AB 1X 26-27 FAQs

PLEASE NOTE: AB1X 26 (the "Dissolution Bill) and AB1X 27 (the "Continuation Bill") are very complex and in many respects poorly drafted and ambiguous. This Q&A is intended to give general answers to general questions. Each agency should consult with its legal counsel concerning the application of the legislation to its specific circumstances.

1. **Q: CRA intends to file a legal challenge to the Dissolution and Continuation Bills. When will that happen and what impact will it have?**

   A: CRA's and the League of California Cities' lawsuit will be filed in the next few weeks in the California Supreme Court. CRA will seek an immediate stay of the Dissolution and Continuation Bills in order to preserve the status quo pending a decision on the constitutionality of these laws. If the Court grants a stay, some or all of the provisions of the Dissolution and Continuation Bills will be suspended until the Court makes a decision on the merits of the case. It is difficult to predict the exact parameters of a stay but, at a minimum, it should suspend the dissolution of agencies and the time for making Continuation Payments. It is difficult to predict when the Court will act on the request for a stay, but we believe it will act before agencies are dissolved (October 1, 2011), if it intends to issue a stay. Until a stay is issued, the Dissolution and Continuation Bills remain law.

2. **Q: How will cities/counties that have enacted a Continuation Ordinance be affected by the lawsuit?**

   A: Cities and counties that enact a Continuation Ordinance will be able to continue normal operations, subject to payment of the Continuation Payments. If the Court issues a stay that suspends the time for making the Continuation Payments, then agencies would not have to make those payments unless and until the Court finally concludes they are constitutional. CRA will provide additional guidance when and if the Court issues a stay.

3. **Q: How long will it take to decide the case on the merits?**

   A: This is difficult to predict. It depends on the Court. If the Court issues a stay, the need for an immediate decision may be moderated, depending on the terms of the stay. CRA will urge the Court to decide the case as quickly as possible so that agencies can know how to plan.

4. **Q: Should agencies be considering filing their own actions in addition to CRA's lawsuit?**

   A: CRA's lawsuit will challenge the constitutionality of the legislation on its face as violating Proposition 22, Article XVI, section 16 and other provisions of the California Constitution. Some agencies may have special factual situations created by the legislation's application to their specific circumstances that would be beyond the scope of CRA's lawsuit. Agencies should consult their attorneys to determine if an individual suit would be warranted. If an agency intends to file a separate suit, please notify CRA. Copies of CRA's pleadings will be available on its website once the case is filed.

5. **Q: AB1X 26-27 became effective June 29 upon the signature of the State Budget by the Governor. What can agencies do now?**

A: AB1X 26 (i.e. the "Dissolution Bill") prescribes strict limits on what redevelopment agencies may do between its effectiveness date and October 1, 2011, when all redevelopment agencies will be legally dissolved unless the legislative body (city council or county board of supervisors) enacts an ordinance pursuant to AB1X 27 (i.e. the "Continuation Bill") committing itself to make payments to school districts and special districts (the "Continuation Payments"). Until enactment of that ordinance (the "Continuation Ordinance"), agencies are prohibited from entering into new agreements or indebtedness, except as necessary to carry out "enforceable obligations" entered into prior to June 29. "Enforceable obligations" are defined as bonds,[1] loans, payments to the federal government or imposed by state law, judgments or settlements and contracts, including contracts necessary for the continued administration or operation of the agency.

Except to carry out enforceable obligations, an agency may not incur indebtedness (including bonds), refund or restructure indebtedness[2], redeem bonds, modify or amend the terms of payment schedules, execute deeds of trust or mortgages, or pledge or encumber any of its revenue. Agencies are also prohibited from making loans, entering into new agreements, amending the terms of existing agreements, renewing or extending leases, forgiving or altering the terms of loans or increasing deposits to the Low and Moderate Income Housing Fund beyond the minimum level required by law.

Except to carry out enforceable obligations, agencies are prohibited from acquiring or disposing of real property and other assets such as cash, accounts receivable, contract rights, or grant proceeds. Agencies are also prohibited from engaging in any activities related to the preparation, adoption or amendment of redevelopment plans.

6. Q: What about agency staffing?

A: Agencies are prohibited from adding staff beyond the number of staff employed as of January 1, 2011. However, agencies are specifically authorized and required to honor the terms of any collective bargaining agreements and enter into contracts necessary for the continued administration of the agency. The total number of staff may not increase, but within that limitation, new staff may be hired. Contracts with consultants are permitted if necessary for the continued administration of the agency. Many agencies have no employees and contract with their legislative body (city or county) for staff services. The language of the Dissolution Bill appears to be directed at employees of the agency and would not apply to legislative body employees who provide services to the agency under agreement.

7. Q: Are cooperation or reimbursement agreements between agencies and their host jurisdiction still valid?

A: Most redevelopment agencies have an agreement with their host legislative body (usually

[1] Note that the term "bonds" is defined broadly in the Community Redevelopment Law as "any bonds, notes, interim certificates, debentures, or other obligations issued by an agency . . ." (Health & Safety. Code Sec. 33602.) This definition would extend to more than formally issued bonds.

[2] There is a very limited exception to refunding bonds to avoid a default on outstanding bonds.

called a "cooperation agreement" or "reimbursement agreement") pursuant to which the legislative body provides staff services, offices, equipment and other administrative necessities and the agency reimburses the cost of these. Sometimes these agreements are entered into when the redevelopment agency is established and before a redevelopment plan is adopted. Other times, these agreements are entered into later, such as upon the adoption of a new redevelopment plan. Some agencies have no written cooperation agreement, but have accomplished the same purpose through the annual adoption of their budget. Finally, since January 1, 2011, many redevelopment agencies have entered into agreements with their host legislative body pursuant to which the agency has transferred assets to the legislative body and the legislative body has agreed to complete redevelopment activities related to these assets.

During the interim period after the effective date of the Dissolution Bill and prior to October 1, 2011, it appears that cooperation agreements and reimbursement agreements for staffing and related administrative costs would remain in effect. During this interim period, the agency must continue to make payments and perform obligations under its enforceable obligations, which include "any legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy" and "[c]ontracts or agreements necessary for the continued administration or operation of the redevelopment agency." This language suggests that cooperation agreement or reimbursement agreement for agency staffing and similar costs would remain in effect until October 1, 2011, and the amounts due under those agreements should be listed on the agency's initial repayment obligation schedule.

After October 1, 2011, nearly all agreements between cities and agencies would be rendered invalid. The Dissolution Bill explicitly states that after October 1, 2011, ". . . agreements, contracts, or arrangements between the city or county, or city and county that created the redevelopment agency and the redevelopment agency . . ." are invalid, subject to two narrow exceptions: (1) agreements entered into in connection with the issuance of bonds issued prior to December 31, 2010, solely for the purpose of repaying the bonds, and (2) agreements entered into within two years of the date of creation of the agency. This provision of the Dissolution Bill will invalidate many, perhaps most, cooperation agreements as of October 1, 2011. The successor agency will have the ability to enter or reenter into agreements with the host legislative body, subject to approval by the oversight committee. This would give the successor agency the option of contracting with the legislative body for continued staff services through a continuation of a cooperation agreement.

Other cooperation agreements, particularly those entered into since January 1, 2011, and involving a transfer of assets from the agency to the legislative body are at greater risk of being declared invalid. The Dissolution Bill declares that any transfer of assets from the redevelopment agency after January 1, 2011 is unauthorized, and grants the State Controller authority to order the legislative body to return any transferred funds or assets back to the redevelopment agency. Further, the Dissolution Bill indicates that nearly all agreements between the agency and the legislative body are terminated as of October 1, 2011. It is clear that the Dissolution Bill intends to invalidate any cooperation agreements entered into since January 1, 2011. It is questionable whether the State can invalidate these and other agreements with the legislative body in this manner, and individual agencies may choose to challenge these provisions of the Dissolution Bill based on their specific circumstances.

8. Q: What contractual obligations may an agency continue to carry out?

A: Contractual obligations entered into prior to June 29 are enforceable obligations and agencies have not only the right but the duty to carry them out.[3] These would include disposition and development agreements, owner participation agreements, agreements for the purchase or sale of property, contracts for demolition, site remediation or the construction of public improvements. Moreover, new contracts necessary to implement those enforceable obligations may also be approved and carried out. For example, if a disposition and development agreement requires an agency to sell property to the developer and construct public improvements, the agency may enter into an agreement with a title insurance company to provide title insurance and may contract with a construction company to build the public improvements, even though these contracts may be entered into after June 29.

Some agencies have asked whether they may approve a disposition and development agreement when they have entered into an exclusive negotiation agreement with the developer prior to June 29. The answer to that question is more nuanced and may depend on the specific wording of the exclusive negotiation agreement. Agencies are encouraged to consult with their individual legal counsel.

9. Q: If the legislative body of an agency intends to adopt a Continuation Ordinance, what may the agency do before the ordinance is enacted?

A: Until the legislative body adopts a Continuation Ordinance, it is subject to the provisions of the Dissolution Bill.

10. Q: How soon may the legislative body enact a Continuation Ordinance?

A: The legislative body may enact a Continuation Ordinance as soon as it wants. The only statutory limitation is that the ordinance must be enacted before November 1, 2011. Until the Department of Finance notifies agencies of the amount of their Continuation Payment on August 1, 2011, agencies will not know precisely the amount of the payments, though the calculation made by CRA should be in the ballpark. The Continuation Bill also has a provision for appeal of the amount of the Continuation Payment. If a legislative body enacts a Continuation Ordinance before it is notified of the amount of its Continuation Payment, or during the appeal period, it should reserve its right to appeal.

11. Q: When is a Continuation Ordinance officially "enacted?"

A: Upon the second reading, unless enacted as an urgency ordinance, in which case the second reading is waived.

12. Q: Once a Continuation Ordinance is enacted, what may an agency do?

A: After enactment of a Continuation Ordinance, the Dissolution Bill is inapplicable to the agency and the agency may continue to operate normally as long as its legislative body makes the Continuation Payments.

[3] With the possible exception of contracts with the legislative body, as noted above.

13. Q: If the legislative body enacts a Continuation Ordinance, may it later rescind the ordinance?

A: There is nothing in the Continuation Bill that limits a legislative body's authority to rescind the Continuation Ordinance. If the legislative body rescinds the Continuation Ordinance or fails to make the Continuation Payments, then the agency becomes subject to the Dissolution Bill.

14 Q: What funds can be used to make the Continuation Payment?

A: The Continuation Payment is an obligation of the legislative body, not the agency. As such, any City or County must recognize that if it agrees to make the Continuation Payment, it is ultimately legally responsible, irrespective of what happens to the redevelopment agency or its assets. The legislative body is authorized to utilize any available funds to make the payments, subject to otherwise applicable statutory and Constitutional restrictions. However, the agency and its legislative body are authorized to enter into an agreement whereby the agency transfers to the legislative body annually an amount not to exceed the Continuation Payment for that year for the purpose of financing activities within the redevelopment project.

15 Q: May an agency use low and moderate income housing funds to make the Continuation Payments?

A: The Continuation Bill provides that if the legislative body enacts a Continuation Ordinance and makes the Continuation Payments for the 2011-12 fiscal year, its agency is exempt from making the full allocation for that year to the low and moderate income housing fund. The Continuation Bill does not authorize use of housing fund money, other than the 2011-12 set-aside, to reimburse the legislative body for the Continuation Payment. Thus, the fund balance in the low and moderate income housing fund on June 30, 2011, must continue to be used to increase, improve and preserve the supply of affordable housing in the community.

Funds from the housing set aside or from accumulated low and moderate income housing funds cannot be used to make the payments for the 2012-13 fiscal year and beyond.

16. Q: What factors should the legislative body take into consideration before making a decision to enact a Continuation Ordinance?

A: Assuming that the legislative body will rely on the agency to reimburse it for the annual Continuation Payments, the legislative body should conduct a careful review of the agency's financial condition, including an annual cash flow analysis. A conservative projection of future annual tax increment should be prepared. From the annual tax increment, the following should be deducted:

1. Pass-through payments, both statutory and contractual;[4]

2. Debt service on bonds and other obligations;

3. Housing fund set-aside (except for fiscal year 2011-12);

4. The cost of contractual obligations under agreements;

5. Property tax administration fees paid to the county.

The analysis should also take into account the time and dollar limitations contained in the redevelopment plan. After deducting the foregoing and the Continuation Payment, the legislative body will need to determine if sufficient tax increment remains to continue to fund the redevelopment program.

[4] Note that the method of calculating these payments may change over time. For statutory payments, the percentage of tax increment will increase over time in accordance with the formula in Section 33607.5. For pass-through agreements, the specific terms of the agreements should be reviewed.