League of California Cities

Key Issues with DOF RDA Dissolution Trailer Bill[1]

The League of California Cities is <u>Opposed</u> to the following provisions due to their many harmful impacts on existing cities. We are asking legislators to either remove these provisions or reject the proposal in its entirety.

1) **Overturns recent Court of Appeal decision upholding reentered agreements approved by Oversight Boards.** This change seeks to overturn *<u>Emeryville v. Cohen</u>* and impacts and retroactively invalidates dozens of agreements validly entered into by cities and successor agencies around the state and approved by the governing Oversight Board in those jurisdictions based upon finding that the projects were in the best interests of all impacted taxing entities. *(Section 34178, page 47, 48 and 49; Subdivision (h) page 58).* Many other cities are affected by this provision in addition to Emeryville: Bellflower; Citrus Heights; Coronado; Danville; Lawndale; Loma Linda; Petaluma; Riverside; San Leandro; Santa Rosa; Sunnyvale; Twenty-Nine Palms; Ukiah; Union City; and Watsonville.
2) **Undoes incentives previously offered 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; also makes these loans subject to RDA plan time limits that don't apply to full repayment of other debts. *(Subparagraph (2), page 67) also (Section 34189, Page 65)*
3) **Retroactively undoes the effects of the February 13, 2015, ruling in *Glendale v. DOF* over the appropriate method of calculating interest rates on reinstated loans.** Judge Chang of the Sacramento Superior Court recently issued a ruling that holds that the LAIF rate that would apply to the accumulated balance on a loan was the rate in effect over the life of the loan since origination. The judge rejected DOF's contention that the rate was the current rate on a fixed date. The language *(Subparagraph (3), on page 68)* deletes the pertinent language relied on by the Court and substitutes a rate "up to" one percent. Such a change would be a major loss of funds needed by local agencies to provide public safety and other vital services, and also significantly reduces the 20% set-aside for affordable housing.
4) **Undercuts local agency ability to protect legal rights by revoking statutory authority to recover legal costs outside of existing administrative cost cap.** Existing law provides that litigation costs related to assets, obligations, settlements, and judgments are not part of the administrative cost allowance. This change would be a complete reversal of previous legislative authority. *(Section 34171 (b), Page 2 and 3).* The dispute resolution process established is clear: (1) oversight board approval; (2) DOF review of the ROPS; (3) an opportunity to "meet and confer" with DOF on outstanding issues; and (4) an opportunity to appeal any final DOF decisions in a Court of Law. Successor agencies have also had to respond to lawsuits filed against the successor agency by other parties. For efficiency, all cases were directed to the

[1] Comments based upon 03/09/15 version RN # 15 094645; there is little difference with the February 18th version of the amendments. Thus, most of the changes to this document are simply updating several page numbers to indicate where issues are within the DOF draft.

Sacramento Superior Court. This proposal restricts any litigation expenses to a limited administrative cost allowance, which is even further constrained in other areas of this proposal[2]. Further limitations *(Subdivision (F), page 6)* prohibit a city's ability to independently assist with litigation costs[3]. The objective of these provisions can have no other purpose but to severely limit a community's ability to protect its legal rights.

5) **Retroactively repeals authority for cities to make loans to successor agencies approved by oversight boards for "project-related expenses." Imposes interest restrictions on other such loans and makes repayment subordinate to all other payments and only if funding available.** When redevelopment was eliminated, many projects were underway, incomplete or required routine maintenance, continuation of security services, etc. To ensure such public investments did not languish or deteriorate, AB 26 authorized cities to loan funds to the successor agencies with the approval of the oversight boards. This provision retroactively reverses such authority and restricts the ability of the city to recover other such loans which were made in compliance with existing law and good faith. (Subdivision (h), Page 14)
6) **Retroactively exempts all DOF actions from the Administrative Procedures Act.** Redevelopment dissolution law has put DOF in a position of making thousands of quasi-judicial decisions with enormous financial and other consequences for affecting individual communities, properties and third parties. The proposed language (Section 34170.1, Page 2) deems such actions equivalent to "the preparation, development or administration of the state budget." Should such a change be enacted – especially in combination with other aspects of this proposal which attempts to reduce an ability of a successor agency to challenge DOF actions in Court—it would insulate the department's quasi-judicial decisions from needed transparency, accountability and scrutiny. This is especially troubling when in over two dozen cases Courts have ruled that DOF abused its discretion when administering RDA Dissolution Law.
7) **Retroactively prohibits previously authorized work associated with "winding down" the work of a former redevelopment agency.** Successor agencies are empowered to hire staff to assist with the work of "winding down" the former redevelopment agency. All of this activity is, of course, subject to review and approval of the oversight board. This proposal (Section 34177.3, Page 38 and 39) creates a long list of exclusions including "site remediation, removal of graffiti… and other similar work" to the term "winding down" and makes it retroactive. This change is puzzling, since successor agencies have an obligation to maintain the assets of the former redevelopment agency.

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[2] The amount available for the successor agency's administrative cost allowance is further restricted by language (Subparagraph (3), Page 3) 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 4 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 language should also be contrasted with (Subdivision (j) on Page 54 and 55) which authorizes a county auditor-controller to recover "all associated costs, including those of other county departments providing related services."

[3] Subdivision (h) on Page 14, repeals existing authority for a city to loan or grant funds to a successor agency. This language also excludes "grants" which appears to work in tandem with other aspects of this proposal designed to limit the ability of the successor agency to carry out the work of dissolving redevelopment.

Other Issues: ***Provided the aforementioned harmful provisions are removed*****,** many of the following provisions are, in isolation, potentially workable. The League is willing to work on these and other consensus-based changes to the dissolution process.

1. ***2011 Refunding Bonds:*** Agreements between a city and successor agency to refunding or refinancing of bonds prior to June 27, 2011, is considered an enforceable obligation. *(Subparagraph (2), Page 7)*
2. ***Extension of RDA Time Limits to Repay Bond Debts:*** An issue that has arisen is how debts will be repaid if the time limits of a former redevelopment agency have expired. This proposal waives those limits for bond repayments only, so the question remains what happens to other enforceable obligations that remain to be paid. (Section 34189, Page 65)
3. ***Annual ROPS:*** Changes from 6-month to annual ROPS process commencing July 1, 2016. (Subdivision (h), Page 8), Pages 35-38.
4. ***Final and Conclusive:*** Provides DOF with 100 days to render a decision on a final and conclusive request. (Subdivision (i), Page 46)
5. ***Long Range Property Management Plans:*** Provides some helpful clarification that DOF does not need to review either (1) transfers of governmental property or (2) transfers of property to be retained for development pursuant to a DOF approved Long Range Property Management Plans. It appears, however, that transfers to a third party are missing from this list. (Subdivision (h), Pages 52 and 53)
6. ***Countywide Oversight Boards:*** There are a number of issues that are raised with the planned transition to countywide oversight boards. (Subdivision (j), Page 54 and 55)
7. ***Public Parking Lots:*** Adds 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 59). Agencies with previously approved plans may amend their plans to incorporate these parking lots. (Subdivision (b), Page 66).
8. ***Auditor-Controller Audits***: Makes revisions to the existing audit process. Section 34186, Page 61 and 62).
9. ***Process for Dissolving Successor Agency following debt repayment***: (Page 62, 63 and 64)
10. ***Optional Last and Final ROPS Process:*** Offers a last and final ROPS process to those agencies where issues are resolved and debt repayment can be placed on autopilot. (Pages 72-79)