



County of Los Angeles CHIEF EXECUTIVE OFFICE

Kenneth Hahn Hall of Administration
500 West Temple Street, Room 713, Los Angeles, California 90012
(213) 974-1101
<http://ceo.lacounty.gov>

WILLIAM T FUJIOKA
Chief Executive Officer

March 15, 2012

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From: William T Fujioka
Chief Executive Officer

SACRAMENTO UPDATE

The memorandum contains a pursuit of a County position on AB 1585 (Pérez) related to Redevelopment.

Pursuit of County Position on Legislation

AB 1585 (Pérez), which would modify provisions of ABX1 26 (Chapter 5, Statutes of 2011) related to the dissolution of Redevelopment Agencies (RDAs), including: 1) the distribution of Low Moderate Income Housing (LMIH) funds; 2) the definition of the terms enforceable obligation and administrative cost allowance; 3) the responsibilities of the successor agency and oversight board; and 4) the responsibilities of the auditor-controller, among other provisions was significantly amended on March 8, 2012. The bill is an urgency measure and would be effectively immediately if approved by the Legislature and signed by the Governor.

As reported on February 21, 2012 and February 29, 2012, AB 1585, similar to **County-supported SB 654 (Steinberg)**, would: 1) allow the local housing authority or the California Department of Housing and Community Development to retain LMIH funds if the city or county chooses not to assume the housing functions previously performed by a RDA; 2) expand the definition of enforceable obligation payments, administrative cost allowances for successor agencies, and responsibilities of successor agencies and oversight boards; 3) further expand the definition of an enforceable obligation to include: other loan agreements between the RDA and the city or county, if the oversight board finds that the loan was for a legitimate redevelopment purpose, had economic substance, and was based on reasonable repayment terms; and 4) include payments for costs incurred to fulfill collective bargaining agreements for layoffs or terminations of city employees who performed work directly on behalf of the former RDA.

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Amendments to AB 1585

On March 8, 2012, AB 1585 was significantly amended to: 1) expand the administrative cost allowance; 2) further expand the definition of enforceable obligations; and 3) designate successor agencies as separate legal entities, among other changes.

Overall, the latest amendments significantly affect the implementation of ABX1 26 of 2011, as AB 1585 proposes major changes that would further erode property tax increment that would otherwise be allocated to taxing entities, including the County, as a result of the dissolution of RDAs. Key elements of the recent amendments include:

Expansion of the Administrative Cost Allowance. Under ABX1 26, a successor agency is entitled to an administrative budget of up to 5 percent of the property tax allocation in FY 2011-12, and up to 3 percent annually thereafter, but not less than \$250,000 annually. Because successor agencies did not come into existence until February 1, 2012, they will only be entitled to 5 percent of the property tax allocation for the period of February 1, 2012 to June 30, 2012.

As amended, AB 1585 further specifies that successor agencies would be entitled to 5 percent of the property tax revenue allocated to the former RDA for the entire FY 2011-12. **This amendment would greatly expand the pool of money from which the 5 percent administrative allowance is drawn because instead of calculating as of February 1, 2012, successor agencies would be entitled to receive funds going back to July 1, 2011.**

AB 1585 also would expand the definition of the administrative cost allowance to specify that: 1) employee costs associated with work on specific project implementation activities, including, but not limited to, construction inspection, project management, or actual construction, shall be considered project-specific and are not administrative costs; and 2) the oversight board may approve temporary increases to the administrative cost allowance to carry out the requirements of an enforceable obligation, cover litigation costs, or to maintain and preserve the value of assets while in the possession of the successor agency.

Expansion of the Definition of an Enforceable Obligation. AB 1585 proposes additional amendments to the definition of enforceable obligation:

- I. As introduced, AB 1585 allowed oversight boards the discretion to allow loan agreements between a RDA and a city or county, if the oversight board made certain findings. **As amended, AB 1585 would remove the oversight board's discretion and would make it mandatory for the board to approve loan agreements if certain conditions are met.**

- II. As introduced, AB 1585 proposed to expand the definition of an enforceable obligation to include payment to fulfill collective bargaining agreements for layoffs or terminations of city employees who performed work directly for a former RDA. **The recent amendments to AB 1585 specify that these obligations are enforceable obligations for any employee transferred to the entity assuming housing functions of the former RDA and would require the successor agency to enter into an agreement with the housing entity to reimburse it for those costs.**

- III. Under ABX1 26, amounts that a former RDA borrowed from the LMIH Fund are considered enforceable obligations. Successor agencies can use that money to cover existing obligations, which reduces the need for them to use money from the Redevelopment Property Tax Trust Fund, which in turn provides for more money to be allocated to affected taxing entities as property tax revenue. **As amended, AB 1585 would instead transfer the loan payments to the local housing authority, which means the successor agency would have to rely further on Trust Fund moneys, which would reduce the amount available for distribution to affected taxing entities as property tax revenue.**

At this time, we are unable to determine the specific fiscal impact to the County; however, any expansion of the definition of an enforceable obligation would result in the potential loss of the property tax increment to the County and other taxing entities. It is expected to range in tens to hundreds of millions of dollars over several years as RDA debt is retired.

Designation of Successor Agencies as Separate Legal Entities. Under ABX1 26, a successor agency is not a separate and distinct legal entity. It is the city or county or other local authority that has taken over the responsibilities of the former RDA. As amended, AB 1585 would define a successor agency as a distinct legal authority separate from the city or county which would act on its own behalf, and have all powers including the power to sue or be sued. **This provision would provide liability protection for cities acting as successor agencies to former RDAs, and may subject counties to lawsuits by successor agencies for issues such as the disallowance of enforceable obligation payments by county auditor-controllers.**

Further, the designation of successor agencies as separate legal entities would add a layer of complexity to the process of unwinding RDAs under ABX1 26 which has not been fully analyzed, such as the predicates for obtaining a money judgment against successor agencies or successor agencies seeking to declare bankruptcy. Successor agencies could not pursue bankruptcy unless they are recognized as a separate and distinct legal entity. AB 1585 as amended would afford successor agencies the power

to declare bankruptcy and implies additional legislative changes in the future to their powers.

In addition, under current law there is a process which must be followed when a claim is filed for money or damages against a city or a county. If the term successor agency is simply another name for those cities, the law is clear on the procedure for filing claims against successor agencies. However, if successor agencies are considered separate legal entities it becomes unclear whether they would be subject to those claims procedures.

Determination to Serve as a Successor Agency. As amended, AB 1585 would allow a city or county that opted not to serve as a successor agency to reverse that decision. The City of Los Angeles is the only agency within the County that opted out of being a successor agency.

Recognized Obligation Payment Schedules (ROPS). As amended, AB 1585 would make the following changes regarding the ROPS:

- Under ABX1 26, successor agencies are required to prepare a draft ROPS which covers the period from February 1, 2012 to June 1, 2012 projecting the date and amount of payment for each enforceable obligation for the remainder of the time period which the former RDA would have been authorized to make the property tax increment. **As amended, AB 1585 would change the period to January 1, 2012 to June 30, 2012. While the intent of this amendment is unclear, it appears to secure additional property tax revenue to cover this time period.**
- Allow the first ROPS to include the total amount of payments required for an enforceable obligation for the next two six-month periods, and in the case of debt obligation, may include the amount of annual debt service, reserve set-aside, and any amounts required under indenture or similar documents.
- Under ABX1 26, commencing May 1, 2012, only those payments listed in the ROPS may be made by the successor agency. As amended, AB 1585 would eliminate the May 1, 2012 date. **This provision would give successor agencies an open-ended deadline for validating ROPS.**

Appointments to Oversight Boards. As amended, AB 1585 would make the following changes to membership qualifications to the oversight board:

- With regard to the appointment of a member from the special district, specifies that the member shall be from the special district having the largest property tax

share within the RDA project area. Formerly this language specified largest property tax share with territory in the territorial jurisdiction.

- With regard to the appointment of an employee of the former RDA, specifies that if a recognized employee organization does not exist for either the former RDA or the city or county, the appointee shall be an employee of the successor agency.

Assembly Housing and Community Development Analysis of AB 1585

The March 13, 2012 Assembly Housing and Community Development Committee analysis of AB 1585 focuses primarily on the provisions of the bill relating to the LMIH funds and notes that the fiscal impacts of AB 1585 as amended are unknown. According to the analysis, RDAs reported to the State Controller's Office (SCO) to have in excess of \$1.4 billion on deposit in their LMIH Funds in FY 2009-10. The analysis also notes that the SCO is in the process of auditing RDAs for FY 2010-11 and is required to submit the audit to the Legislature at the end of April 2012.

According to the analysis, to the extent that AB 1585, as does SB 654, prevents the reallocation of the \$1.4 billion of LMIH Funds to local governments and schools, there would be a corresponding loss of State General Fund savings, which would otherwise offset the Proposition 98 guarantee to education. Based on the \$1.4 billion on deposit in an LMIH Fund and assuming that 50 percent of this revenue would be allocated to schools, a one-time State General Fund loss of as much as \$700.0 million is estimated. The remaining \$700.0 million in property tax revenue would no longer be available for reallocation to counties, cities, or special districts. As previously reported, of this amount Los Angeles County would likely receive \$70.0 million to \$93.0 million.

In addition, as previously reported, the Legislative Analyst's Office (LAO) indicates that during 2011 many RDAs entered into cooperation agreements with their city, county, or another local agency to carry out existing and future redevelopment projects. The LAO finds that local agency staff and officials appeared to assume that if the Governor's proposal to eliminate RDAs was enacted, the cooperation agreements would be an enforceable obligation, requiring the allocation of future tax increment revenues as payment for performing the agreement.

According to published reports on redevelopment activity, the three largest RDAs in the County, Los Angeles, Long Beach, and Santa Monica adopted "agreements" that sought to transfer a combined \$2.0 billion from their RDAs to the cities. It is very difficult to determine what the total amount of transfer activity could be for all RDAs in the County because only limited data is available and the type of financial obligations RDAs may have entered into prior to their dissolution on February 1, 2012 is unknown.

However, it appears that AB 1585 could legitimize these actions at a significant cost assuming an estimated County share of 30 to 40 percent.

County Impact

As previously stated, we are unable to determine actual impact of AB 1585 to the County. **However, based on information available we estimate that the overall impact of AB 1585 could result in the loss of hundreds of millions of dollars in property tax increment to local taxing entities and the County.** Specific impact we can project at this time is:

- Under ABX1 26, the County General Fund may be entitled to **\$70.0 million to \$93.0 million (30 percent to 40 percent) of undesignated LMIH funds.** These revenues would not come to the County based on the provisions of AB 1585.
- The expansion of an enforceable obligation to include loan agreements between a RDA and a host city or county with two years of the creation of an executed project areas **could result in a one-time County loss of \$34.0 million.**

Furthermore, as indicated in the Assembly Committee analysis, AB 1585 could result in at least one-time State General Fund loss of as much as \$700.0 million, and the enactment of any other provisions, such as the expansion of the enforceable obligation would further redirect property tax increment away from the State and local governments resulting in less revenue to address the State Budget deficit. This would most likely require the Legislature and the Governor to make further cuts to critical health and human services programs which provide essential services to the County's most vulnerable children and families.

Recommendation

The County supports provisions of AB 1585 which are intended to ensure that existing housing funds, including Low and Moderate Income Housing funds, are transferred to the appropriate housing agencies. However, as amended, AB 1585 would greatly expand the definition of enforceable obligation and the administrative cost allowance for successor agencies resulting in significant loss of property tax increment to taxing entities, including the County, ranging in the tens to hundreds of millions of dollars. This measure also would delay the final dissolution of RDAs which is intended to maximize the benefit of existing redevelopment assets and future uncommitted property tax increment to schools, counties, cities and special districts. Therefore, **unless otherwise instructed by your Board, the Sacramento advocates will oppose AB 1585 unless the bill is amended to only retain those provisions which are contained in County-supported SB 654 (Steinberg), and specifically amended to**

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authorize counties to administer oversight board meetings of successor agencies and seek reimbursement for those activities from the Redevelopment Property Tax Trust Fund, when such functions are requested by successor agencies.

AB 1585 is supported by: the Monterey County Board of Supervisors; the League of California Cities; the cities of Colton, Fairfield, Coronado, Lafayette, Lakewood, Moorpark, and Vista; the California Redevelopment Association; Abode Services, Fremont; Affirmed Housing Group; Aging Services of California; Allied Housing, Fremont; Bay Area Local Initiatives Support Corporation, San Francisco; Cambrian Center, San Jose; Century Housing, Culver City; Community Housing Partnership, San Francisco; Daniel Solomon Design Partners, San Francisco; EAH Housing, San Rafael; Housing Authority of Kings County; Laurin Associates, Sacramento; Life Skills Training and Educational Programs, Fair Oaks; Mercy Housing, San Francisco; Palm Communities, Palm Desert; Resources for Community Development; San Diego Housing Commission; and housing managers for the following affordable housing communities; Casa de la Paloma, Glendale; Clark Terrace and Clark Terrace II, Norco; Mountain Vistas and Mountain Vistas II, Redding. This measure is opposed by the Santa Clara Board of Supervisors.

AB 1585 passed the Assembly Housing and Community Development Committee by a vote of 5 to 0 on March 14, 2012. This measure is scheduled for a hearing in the Assembly Local Government Committee on March 21, 2012.

We will continue to keep you advised.

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