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## Major Provisions of AB 1484<sup>1</sup>

### 1. **Three payments:** Successor agency must make three payments:

- July 12: Taxing entities' share of December 2011 property tax distribution to redevelopment agency/successor agency
- November 28: Low-Moderate Income Housing Fund
- April 10: Unencumbered cash

In addition to these three payments, if a successor agency did not make complete 2011-12 pass-through payments, amount of payment not made will be deducted from property tax distribution from auditor-controller.<sup>2</sup>

### 2. **New audit by October 1:** Successor agency must retain licensed accountant to audit books:<sup>3</sup>

- Audit of LMIHF
- Audit of cash assets
- Audit of cash transfers to public agencies and private parties<sup>4</sup>

### 3. **New penalties:**

- Failure to make July 12 payment: successor agency subject to civil penalty of 10% of the amount owed plus 1.5% of the amount owed for each month that payment is not made unless DOF finds that payment of penalty will jeopardize payment of enforceable obligations. Until payment is made,

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<sup>1</sup> This initial Draft summary of AB 1484 was prepared by the League's Special Counsel, Betsy Strauss, on June 28, 2012, with the objective of providing something quickly to city officials. The League will continue to refine this analysis with the assistance of its RDA Attorney Working Group and other city officials.

<sup>2</sup> Additional information about these payments is found in the Appendix.

<sup>3</sup> Agreed-upon procedures audit completed by auditor-controller can substitute for the licensed accountant audit if it includes all statutory requirements

<sup>4</sup> Successor agency must attempt to recover cash transferred to public agency without an enforceable obligation.

successor agency may only pay bond debt. City subject to same civil penalty. City will not receive July 18 sales tax payment (up to amount owed).<sup>5</sup>

- Failure to transfer LMIHF funds: Offset of city sales tax or property tax of the amount required to be transferred<sup>6</sup>
- Failure to transfer cash assets: Offset of city sales tax or property tax of the amount required to be transferred<sup>7</sup>
- Failure to recover cash transferred to local agency without enforceable obligation: Offset of sales tax or property tax of the local agency to which the cash was transferred.<sup>8</sup>
- Failure to submit ROPS by September 1, 2012 and subsequent deadlines: City to pay civil penalty of \$10,000 per day for each day beyond deadline

#### 4. Safe Harbor: Finding of Completion<sup>9</sup>

The Department of Finance will issue a finding of completion to a successor agency that pays the following amounts:

- ✓ The amount determined in the audit of the LMIHF<sup>10</sup>
- ✓ The amount determined in the audit of all other funds<sup>11</sup>
- ✓ The amount (if any) owing to taxing entities from the December 2011 property tax payment<sup>12</sup>

The following applies to a successor agency that is issued a finding of completion:

- ✓ Loan agreements entered into between the redevelopment agency and the city are deemed to be enforceable obligations if oversight board makes a finding that loan was for legitimate redevelopment purposes. As enforceable obligations, payments are listed on ROPS<sup>13</sup>.

Repayments of loans may not begin prior to 2013-14 fiscal year at maximum amount described in statute. Repayment amounts received by city must first be used to retire outstanding amounts borrowed and owed to LMIHF of the

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<sup>5</sup> Section 34183.5(b)(2)

<sup>6</sup> Section 34179.6(h)

<sup>7</sup> Section 34179.6(h)

<sup>8</sup> Section 34179.6(h); see, also 34179.8

<sup>9</sup> Section 34191.1.

<sup>10</sup> Section 34179.6

<sup>11</sup> Section 34179.6

<sup>12</sup> Section 34183.5

<sup>13</sup> DOF continues to retain final authority to approve items listed on ROPS.

former redevelopment agency for purposes of the SERAF payment. 20% of loan repayment amount must be transferred to LMIH Asset Fund.<sup>14</sup>

- ✓ Bond proceeds derived from bonds issued on or before 12/31/10 shall be used for the purposes for which the bonds were sold. Proceeds which cannot be spent consistent with bond covenants shall be used to defease the bonds or to purchase those same outstanding bonds on the open market for cancellation.<sup>15</sup> Use of bond proceeds listed on ROPS.<sup>16</sup>
- ✓ Real property assets: In lieu of the provisions of AB 26 which require disposal of real property assets at the direction of the oversight board, successor agency prepares a long-range property management plan and submits to oversight board and DOF for approval. Permissible uses of property include retention for governmental use; retention for future development; sale of property; use of the property to fulfill enforceable obligations. If plan directs use or liquidation of property for a project identified in an approved redevelopment plan, the property shall transfer to the city. No transfers until plan approved by oversight board and DOF.<sup>17</sup>
- ✓ Statute of Limitations: The longer statutes of limitations (2 years) to challenge actions of the former redevelopment agencies do not apply.<sup>18</sup>

## 5. New Power of State Controller<sup>19</sup>

AB 1484 directs the Controller to review the activities of successor agencies to determine whether an asset transfer occurred after January 31, 2012, between the successor agency and the city or county that created the redevelopment agency, or any other public agency that was not pursuant to an enforceable obligation on an approved ROPS. The Controller is directed to order the assets returned to the successor agency. "City" is defined very broadly to include any entity which is controlled by the city or for which the city is financially responsible or accountable.<sup>20</sup>

## 6. Increase in authority for Department of Finance

- DOF may eliminate or modify any item on an oversight board-approved ROPS. The auditor-controller must distribute property tax in accordance with changes made to the ROPS by DOF. If successor agency disputes DOF

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<sup>14</sup> 34191.4(b)(2).

<sup>15</sup> 34191.4(c)

<sup>16</sup> DOF continues to retain final authority to approve items listed on ROPS.

<sup>17</sup> Section 34191.5

<sup>18</sup> Section 33500, 33501

<sup>19</sup> Section 34178.8

<sup>20</sup> Section 34167.10. AB 26 directed the State Controller to review asset transfers from redevelopment agencies to the city or county that created the agency that occurred after January 1, 2011. If the city or county was not contractually committed to a third party for the expenditure or encumbrance of those assets, the Controller was directed to order the return the assets to the redevelopment agency or successor agency.

action, disputed item may be carried on ROPS. If dispute resolved in favor of successor agency in the future, the past allocation of property tax to the successor agency is not changed nor is a "liability" created for any affected taxing entity.<sup>21</sup>

- DOF may review and object to oversight board actions approving (1) establishment of new repayment terms for outstanding loans; and (2) setting aside amounts in reserves as required by bond indentures, and similar documents<sup>22</sup>

## **7. New restrictions on authority of Successor agency**

- No new enforceable obligations except (1) as specifically authorized by the statute; (2) in compliance with enforceable obligations that existed prior to June 28, 2011; or (3) to hire staff, acquire professional services and procure insurance.<sup>23</sup>
- May not transfer revenues or powers to any other public or private party except pursuant to enforceable obligation on an approved ROPS. Any such transfer of authority or revenues are "void" and successor agency required to reverse transfers. Controller may audit and order return of transfers of authority or revenues.<sup>24</sup>
- Actions taken by redevelopment agencies pursuant to VARP (Voluntary Alternative Redevelopment Program in AB 27) are "ultra vires" and do not create enforceable obligations.<sup>25</sup>
- If successor agency exercised power to reenter into agreements with city (section 34178) and agreement was approved by oversight board but rejected by DOF, successor agency and oversight board may not act to restore funding for the reentered agreement.<sup>26</sup>
- No reestablishment of loan agreements between successor agency and city except pursuant to safe harbor provisions.<sup>27</sup>

## **8. Miscellaneous**

- City loans to successor agency: City may loan or grant funds for administrative costs, enforceable obligations or project-related expenses. Receipt and use of these funds shall be reflected on the ROPS or in the

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<sup>21</sup> Section 34179(h)

<sup>22</sup> Section 34181(f)

<sup>23</sup> Section 34177.3(a); 34177.3(b)

<sup>24</sup> Section 34177.3(c)

<sup>25</sup> Section 34177.3(d)

<sup>26</sup> Section 34178(a)

<sup>27</sup> Section 34180(a)

administrative budget subject to oversight board approval. An enforceable obligation is created for repayment of loans.<sup>28</sup>

- New Oversight Board Provisions<sup>29</sup>
  - ✓ Auditor-controller may determine “largest special district”
  - ✓ Section 1090 does not apply to employee representative on oversight board
  - ✓ Oversight board members are protected by immunities applicable to public entities and public employees
  - ✓ Written notice and information about all oversight board actions must be provided to DOF by electronic means. DOF has 40 (instead of 10) days to review and approve, reject, or modify oversight board action.
  - ✓ Oversight board may direct successor agency to provide additional legal or financial advice.
  - ✓ Authorized to contract with the county or other public or private agencies for administrative support
  - ✓ On matters within its purview, decisions made by oversight board “supersede those made by the successor agency or the staff of the successor agency.”<sup>30</sup>
- New authority for auditor-controller<sup>31</sup>: A county auditor-controller can object to an item on the ROPS or to the funding source listed for an item on the ROPS. Objections are sent to DOF to resolve.
- Polanco Act protection for successor agency: Cleanup plans and liability limits of redevelopment agency transferred to successor agency and to housing entity, upon entity’s request.<sup>32</sup>
- Limited authority for successor agency to refinance existing debt.<sup>33</sup>
- Successor agency is separate public entity.<sup>34</sup>

## Appendix – Successor Agency Required Payments/Fund Transfers

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<sup>28</sup> Section 34175(h)

<sup>29</sup> Section 34180

<sup>30</sup> Section 34179

<sup>31</sup> Section 34182.5

<sup>32</sup> Section 34173(f)

<sup>33</sup> Section 34177.5

<sup>34</sup> Section 34173(g)

✓ **Transfer of Unencumbered Balances**<sup>35</sup>

AB 26 requires that a successor agency transfer unencumbered cash balances and low and moderate income housing funds to the county auditor-controller for distribution to the taxing entities. AB 1484 requires a successor agency to retain the services of a licensed accountant to audit (1) the balance in the LMIHF; (2) the balance in other cash funds; (3) cash payments that were made in compliance with an enforceable obligation; and (4) cash transfers that were made without an enforceable obligation. In addition to transferring the balances in the LMIHF and other cash funds, a successor agency must make efforts to recover the cash transferred without an enforceable obligation.

✓ **Payment of December 2011 Taxing Entity Property Tax**<sup>36</sup>

AB 26 distributes property tax through a “waterfall” of payments which includes passthrough payments, payments to successor agencies for enforceable obligations, payments to successor agencies for administrative costs, and payments to taxing entities. The waterfall for the December 2011 property tax payment did not operate as intended because of the stay imposed by the Court in *Matosantos*. The property tax payment to taxing entities was not made. AB 1484 requires successor agencies to make those payments by July 12.

✓ **Payment of 2011-12 Passthrough Payments**

Some successor agencies made 2011-12 passthrough payments and some did not. AB 1484 requires the auditor-controller to reduce property tax payments to those successor agencies that did not make pass through payments in 2011-12.

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<sup>35</sup> Section 34179.5; 34179.6

<sup>36</sup> Section 34183.5



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### AB 1484: Important Dates

- July 9: County auditor-controller notifies successor agency of amount of funds owing taxing entities based upon December 2011 property tax payment<sup>1</sup>
- July 12: Successor agency must make payment to auditor-controller for deposit into Redevelopment Property Tax Trust Fund and distribution to taxing entities.<sup>2</sup>
- July 16: Auditor-controller distributes money received from successor agencies to taxing entities. Monies received after July 12 date distributed within 5 days of receipt.<sup>3</sup>
- July 18: **City sales tax payment suspended if successor agency doesn't make July 12 payment.**<sup>4</sup>
- August 1: Successor housing entity must submit to DOF a list of housing assets that contains explanation of how assets meet criteria set forth in the law. DOF will prescribe format for list. DOF may object to any of the assets within 30 days. If after meet and confer, DOF continues to object, asset must be returned to the successor agency.<sup>5</sup>
- September 1: ROPS for January 1, 2013 through June 30, 2013 must be submitted electronically to DOF after oversight board approval.<sup>6</sup> DOF makes determinations within 45 days. Within 5 days of determination, successor agency may request additional review and meet and confer.
- October 1: Successor agency submits to oversight board, county auditor-controller, State Controller, and DOF results of the review of the LMIHF conducted by the licensed accountant agency must retain.<sup>7</sup> Note: licensed accountant must be approved by the county auditor-controller.

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<sup>1</sup> Section 34183.5(b)(2)(A). Note: The statute, that may be drafted in error, states that if June 1 property tax payment has not been made to successor agencies, the amount owing to taxing entities will be deducted from that same June 1 payment (34183.5(b)(1)).

<sup>2</sup> Section 34183.5(b)(2)(A).

<sup>3</sup> Section 34183.5(b)(2)(A).

<sup>4</sup> Section 34183.5(b)(2)(A)

<sup>5</sup> Section 34176(a)(2). Definition of "housing asset" found at section 34176(e).

<sup>6</sup> Section 34177(m). Future ROPS must be submitted to DOF 90 days prior to property tax distribution. **City subject to civil penalty of \$10,000 per day for successor agency's failure to timely submit ROPS (Section 34177(m)(2)).**

<sup>7</sup> Section 34179.6(a). The requirement to retain a licensed accountant is found in section 34179.5. The audit provided by the county auditor-controller can be substituted for an audit by a licensed accountant if it contains the information required by Section 34179.5.

- October 1: County auditor-controller completes agreed-upon procedures audit of each redevelopment agency.<sup>8</sup> Auditor-controller provides estimate of property tax payments to successor agency for upcoming six-month period.<sup>9</sup>
- October 15: Oversight Board must review, approve, and transmit LMIHF audit to DOF, auditor-controller.<sup>10</sup>
- November 9: DOF completes review of LMIHF audit and reports findings, determinations, and decision to overturn oversight board decision to allow retention of successor agency assets.<sup>11</sup>
- November 16: Successor agency may request meet and confer to resolve disputes with DOF findings on LMIHF audit.<sup>12</sup> DOF must confirm or modify its determination and decisions within 30 days.
- November 28: Successor agency to transfer LMIHF funds to auditor-controller. **City sales tax/property tax may be offset for unfunded amounts.**
- December 15: Successor agency submits to oversight board, county auditor-controller, State Controller, and DOF results of the review of all other fund and account balances by licensed accountant.<sup>13</sup>
- January 15: Oversight board must review, approve, and transmit other funds audit to DOF, auditor-controller.<sup>14</sup>
- April 1: DOF completes review of other funds audit and reports findings, determinations, and decision to overturn oversight board decision to allow retention of successor agency assets.<sup>15</sup>
- April 1: County auditor-controller provides estimate of property tax payments to successor agency for upcoming six-month period.<sup>16</sup>
- April 6: No later than 5 days after receiving DOF determination on other funds audit, successor agency may request meet and confer to resolve disputes with DOF findings. DOF must confirm or modify its determination and decisions within 30 days.
- April 10: Successor agency to transfer other "cash and assets" audit payment to auditor-controller if meet and confer process complete.<sup>17</sup> **City sales tax/property tax may be offset for unfunded amounts.**

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<sup>8</sup> Section 34182(a)(1).

<sup>9</sup> Section 34182(c)(3)

<sup>10</sup> Section 34179.6(c)

<sup>11</sup> Section 34179.6(d)

<sup>12</sup> Section 34179.6(e)

<sup>13</sup> Section 34179.6(a).

<sup>14</sup> Section 34179.6(a).

<sup>15</sup> Section 34179.6(a)

<sup>16</sup> Section 34182(c)(3)



Safe Harbor: Successor agencies obtaining a "notice of completion" from DOF will qualify for loan repayments, bond proceeds expenditure authority to be placed on ROPS<sup>18</sup>, and long range asset management plan.

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<sup>17</sup> Section 34179.6(f). The statute does not allow sufficient time between completion of DOF review on April 1 and required payment on April 10.

<sup>18</sup> DOF continues to retain final authority to approve items listed on ROPS

June 28, 2012