

Kelly Culver

From: LSL CPAs - Lance, Soll & Lunghard LLP [august.burrows@lslcpas.com]
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To: Kelly Culver
Subject: News on Budget Proposal to Eliminate RDA's



The Latest Information

March 8, 2011

**LEGISLATION TO IMPLEMENT THE GOVERNOR'S BUDGET PROPOSAL TO
ELIMINATE REDEVELOPMENT AGENCIES**

To all of our City Clients:

As you are aware, on February 23, 2011 the Department of Finance circulated a draft legislation to implement the redevelopment provisions of the Governor's proposed 2011-12 budget. The intent of the legislation is to immediately curtail redevelopment agency activities and thereafter dissolve the agencies as of July 1, 2011. In light of these potential changes, we would like to highlight a couple of items to consider:

Existing Indebtedness Needs to be Fully Documented

The California Redevelopment Association has indicated that agencies should continue operations as they normally would in accomplishing their purpose of redevelopment; however, they should also review existing indebtedness and make sure that it is fully documented and supportable.

We support this approach and feel that all agencies should review the debt that they have in existence. This would be the amounts shown on their most recent Statement of Indebtedness (SOI) and financial audit. This review should be done with legal counsel and should make sure that all debt is appropriately documented to qualify as "enforceable obligations" should this process go forward. The review should cover the normal items such as bonds, city loans, developer debt, etc., as well as OPAs (owner participation agreements) and DDAs (disposition developer agreements) as these are generally not covered in many SOIs or financial audits. The format and results of this review will be the decision of legal counsel as they are in the best position to determine the status of these financial transactions.

With regard to loans and/or cooperation agreements between the forming entity (City/County) and the agency, the question as to whether or not these are "enforceable obligations" is unclear at present. In a

summary of the legislation done by Best, Best & Krieger, it is indicated that "enforceable obligations do not include agreements between the agency and its legislative body". This would appear to mean that loans between the City/County and its redevelopment agency would not qualify. Sections 34167(c)(1) and 34171(e) of the proposed legislation both define an "enforceable obligation". Nothing in these sections appear to remove debt to the legislative body. In those sections it is stated that "any legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy" qualifies as an "enforceable obligation". The prohibition as to entities that created the agency from being involved is present in Section 34171(c) where an "approved development project" is defined. That definition is used in administering projects which continue and it could also be used by the County in administering the tax increment to exclude the debt of the creating entity. If this is done, we would expect more disagreements and litigation would follow.

Assuming that debt between the creating entity and the agency is valid for repayment, what additionally should be considered? Many agencies do not regularly repay these loan(s). Instead, they have either chosen to use excess tax increment on project costs or no excess tax increment exists. Additionally, some agencies have loans with provisions that indicated that they are payable if and when tax increment becomes available. These may be the lowest form of debt in the order of repayment. In order to recognize that these obligations need to be repaid currently, agencies may wish to restructure these into obligations with fixed repayment schedules. Hopefully such a modification could be done now, as the proposed legislation bars such amendments after it is signed through the date specified for dissolution. Again, these should be review and discussed with legal counsel to make sure they are as effective as possible.

Low and Moderate Income Housing Continuation

Section 34176(a) of the proposed legislation indicated "the county or city that authorized the creation of a redevelopment agency may elect to retain the housing assets and functions previously performed by the redevelopment agency". Accordingly, the assets of the Low and Moderate Income Housing operation of the agency would be transferred to the City/County that created the agency. If that is not elected and there is in that locality a "local housing authority," then it will be next in order to receive the assets, etc. We would assume that a "local housing authority" could be the County housing authority if none exists in the City. If no "local housing authority" exists, then finally to the Department of Housing and Community Development.

Cities/Counties that authorized agencies may wish to exercise this election and have these amounts as part of their operations in a separate fund for accounting purposes. If they do not wish to do this then a local housing authority will have to be used to keep the monies locally. If such an authority does not presently exist then it would need to be formed by appropriate legislative action. Since the operation of Low and Moderate Income Housing is different than those generally of the City/County involved, we would suggest having a local housing authority accomplish those functions under local control. It would be wise to review your situation and verify with legal counsel if a "local housing authority" is present to accomplish this situation, if needed.

We suggest that each agency obtain legal counsel in order to make appropriate decisions moving forward. If you have any additional questions, please contact Rich Kikuchi, Bryan Gruber or Debbie Harper.

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If you have any questions, please feel free to contact a partner or manager.

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