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Proposed Legislation to Address Governor's Proposal to Disestablish Redevelopment Agencies

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Late in the afternoon on Wednesday, February 23rd, the State Department of Finance released language for a proposed budget trailer bill that addresses the Governor's proposal to disestablish redevelopment agencies. The 26-page bill has not yet been formally introduced, but may be introduced and considered by the Budget Conference Committee within the next few days. It is likely that the bill will undergo modification prior to consideration by the legislature, and if adopted, the bill may be subject to legal challenge.

The proposed legislation states that it is an urgency measure that would take immediate effect upon approval by the legislature and signature by the Governor. Although urgency legislation normally requires approval by two-thirds of both the Senate and Assembly, it is possible that the legislation may be included as part of the budget package and become effective with majority approval and the Governor's signature.

Summary of the proposed legislation:

1. Dissolves all redevelopment agencies as of July 1, 2011.
2. Effective as of the date of adoption of the legislation, imposes far-reaching limitations on agency actions prior to dissolution, including prohibitions on the establishment of new debt, the execution of new contracts, the amendment of existing agreements, the disposition of assets including the sale of property, and the adoption or amendment of redevelopment plans.

3. Provides that the successor to each dissolved redevelopment agency would be the entity that created the agency (with specified modifications for joint powers agencies).
4. Permits successor entities to assume responsibility for housing obligations and use the agency's low/mod housing set-aside fund balance for such purposes. (If a successor entity chooses not to assume these responsibilities, the funds would be transferred to a local housing authority or to the State Department of Housing and Community Development if there is no local housing authority).
5. Provides that challenges to the validity of agency bonds or to agency and legislative body determinations and findings issued or adopted after January 1, 2011 may be brought within three years following approval of the action (extending the 60- and 90-day periods provided under current law).
6. Provides for establishment of a seven-member oversight board for each successor entity that would consist of representatives appointed by the County Board of Supervisors, the City Council, the County Superintendent of Education and the largest non-enterprise special district operating within the jurisdiction.
7. On a semi-annual basis, requires each successor entity to prepare, a "Recognized Obligation Payment Schedule" that sets forth a schedule of payment obligations, including the date, amount, and source of funds for each payment.
8. Requires the payment schedule to be certified by an external auditor, approved by the oversight board, and submitted to the county auditor-controller, the State Controller's Office and the Department of Finance.
9. Requires the successor entity to make payments for "enforceable obligations" (defined to include: (a) bonds, (b) loans "borrowed by the agency for a lawful purpose", (c) payments required by the federal government, (d) pre-existing obligations to the state, (e) obligations imposed by state law, (f) legally enforceable payments to agency employees, including pension and unemployment payments, (g) judgments and settlements entered into by a court or arbitration proceeding, provided however, successor entities and oversight boards have authority to appeal judgments, settlements and arbitration decisions, (h) legally binding agreements "that are not otherwise void as violating the debt limit or public policy", and (i) contracts necessary for administration of the agency to the extent permitted (e.g., leases, insurance, equipment rentals).
10. Permits the successor entity to make payments for enforceable obligations using tax increment funds only when no other funding source is available or when payment from current property tax revenues is required by an enforceable obligation.
11. Requires the successor entity to remit unencumbered agency funds to the county auditor-controller for distribution to taxing entities.

12. Requires the successor entity to dispose of agency assets as directed by the oversight board with proceeds to be transferred to the county auditor-controller for distribution to taxing entities.
13. Authorizes successor entities to complete "approved development projects" which are defined to mean projects where construction, site remediation, environmental assessment, or property acquisition is required pursuant to an enforceable obligation between the agency and parties other than the entity that created the redevelopment agency, and either (1) substantial performance under the agreement had taken place prior to July 1, 2011, or (2) the oversight board determines that it would be beneficial for the taxing entities or the communities to continue the project even if there has not been substantial performance.
14. Authorizes successor entities to carry out "retained development projects" (defined to mean projects planned by the agency prior to dissolution that the successor entity wishes to continue to develop using its own funds but which the oversight board would otherwise direct the successor entity to terminate because the project does not qualify as an "approved development project.")
15. Requires the successor entity to compensate the taxing entities for the value of property and assets retained by the successor entity in an amount proportional to the taxing entities' shares of property tax. Provides that the value of retained assets will be established as the fair market value established by the county assessor for the 2011 property tax lien date if no other agreement as to valuation is reached.
16. On a semi-annual basis, requires successor entities to prepare, for oversight board approval, a proposed administrative budget that includes estimated administrative costs, proposed sources of payment, and proposals for services to be provided, but which excludes costs for staff activities associated with "retained development projects" (defined above).
17. Limits the annual amount payable for the administrative budget from tax increment to the greater of \$250,000 or 5% of property tax allocated to the successor entity for the 2011-12 fiscal year (declining to 3% for each fiscal year thereafter), reduced by the amount that can be paid from bond proceeds or other sources.
18. Permits successor entities to employ staff and officers of the dissolved agency provided that their total compensation does not exceed the amount paid in calendar year 2010 unless approved by the oversight board.
19. Provides that prior oversight board approval is required for: (a) the establishment of repayment terms for outstanding loans where such terms have not been established prior to July 1, 2011; (b) the issuance of refunding bonds by the successor entity (provided, however, the successor entity is authorized to refund bonds under certain

- circumstances), (c) the setaside of reserves as required by bond indentures; (d) the merger of project areas, (e) the acceptance of federal or state grants that are conditioned upon the provision of matching funds in an amount greater than 5%; (f) approval to have projects deemed to be "retained development projects" (defined above); and (g) the establishment of the Recognized Obligation Payment Schedule (described above).
20. Requires the oversight board to direct the successor entity to: (a) dispose of all assets and properties except those deemed to be part of "approved development projects" (defined above) with such disposition 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" (defined above); (c) transfer housing obligations and low/mod setaside funds to the applicable entity (the successor entity if it so elects); and (d) negotiate compensation agreements with taxing entities for retained development projects (defined above).
 21. Requires the county auditor-controller to complete a financial audit of each redevelopment agency in the county by October 1, 2011 in order to establish each agency's assets, liabilities, passthrough payment obligations, and the amount and terms of indebtedness, and to certify the initial Recognized Obligation Payment Schedule. The audits are to be submitted to the State Controller by October 15, 2011.
 22. Requires the county auditor-controller to determine the amount of property tax increment that would have been allocated to each redevelopment agency and to deposit that amount in a Redevelopment Property Tax Trust Fund ("Property Tax Fund"). The county auditor-controller is charged with administering the Property Tax Fund for the benefit of holders of agency debt, the taxing entities that receive passthrough payments, and the beneficiaries of the Public Health and Safety Fund (defined below).
 23. Requires the county auditor-controller to allocate funds from the Property Tax Fund *first*, to local agencies, school districts and community college districts in the amount that would have been received by such entities as their share of the property tax base and that would have been paid pursuant to statutory and contractual passthrough agreements, *second* (during Fiscal Year 2011-12 only) to the Public Health and Safety Fund an amount not to exceed \$1.7 billion dollars on an aggregate basis statewide, *third* to successor entities for payments listed in the Recognized Obligation Payment Schedule, and *fourth* to the successor entity approved administrative costs required to be paid from former tax increment revenue, with any balance payable to cities, the county, schools, community college districts, and non-enterprise special districts. The State Director of Finance will determine the amount to be allocated to the Public Health and Safety Fund by each agency after needs for enforceable obligations are taken into

account. The Public Health and Safety Fund shall be used to reimburse the State for the cost of providing healthcare and trial court services in the county.

24. Requires the California Law Revision Commission to draft a Community Redevelopment Law cleanup bill for consideration by the legislature by January 1, 2013.

Meyers Nave's Redevelopment Practice Group continues to monitor legislative developments and is working with cities and redevelopment agencies throughout the state to craft responses to the legislation.

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