

League of California Cities

(May Revise)

Key Issues with DOF RDA Dissolution Trailer Bill¹

The League of California Cities is **Opposed, Unless Amended** to the following provisions in the proposed Trailer Bill due to their many harmful impacts on existing cities.

These provisions reverse previous incentives and due process provisions approved by the Administration and Legislature in AB 1484 of 2012:

- 1) **Reimbursement Agreements:** Undoes incentives previously offered, under AB 1484 of 2012, to successor agencies to make three required payments to become eligible for a DOF “finding of completion.” This proposal retroactively prohibits the reinstatement of reimbursement agreements between a city and a redevelopment agency for public improvements constructed by a third party. (*Subparagraph (2), page 37*).
- 2) **Interest Rates on Loans:** Retroactively undoes the final March 16, 2015, ruling in *Glendale v. DOF* over the appropriate method of calculating interest rates on reinstated loans. The Sacramento Superior Court recently ruled the LAIF (Local Agency Investment Fund) rate, applies to the accumulated balance on a loan and is calculated based on the rates in effect over the life of the loan since origination. The Court rejected DOF’s contention that the rate was the current rate on a fixed date. The language (*Subparagraph (3), on page 37*) deletes the pertinent language relied on by the Court and substitutes a rate “up to” one percent. This change reverses the previous language the Administration and Legislature put into place, and would mean a major loss of funds needed by local agencies to provide public safety and other vital services. Affordable housing funding would also suffer, because 20% of local repayments must be set-aside for affordable housing.
- 3) **Erosion of Due Process Review of DOF Decisions:** The May Revise provision continues to undercut the due process provisions agreed to by the Administration and Legislature in AB 1484, to enable a successor agency to contest a DOF decision in Sacramento Superior Court. There is a fundamental inequity with repealing the construct of existing law in this area. Many successor agencies have viewed the DOF process as highly subjective, leaving the only due process recourse to the Courts. This proposal fundamentally erodes the ability of a successor agency to protect its interests in a bona fide dispute with DOF, while strengthening the existing state’s leverage and position.
 - **Litigation Expenses:** Existing law provides that successor agencies could retain legal counsel to represent it in litigation with the costs covered as enforceable obligations. This proposal restricts any litigation expenses to a limited administrative cost allowance (Page 2, Paragraph (5)), which is even further

¹ Comments based upon the PDF released by DOF as part of the May Revise on 05/14/15 version.

constrained by other areas of this proposal². The May Revise alters this construct slightly to permit a sponsoring city of county to loan funds to a successor agency for litigation with costs recoverable upon the local agency prevailing.

- Exempting DOF from Administrative Procedures Act: DOF has been granted broad authority to make quasi-judicial determinations without any formal administrative review process. This authority is compounded by the proposal (Page 1, Sec. 34170.1) to exempt DOF from the Administrative Procedures Act.

Three Issues the League Raised with January Proposal, Potentially Addressed by Amendments: The May Revise makes several adjustments to the January proposal, affecting issues raised by the League:

- 1) **Removing Proposal Seeking to Undo Re-entered Agreements:** The League appreciates the removal of prior language seeking to overturn *Emeryville v. Cohen* and retroactively invalidate dozens of agreements validly entered into by cities and successor agencies around the state under AB 26X of 2011. DOF has also sent a letter to the affected agencies notifying them they will no longer be pursuing litigation on this issue. Several amendments are necessary to the bill to clarify the statute in this area due to the overlap of several sections, which the League will be offering.
- 2) **Authority for cities to make loans to successor agencies approved by oversight boards for “project-related expenses.”** The May Revise restored the reference to “project related expenses.” (Page 3, sub. (h)). The League appreciates this change and will suggest several minor, clarifying amendments.
- 3) **Work associated with “winding down” a former redevelopment agency.** The May Revise makes a slight change to the January proposal which indicates that there may be the potential for clarifying language that work associated with basic maintenance and repairs of buildings continues to be a supported activity. The League appreciates this change and will suggest clarifying amendments.

Other RDA-Related Issues:

- 1) **Extension of RDA Time Limits to Repay Bond Debts:** The League appreciates this helpful provision. One necessary clarifying amendment is that loans repaid after a finding of completion under Sec. 34191.4 are also covered.
- 2) **Staff Neutrality: Countywide Oversight Board:** It is important that whatever entity is tasked with staffing the functions of countywide oversight boards, that they maintain a fiduciary duty to all members and agencies represented on the oversight board and remain neutral. The League will provide language on this.

² The amount available for the successor agency’s administrative cost allowance is further restricted by language (Subparagraph (3), Page 1) which requires the amounts of loans repaid to a city as well as the amount of a prior administrative cost allowance to be deducted before applying the 3% factor. Subparagraph (4) on Page 1 further restricts possible funding by imposing a maximum 50% cap. All of these restrictions ignore the existing authority of an oversight board to review a successor agency’s administrative cost allowance and reduce it where appropriate. This restrictive language should also be contrasted with (Subdivision (j) on Page 26) which authorizes a county auditor-controller or other entity staffing an oversight board to recover “all costs incurred.”

- 3) **Installment Plans For Agencies Without an FOC:** The May Revise proposes a process for successor agencies which have not received a finding of completion (presumably because there are issues in dispute) to receive a finding of completion if they enter into an installment payment plan, which can later be altered to reflect a final Court decision. The League will suggest several clarifying amendments including that the installment plan be “reasonable” and reflect the likelihood of available funding.
- 4) **Pension Special Override Rates:** The League has shared this language with the affected cities seeking feedback on its impacts. The Language is confusing in its drafting; one reading of the language could be interpreted to negatively impact the City of San Jose in pending litigation. (page 31 & 32). This language bears further review by affected entities.
- 5) **2011 Bond Issues:** The League appreciates that the Administration made a proposal in the May Revise on this outstanding RDA dissolution issue. Affected agencies are reviewing. (Page 38 & 39).
- 6) **Public Parking Lots:** The January budget proposal added parking lots to the list of facilities deemed to be for a governmental purpose, provided they do not generate revenue in excess of reasonable maintenance costs. (Subparagraph (2), page 30). Agencies with previously approved plans may amend their plans to incorporate these parking lots. (Subdivision (b), Page 36). The League proposes that the word “lots” be replaced with “facilities” to ensure that multi-story structures may qualify. Also proposed is that reasonable “operational costs” to be recognized.

Other Issues Added at May Revise: The following proposals are helpful to the affected agencies.

- 1) **San Francisco Affordable Housing:** The May Revise adds a provision that will lead to the construction of several thousand affordable housing units in this extremely high-cost city.
- 2) **Recently Incorporated Cities:** \$23.75 million is offered as a one-time payment to repay debt owed to the County of Riverside by three out of the four recently incorporated cities which have been struggling since the 2011 VLF takeaway.
- 3) **Negative ERAF:** \$5.8 million would be allocated to local agencies in three counties where there is insufficient ERAF funds to make offsetting payments for the Triple-Flip and VLF-Property Tax Swap.
- 4) **Santa Clara County Cities Tax Equity.** Several cities in Santa Clara County will receive relief from an ERAF calculation issue for five years, valued at \$2 million annually.
- 5) **San Benito County:** Forgives \$3.4 million in debts owed by local agencies in the county due to a previous calculation error that caused underpayments by those agencies to ERAF.
- 6) **Negative Bailout Counties:** Provides \$6.9 million in budget relief for four “negative bailout counties.”