33676, as those sections read on January 1, 2011, or pursuant to any passthrough agreement between a redevelopment agency and a taxing jurisdiction that was entered into prior to January 1, 1994 that would be in force in but for the operation of this part, if the redevelopment agency would have been in existence but for the operation of this part. These allocations shall occur no later than December 31 and June 1.

(2) Second, on June 1 and January 2, to successor agencies for purposes for payments listed in the Recognized Obligation Payment Schedule for the six month fiscal period beginning on the next July 1 or January 1, in the following order of priority:

(A) Debt service payments scheduled to be made for tax allocation bonds.

(B) Payments scheduled to be made on revenue bonds, but only to the extent the revenues pledged for them are insufficient to make the payments and the agency's tax increment revenues were also pledged.

(C) Payments scheduled for other debts and obligations listed in the Recognized Obligation Payment Schedule.

(3) Third, on June 1 and January 2, to each successor agency for administrative costs, provided that no more than three percent of the amount provided pursuant to paragraph (2) may be allocated.

(4) Fourth, on June 1 and January 2, any moneys remaining in the Redevelopment Tax Trust Fund after the payments and transfers authorized by the preceding paragraphs shall be distributed to cities, counties, non-enterprise special districts and schools and community colleges pursuant to Section 34188. If a successor agency is other than the agency that formed a redevelopment agency, the share that would have been allocated to that agency shall instead be allocated to the agency that is the successor agency. If a local agency other than the county auditor-controller has accepted responsibility for administering the Public Health and Safety Fund in a county, the county share shall be allocated to that local agency.

(f) In years after fiscal year 2011-12, if the successor agency reports to the county auditor-controller to the county auditor-controller, no later than December 1 or May 1 that the total amount available to the successor agency from the Redevelopment Property Tax Trust Fund allocation to that successor agency's Redevelopment Obligation Retirement Fund, from other funds transferred from the each redevelopment agency, and from funds that have or will

become available through asset sales and all redevelopment operations is insufficient to fund the payments required by this section in the next six-month fiscal period, the county auditor-controller shall notify the State Controller and the Department of Finance no later than ten days later. The county auditor shall verify whether the successor agency will have sufficient funds from which to service debts according to the schedule and shall report the findings to the Controller. If the Controller concurs that there are insufficient funds to pay required debt service, the amount of such deficiency shall be deducted first from the amount remaining to be distributed to taxing entities pursuant to paragraph (4), and if that amount is exhausted, from amounts available for distribution for administrative costs in paragraph (3). If an agency, pursuant to the provisions of Section 33492.15, 33492.72, 33607.5, 33671.5, 33681.15 or 33688, made passthrough payment obligations subordinate to debt service payments required for enforceable obligations, funds for servicing bond debt may be deducted from the amounts for pass-through payments under paragraph (1), as provided under those sections, if the amounts remaining to be distributed to taxing entities pursuant to paragraph (4) and the amounts available for distribution for administrative costs in paragraph (3) have all been exhausted.

Section 34185. The county auditor-controller shall transfer from the Redevelopment Property Tax Trust Fund established for deposit of revenues associated with each former redevelopment agency into the Redevelopment Obligation Retirement Fund for each successor agency an amount of property taxes equal to that specified in the Recognized Obligation Payment Schedule as payable from the Redevelopment Property Tax Trust Fund.

Section 34186. Differences between actual payments and past estimated obligations on recognized obligation payment schedules must be reported in subsequent recognized obligation payment schedules and shall adjust the amount to be allocated to the Redevelopment Obligation Retirement Fund. These estimates and accounts are subject to audit by county auditor-controllers and the Controller.

Section 34187. Whenever a recognized obligation identified in the Recognized Payment Obligation Schedule is paid off or retired, either through early payment or payment at maturity, the county auditor-controller shall distribute to the taxing entities, as provided in the Revenue and Taxation Code, all property tax revenues that the redevelopment agency would have been entitled to receive before enactment of this section.

Section 34188. For all distributions of property tax and other moneys pursuant to this part, each taxing agency for which an allocation is provided shall be proportionate to its share of property tax revenues in the jurisdictional territory of the former redevelopment agency in that fiscal year, except as follows:

(a)(1) For distributions from the Redevelopment Property Tax Trust Fund, the share of each taxing entity shall be applied to the amount of property tax available in the Redevelopment Property Tax Trust Fund after deducting the amount of any distributions under paragraphs (2), (3), and (4) of subdivision (a) of Section 34183 or paragraphs (2) and (3) of subdivision (e) of Section 34183, as applicable.

(2) For each taxing agency, the amounts of any passthrough payments under paragraph (3) of subdivision (a) of Section 34183 or paragraph (1) of subdivision (e) of Section 34183 that it has received, shall be deducted from the amount determined in paragraph (1).

(b) The county shall additionally receive any sums that would otherwise have been provided to enterprise special districts, but for the operation of this part; provided, however that the county shall not receive those sums defined in paragraph (2) of subdivision (c) of Section 97.3 of the Revenue and Taxation Code.

(c) Special districts that have both enterprise and non-enterprise functions shall receive a pro-rated share proportionate to the special district's overall share of the countywide property tax that is received for its non-enterprise functions.

(d) Property tax shares shall be determined based on property tax allocations in effect on the date of distribution, without the revenue exchange amounts allocated pursuant to Section 97.68 of the Revenue and Taxation Code.

(e) The total school and community college share shall be the share of the school and community college property taxes that would have been received by schools and community colleges serving the jurisdictional territory of the former redevelopment agency.

(f) Distribution of the share to schools and community colleges will be made pursuant to Section 100.96 of the Revenue and Taxation Code.

Chapter 6. Effect of This Part on the Community Redevelopment Law

Section 34189. (a) Commencing on the effective date of this part, provisions of the Community Redevelopment Law that depend on the use of property tax increment allocable to any taxing jurisdiction other than a city, city and county, or county operating a redevelopment plan under its own auspices shall be inoperative.

(b) No tax increment can be created or pledged for debt except by a city, county, or city and county, operating under its own auspices and only from its share of the property tax.

(c) If a city, county, or city and county, operating under its own auspices pledges any tax increment or other revenues to further the purposes of a redevelopment plan, there will no longer be any pass through of revenues to other taxing jurisdictions

(d) The California Law Revision Commission is required to produce a Community Redevelopment Law cleanup bill for consideration by the Legislature no later than January 1, 2013.

(e) To the extent that any provision of Part 1 (commencing with Section 33000), Part 1.5 (commencing with Section 34000), Part 1.6 (commencing with Section 34050), and Part 1.7 (commencing with Section 34100) conflict with this part, the provisions of this part shall control. Further, if any provision in Part 1 (commencing with Section 33000), Part 1.5 (commencing with Section 34000), Part 1.6 (commencing with Section 34050), and Part 1.7 (commencing with

Section 34100) provides an authority that this part is restricting or eliminating, the restriction and elimination provisions of this part shall control.

(f) It is intended that the provisions of this part shall be read in a manner as to avoid duplication of payments.

SEC. 7. Chapter 7 (commencing with Section 100.96) is added to of Part 0.5 of Division 1 of the Revenue and Taxation Code, to read:

Chapter 7. Additional Revenue Allocations for Education

Section 100.96 of the Revenue and Taxation Code is added to read:

100.96. (a) Notwithstanding any other provision of law, for the 2012-13 fiscal year and each subsequent fiscal year in which revenues are available in a county to be distributed pursuant to subdivision (e) of Health and Safety Code Section 34183, each county auditor shall allocate to all elementary, high school, unified school districts, county offices of education, and community college districts within the county an equal amount per student in attendance, as defined in subdivision (b), from the revenues allocated to school and community college districts in the county pursuant to Sections 31143 and 34188 of the Health and Safety Code.

(b) The Superintendent of Public Instruction shall certify the average daily attendance of the advance apportionment of state aid in the then current fiscal year as the attendance of each school district and county office of education for purposes of this section. The Superintendent of Public Instruction shall certify the appropriate counts of average daily attendance to each county auditor no later than September 15 of each applicable fiscal year. The Chancellor of the California Community Colleges shall certify the full-time equivalent students in attendance at each community college district in each county that is used for apportioning state aid as of September of each year to the county auditor no later than September 15 of each applicable year.

(c) On or before November 15 and April 15, the auditor of each county shall furnish to the Superintendent of Public Instruction the estimated amount of tax receipts pursuant to this section of each school district situated within his or her county. Notwithstanding any other law, funding provided to schools and community colleges pursuant to this section shall not be considered allocated local proceeds of taxes for purposes of Section 8 of Article XVI of the California Constitution.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XVI of the California Constitution because a local agency or school district has the authority to levy service charges or fees, or assessments sufficient to pay for the program or level of service mandated in this act, within the meaning of Section 17556 of the Government Code.

SEC 9. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to meet the current and near-term financial requirements of the state, it is necessary that this act take effect immediately.

Summary of Budget Trailer Bill to Dissolve Redevelopment

I. General Overview

The draft legislation released by the Department of Finance on February 23 is generally consistent with the Governor's proposal and the general descriptions contained in testimony from the Department of Finance in legislative hearings that took place over the last few weeks. The general outline of the legislation is as follows:

- A. Commencing with the effectiveness of the bill (the day the Governor signs the bill), virtually all redevelopment activity would be suspended except paying existing obligations.
- B. Redevelopment agencies would continue to operate under restrictions until July 1, 2011 when all agencies would be abolished.
- C. Effective July 1, successor agencies would be created and take over the assets and obligation of their former redevelopment agencies.
- D. Successor agency would be charged with wrapping up the operations of the former redevelopment agency under the direction of an oversight board dominated by appointees from education and county interests.
- E. County auditor-controllers would essentially become the treasurers for all the redevelopment agencies in the county.
- F. In 2011-12, \$1.7 billion would be paid from what was formerly tax increment revenues to the State for trial court and Medi-Cal costs. A small amount would allegedly be available for distribution to cities and counties.
- G. In subsequent fiscal years, what was formerly tax increment will be distributed to taxing agencies after first paying amounts due on existing obligations under current payment schedules.
- H. Some, but not all, prior obligations will have priority over payment to the State and taxing agencies. Some obligations which had a first priority on tax increment will be subordinated to payments to the State and taxing agencies.

II. Analysis

A. Findings and Intent

Section 1 contains findings and a general statement of intent. The findings emphasize the growth of redevelopment, the increasing share of property taxes going to redevelopment and the diversion of property tax revenues from so-called core services such as police, fire and schools. The general intent of the Legislature is described as follows:

1. Bar redevelopment agencies from incurring new obligations;
2. Beginning with FY 2012-13, allocate tax increment like other property taxes, except for enterprise special districts;
3. Require a successor agency to settle the affairs of each redevelopment agency; and
4. Protect the contractual rights of holders of existing redevelopment agency obligations.

Section 2 amends the provisions of the CRL that establish a statute of limitations on actions challenging the adoption or amendment of redevelopment plans. The statute of limitations is increased from 90 days to three years if the ordinance adopting or amending the plan was adopted after January 1, 2011. This provision has little effect since agencies will not be able to adopt new redevelopment plans under the legislation.

Section 3 amends the section of the CRL that authorizes challenges to the validity of the adoption or amendment of a redevelopment plan or agency bonds through the special validation procedures in the Code of Civil Procedure. The amendment would change the statute of limitations on an action contesting the validity of any bonds from 60 days to three years. This is expected to have a negative impact on the ability to sell any bonds, even those authorized by the legislation. An agency must be able to certify that it can reasonably expect to use tax exempt bond proceeds within three years to avoid federal arbitrage rules. So, in general, bond proceeds will be expended within that three-year period. The language does not address what happens if an action is brought after all the bond proceeds have been expended. If a court determines that the bonds were issued illegally, it is an open question as to whether it can require the agency to return principal to the bondholders or how that would be done if principal were already spent.

Section 4 repeals the provision of existing law that states that any surplus agency money left over after an agency ceases to function vests in the community.

B. Suspension of Redevelopment Agencies

Section 5 deals with suspension of redevelopment agency operations between the time the legislation is enacted and July 1, 2011. Agencies are forbidden from incurring any new or expanding any existing monetary or legal obligations, including the issuance or sale of bonds incurring indebtedness payable from tax increment, refunding bonds or accepting loans. Agencies are likewise forbidden from making any loans or agreeing to provide financial assistance of any kind, entering into contracts or incurring obligations for any purpose, amending or modifying existing agreements, renewing or extending leases, transferring funds out of the housing fund, disposing of assets (including cash and real property), or accepting financial assistance from the State or federal governments. Agencies are forbidden from engaging in redevelopment activities, including preparing adopting or amending redevelopment plans, enacting any new programs, providing any financial assistance, initiating a validation action under Code of Civil Procedure section 860 to validate the issuance of bonds, or commencing condemnation proceedings. The intent of these provisions is to preserve the assets of redevelopment agencies to the maximum extent possible so those assets not needed to pay prior obligations can be used for local government services such as police, fire and schools. Agencies may continue to act only to perform their obligations under "enforceable obligations," which are defined as existing bonds, loans of money borrowed by the Agency for a lawful purpose, legally binding and enforceable contracts, payments, judgments, and settlements and to preserve all assets. During this interim period agencies are required by the legislation to continue to make scheduled payments under enforceable obligations, set aside or maintain any reserves

required in connection with outstanding agency bonds, preserve assets and records and minimize liabilities of the agency, cooperate with successor agencies and take reasonable measures to avoid triggering an event of default under any enforceable obligations.

C. Dissolution of Redevelopment Agencies; Creation of Successor Agencies

Section 6 dissolves redevelopment agencies effective July 1, 2011. Successor agencies are created as successors to the former redevelopment agencies. The successor agency is the city or county that authorized creation of the redevelopment agency, unless the city or county elects to not serve as the successor agency. If the city or county elects not to serve as the successor agency, then any local agency can serve that role. The successor agency shall be designated as the first local agency that delivers a copy of a resolution of the local agency board electing to serve as the successor agency to the redevelopment agency. If no local agency makes such an election, then a new "designated local authority" will be formed, and a threemember board will be appointed by the Governor. The powers of redevelopment agencies are vested in these successor redevelopment agencies, except as repealed by this legislation.

Section 34174 would be added to the H&S Code and state that on the effective date of the legislation "all agency loans, advances, or indebtedness, and interest thereon, shall be deemed extinguished and paid" for the purposes of Article XVI, section 16 of the Constitution. This is apparently an attempt to repeal Article XVI, section 16 by statute. Having done that, the Legislature is then free to reallocate what was formerly tax increment as if it were ordinary property taxes under its authority given by Proposition 13. The legislation goes on to say, however, that "any legally binding obligations that were entered into with a pledge of tax increment shall continue to have the revenues that were *formerly tax increment . . .*" So, the Legislature eliminates a pledge of revenues based on the constitution and substitutes a pledge based on statute. These provisions clearly violate both Article XVI, section 16 and the contract clauses of the Federal and State Constitutions.

All assets of the former redevelopment agencies are transferred to their successor agencies effective July 1, 2011.

A city or county may elect to retain the housing assets and functions of its former redevelopment agency. If so, all rights powers assets, etc., associated with the housing activities of the agency along with any amounts in the housing fund are transferred to the city or county. It does not appear that the city or county would be entitled to continue to receive the 20% housing set-aside, as the sections that address the distribution of tax increment do not appear to provide a continuing set aside of a portion of tax increment for housing. If a city or county does not elect to retain the housing function, then those rights, powers and assets are transferred either to a local housing authority, or if there is none, to the Department of Housing and Community Development. It is unclear when this transfer of assets would take place, or whether the city or county could opt to not serve as the successor entity, but could still receive

the housing set aside funds. There are provisions of the bill that suggest that the successor agency would retain control of the housing set-aside and have the ability to pay agency obligations with the housing set-aside funds (see Section 34177(m)(1)).

Successor agencies are required to continue to make payments due for enforceable obligations, but only in accordance with existing payment schedules. They may also perform obligations required to carry out enforceable obligations. Enforceable obligations include bonds and other financial obligations with outside parties. Enforceable obligations do not include agreements between the agency and its legislative body. Enforceable obligations may also include performance under an approved development project if construction, site remediation, design, or environmental assessment work or property acquisition is required by the former redevelopment agency and either (1) substantial performance of the contract has taken place prior to the effective date of the act, or (2) it is approved by the oversight board because it is beneficial for the taxing entities to continue with the project. They are authorized to dispose of agency assets and otherwise wind up agency operations "as directed by the oversight board." Such disposal is to be done expeditiously and in a manner aimed at maximizing value. Any proceeds from the disposal of assets will be remitted to the county auditor-controller to be remitted to the other taxing agencies as property tax in the manner described in Section 34188 of the act (described below).

The successor agency may pay administrative costs in connection with its responsibilities from tax increment revenues equal to the greater of (1) five percent of the property tax allocated to the successor agency for the 2011-12 fiscal year and three percent for each subsequent year, or \$250,000. Any such administrative payments are subject to the approval of the oversight board, and subject to the availability of funds after payment of other required amounts, as described below in Section F.

Successor agencies may elect to retain properties or other assets for future redevelopment activities funded from their own funds and under their own auspices but, in order to do so, must reach an agreement with the other taxing agencies to provide payments to them in proportion to their shares of the property tax and have the projects approved by the oversight board.

D. Oversight Boards

Oversight boards are composed of 7 members: one selected by the county board of supervisors, one selected by the city council of the city that formed the agency, one selected by the largest non-enterprise special district, one appointed by the county superintendent of education to represent schools, one appointed by the county superintendent of education to represent community college districts and one each appointed by the county and county superintendent of education to represent the general public. The legislation does not address how the composition would change for county redevelopment agencies. Obviously, the composition of the oversight board is heavily weighted towards schools, with a majority of the board being appointed by the education establishment. The oversight board may direct staff of the successor agency, but it has no financial responsibility. The successor agency has

financial responsibility, but the county auditor-controller controls the funds. This is a model for governmental chaos. The oversight board must approve any actions of any consequence with respect to the use or disposition of former agency assets. The oversight board is required to direct the successor agency to dispose of all assets and properties of the former redevelopment agency, except those deemed part of approved development projects, expeditiously and in order to maximize value for the taxing agencies. The oversight board is additionally directed to cease performance in connection with and terminate all existing agreements that do not qualify as "enforceable obligations." Since all legal contracts and agreements constitute "enforceable obligations" under the act, this requirement would only apply to illegal contracts. The State and some oversight boards will presumably take the position that City-Agency cooperation agreements and other agreements are not legally enforceable and can be terminated by the successor agency at the direction of the oversight board.

E. Role of Auditor-Controller

The legislation outlines a vastly expanded role for the county auditor controller – essentially becoming the treasurer for every successor agency in the county. The following describes the new role:

1. Unencumbered funds and proceeds from any asset sales are to be remitted to county auditor-controller for distribution to the taxing agencies.
2. The county auditor-controller is required to conduct a financial audit of each redevelopment agency in the county and complete it by October 1, 2011. The audits are intended to establish each redevelopment agency's assets and liabilities.
3. Annually, the county-auditor controller must determine the amount of property taxes that would have been allocated to each redevelopment agency using current assessed values, statutory pass-through agreements, contractual pass-through agreements, etc., and deposit that amount in a fund administered by the county. It appears that there will be a fund created for each agency, rather than each project area.
4. Prepare estimates of amounts to be distributed from the fund administered by the county and provide those estimates to the entities receiving distributions and the State Department of Finance twice yearly.
5. Disburse proceeds of asset sales or reserve balances received from the successor entities to taxing entities.
6. Make a comprehensive report to the Department of Finance annually on amounts paid from the county administered fund.
7. Charge all of these costs to the county administered fund.

F. Disbursement of Funds

For the 2011-12 fiscal year, the county auditor-controller shall disburse money from the county administered fund for each agency in the following order of priority:

1. First, to any contractual or statutory pass-through payments that would be due to taxing agencies if the redevelopment agency had remained in existence;
2. Second, to pay each agency's proportionate share of a \$1.7 billion payment to the

- State to be used for trial courts and State health care costs. Each agency's share will be determined by the State Director of the Department of Finance. The Director will use the 2008-09 Report of Financial Transactions of Redevelopment Agencies to estimate each agency's share after paying enforceable obligations and pass-through payments;
3. Third, to successor agencies for payment of scheduled obligations due under enforceable obligations between January 1, 2012 and July 1, 2012. These amounts are transferred into a separate fund that is administered by the successor agency;
 4. Fourth, to each successor agency for administrative costs. Administrative costs are limited to the greater of 5% of tax increment for FY 2011-12 and 3% of tax increment for subsequent years, or \$250,000, and must be approved by the oversight committee;
 5. Fifth, any amount remaining to cities, counties and non-enterprise special districts. If the city or county that established the redevelopment agency opts not to serve as the successor agency, then the local agency serving as the successor agency will receive that city or county's share of this amount. If the county opts not to administer its share of the \$1.7 billion payment to the State, then the county's share of this amount will be disbursed to the local agency that administers that fund.

Notwithstanding this order of payment, the act then states that if the successor agency determines that the amount in the county administered fund will be insufficient to pay the total amounts due as described above, the successor agency must report that fact to the county auditor-controller prior to December 1, 2011 and May 1, 2012. If the county auditor-controller concurs, the county auditor-controller must report that fact to the State Controller prior to December 10, 2011 and May 10, 2012. If the State Controller concurs that the funds are insufficient, then the shortfall shall be deducted first from the amounts disbursed under #5 above, then from the administrative costs paid under #4 above, then from the agency's share of the \$1.7 billion payment. Further, the act states that if the agency has subordinated the pass-through payments to any pledge of tax increment revenues, then the short-fall will be deducted from the pass-through payments prior to any amounts needed to pay bond debt service. So, the priority order listed in the act does not appear to be the true order of payment. There is no deadline for the State Controller to make its determination on any shortfall, and no provisions that address what will happen if the county auditor-controller or the State Controller does not make its determination in a timely manner.

For the 2012-13 and subsequent fiscal years, funds would be disbursed by the county auditor-controller in the same order of priority as above except that: (1) The first priority of payments includes statutory pass-through payments to schools and community college districts and contractual pass-through payments to all taxing entities, but excludes statutory pass-through payments to other taxing entities; (2) the \$1.7 billion payment to the State is omitted; and (3) school districts and community colleges are added to the list of taxing agencies that would receive a distribution of any left-over revenue.

The remaining funds to be distributed to the taxing entities after payment of pass-through payments, enforceable obligations, and administrative costs are distributed in the following manner:

1. Any pass-through amounts already paid are deducted from each taxing entities share of property taxes;
2. The county will receive any funds that would otherwise have been provided to enterprise special districts, except that the county does not receive amounts from those special districts that are exempted from paying into ERAF (which include hospital districts, transit districts and certain other special districts listed in Rev. and Tax Code section 97.3(c)(2));
3. Special districts with enterprise and non-enterprise functions receive a pro-rated share proportionate to their county-wide share of property tax based on non-enterprise functions;
4. Each agency's share is based on property tax allocations in effect at the time of distribution, without the revenue exchange amounts allocated in order to carry out the revenue swapping procedures known as the "triple flip." The school and community college shares are based on the share that would have been received by schools and community colleges serving the territory of the former redevelopment agency. It is not clear if this refers to the redevelopment project area or the jurisdiction of the community.

G. Effect on CRL

A new H&S Section 34189 of the bill provides that, commencing on the effective date of the bill, "provisions of the CRL that depend on the use of property tax increment allocable to any jurisdiction other than a city, city and county, or county operating a redevelopment plan under its own auspices shall be inoperative." No tax increment can be pledged except by a city or county operating under its own auspices and using only its own tax increment.

The bill has an urgency clause, enabling it to become effective immediately upon signature by the governor.

**LEGISLATION TO IMPLEMENT
GOVERNOR'S BUDGET PROPOSAL:**

Overview

Department of Finance posted draft redevelopment dissolution legislation late Wednesday, February 23, 2011.

Redevelopment legislation has not yet been formally introduced

Redevelopment legislation has been drafted such that provisions suspending RDA activities and preserving RDA assets and revenues (as described below) would take immediate effect if passed by the Assembly and Senate and signed by Governor Brown

Redevelopment legislation may be passed as separate urgency legislation (requiring a 2/3 vote of the Assembly and Senate) or arguably may be passed as part of the budget legislation (requiring only a simple majority vote of the Assembly and Senate pursuant to Proposition 25)

Budget legislation, including Redevelopment legislation, will be considered by Joint Conference Committee over the coming week

Governor Brown's goal is to introduce Budget legislation package in Assembly and Senate by the middle of next week for passage by as early as March 4 but in no event later than March 10

**LEGISLATION TO IMPLEMENT
GOVERNOR'S BUDGET PROPOSAL:**

Suspension of RDA Activities and Preservation of RDA Assets and Revenues

Commencing on effective date of Redevelopment legislation, RDAs no longer authorized to:

- Incur indebtedness
- Make loans or grants
- Enter into contracts
- Amend existing agreements, obligations, or commitments
- Renew or extend leases or other agreements
- Transfer funds out of Housing Fund
- Dispose of assets
- Prepare, adopt, amend, or merge redevelopment plans
- Approve any program, project, or expenditure
- Prepare or amend implementation plans, relocation plans, or other planning documents
- Cause development or rehabilitation of housing units
- Join a Joint Powers Authority
- Form or join a separate legal entity
- Bring a validation action
- Commence an eminent domain proceeding
- Prepare a Draft EIR

**LEGISLATION TO IMPLEMENT
GOVERNOR'S BUDGET PROPOSAL:**

Dissolution of RDAs/Creation of Successor Agencies

As of July 1, 2011:

- RDAs would be dissolved
- A Successor Agency would be created for each RDA consisting of the City or County that formed the Agency (unless the City or County opts out)
- Successor Agency would be overseen by an Oversight Board consisting of 7 members appointed by:
 - County Board of Supervisors (2 members)
 - City Council (1 member)
 - County Superintendent of Schools (3 members)
 - Largest Non-Enterprise Special District (1 member)
- All assets, properties, contracts, leases, records, buildings and equipment of former RDAs would be transferred to the control of the Successor Agency (except as described below)
- City or County may elect to retain housing functions of former RDA, including all rights, powers, assets, liabilities, duties, and obligations associated with housing functions, including amounts in the former RDA's Housing Fund
 - If City or County does not elect to retain the former RDA's housing functions, such housing functions and all related assets would be transferred to the local Housing Authority (or HCD, if there is no local Housing Authority)

**LEGISLATION TO IMPLEMENT
GOVERNOR'S BUDGET PROPOSAL:**

Role of Successor Agencies

Make payments and perform other obligations due for "Enforceable Obligations" of RDAs, which include:

- Bonds
- Loans borrowed by RDAs
- Payments required by federal or state government or for employee pension obligations
- Judgments or settlements
- "Any legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy" (at oversight board determination, Successor Agency may terminate existing agreements and pay required compensation or remediation for such termination)

Dispose of former RDA assets or properties expeditiously and in a manner aimed at maximizing value (proceeds to be distributed similar to normal property tax proceeds)

Effectuate transfer of housing functions

Wind up affairs of former RDA

**LEGISLATION TO IMPLEMENT
GOVERNOR'S BUDGET PROPOSAL:**

Role of Successor Agencies (Continued)

Oversee completion of Approved Development Projects, which are projects:

- Involving construction, site remediation, design, or property acquisition
- Required by the RDA under an enforceable obligation with a party other than the City or County that created the RDA
- In which substantial performance has already taken place (prior to the effective date of the Redevelopment legislation) or the Successor Agency's Oversight Board deems it would be beneficial to complete

Prepare administrative budgets for Oversight Board approval and pay administrative costs

Prepare twice-yearly Recognized Obligation Payment Schedule, including identifying funding source

**LEGISLATION TO IMPLEMENT
GOVERNOR'S BUDGET PROPOSAL:**

Role of County Auditor-Controller

Conduct one-time audit of former RDA assets and liabilities, including pass-through payment obligations and amount and terms of any RDA indebtedness (by October 1, 2011)

Annually determine the amount of property tax increment that would have been allocated to each RDA and deposit that amount in a Redevelopment Property Tax Trust Fund (the "Trust Fund")

Administer Trust Fund for the benefit of holders of former RDA debt, taxing entities that receive pass-through payments and distributions of property taxes, and State (as described below)

**LEGISLATION TO IMPLEMENT
GOVERNOR'S BUDGET PROPOSAL:**

Payments from Trust Fund

County Auditor-Controller to allocate moneys in Trust Fund as follows:

- To pay selected pass-through payments
- To Public Health and Safety Fund (2011-12 only)
- To Successor Agencies to pay enforceable obligations, including bonds
- To Successor Agencies for administrative costs
- To cities, counties, special districts, schools and community colleges, as property taxes

If Successor Agency determines, and County Auditor-Controller and State controller verify, that Successor Agency will not have sufficient funds to pay all amounts above, then the deficiencies shall be deducted in the following order from the Trust Fund payments to:

- Cities, counties, special districts, schools and community colleges, as normal property taxes
- Administrative costs to Successor Agencies
- Public Health and Safety Fund (2011-12 only)
- Subordinated pass-through payments
- Enforceable obligations payable by successor agency
- Non-subordinated pass-through payments

Attachment IV: List of Agency-Owned Properties

March 2, 2011

APN	Address	Current/Intended Use
428-0061-039-01	1025 A ST	Muni Parking Lot #2
428-0066-085-00	22631 FOOTHILL BLVD	Cinema Place Parking Structure
428-0066-086-00	22631 FOOTHILL BLVD	Cinema Place Parking Structure
428-0071-049-00	805 B ST	City Hall Parking Structure
428-0071-050-00	805 B ST	City Hall Parking Structure
428-0071-018-00	22675 MISSION BLVD	Surface Parking Lot next to City Hall Pkng Structure
428-0071-019-00	22695 MISSION BLVD	Surface Parking Lot next to City Hall Pkng Structure
444-0033-018-01	24311 MISSION BLVD	Property held for redevelopment purposes
444-0033-019-00	24321 MISSION BLVD	Property held for redevelopment purposes
444-0033-020-00	24331 MISSION BLVD	Property held for redevelopment purposes
444-0033-023-00	24491 MISSION BLVD	Property held for redevelopment purposes
427-0001-031-01	22852 FOOTHILL BLVD	Property held for redevelopment purposes
415-0240-002-00	1154 RUSSELL WAY	Property held for redevelopment purposes
415-0240-003-02	1166 RUSSELL WAY	Property held for redevelopment purposes
431-0110-007-00	B ST	Residual Burbank site/Property held for redevelopment purposes
431-0040-010-00	581 B ST	Property held for affordable housing purposes
431-0040-011-00	585 B ST	Property held for affordable housing purposes
431-0040-012-02	597 B ST	Property held for affordable housing purposes
431-0016-088-03	123 A ST	Property held for affordable housing purposes
428-0076-023-13	WATKINS ST	City Hall Land
428-0076-027-09	WATKINS ST	City Hall Land
428-0071-002-00	789 B ST	City Hall Land
428-0071-003-00	799 B ST	City Hall Land

RESOLUTION NO. _____**A RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF HAYWARD APPROVING THE TRANSFER OF CERTAIN AGENCY OWNED REAL PROPERTIES TO THE CITY OF HAYWARD AND MAKING CERTAIN FINDINGS RELATING THERETO**

WHEREAS, the City Council of the City of Hayward ("City") approved and adopted the Redevelopment Plan ("Redevelopment Plan") for the Downtown Hayward Redevelopment Project (the "Project Area"); and

WHEREAS, the Redevelopment Agency of the City of Hayward ("Agency") is engaged in activities to execute and implement the Redevelopment Plan pursuant to the provisions of the California Community Redevelopment Law (Health and Safety Code Section 33000, *et seq.*) ("CRL"); and

WHEREAS, for the improvement of the Project Area and the immediate neighborhoods in which the Project Area is located, the Agency has recognized the need for certain public improvements, which improvements are located within the boundaries of the Project Area, and has further recognized the need to provide affordable housing and affordable housing sites within the Project Area; and

WHEREAS, in accordance with the CRL, the Agency has used its tax increment funds received pursuant to CRL Section 33670, and its housing set-aside funds received pursuant to CRL Section 33334.3, to pay for all or part of the cost of the value of land for certain properties located within the Project Area (collectively, the "Agency Properties"), as listed on the attached Exhibit A; and

WHEREAS, in response to the Governor's proposed State budget package and proposals for FY 2011-2012, which include recommending the elimination of redevelopment agencies "to realign the delivery of state services to counties and local governments" and eliminate a projected State deficit of \$25.4 billion, the City Manager and Agency Executive Director have proposed the transfer of the Agency Properties to the City to avoid losing control of these properties, and provide flexibility to preserve local public assets; and

WHEREAS, the Governor's budget proposal threatens the ability of the Agency to control the use of the Agency Properties, and control of the use of the Agency Properties is important to successful redevelopment of the Project Area; and

WHEREAS, transfer of the Agency Properties to the City is necessary in order to continue to carry out the Redevelopment Plan; and

WHEREAS, CRL Section 33430 authorizes a redevelopment agency to sell, lease,

exchange, subdivide, transfer, assign, encumber and dispose of any real property or any interest in real property; and

WHEREAS, the City Council has considered all terms and conditions of the proposed transfer, and has determined that the proposed action is in the best interests of the City and in accord with the public purposes and provisions of applicable State and local laws; and

WHEREAS, the Agency is the lead agency pursuant to the California Environmental Quality Act (codified as Public Resources Code Sections 21000 *et seq*) ("CEQA") and the State CEQA Guidelines; and

WHEREAS, Agency staff has determined that the Agency's authorization of the transfer of the Agency Properties is exempt from CEQA, pursuant to the CEQA Guidelines set forth in California Code of Regulations, Title 14, Section 15378(b)(5), which provides that such authorizations are not considered a project subject to CEQA review because the transfer of the Agency Properties is an organizational activity that will not result in direct or indirect physical changes in the environment;

NOW, THEREFORE, BE IT RESOLVED by the Redevelopment Agency of the City of Hayward as follows:

Section 1. Recitals. The Recitals set forth above are true and correct and incorporated herein.

Section 2. Findings. The Agency hereby finds and determines, based on the Recitals set forth above and the information made available in the staff report accompanying this Resolution, the oral presentation of Agency staff, and all other written and oral evidence presented to the Agency, that the Agency's transfer of the Agency Properties is of benefit to the Project Area because the transfer of the Agency Properties to the City: (1) is in the best interest of the City and the health, safety, morals and welfare of its residents, businesses, tenants, and property owners, (2) will assist in the elimination of one or more blighting conditions in the Project Area and assist the City and Agency in providing and preserving needed affordable housing opportunities in the Project Area, stimulate economic development and minimize depreciated or stagnant property values and high business vacancies, while improving aesthetics and visibility in the Project Area, and (3) will provide needed affordable housing and affordable housing sites.

Section 3. Transfer Authorization. The Agency authorizes and directs the Executive Director of the Agency, with the concurrence of the Agency Counsel, to execute and deliver on behalf of the Agency, one or more grant deeds for the conveyance of the Agency Properties to the City and to take any action and execute any other documents as may be necessary to implement this Resolution.

Exhibit "A"

DRAFT LIST OF AGENCY PROPERTIES

<u>APN</u>	<u>Description</u>
428-71-09	City Parking Lot No. 8 (southeast corner of "B" Street and Watkins Street)
428-0061-038 (portion); 428-0061-039; 428-0061-040 (portion)	1027 A Street
444-0033-018-01	24311 Mission Blvd.
444-0033-019	24321 Mission Blvd.
444-0033-020	24331 Mission Blvd.
333-0033-23-00	24491 Mission Blvd.
428-0066-034-08 (portion)	Cinema Place
431-0024-001	Burbank School Site
428-0071-022-01	City Hall Municipal Parking Structure
428-0051-_____	City Parking Lot No. 2
(Parcel Map 9095, January 2007)	Cinema Place B and Foothill parcels (Cinema Place Parking Structure)
_____	City Hall Plaza Park (former Site 2)
_____	"B" and Grand (Affordable Housing Parcel)

431-0016-080-03 (portion);
431-0016-081-00 (portion);
431-0016-082-00 (portion);
431-0016-083-00 (portion);
431-0016-084-00 (portion);
431-0016-085-00 (portion);
431-0016-086-00 (portion);
431-0016-087-00 (portion);
431-0016-088-00 (portion);

“A” and Walnut (Affordable Housing Parcel)

415-0240-002;
415-0240-003-02

1154-1166 Russell Way

427-0001-031-01

22852 Foothill Blvd.

428-0071-018;
428-0071-019

22675-22695 Mission Blvd.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HAYWARD APPROVING THE TRANSFER TO THE CITY OF CERTAIN REAL PROPERTIES OWNED BY THE REDEVELOPMENT AGENCY OF THE CITY OF HAYWARD AND MAKING CERTAIN FINDINGS RELATING THERETO

WHEREAS, the City Council of the City of Hayward ("City") approved and adopted the Redevelopment Plan ("Redevelopment Plan") for the Downtown Hayward Redevelopment Project (the "Project Area"); and

WHEREAS, the Redevelopment Agency of the City of Hayward ("Agency") is engaged in activities to execute and implement the Redevelopment Plan pursuant to the provisions of the California Community Redevelopment Law (Health and Safety Code Section 33000, *et seq.*) ("CRL"); and

WHEREAS, for the improvement of the Project Area and the immediate neighborhoods in which the Project Area is located, the Agency has recognized the need for certain public improvements, which improvements are located within the boundaries of the Project Area, and has further recognized the need to provide affordable housing and affordable housing sites within the Project Area; and

WHEREAS, in accordance with the CRL, the Agency has used its tax increment funds received pursuant to CRL Section 33670, and its housing set-aside funds received pursuant to CRL Section 33334.3, to pay for all or part of the cost of the value of land for certain properties located within the Project Area (collectively, the "Agency Properties"), as listed on the attached Exhibit A; and

WHEREAS, in response to the Governor's proposed State budget package and proposals for FY 2011-2012, which include recommending the elimination of redevelopment agencies "to realign the delivery of state services to counties and local governments" and eliminate a projected State deficit of \$25.4 billion, the City Manager and Agency Executive Director have proposed the transfer of the Agency Properties to the City to avoid losing control of these properties, and provide flexibility to preserve local public assets; and

WHEREAS, the Governor's budget proposal threatens the ability of the Agency to control the use of the Agency Properties, and control of the use of the Agency Properties is important to successful redevelopment of the Project Area; and

WHEREAS, transfer of the Agency Properties to the City is necessary in order to continue to carry out the Redevelopment Plan; and

WHEREAS, CRL Section 33430 authorizes a redevelopment agency to sell, lease, exchange, subdivide, transfer, assign, encumber and dispose of any real property or any interest in real property; and

WHEREAS, the City Council has considered all terms and conditions of the proposed transfer, and has determined that the proposed action is in the best interests of the City and in accord with the public purposes and provisions of applicable State and local laws; and

WHEREAS, the Agency is the lead agency pursuant to the California Environmental Quality Act (codified as Public Resources Code Sections 21000 *et seq*) ("CEQA") and the State CEQA Guidelines; and

WHEREAS, Agency and City staff has determined that the Agency's authorization of the transfer of the Agency Properties is exempt from CEQA, pursuant to the CEQA Guidelines set forth in California Code of Regulations, Title 14, Section 15378(b)(5), which provides that such authorizations are not considered a project subject to CEQA review because the transfer of the Agency Properties is an organizational activity that will not result in direct or indirect physical changes in the environment;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward as follows:

Section 1. Recitals. The Recitals set forth above are true and correct and incorporated herein.

Section 2. Findings. The City Council hereby finds and determines, based on the Recitals set forth above and the information made available in the staff report accompanying this Resolution, the oral presentation of Agency and City staff, and all other written and oral evidence presented to the City Council, that the Agency's transfer of the Agency Properties is of benefit to the Project Area because the transfer of the Agency Properties to the City: (1) is in the best interest of the City and the health, safety, morals and welfare of its residents, businesses, tenants, and property owners, (2) will assist in the elimination of one or more blighting conditions in the Project Area and assist the City and Agency in providing and preserving needed affordable housing opportunities in the Project Area, stimulate economic development and minimize depreciated or stagnant property values and high business vacancies, while improving aesthetics and visibility in the Project Area, and (3) will provide needed affordable housing and affordable housing sites.

Section 3. Transfer Authorization. The City Council approves, authorizes and directs the City Manager, with the concurrence of the City Attorney, to accept on behalf of the City, one or more grant deeds for the conveyance of the Agency Properties to the City and to take any action and execute any other documents as may be necessary to implement this Resolution.

Exhibit "A"

DRAFT LIST OF AGENCY PROPERTIES

<u>APN</u>	<u>Description</u>
428-71-09	City Parking Lot No. 8 (southeast corner of "B" Street and Watkins Street)
428-0061-038 (portion); 428-0061-039; 428-0061-040 (portion)	1027 A Street
444-0033-018-01	24311 Mission Blvd.
444-0033-019	24321 Mission Blvd.
444-0033-020	24331 Mission Blvd.
333-0033-23-00	24491 Mission Blvd.
428-0066-034-08 (portion)	Cinema Place
431-0024-001	Burbank School Site
428-0071-022-01	City Hall Municipal Parking Structure
428-0051-_____	City Parking Lot No. 2
(Parcel Map 9095, January 2007)	Cinema Place B and Foothill parcels (Cinema Place Parking Structure)
_____	City Hall Plaza Park (former Site 2)
_____	"B" and Grand (Affordable Housing Parcel)

431-0016-080-03 (portion);
431-0016-081-00 (portion);
431-0016-082-00 (portion);
431-0016-083-00 (portion);
431-0016-084-00 (portion);
431-0016-085-00 (portion);
431-0016-086-00 (portion);
431-0016-087-00 (portion);
431-0016-088-00 (portion);

“A” and Walnut (Affordable Housing Parcel)

415-0240-002;
415-0240-003-02

1154-1166 Russell Way

427-0001-031-01

22852 Foothill Blvd.

428-0071-018;
428-0071-019

22675-22695 Mission Blvd.