AB 1484 – The Trailer Bill

Overview of the Significant Changes in the New Law

Summary of Changes

Changes Affecting the Successor Agency

- Makes it clear that the SA can create new enforceable obligations as necessary to conduct the work of winding down the redevelopment agency (H&S Code Sec. 34177.3(b)).
- Prohibits the SA from transferring any revenues to any other party except pursuant to an enforceable obligation on a ROPS approved by the DOF. Imposes an affirmative duty on the SA to reverse any such transfer (H&S Code Sec. 34177.3(c)).
- AB 1484 states that these provisions are declaratory of existing law.

Changes Affecting the Successor Agency – cont'd.

- Makes it clear that a SA (or an Oversight Board) cannot restore funding for an item that was deleted by DOF in its review of an Oversight Board action (H&S Code Sec. 34178(a)), unless it reflects decisions made in the meet and confer process with the DOF.

Changes Affecting the Successor Agency – cont'd.

- The State Controller is now obligated to review not only the activities of the former redevelopment agency in transferring assets but also the activities of the Successor Agency to determine if a prohibited transfer to the City was made after January 31, 2012 (H&S Code Sec. 34178.8). A prohibited transfer is any transfer to the City (other than of low/mod housing assets) which was not made pursuant to an enforceable obligation on an "approved and valid" ROPS.
- The Controller must order the City to return to the SA any assets that were the subject of a prohibited transfer.

Changes Affecting the Oversight Board

- AB 1484 makes it clear that all OB action must be taken by resolution (H&S Code Sec. 34179(e)).
- DOF now has 5 business days (instead of 3) to decide whether it wants to challenge an OB action and 40 days thereafter (instead of 10) to approve the action or return it to the OB for further consideration. The questioned action cannot become effective, even if modified by the OB until approved by the DOF (H&S Code Sec. 34179(h)).

Changes Affecting the Oversight Board cont'd.

- An OB may contract with the county, or other public or private agencies for administrative support (H&S Code Sec. 34179(o)). Presumably, the SA is responsible for the cost of this pursuant to H&S Code Sec. 34179(c).
- Decisions made by the OB supersede those made by the SA on those matters within the authority of the OB (H&S Code Sec. 34179(p)).

Changes Affecting the Oversight Board cont'd.

- SA transfer of assets and properties, including for a governmental purpose, or the housing assets to the housing successor agency now must be considered by the OB at a public meeting after at least 10 days' notice to the public of the proposed actions, and is subject to DOF review within 60 days of Oversight Board approval. (H&S Code Sec. 34181(f)).

Changes Affecting the ROPS Process

- Each ROPS must now go to the county administrative officer, the county auditor-controller and the DOF at the same time it goes to the OB for approval (H&S Code Sec. 34177(l)(2)(A)).
- ROPS #3 (for the period 1/1/13 – 6/30/13) must be approved by the OB and submitted to the DOF by September 1, 2012 (H&S Code Sec. 34177(m)).

Changes Affecting the ROPS Process cont'd.

- After ROPS #3 (due September 1, 2012) each OB-approved ROPS must be submitted to DOF by the SA not fewer than 90 days before the date of the property tax distribution (H&S Code Sec. 34177(m)).
- DOF has 45 days from receipt of each ROPS to make its determination on enforceable obligations and funding sources (H&S Code Sec. 34177(m)).

Changes Affecting the ROPS Process cont'd.

- The SA has 5 business days from receipt of the DOF determination on a ROPS to request an opportunity to meet and confer on disputed items (H&S Code Sec. 34177(m)).
- If a SA does not submit a ROPS by its deadline the jurisdiction that created the RDA (i.e., the **City of Oakland**) is subject to a $10,000 per day penalty for every day the ROPS is late. If its not submitted within 10 days of the deadline the administrative cost allowance for the SA for that period will be reduced by 25% (H&S Code Sec. 34177(m)(2)).

Changes Affecting the ROPS Process cont'd.

- The county auditor-controller now has an independent right to review each ROPS and object to any item included as an enforceable obligation or to the funding source for an enforceable obligation. If the OB disagrees with the auditor-controller the DOF makes the final determination (H&S Code Sec. 34182.5).

Changes Affecting How the DOF Does its Work

- DOF has a war chest of $22,000,000 to conduct its AB 26 and AB 1484 activities. (Sec. 38 of AB 1484).
- DOF is authorized to hire all the accountants, lawyers and consultants it needs to assist it and is exempt until 2014 from all normal public contracting requirements in hiring these advisors (H&S Code Sec. 34176.5).

Changes Affecting Low- and Moderate-Income Housing – Some Good News!

- Payments made by the SA to the low/mod 20% fund to repay loans or pay deferred amounts of the 20% payments can be used by the HSA for new affordable housing. Payments can't start until 2013 -2014 fiscal year. Limits on max. amount paid each year. (H&S Code Sec. 34176(e)(6)(A) and (B)).

Changes Affecting Low- and Moderate-Income Housing cont'd.

- Loan payments by SA to City (which can become enforceable obligations after a "finding of completion" issues) cannot be made until all repayments and deferral to low/mod 20% fund have been made and then payments to City must be credited 20% to the HSA for affordable housing projects (H&S Code Sec. 34191.4(b)(2)(B) and (C)).

Changes Affecting Bonds

- Bonds can be refinanced for certain purposes such as getting a lower interest rate or dealing with a coming balloon payment. Requires OB approval. Methods provided for obtaining irrevocable approval from DOF – necessary for this to have any appeal to the bond market (H&S Code Sec. 34177.5).

Changes Affecting Bonds, cont'd.

- Changes to help to address Moody's downgrade of tax allocation bonds based on "cash flow uncertainty of timely payment".
  - Allows SA to maintain reserves to avoid timing problems (H&S Code Sec.34171(d)(1)(A)).
  - The county treasurer can loan funds to the SA to make sure enforceable obligations are promptly paid (H&S Code Sec. 34183(c)).
  - January date for disbursement of funds from the county auditor-controller changed to Jan. 2 from Jan 16 (however, second payment changed to June 1 from May 16) (H&S Code Sec. 34183(a)(2)).

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The New One-Time Due Diligence Review –Stick and Carrot

- Stated purpose is to determine amounts in former RDA accounts that are available for disbursement to taxing entities. (H&S Code Sec. 34179.5)
- As a practical matter it will likely settle most ROPS items too because amounts will not be eligible for retention by the SA if not needed for an approved enforceable obligation.

Review Stick and Carrot – cont'd.

- Entire process must be completed by April, 2013 and monies paid to county auditor-controller shortly thereafter for distribution to taxing entities. (H&S Code Sec. 34179.6)
- Once all amounts that must be paid to the auditor-controller, as shown by the due diligence review and approved by the DOF, have been paid by the SA, the SA will receive a "finding of completion" issued by DOF. (H&S Code Sec. 34179.7)

Benefits of the "Finding of Completion" (Chapter 9 of AB 1484)

- Loans between the RDA and the City can be deemed to be enforceable obligations, upon a finding by the OB that they were for a "legitimate redevelopment purpose."
- However, loan payments can't begin until 2013-2014 fiscal year and portions of the loan payments have to be allocated to the housing successor and used for affordable housing.

More benefits -

- Bond proceeds from bonds issued on or before December 31, 2010 can be used for the purposes for which the bonds were sold.
- Real property assets of the RDA may not have to be sold.

Benefits cont'd.

- After receipt of a "finding of completion" the SA is required to prepare a "long-range property management plan" that addresses the disposition and use of the properties.
- Pursuant to the plan (which must be approved by DOF) properties may be liquidated or used for projects identified in an approved redevelopment plan or liquidated to pay for an enforceable obligation.

The Due Diligence Review Process (H&S Code Sec. 34179.5)

- SA hires an accountant subject to approval of county auditor-controller
- Due diligence review of low/mod fund is done first and separately from other funds.
- Among other tasks, accountant charged with checking transfers of assets and monies from the RDA to the City, other public agencies and private parties after January 1, 2011 and confirming each transfer was backed by an enforceable obligation.

Due Diligence Review cont'd.

- Amounts determined to be available for transfer to taxing entities will include the value of assets improperly transferred by the RDA after January 1, 2011.
- Once the due diligence review is completed it is submitted to the OB for review. (H&S Code Sec. 34179.6) The due diligence review is given to DOF and the county auditor-controller at the same time.
- Low/mod review must be sent to OB by October 1, 2012; all others must be sent by December 15, 2012.

Oversight Board Role (H&S Code Sec. 34179.6)

- Upon receipt of each due diligence review, the OB must convene a public comment session to take place at least 5 business days before the OB votes on the review.
- The OB may make adjustments in the findings of the due diligence review based on its review and analysis.
- By October 15, 2012 for the low/mod fund and by January 15, 2013 for all of the others the OB must complete its review and transmit to DOF and the county auditor-controller the amount that the OB has determined is available for distribution to the taxing entities.

DOF Role (H&S Code Sec. 34179.6)

- DOF may make adjustments based on its review and analysis of each due diligence review.
- DOF review must be complete and OB and SA notified of any disputed items by November 9, 2012 for low/mod fund and by April 1, 2013 for all other funds.

Responsibility then returns to the SA (H&S Code Sec. 34179.6)

- SA and the City have the right to challenge any DOF findings and can request a meet and confer to discuss these items.
- DOF must meet and confer and reach a final decision on the amount to be transferred within 30 days of the request for a meet and confer.

DOF Remedies for SA Failure to Pay (H&S Code Sec. 34179.6)

- Within 5 “working” days of DOF’s final decision on the amount the SA must transmit the determined amount to the county auditor-controller.
- County auditor-controller must disburse funds to taxing entities within 5 “working” days of receipt from the SA.
- If the SA fails to meet its payment deadline the DOF has several remedies.

DOF Remedies cont'd.

- If the SA cannot promptly recover funds that were improperly transferred to a public agency the DOF can cause an offset of property and sales tax revenues from the allocation of these monies the public agency would otherwise receive.

DOF Remedies cont'd.

- DOF can order the county auditor-controller to withhold property tax distributions to the SA until the unpaid amount has been obtained.
- If DOF determines that the SA can't pay without jeopardizing its ability to meet enforceable obligations it can agree to an installment payment plan.

Remedies for the Other Side

- Any public agency affected by a withholding of sales or property taxes may sue. If it is the prevailing party the State must pay the amount improperly withheld plus a penalty of up to 10% of the amount improperly withheld.

Summary of Key Dates

- **Sept.1, 2012** - SA submits ROPS #3 to DOF after OB approval
- **Oct. 1, 2012** - SA to submit to OB, CAC, DOF and SCO results of low/mod due diligence review
- **Oct. 15, 2012** – OB to review, approve and transmit low/mod due diligence review and notify DOF and CAC, after having held a public comment session at least 5 business days in advance

Summary of Key Dates, cont'd

- **Nov. 9, 2012** – DOF completes review of low/mod due diligence review and reports to OB; within 5 days SA can request meet and confer; DOF must confirm or modify findings within 30 days; within 5 days of final DOF determination, SA must transfer to CAC available low/mod balances

Summary of Key Dates, cont'd

- **Dec. 15, 2012** - SA to submit to OB, CAC, DOF and SCO results of due diligence review of all other funds and balances
- **Jan. 15, 2013** – OB to review, approve and transmit due diligence review of all other funds and balances and notify DOF and CAC, after having held a public comment session at least 5 business days in advance

Summary of Key Dates, cont'd

- **March 3, 2013** (Sun.) – SA submits ROPS for July 1 – Dec. 31, 2013 to DOF after OB approval
- **April 1, 2013** – DOF completes review of due diligence review of all other funds and balances and reports to OB; within 5 days SA can request meet and confer; DOF must confirm or modify findings within 30 days; within 5 days of final DOF determination, SA must transfer to CAC available cash and other assets