

Memorandum 2012-24

Community Redevelopment Law Cleanup: Payment Obligations

Health and Safety Code Section 34189(b) requires the Law Revision Commission to “draft a Community Redevelopment Law cleanup bill for consideration by the Legislature no later than January 1, 2013.” The Commission is using the following general methodology for the conduct of that study:

- The Commission’s clean-up work will be limited to making technical changes to conform to the effect of ABx1 26 (Blumenfield), 2011 Cal. Stat. ch. 5.
- The Commission will not recommend any revisions to construe, clarify, or alter the substantive effect of ABx1 26.
- The Commission’s clean-up work will not alter the existing powers and duties of successor agencies, as established by ABx1 26.
- The Commission’s clean-up work will not alter the existing status of the employees of former redevelopment agencies, as established by ABx1 26.
- The Commission’s clean-up work will not disturb the existing allocation of the revenue of former redevelopment agencies, as established by ABx1 26.
- The scope of the Commission’s clean-up work will include Parts 1, 1.5, 1.7, 1.8, 1.85, and 1.9 of Division 24 of the Health and Safety Code. The Commission will also correct any cross-references to any of those provisions.
- If a provision of the community redevelopment statutes contains an apparent substantive defect or its meaning is unclear, the Commission may note the matter in an appendix for inclusion in the Commission’s final report. The appendix will state expressly that it has been prepared solely for informational purposes and that the Commission does not take any position on whether or how any of the issues noted in the appendix should be addressed. The appendix will also make clear that the omission of any issue from the appendix should not be construed to infer that the Commission evaluated the issue and concluded that it is unproblematic.

Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission’s website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission’s staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting.

- If the Commission determines that a provision of the community redevelopment statute is wholly obsolete, it shall recommend the provision's repeal.
- The Commission's clean-up proposal will include a general "savings provision." The savings provision will expressly declare that the Commission's clean-up work does not have any effect on the existing powers and duties of successor agencies, the existing rights and obligations of the employees of former redevelopment agencies, the existing rules for allocation of the revenue of former redevelopment agencies, or any other substantive effect of ABx1 26.

See Minutes (Feb. 2012), p. 6; Minutes (April 2012), p. 9. The concept of the "savings provision" is explained in Memorandum 2012-11. For the current draft of the savings provision, see Memorandum 2012-20; see also Minutes (April 2012), pp. 3-6.

This memorandum provides preliminary analysis and staff recommendations relating to the following provisions of Part 1 of Division 24, which address the financial obligations of redevelopment agencies ("RDAs"):

- Sections 33333.10(g)(2)-(5), 33334.2(a)-(c), (h), (j)-(k), 33334.3(a)-(b), (i), 33334.6, and 33334.9-33334.12 (low- and moderate-income housing fund contributions)
- Sections 33607.5-33607.7 (passthrough payments)
- Sections 33607.8-33608, 33670.9-33670.95 (special payment obligations)
- Sections 33680-33692 (school financing)

In many places, this memorandum refers to the "transitional period," a term that is defined in the proposed savings provision. At the April meeting, the Commission decided to revise its definition of "transitional period" to refer to mediation, but it did not decide exactly how to implement that decision. See Minutes (April 2012), p. 5. The staff has since recommended the following language:

"Transitional period" means the period during which either or both of the following are true:

(A) A successor agency is winding down the affairs of a former redevelopment agency.

(B) A redevelopment-related proceeding is pending or may be legally commenced. For the purposes of this section, "proceeding" means any adjudicative, investigative, or dispute resolution proceeding, including, without limitation, a civil, criminal, or administrative action or proceeding, mediation, or arbitration.

See Memorandum 2012-20, pp. 3-4. Throughout this memorandum, the staff has used that definition of “transitional period.”

Unless otherwise indicated, all statutory citations in this memorandum are to the Health and Safety Code.

TWO-STEP ANALYSIS

In this memorandum, the staff will first group the provisions of each article by subject matter. The staff will then analyze each subject matter group separately, using the same two-step process that we first described and applied in Memorandum 2012-12:

- (1) **Analyze the relevance of the provisions *after* the transitional period.** First, the staff will assess whether the group of provisions will serve any purpose after the end of the transitional period. In other words, once the affairs of all former RDAs have been wound down and all redevelopment-related proceedings have been finally resolved, will the analyzed provisions still be needed? If not, the provisions are obsolete and should be repealed. If the group of provisions would serve some continuing purpose after the end of the transitional period, the staff will recommend that the provisions be retained, or suggest another means of effectively dealing with the situation.
- (2) **Analyze the relevance of the provisions *during* the transitional period.** Second, the staff will assess whether the group of provisions might have some continuing utility during the transitional period that would not be adequately preserved by the savings provision. If so, the staff will assess whether and how to adjust the savings provision to account for the issue.

ORGANIZATION OF MATERIAL

The provisions examined in this memorandum have been organized into the following groups, each addressing a different type of statutory payment obligation:

- Low- and moderate-income housing fund contributions
- Passthrough payments and other payment obligations
- School financing requirements

Note that this memorandum examines the main body of statutory provisions relating to the topics listed above. It does not necessarily address every provision that touches on those subjects or mandates a particular payment. Such provisions

will be discussed in future memoranda, in the context in which they are located. For example, Sections 33470-33489 address the merger of redevelopment projects. Those provisions contain, among other things, language addressing the allocation of low- and moderate-income housing obligations within a merged project. Those special rules will be included in the broader discussion of merger, in a future memorandum.

This memorandum also does not examine routine financial obligations that arise as a consequence of regular redevelopment activity or the obligation to repay bonds and loans that are discussed in Memorandum 2012-23. It only discusses statutory obligations to use agency funds for specific purposes.

LOW- AND MODERATE-INCOME HOUSING FUND

Sections 33334.2 and 33334.6 generally require that an RDA use at least 20% of its tax increment revenue “for the purposes of increasing, improving, and preserving the community’s supply of low- and moderate-income housing.” Section 33333.10(g) generally requires that 30% of an RDA’s tax increment revenue be used for the construction of low- and moderate-income housing.

Each of those sections applies to different stated circumstances, as follows:

- Section 33334.2, added in 1976 (see 1976 Cal. Stat. ch. 1337, § 7), applies to an RDA with a final redevelopment plan that is approved on or after January 1, 1977. The section also applies to an area that is added by amendment of a redevelopment plan on or after January 1, 1977. An agency can also *elect* to apply Section 33334.2 to a pre-1977 project, subject to any prior indebtedness.
- Section 33334.6, added in 1985 (see 1985 Cal. Stat. ch. 1135, § 2), applies to “all project areas, or portions of project areas” that are not governed by Section 33334.2. Presumably this means project areas with plans that were approved before 1977 and were not amended in a way that would make Section 33334.2 applicable. *Notably, the section also expressly applies to project areas that an agency has elected to have governed by Section 33334.2.*
- Section 33333.10(g), added in 2001 (see 2001 Cal. Stat. ch. 782, § 4), applies if a redevelopment plan that was adopted before 1994 is subsequently amended to extend the plan’s time limits on the receipt of tax increment and the effectiveness of the plan.

As can be seen, there is some overlap in the stated application of these three provisions. Section 33334.6 expressly applies to areas that an agency has elected to be governed by Section 33334.2, apparently trumping that election. Section

33333.10(g) seems to apply to the projects that it describes, even though those projects would otherwise be subject to Section 33334.2 or 33334.6. (That conclusion is based on the fact that Section 33333.10(g) is more specific and more recently enacted than the other two provisions, which it expressly mentions. Moreover, Section 33333.10 would seem to have no effect if it does not trump the other provisions.) The staff could not find any case law discussing the overlapping application of these provisions.

The tax increment funds described in Sections 33333.10, 33334.2, and 33334.6 must be deposited into a special Low and Moderate Income Housing Fund. See Sections 33333.10(g)(1), 33334.3(a).

There are a number of detailed provisions that govern the use of the funds deposited into the Low and Moderate Income Housing Fund. Some of those provisions (which are not discussed further in this memorandum) regulate the *development* of low- and moderate-income housing. See, e.g., Sections 33333.10(f), 33334.2(e)-(g)(1), 33334.3(c)-(h). Those provisions are examined in Memorandum 2012-22.

This memorandum focuses on the provisions that govern the housing fund *contribution* or the management of the contributed funds. Those provisions include:

- **The contribution requirement.** See Sections 33333.10, 33334.2, 33334.3, and 33334.6
- **Exceptions that allow an RDA to avoid, reduce, or postpone its contributions.** See Sections 33333.10(g)(2)-(3), (5) (reduction necessary to make specified bond payments); (g)(4)-(5) (subordination of part of contribution to payment of bond debt service); 33334.2(a)(2)(C) & (b) (exemption where “no need exists”); (a)(2) & (b) (reduction where reduced amount “sufficient”); (a)(3) & (b) (exemption where community making “substantial effort” that is “equivalent in effort” to required contribution); (k) (suspension of contribution in 2009-10 fiscal year); 33334.6(c) & (f)-(h) (incorporation of exemptions provided by Section 33334.2(a)); (d) & (f)-(h) (reduction necessary to meet existing obligations); (e) (reduction necessary to complete specified projects), 33334.9 (offsetting credits for certain expenditures).
- **Legal action to enforce contribution requirements.** See Sections 33334.2(c) (challenge to findings supporting exemption); 33334.2(j) (action to compel compliance); 33334.6(i) (challenge to statement of obligations).
- **Fund management provisions.** See Sections 33334.3(b) (interest); 33334.10-33334.12 (excess surplus).

Effect of ABx1 26 on Housing Contribution Provisions

The Commission needs to be particularly careful in its consideration of the effect of ABx1 26 on the housing fund contributions. Some aspects of that issue are in dispute. The resolution of those disputes could have very significant practical and policy consequences. **The Commission has not been tasked with resolving disputes about the effect of ABx1 26 and it has expressly declared that it has no intention of doing so:**

The Commission will not recommend any revisions to construe, clarify, or alter the substantive effect of ABx1 26.

See Minutes (Feb. 2012), p. 6. The Commission is able to meet that commitment because the savings provision allows it to preserve the existing effect of the law, during the transitional period, *without needing to definitively construe the effect of that law*. As noted in the Comment to proposed Section 33090:

To the extent that a provision of former law applied to redevelopment matters before the operation of this section, it will continue to apply with the same meaning and effect during the transitional period, notwithstanding the repeal or amendment of the provision by the Redevelopment Law Clean-Up Act.

In other words, the Commission's clean-up legislation will not alter the effect of existing law during the transitional period, *whatever that effect might be*.

The potential for disputes about the effect of ABx1 26 on the RDA housing funds demonstrates the wisdom of that approach. If instead the Commission were attempting to revise existing law to conform to the effect of ABx1 26, it would be necessary for the Commission to take a position on disputed points of law, where there may be no plainly correct position. It seems likely to the staff that any such disputes will eventually be resolved through supplemental legislation or by the courts. **The Commission should be careful not to take any position that would prejudice those processes.**

With that in mind, this portion of the memorandum will analyze the effect of ABx1 26 on the following elements of the housing fund provisions:

- Housing Fund Contribution Obligation
- Transfer of Housing Assets and Functions
- Transfer of "Unencumbered" Housing Funds
- Transfer of "Encumbered" Housing Funds

Each of those issues is discussed separately below.

Housing Fund Contribution Obligation

Under former law, most RDAs were required to deposit some portion of their tax increment revenue into a Low and Moderate Income Housing Fund, to be used for specified purposes. Does that contribution requirement continue, or was it ended by ABx1 26?

Section 34189(a) provides, in relevant part:

Commencing on the effective date of this part, all provisions of the Community Redevelopment Law that depend on the allocation of tax increment to redevelopment agencies, including, but not limited to, Sections 33445, 33640, 33641, 33645, and subdivision (b) of Section 33670, shall be inoperative....

The housing fund contribution provisions are not among those expressly listed in Section 34189(a). However, housing fund contribution provisions would seem to be “dependent” on the allocation of tax increment to RDAs. Each of the contribution provisions expressly provides for the contribution of a specified percentage of “all taxes allocated to the agency pursuant to Section 33670” (i.e., a percentage of the RDA’s tax increment revenue). See Sections 33333.10(g)(1), 33334.2(a), 33334.6(c). In other words, the contributed funds are drawn from the tax increment allocated to the RDA. If no tax increment is allocated to the RDA, no contribution would be required.

Given that, the contribution requirement would seem to “depend” on the allocation of tax increment. If so, the contribution provisions are now inoperative pursuant to Section 34189(a).

That conclusion is consistent with recent guidance provided by the Department of Finance, which states: “The low-moderate income housing set-aside is not a continuing obligation.” See Dep’t of Finance, Housing Frequently Asked Questions, *available at* <www.dof.ca.gov/assembly_bills_26-27/documents/RDA_Web_Page_Housing_FAQs-2.pdf> (hereafter “DOF Housing FAQ”). Although the apparent purpose of that guidance was to make clear that the housing contribution should not be listed on a successor agency’s Recognized Obligation Payment Schedule (“ROPS”), the guidance is entirely consistent with the view that the contribution requirement is no longer in effect.

Moreover, “trailer bill” language prepared by the Department of Finance (for consideration in connection with the pending state budget), would seem to codify that interpretation. It would amend Section 34163, in relevant part, as follows:

34163. ... [A]n agency shall not have the authority to, and shall not, do any of the following:

...
(c) Amend or modify existing agreements, obligations, or commitments with any entity, for any purpose, including, but not limited to, any of the following:

...
(4) ~~Increasing its~~ Make any future deposits to the Low and Moderate Income Housing Fund created pursuant to Section 33334.3 ~~beyond the minimum level that applied to it as of January 1, 2011.~~

See Dep't of Finance, Redevelopment Agencies Dissolution Clean-up and Liquid Asset Provisions, *available at* <www.dof.ca.gov/budgeting/trailer_bill_language/business_transportation_and_housing/documents/> (hereafter "Redevelopment Trailer Bill"). Note that a technical error in the drafting of the proposed trailer bill language omitted the strikeout and underscore from the proposed amendment of Section 34163(c)(4). The strikeout and underscore shown above is based on a telephonic inquiry that the staff made to the Department of Finance.

However, there does not appear to be complete agreement on that point. Reportedly, the Western Center on Law and Poverty issued a memorandum suggesting that the housing fund contribution is a continuing obligation that should be listed as such on a successor agency's ROPS. See California Redevelopment Ass'n, ABx1 26 Affordable Housing Provisions, *available at* <www.calredevelop.org/external/wcpages/wcwebcontent/webcontentpage.aspx?contentid=438>. In reporting on that opinion, the California Redevelopment Association expresses some skepticism about its merits:

Western Center on Law & Poverty has taken the position that the total projected amount of the Housing Fund that would be accumulated through the remaining life of the Redevelopment Plan is indebtedness of the Agency and thus an "Enforceable Obligation" and should be reflected as an enforceable obligation (listed on the EOPS and ROPS). Western Center on Law & Poverty also states in the memorandum that every Agency has a "legal obligation" to include the total Housing Fund debt on the EOPS and the subsequent ROPS. Many redevelopment lawyers and practitioners have reviewed this memorandum and do not find its arguments compelling; thus, they do not concur with or conclude there is a "legal obligation." However, RDAs and Successor Agencies may wish to include the annual distribution of low and moderate housing funds as a debt on the EOPS/ROPS and allow

the Oversight Board, and/or County Auditor-Controller, and/or
DOF to make the final determination.

Id. at 3.

Transfer of Housing Assets and Functions

When the RDA's were dissolved, what happened to their housing-related assets and functions?

Section 34176 provides that an RDA's "housing assets and functions" may be retained by the city or county that created the RDA or, if the city or county does not elect to retain those assets and functions, they are instead transferred to another designated public entity (a local housing authority, or if none, the Department of Housing and Community Development). All of the former RDA's housing-related "rights, powers, duties, and obligations, *excluding any amounts on deposit in the Low and Moderate Income Housing Fund*" are transferred to the entity assuming the RDA's housing functions (i.e., the "housing successor"). Section 34176 (emphasis added.) See also Sections 34177(g) (successor agency duty to transfer housing functions and assets to appropriate entity); 34181(c) (oversight board duty to direct successor agency to make such transfer).

Section 34176 provides that the housing successor doesn't receive the "amounts on deposit in the Low and Moderate Income Housing Fund" (the import and meaning of that exception is discussed below). But with that significant exception, it does receive the housing "assets" of the former RDA.

What is a housing asset? The term is not defined for the purposes of Section 34176. It appears that there is at least one significant dispute about the scope of the assets transferred to a housing successor. Specifically, there appears to be disagreement about whether a housing "asset" includes payments made on a loan of Low and Moderate Income Housing Fund money. For example, suppose that an RDA loaned housing fund money to a private developer for use in developing low- and moderate-income housing. At the time that RDAs were dissolved, the developer still owed ten years of payments on the loan. Who receives those payments? Are they an "asset" that was transferred to the housing successor? Or are they surplus RDA revenue that flows to the auditor-controller for distribution to the taxing entities?

The Department of Finance maintains that "encumbered" loan repayment revenue is an asset that transfers to the housing successor, but "unencumbered"

loan repayment funds are surplus that should be distributed to the taxing entities:

In our view, housing assets are:

...

(3) A stream of repayments from a loan of Low-Mod Fund money, *if the repayments are encumbered* by enforceable obligations to provide low-mod housing or for enforceable obligations associated with low-mod housing. *Otherwise* they are surplus funds that should be provide[d] to taxing agencies.

DOF Housing FAQ, 1 (emphasis added).

The League of California Cities has released an informal assessment that reaches a different conclusion. They see no authority in ABx1 26 (or elsewhere in the law) for the distinction drawn by Department of Finance, between encumbered and unencumbered loan repayment revenue. In their view, all loan repayment revenue is a housing asset that should transfer to the housing successor. See League of California Cities, City Attorneys' Department Post-Redevelopment Working Group, Subgroup 5: Housing & Special Projects Issues, Questions and Answers: Transfer of Housing Assets, *available at* <www.cacities.org/redevelopment>.

Note that the Redevelopment Trailer bill would add new language defining "housing asset" for the purposes of Section 34176, thus:

(d) "Housing asset" includes the following:

1) Any real property, interest in, or restriction on the use of real property, whether improved or not, and any personal property provided in residences (such as furniture and appliances) that was acquired for housing purposes (either by purchase or through a loan) in whole or part with funds from the Low and Moderate Income Housing Fund .

2) Any funds that are encumbered by an enforceable obligation to build or acquire low and moderate income housing as low and moderate income housing is defined by the Community Redevelopment Law.

3) Any loan or grant receivable, funded from the Low and Moderate Income Housing Fund, from homebuyers, home owners, nonprofit or for-profit developers and other parties that require occupancy by persons of low or moderate income as defined in Community Redevelopment law.

4) Any funds derived from rents or operation of properties by other parties that were financed in whole or part with Low and Moderate Income Housing Fund funds, including residual receipt payments from developers, conditional grant repayments, cost

savings and proceeds from refinancing, and principal and interest payments from homebuyers subject to enforceable income limits.

5) A stream of rents or other payments from housing tenants or operators of low and moderate income housing financed in whole or part with Low and Moderate Income Housing Fund funds that are used to maintain, operate, and enforce the affordability of housing or for enforceable obligations associated with low and moderate income housing.

Proposed Section 34176(d).

That proposed language would provide useful guidance and could help to resolve the dispute about whether payments on outstanding housing fund loans are “assets” that transfer to the housing successor. See, in particular, proposed paragraph (d)(3). Recall, however, that this is only proposed legislation. It is not yet law.

Transfer of “Unencumbered” Housing Funds

As noted above, Section 34176 has an exception: “[A]mounts on deposit in the Low and Moderate Income Housing Fund” are excluded from the transfer of assets to the housing successor. So what happens to the funds on deposit? The answer appears to depend on whether the funds are “encumbered.”

Section 34177(d) provides that a successor agency shall:

Remit unencumbered balances of redevelopment agency funds to the county auditor-controller for distribution to the taxing entities, *including, but not limited to, the unencumbered balance of the Low and Moderate Income Housing Fund of a former redevelopment agency.* In making the distribution, the county auditor-controller shall utilize the same methodology for allocation and distribution of property tax revenues provided in Section 34188.

(Emphasis added.)

The terms “encumbered” and “unencumbered” are not defined for the purposes of Section 34177. There are, however, two provisions of redevelopment law that define the term “encumbered” for other purposes.

Section 33334.12(g)(2) defines the term for the purpose of determining the amount of “excess surplus” in an RDA’s Low and Moderate Income Housing Fund. It provides:

Moneys shall be deemed encumbered if committed pursuant to a legally enforceable contract or agreement for expenditure for purposes specified in Section 33334.2 or 33334.3.

Section 34162(a)(6), which provides that a former RDA could not pledge or encumber its assets in the period just prior to dissolution of the RDA, defines “pledge or encumber” as follows:

As used in this part, to “pledge or encumber” means to make a commitment of, by the grant of a lien on and a security interest in, an agency’s revenues or assets, whether by resolution, indenture, trust agreement, loan agreement, lease, installment sale agreement, reimbursement agreement, mortgage, deed of trust, pledge agreement, or similar agreement in which the pledge is provided for or created.

Neither of those definitions apply to Section 34177. Thus, it is not certain that the Legislature had these meanings in mind when drafting Section 34177.

According to a recent report of the Legislative Analyst’s Office, the State Controller and the Department of Housing and Community Development each have different definitions of “encumbered” with regard to the money in the Low and Moderate Income Housing Fund. The report goes on to say that the total amount on deposit in Low and Moderate Income Housing Funds is not known with certainty, in part because it will depend on “how successor agencies and oversight boards distinguish between encumbered and unencumbered balances.” See Legislative Analyst’s Office, *The 2012-13 Budget: Unwinding Redevelopment*, available at <www.lao.ca.gov/laoapp/PubDetails.aspx?id=2564>. In other words, the meaning of “encumbered” and “unencumbered,” as used in this context, is not yet fully settled.

Nonetheless, the basic principle is clear. Unencumbered housing funds are to be distributed to the taxing entities.

Finally, note that there is pending legislation that would significantly change the rules governing the distribution of funds on deposit in an RDA’s Low and Moderate Income Housing Fund. See, e.g., AB 1585 (Pérez); SB 1156 (Steinberg). In broad brush, those bills would transfer the amount on deposit in a Low and Moderate Income Housing Fund to the housing successor, for use in discharging housing duties. The staff will watch that legislation closely and, if a bill is enacted, make any necessary changes to the analysis presented in this memorandum.

Transfer of “Encumbered” Housing Funds

What happens to the “encumbered” amounts on deposit in the Low and Moderate Income Housing Fund? Unfortunately, ABx1 26 does not directly answer that question.

The answer might be found in the broader provisions of ABx1 26 that govern RDA assets and obligations generally. Under those general provisions, RDA assets are to be transferred to the successor agency. Section 34175(b). The successor agency is then charged with “disposing” of all assets. Any proceeds “that are no longer needed for approved development projects or to otherwise wind down the affairs of the agency, each as determined by the oversight board” are to be distributed to the taxing agencies. Section 34177(e).

Presumably, any funds that are “encumbered” for the repayment of an enforceable obligation *are* needed for winding down the affairs of the RDA and would not be distributed to the taxing agencies. In that case, the funds would be used to retire the obligation. However, the staff could not find language that clearly addressed the issue.

The DOF Housing FAQ does provide guidance on this question (but does not cite any authority for its conclusions):

Funds that are encumbered by enforceable obligations may be retained by the successor agency to satisfy those obligations. With approval of the oversight board, both obligations and funds to satisfy them may be transferred to the housing successor.

In other words, the encumbered funds are not distributed to the taxing agencies, but are instead used by the successor agency to pay the obligation that encumbers the funds. Alternatively, DOF suggests that both the obligation and the related encumbered funds can be handed over to the housing successor.

The proposed Redevelopment Trailer Bill language would address the apparent ambiguity in ABx1 26. It would define “housing asset” to include encumbered housing funds. Presumably, that “asset” would then be transferred to the housing successor, without requiring the involvement or approval of the successor agency or its oversight board:

(d) “Housing asset” includes the following:

...

2) Any funds that are encumbered by an enforceable obligation to build or acquire low and moderate income housing as low and moderate income housing is defined by the Community Redevelopment Law.

Proposed Section 34176(d)(2).

It is not certain that this definition would capture all “encumbered” housing funds, because there might be housing funds that were encumbered for some housing-related purpose that did not involve “building or acquiring” housing, but it would probably cover much of the ground.

Relevance After Transitional Period

If the provisions establishing and regulating housing fund *contributions* are now inoperative, those provisions have no continuing operational relevance. But even if the contribution provisions are still operative, they will be irrelevant once the transitional period has ended. The contributions are a percentage of tax increment. Once the affairs of RDAs have been fully wound down, there will be no further tax increment allocated to the successor agencies. When all legal action involving the contribution-related provisions has been time barred, those provisions would appear to have no further relevance. **They should be repealed.**

Importantly, the analysis and conclusion set out above only applies to the provisions that establish and regulate the low- and moderate-income *funding obligation*. The analysis does *not* extend to provisions that regulate the use of housing funds. Those housing development provisions are addressed in Memorandum 2012-22. Nor does this memorandum address the provisions of ABx1 26 that govern the transfer of housing assets and functions to the housing successors.

Relevance After Transitional Period

As discussed, the provisions establishing and regulating housing fund *contributions* may well be inoperative. If so, then they will have no operational relevance during the transitional period. If that analysis is incorrect, and the contribution provisions do continue to operate during the transitional period, **the savings provision should be sufficient to avoid making any change to the meaning or effect of those provisions during the transitional period.** See proposed Section 33090. The savings provision makes clear that the repeal of a provision of former law will have no effect

on the policy, substance, construction, or application of former law with regard to any redevelopment-related matter, including, but not limited to, any of the following redevelopment-related matters:

(1) The authority, rights, powers, duties, and obligations of a successor agency or any other person or entity who is granted or

charged with authority, rights, powers, duties, and obligations relating to redevelopment.

(2) The allocation of revenue pursuant to Part 1.85 (commencing with Section 34170).

Proposed Section 33090(b)(1)-(2).

However, given the possibility of disputes about the allocation of the “assets” of the former RDAs, it might make sense to revise proposed paragraph (b)(2) to broaden its scope, thus:

(2) The allocation of assets or revenue ~~pursuant to Part 1.85 (commencing with Section 34170).~~

Those changes would avoid any implication that the savings provision does not extend to the law governing assets or to any relevant provisions that fall outside of Part 1.85. The staff sees no disadvantage to making those changes. The savings provision is intended to cover the entire field of provisions that might have relevance during the transitional period, on every topic. The illustrative list provided in proposed Section 33090(b) is only intended to provide reassurance and better understanding of the types of matters that are covered. It should not be framed in too restrictive a way, or someone might misconstrue its purpose and argue that those things not listed are not included (even though the provision itself expressly declares otherwise). **Should those changes be made?**

PASSTHROUGH PAYMENTS AND OTHER PAYMENT OBLIGATIONS

There are a number of provisions that require an RDA to make specified payments to taxing entities within its project area. Those provisions are discussed below.

Passthrough Payments Generally

Starting in 1994, RDAs were required to make specified payments (from the tax increment revenue remaining after making their mandated contributions to the Low and Moderate Income Housing Fund), directly to the “taxing agencies” within their project areas. See Section 33607.5. This “passthrough payment” obligation (as it is commonly known) applies to: (1) an RDA with a redevelopment plan that was adopted on or after January 1, 1994, and (2) territory that is added to an existing redevelopment plan by amendment, on or after January 1, 1994. *Id.* The payments are to be distributed to the taxing agencies based on the proportional share of property tax that would ordinarily

be distributed to the taxing entities under general tax law. *Id.* The “community” that created the RDA may choose whether or not to receive passthrough payments. *Id.*

The rules for calculating the amount of the passthrough payments vary over the life of a project. In the first ten years, the payment is 25% of an RDA’s net tax increment (after making the housing contribution). Section 33607.5(b). In years 11 through 30, an additional amount equal to 21% of net tax increment is added to the 25% payment. Section 33607.5(c). In years 31 and after, another 14% is added to the passthrough amount. Section 33607.5(d).

There are also detailed rules allowing entity-specific reductions to the passthrough payment amount, to offset other specified payments that the RDA has made to the entity. See Section 33607.5(a)(2)-(3).

With the assent of the affected entity, an RDA may subordinate its passthrough payment obligation to its obligations to pay back bonds, loans, and other indebtedness. Section 33607.5(e).

Finally, Section 33607.5(f) states the Legislature’s intent in enacting the passthrough payment provisions.

Passthrough Payments Where Duration of Pre-1994 Plan Extended

By its terms, Section 33607.5 does not apply to an RDA with a redevelopment plan that was adopted before 1994. However, Section 33607.5 states one exception to that general rule. The passthrough payment requirements also apply to *territory* that is added to a pre-1994 plan through an amendment.

Section 33607.7 provides another important exception. Under that section, passthrough payments may also be required if a pre-1994 plan is amended to *extend or eliminate time limits* on indebtedness or plan effectiveness. See Section 33607.7(a). Under Section 33607.7, required payments are either (1) the amount to be paid pursuant to an agreement entered into before 1994, or if there is no such agreement, (2) the statutory amounts prescribed by Section 33607.5. See Section 33607.7(b).

However, in calculating the statutory passthrough payment amounts owed under Section 33607.7, the agency’s net tax increment is determined using an adjusted baseline. Rather than calculating the tax increment by comparing the current assessed value with the assessed value *when the plan was first adopted*, the current assessed value is instead compared to the assessed value *in the year after*

the extended deadline would have elapsed, had it had not been extended by a plan amendment. See Section 33607.7(c).

Outstanding Passthrough Payments to Educational Facilities

Section 33684 provides a special set of rules that govern the payment of outstanding passthrough payment obligations to educational facilities. The provision is very complex.

The section’s application is limited. It only applies to an RDA with a redevelopment plan that was adopted or amended in specified ways, on or after January 1, 1994, and it only applies to the passthrough payment obligations of such an RDA for the 2003-04 through 2008-09 fiscal years.

Section 33684 begins by requiring a cascading series of reports, between various entities, relating to RDA revenue and passthrough payments in specified time periods, as indicated in the table below:

Source	Parties and Timing	Content
Subd. (b)	From RDA to county auditor, by October 1, 2008	Revenue and passthrough data, July 1 2003-June 30, 2008
Subd. (c)	From RDA to county auditor, by October 1, 2009	Revenue and passthrough data, July 1 2008-June 30, 2009
Subd. (d)	From RDA to county auditor, annually, but only if outstanding passthrough payment reported pursuant to (b) or (c)	All payments to agencies or Educational Revenue Augmentation Fund
Subd. (f)	From county auditor to Controller, by December 15, 2008, and annually thereafter	Results of review of all RDA reports submitted pursuant to (b) and (c)
Para. (g)(1)	From Controller to Legislative Analyst, Department of Finance, and Board of Governors of California Community College Board, by February 1, 2009, and annually thereafter through 2015	Summary of RDA data, with emphasis on outstanding obligations
Para. (g)(2)	From Controller to State Department of Education and Board of Governors of California Community College Board, by February 1, 2009, and annually thereafter through 2015	Passthrough payments received by each school district

The State Board of Education is then required to perform specified calculations relating to the amount of passthrough revenue each school district received. The results of those calculations have implications relating to school funding under the Education Code. See Section 33684(h)(1)-(3). The Board of

Governors of the California Community Colleges is required to perform similar calculations, with respect to the community colleges. See Section 33684(h)(4)-(7).

Given the magnitude of this study, the limited resources available to complete it, and the relatively short deadline mandated in Section 34189(b), the staff has not taken the time to fully research and understand the interrelationship of Section 33684 to the complex body of Educational Code law that governs school funding. **For present purposes, it is sufficient to understand that there is an interconnection between the redevelopment passthrough payments governed by Section 33684 and school funding under the Education Code.**

If the Controller's report indicates that an RDA has "outstanding passthrough payment liabilities" or if the county auditor has not concurred in the RDA's report regarding its passthrough payment liabilities, the RDA is subject to certain restrictions. It cannot add or expand its project areas, issue new bonds or other indebtedness, or encumber or expend money (except for specified purposes). See Section 33684(i)(1). A specified interest rate is charged on any overdue passthrough payment liability. See Section 33684(i)-(2).

If an RDA has an outstanding passthrough payment obligation to a local education agency, a specified percentage of any payment made on that obligation is directed to the local Educational Revenue Augmentation Fund, rather than to the entity that would otherwise have received it. See Section 33684(j).

Other Payment Obligations

There are a handful of other sections that authorize or require an RDA to make specified payments to a taxing entity. Those provisions are discussed below.

- Section 33607.8 permits (but does not require) an RDA to make payments to a "state water supply contractor" for the purpose of funding certain payments to the Department of Water Resources.
- Section 33608 affirms the validity of a specified reimbursement agreement between a particular charter city in Los Angeles County and its RDA. The charter city is not named, but is described by a range of very specific criteria that are probably sufficient to identify it.
- Section 33670.9 requires the Orange County RDA to transfer \$4,000,000 each year, for 20 years, to the general fund of Orange County. The section has an operation contingency, based on the outcome of the court proceedings relating to Orange County's

1994 bankruptcy. The staff has not determined whether the contingency was satisfied.

- Section 33670.95 also requires the Orange County RDA to pay \$4,000,000 per year to Orange County for 20 years. However, it only becomes operative if the act adding Section 33670.9 is invalidated by the courts. Again, the staff has not determined if the operation contingency has been met.

Effect of ABx1 26 on the Passthrough Payment Obligations

As discussed in the preceding section of this memorandum, Section 34189(a) (which was added by ABx1 26) provides that any provision of the Community Redevelopment Law that “depends on the allocation of tax increment to redevelopment agencies” is inoperative. The main passthrough provisions (Sections 33607.5 and 33607.7) would seem to depend on the allocation of tax increment, because the formulas used in those sections to calculate the required passthrough payments are expressly based on the amount of tax increment that each RDA receives. It therefore seems likely that the passthrough provisions are now inoperative.

However, ABx1 26 also added Section 34183, which appears to save much of the *effect* of the passthrough provisions. Section 34183 governs how a former RDA’s tax increment revenue is to be allocated during the process of winding down the RDA’s affairs. Among other things, it requires payment

to each local agency and school entity an amount of property tax revenues in an amount equal to that which *would* have been received under Section[s] ... 33607.5 [and] 33607.7 ... *as those sections read on January 1, 2011....* The amount of the payments made pursuant to this paragraph shall be calculated solely on the basis of passthrough payment obligations, *existing prior to the effective date of this part* and continuing as obligations of successor entities....

Section 34183(b) (emphasis added).

In summary, it appears that ABx1 26 did two things to the passthrough provisions:

- (1) It made them inoperative.
- (2) Then it added a new requirement that the local taxing entities be paid amounts *equal* to the passthrough payments they received under the now-inoperative passthrough provisions.

In other words, passthrough payments will still be made, but they will be made pursuant to Section 34183(b), not Sections 33607.5 and 33607.7.

Effect of ABx1 26 on Section 33684

By its terms, Section 33684 only applies to an RDA that receives tax increment. See Section 33684(a)(1). The main subject matter of the section, passthrough payments, also depends on tax increment allocation. For those reasons, it is possible that Section 33684 is now inoperative under Section 34189(a) (providing that any provision of redevelopment law that “depends” on tax increment allocation to RDAs is inoperative).

However, Section 33684 raises an interesting question about the effect of Section 34189(a). It seems fairly clear that any provision that depends on the *continuing* allocation of tax increment is inoperative. But what about a section that governs a *completed* allocation of tax increment, which occurred at some time in the past?

For example, Section 33684(j) provides special rules for the repayment of outstanding passthrough payment obligations to local educational agencies (if specified criteria are met). Under that provision, some portion of the amount owed is paid to the Educational Revenue Augmentation Fund, rather than to the entity that would otherwise have received it. Those outstanding passthrough payment obligations arose in prior years, based on the tax increment that was allocated to RDAs at that time. Is Section 33684(j) inoperative as it applies to repayment of those existing obligations?

The staff is not sure. **Perhaps this would be an appropriate matter for inclusion in the “List of Minor Issues for Possible Future Legislative Attention.”** Thus:

Operation of Redevelopment Provisions that “Depend” on Tax Increment Allocation. Section 34189(a) provides that all provisions of the Community Redevelopment Law that “depend on the allocation of tax increment to redevelopment agencies” are now inoperative. Does that rule apply to provisions that govern tax increment that was allocated in prior years? For example, Section 33684(j) provides special rules for the repayment of outstanding passthrough payment liabilities, in specified circumstances. Is that provision now inoperative?

Effect of ABx1 26 on Other Payment Obligations

Section 33607.8 provides that an RDA “may” make certain payments to a state water supply contractor “from tax increment funds.” That provision would seem to “depend” on the allocation of tax increment and is therefore probably now inoperative under Section 34189(a). The staff did not find anything specific in ABx1 26 that would save the effect of Section 33607.8. That said, if payments to a state water supply contractor were made part of a binding legal agreement, the agreement itself (rather than Section 33607.8) would probably have continuing effect as an “enforceable obligation” of the RDA. See Section 34171(d)(1)(E) (“enforceable obligation” includes legally binding agreement). See also Section 34183(a)(2)(C) (payment of obligations).

Sections 33608 and 33670.9-33670.95, which validate a specified reimbursement agreement and mandate certain annual payments to the County of Orange, respectively, make no special reference to tax increment revenue. It is therefore not clear that those sections necessarily “depend” on tax increment revenue (for example, the payments to Orange County could, in theory, be paid with funds received from a source other than tax increment). Consequently, those sections could still be operative. The staff did not find any express reference to these provisions in ABx1 26. It is possible that the obligations addressed by those provisions remain as “enforceable obligations” of successor agencies. See Section 34171(d)(1)(C) (“enforceable obligation” includes “preexisting obligations to the state or obligations imposed by state law, other than passthrough payments that are made by the county auditor-controller pursuant to Section 34183”).

Relevance After Transitional Period

As discussed, the passthrough payment provisions may already be inoperative. They continue to have relevance as historical documents (used to determine the amounts to be paid under Section 34183), but probably do not have any continuing force of law. Even if the sections are not inoperative, they will have no relevance once an RDA’s affairs have been fully wound down. At that point, there will be no further tax increment allocated to the RDA and, consequently, nothing to pass through to the taxing entities. Once any possible legal action relating to those provisions has been time barred, the provisions should not have any further legal relevance. **They should be repealed.**

Similarly, the provision governing outstanding passthrough payment liability to schools (Section 33684) may also be inoperative. Moreover, the section is focused on passthrough payment obligations arising in prior specified fiscal years. Once those obligations have been repaid and any related legal action has been resolved or time-barred, the section will have no continuing relevance. **It should be repealed.**

The provisions authorizing, validating, or requiring other specified payments to public entities could have established enforceable obligations. Once those obligations have been fulfilled and any related legal action has been resolved or time-barred, the provisions should not have any further relevance. **They should be repealed.**

Relevance During Transitional Period

Although they are probably now inoperative, the passthrough payment provisions will continue to have some relevance during the transitional period. They will be used to calculate the payments that must be made pursuant to Section 34183(b). They would also be relevant in any legal action that involves former passthrough payments.

The savings provision should be sufficient to avoid making any substantive change to the effect of those provisions. Proposed Section 33090 includes, in the illustrative lists of “redevelopment-related matters” that are included within the scope of the savings provision “[t]he allocation of revenue pursuant to Part 1.85 (commencing with Section 34170).” That express provision, combined with the more general language of the savings provision, should make clear that the repeal of the passthrough provisions would not have any effect on the payment of equivalent amounts pursuant to Section 34183(b).

As discussed, the special provision governing outstanding passthrough payment obligations to schools (Section 33684) may already be inoperative. If not, then the section will continue to have relevance during the transitional period. The Commission should not make any substantive change to the effect of Section 33684 during the transitional period.

The savings provision should be sufficient to avoid making such a change. Proposed Section 33090 includes, in the illustrative lists of “redevelopment-related matters” that are included within the scope of the savings provision:

- (1) The authority, rights, powers, duties, and obligations of a successor agency or any other person or entity who is granted or

charged with authority, rights, powers, duties, and obligations relating to redevelopment.

That express language will make clear that the Commission's clean-up legislation would make no change to any of the duties of the various entities set out in Section 33684.

The other provisions authorizing, validating, or requiring payments to specified public entities may have continuing relevance during the transitional period. The obligations they govern may be enforceable obligations that will need to be retired as part of the process of winding down RDA affairs. See Section 34183(a)(2) (requiring payment of enforceable obligations). In addition, those provisions could remain relevant to any related legal action that is pending or may be legally brought. **The general language in the savings provision should be sufficient to avoid making any substantive change to those provisions during the transitional period.**

SCHOOL FINANCING REQUIREMENTS

As explained by the California Supreme Court in *California Redevelopment Ass'n v. Matosantos*, 53 Cal. 4th 231, 244-45, 267 P.3d 580, 135 Cal. Rptr. 3d 683 (2011), the combination of Proposition 13 (which significantly reduced *ad valorem* property tax revenue for local entities) and Proposition 98 (which established constitutional minimum funding levels for public education and required the state to set aside a designated portion of the General Fund for public schools), put significant pressure on the state treasury.

In response to these rising educational demands on the state treasury, the Legislature in 1992 created county educational revenue augmentation funds (ERAF's). ... It reduced the portion of property taxes allocated to local governments, deposited the difference in the ERAF's, deemed the balances part of the state's General Fund for purposes of satisfying Proposition 98 obligations, and distributed these amounts to school districts. ... Periodically thereafter, the Legislature through supplemental legislation required local government entities to further contribute to the ERAF's in order to defray the state's Proposition 98 school funding obligations.

Id. at 245 (citations omitted).

The Legislature has also repeatedly required redevelopment agencies to make ERAF payments. This began in the 2002-03 fiscal year and continued, with some gaps, through the 2010-11 fiscal year, as shown in the table below:

Fiscal Year(s)	Authorizing Provision
1992-93	Former Section 33681; 1992 Cal. Stat. ch. 700
1993-94 & 1994-95	Former Section 33681.5; 1993 Cal. Stat. ch. 68
2002-03	Section 33681.7
2003-04	Section 33681.9
2004-05 & 2005-06	Section 33681.12
2008-09	Section 33685
2009-10	Section 33690
2010-11	Section 33690.5

For the most part, the provisions governing RDA ERAF payments share a common structure, which is repeated for each fiscal year (or pair of years) in which payments are required. However, there are also some special provisions, that only apply to specific ERAF payment years. Finally, there are a small number of provisions that are facially obsolete, because they govern ERAF payments for which the statutory authority has already been repealed.

Each of those three types of ERAF payment provisions is summarized below.

Common ERAF Payment Provisions

Except as otherwise indicated, for each fiscal year in which an RDA is required to make an ERAF payment, the governing law includes certain common elements. Those elements, which are summarized below, are not necessarily identical from year to year, but share the same general structure and effect.

Legislative findings. The school finance provisions begin with a section containing legislative findings and declarations justifying the imposition of RDA ERAF payments. See Section 33680. Although some of the findings in that section are limited to specific fiscal years, most of the section’s content is not limited and so would apply equally to any of the ERAF payment provisions.

Payment mandate. Each provision that requires an ERAF payment begins by mandating the payment in the specified fiscal year (or years). See Sections 33681.7(a)(1), 33681.9(a)(1), 33681.12(a)(1), 33685(a)(1), 33690(a)(1), 33690.5(a)(1).

Payment formula. Each payment provision then specifies the formula that is to be used to calculate the payment owed by each agency. In simplified terms, the formula divides the total amount to be paid to ERAF statewide by the total amount of tax increment that will be allocated to all RDAs statewide. This provides a “percentage factor” that is used by each RDA to determine its own pro rata share of the statewide payment obligation. For example, if the total sum to be collected in the fiscal year is \$10M and the total tax increment allocated to all RDAs in the same fiscal year is \$100M, then the percentage factor would be 10%. Each RDA would then be required to make an ERAF payment equal to 10% of the tax increment that it receives in that fiscal year. See Sections 33681.7(a)(2), 33681.9(a)(2), 33681.12(a)(2), 33685(a)(2), 33690(a)(2), 33690.5(a)(2).

Loan from Housing Fund. An RDA is permitted to borrow from its Low and Moderate Income Housing Fund in order to make its ERAF payment. See Sections 33681.7(b), 33681.9(b), 33681.12(b), 33685(b), 33690(c), 33690.5(c).

Loan from Legislative Body. If making its full ERAF payment would cause an RDA to be unable to pay an “existing indebtedness,” the RDA may enter into an agreement with its legislative body to fund the shortfall. This creates an indebtedness to the legislative body that exists until paid in full. See Sections 33681.8, 33681.10, 33681.13, 33682.1, 33686, 33691. (There are also facially obsolete provisions of this type, which are not listed here. They are discussed below.)

Miscellaneous Administrative Provisions. There are also a handful of administrative provisions addressing the source of funds from which an ERAF payment can be made and provisions on related duties of the Director of Finance and the State Controller. See Sections 33681.7(c)-(h); 33681.9(c)-(h); 33681.12(c)-(h); 33685(c)-(h); 33690(b), (d)-(h); 33690.5(b), (d)-(h).

Special ERAF Payment Provisions

There are a number of provisions that apply to some, but not all, of the fiscal years in which ERAF payments were required. Those special provisions are summarized below.

Loan from “Authorized Issuer.” In some of the ERAF payment years, an RDA could take a loan from an “authorized issuer” in order to make an ERAF payment. An “authorized issuer” is a joint powers entity consisting of no less than 100 local agencies issuing bonds pursuant to specified statutory authority.

The authorized issuer may issue bonds, notes, or other forms of indebtedness in order to finance the loans to RDAs. See Sections 33681.15 (2004-05, 2005-06), 33688 (2008-09, 2009-10, 2010-11).

Payment by Legislative Body in Lieu of RDA Payment. In most of the ERAF payment years, a legislative body could elect to pay an amount equal to an RDA's ERAF payment obligation, in lieu of the RDA making the payment. See Sections 33688.11 (2003-04), 33681.14 (2004-05, 2005-06), 33687 (2008-09), 33692 (2009-10, 2010-11).

ERAF Payment Not Treated as Tax Increment Received by RDA. As discussed in Memorandum 2012-22, certain specified redevelopment plans must contain a time limit on the period in which tax increment can be received and a dollar limit on the amount of tax increment that an RDA can receive. See Sections 33333.2(a)(3), 33333.4(g)(1). The rules governing these limitations are complex and are not reiterated here.

For most years, redevelopment law provides that tax increment paid pursuant to ERAF payment obligations "shall be deducted from the amount of property tax dollars deemed to have been received by the agency." In other words, tax revenue paid to comply with an ERAF payment requirement *does not count against an RDA's tax increment limitations.* See Sections 33683 (1992-93, 1993-94, 1994-95, 2002-03, 2003-04, 2004-05, 2005-06), 33689 (2008-09). The same rule applies to tax increment that is used to repay a loan from an "authorized issuer." See Sections 33681.15(c) (2004-05, 2005-06), 33688(c) (2008-09, 2009-10, 2010-11).

Loan to City or County. In certain specified fiscal years, an RDA may pay *more* than its required ERAF payment, with the excess amount credited against the amount that a city's or county's allocation of property tax revenue would otherwise be reduced under Revenue and Taxation Code Section 100.06. See Section 33681.12(i) (2004-05, 2005-06, or 2009-10). This constitutes a loan from the RDA to the city or county.

Thirty-Year Payment Agreement. In 2009-10 and 2010-11, an RDA that had its tax increment revenue reduced by at least 20 percent in the 2009-10 fiscal year can enter into an agreement with the Department of Finance to make its 2009-10 and 2010-11 ERAF payments over a period of up to 30 years. See Section 33691.5.

Use of ERAF Funds. The RDA ERAF payments in 2009-10 and 2010-11 are only to be distributed to K-12 school districts. See Sections 33590(j), 33690.5(j). The amount of property tax that would otherwise be apportioned to each school district is reduced by the amount paid by RDAs to ERAF. See Sections 33590(k), 33690.5(k). See also Section 33590(l)-(m), 33690.5(l)-(m) (related provisions).

Facially Obsolete ERAF Payment Provisions

A few of the RDA ERAF provisions are facially obsolete:

- Section 33681.6 is dependent on a repealed provision (former Section 33681.5).
- Section 33682 (as added by 1992 Cal. Stat. ch. 699) was made inoperative by Section 33682 (as added by 1992 Cal. Stat. ch. 700).
- Section 33682 (as added by 1992 Cal. Stat. ch. 700) is dependent on a repealed provision (former Section 33681).
- Section 33682.1 is dependent on a repealed provision (former Section 33681).
- Section 33682.5 is dependent on a repealed provision (former Section 33681.5).

Those provisions have no present effect.

Relevance After Transitional Period

Once all RDA affairs have been fully wound down, there will be no further need for the ERAF payment provisions. The provisions requiring ERAF payments will be fully obsolete and any loans issued to finance ERAF payments will have been repaid. Consequently, these provisions will have no operational relevance after the end of the transitional period. Furthermore, any relevance they may have had in legal actions relating to ERAF payments will also have ended, as the transitional period extends to include the time during which any redevelopment related legal matters are pending or may be legally brought. Therefore, the ERAF payment provisions will have no relevance after the transitional period. **They should be repealed.**

Relevance During Transitional Period

All of the ERAF *payment* provisions are limited, by their terms, to previous fiscal years. Consequently, most of those provisions have no continuing operational relevance during the transitional period, because no further ERAF payments will be required. The exception is Section 33691.5, which allows certain

ERAF payments to be made over an extended period of time (up to 30 years). That provision remains directly relevant during the transitional period, to the extent that any RDAs took advantage of that option. If so, the payment plan would establish an enforceable obligation that would need to be fulfilled during the transitional period. See Sections 34171(d)(1)(B)-(C) (“enforceable obligations” includes loans and obligations imposed by state law).

Many of the ERAF provisions govern loans issued to RDAs to finance their ERAF payments. Any loans issued pursuant to those provisions would constitute enforceable obligations that would need to be paid off as part of the winding down process. *Id.*

Moreover, any of the ERAF provisions could be relevant in any legal action relating to an RDA’s ERAF payment obligations.

The savings provision should be sufficient to prevent the clean-up legislation from making any substantive change to the effect of those provisions. Proposed Section 33090 includes, in the illustrative lists of “redevelopment-related matters,” the redevelopment-related “obligations” of successor agencies and other entities.

Respectfully submitted,

Brian Hebert
Executive Director

HEALTH AND SAFETY CODE	3
DIVISION 24. COMMUNITY DEVELOPMENT AND HOUSING.....	3
PART 1. COMMUNITY REDEVELOPMENT LAW [<i>SELECTED PROVISIONS</i>]	3
CHAPTER 4. REDEVELOPMENT PROCEDURES AND ACTIVITIES	3
Article 4. Preparation and Adoption of Redevelopment Plans by the Agency	3
§ 33333.10. Conditions for, and consequences of, extending time limits on redevelopment plan adopted on or before Dec. 31, 1993	3
§ 33334.2. Minimum amount of taxes RDA must use for affordable housing where redevelopment plan is adopted on or after Jan. 1, 1977	8
§ 33334.3. Affordable housing covenants and Low and Moderate Income Housing Fund	14
§ 33334.6. Minimum amount of taxes RDA must use for affordable housing where Section 33334.2 does not apply or is voluntarily applied by resolution	19
§ 33334.9. Credit and offset for providing low income housing assistance	21
§ 33334.10. Excess surplus in Low and Moderate Income Housing Fund.....	22
§ 33334.12. Failure to timely expend excess surplus in Low and Moderate Income Housing Fund	22
CHAPTER 6. FINANCIAL PROVISIONS	25
Article 1. General	25
§ 33607.5. Statutory pass-through payments	25
§ 33607.7. Pass-through payments for RDAs that satisfy specified criteria	29
§ 33607.8. Payment to state water supply contractor	30
§ 33608. Validation of specified “reimbursement agreement”	30
Article 6. Taxation	32
§ 33670.9. Payments to Orange County	32
§ 33670.95. Alternative payments to Orange County.....	33
Article 7. School Finance	33
§ 33680. Legislative findings and declarations.....	33
§ 33681.6. Exception to former Section 33681.5	34
§ 33681.7. RDA ERAF contribution in 2002-03 fiscal year	35
§ 33681.8. Loan from legislative body to make ERAF payment in 2002-03 fiscal year	36
§ 33681.9. RDA ERAF contribution in 2003-04 fiscal year	39
§ 33681.10. Loan from legislative body to make ERAF payment in 2003-04 fiscal year	40
§ 33681.11. Legislative body remittance in lieu of RDA ERAF contribution in 2003-04 fiscal year	43
§ 33681.12. RDA ERAF contribution in 2004-05 and 2005-06 fiscal years.....	43
§ 33681.13. Loan from legislative body to make ERAF payment in 2004-05 and 2005-06 fiscal years	46
§ 33681.14. Legislative body remittance in lieu of RDA ERAF contribution in 2004-05 and 2005-06 fiscal years	48
§ 33681.15. Loan by “authorized issuer” to make RDA ERAF contribution in 2004-05 and 2005-06 fiscal years	49
§ 33682 (as added by 1992 Cal. Stat. ch. 699) (made inoperative by § 33682(f) (as added by 1992 Cal. Stat. ch. 700))	51
§ 33682 (as added by 1992 Cal. Stat. ch. 700). Loan from legislative body to make ERAF payment in 1992-93 fiscal year, pursuant to former Section 33681	52
§ 33682.1. Supplement to rule provided in § 33682.....	54
§ 33682.5. Loan from legislative body to make ERAF payment in 1993-94 or 1994-95 fiscal years, pursuant to former Section 33681.5.....	55
§ 33683. Specified payments not counted against tax increment limits	57
§ 33684. Outstanding pass-through payment obligation reporting and consequences	57
§ 33685. RDA ERAF contribution in 2008-09 fiscal year	66

§ 33686. Loan from legislative body to make ERAF payment in 2008-09 fiscal year	68
§ 33687. Legislative body remittance in lieu of RDA ERAF contribution in 2008-09 fiscal year	71
§ 33688. Loan by “authorized issuer” to make RDA ERAF contribution in 2008-09, 2009- 10, and 2010-11 fiscal years	71
§ 33689. Specified payment not counted against tax increment limits	73
§ 33690. RDA ERAF contribution in 2009-10 fiscal year	73
§ 33690.5. RDA ERAF contribution in 2010-11 fiscal year	77
§ 33691. Loan from legislative body to make ERAF payment in 2009-10 and 2010-11 fiscal years	80
§ 33691.5. Alternative provisions for payment of RDA ERAF contribution in 2009-10 or 2010-11 fiscal years	84
§ 33692. Legislative body remittance in lieu of RDA ERAF contribution in 2009-10 and 2010-11 fiscal years	84

HEALTH AND SAFETY CODE

1 DIVISION 24. COMMUNITY DEVELOPMENT AND
2 HOUSING

3 PART 1. COMMUNITY REDEVELOPMENT LAW
4 [SELECTED PROVISIONS]

5 CHAPTER 4. REDEVELOPMENT PROCEDURES AND ACTIVITIES

6 Article 4. Preparation and Adoption of Redevelopment Plans by the
7 Agency

8 § 33333.10. Conditions for, and consequences of, extending time limits on redevelopment
9 plan adopted on or before Dec. 31, 1993

10 33333.10. (a)(1) Notwithstanding the time limits in subdivisions (a) and (b) of
11 Section 33333.6, an agency that adopted a redevelopment plan on or before
12 December 31, 1993, may, pursuant to this section, amend that plan to extend the
13 time limit on effectiveness of the plan for up to 10 additional years beyond the
14 limit allowed by subdivision (a) of Section 33333.6.

15 (2) In addition, the agency may, pursuant to this section, amend that plan to
16 extend the time limit on the payment of indebtedness and receipt of property taxes
17 to be not more than 10 years from the termination of the effectiveness of the
18 redevelopment plan as that time limit has been amended pursuant to paragraph (1).

19 (b) A redevelopment plan may be amended pursuant to subdivision (a) only after
20 the agency finds, based on substantial evidence, that both of the following
21 conditions exist:

22 (1) Significant blight remains within the project area.

23 (2) This blight cannot be eliminated without extending the effectiveness of the
24 plan and the receipt of property taxes.

25 (c) As used in this section:

26 (1) "Blight" has the same meaning as that term is given in Section 33030.

27 (2) "Significant" means important and of a magnitude to warrant agency
28 assistance.

29 (3) "Necessary and essential parcels" means parcels that are not blighted but are
30 so necessary and essential to the elimination of the blight that these parcels should
31 be included within the portion of the project area in which tax increment funds
32 may be spent. "Necessary and essential parcels" are (A) parcels that are adjacent
33 to one or more blighted parcels that are to be assembled in order to create a parcel
34 of adequate size given present standards and market conditions, and (B) parcels

1 that are adjacent or near parcels that are blighted on which it is necessary to
2 construct a public improvement to eliminate the blight.

3 (d) For purposes of this section, significant blight can exist in a project area even
4 though blight is not prevalent in a project area. The report submitted to the
5 legislative body pursuant to Section 33352 shall identify on a map the portion of
6 the project area in which significant blight remains.

7 (e) After the limit on the payment of indebtedness and receipt of property taxes
8 that would have taken effect but for the amendment pursuant to this section,
9 except for funds deposited in the Low and Moderate Income Housing Fund
10 pursuant to Section 33334.2 or 33334.6, the agency shall spend tax increment
11 funds only within the portion of the project area that has been identified in the
12 report adopted pursuant to Section 33352 as the area containing blighted parcels
13 and necessary and essential parcels. Except as otherwise limited by subdivisions
14 (f) and (g), agencies may continue to spend funds deposited in the Low and
15 Moderate Income Housing Fund in accordance with this division.

16 (f)(1) Except as otherwise provided in this subdivision, after the limit on the
17 payment of indebtedness and receipt of property taxes that would have taken
18 effect, but for the amendment pursuant to this section, agencies shall only spend
19 moneys from the Low and Moderate Income Housing Fund for the purpose of
20 increasing, improving, and preserving the community's supply of housing at
21 affordable housing cost to persons and families of low, very low, or extremely low
22 income, as defined in Sections 50079.5, 50093, 50105, and 50106. During this
23 period, an agency that has adopted an amendment pursuant to subdivision (a) may
24 use moneys from the Low and Moderate Income Housing Fund for the purpose of
25 increasing, improving, and preserving housing at affordable housing cost to
26 persons and families of moderate income as defined in Section 50093. However,
27 this amount shall not exceed, in a five-year period, the amount of moneys from the
28 Low and Moderate Income Housing Fund that are used to increase, improve, and
29 preserve housing at affordable housing cost to persons and families of extremely
30 low income, as defined in Section 50106. In no case shall the amount expended for
31 housing for persons and families of moderate income exceed 15 percent of the
32 annual amount deposited in the Low and Moderate Income Housing Fund during a
33 five-year period and the number of housing units affordable to moderate-income
34 persons shall not exceed the number of housing units affordable to extremely low
35 income persons.

36 (2) Commencing with the first fiscal year that commences after the date of the
37 adoption of an amendment pursuant to subdivision (a) and until the limit on the
38 payment of indebtedness and receipt of property taxes that would have taken effect
39 but for the amendment pursuant to this section, an agency that has adopted an
40 amendment pursuant to subdivision (a) may use moneys from the Low and
41 Moderate Income Housing Fund for the purpose of increasing, improving, and
42 preserving housing at affordable housing cost to persons and families of moderate
43 income as defined in Section 50093. However, this amount shall not exceed, in a

1 five-year period, 15 percent of the amount of moneys deposited in the Low and
2 Moderate Income Housing Fund during that five-year period and shall only be
3 used to assist housing projects in which no less than 49 percent of the units are
4 affordable to and occupied by persons and families of low, very low, or extremely
5 low income. An agency may spend an additional amount of moneys in the same or
6 other housing projects to assist housing units affordable to and occupied by
7 moderate-income persons. However, this amount shall not exceed the lesser of: the
8 amount of moneys spent to increase, improve, and preserve housing at affordable
9 housing cost to persons and families of extremely low income as defined in
10 Section 50106, or 5 percent of the moneys deposited in the Low and Moderate
11 Income Housing Fund during that five-year period.

12 (g)(1) Except as provided in paragraph (2) or (3), commencing with the first
13 fiscal year that commences after the date of adoption of an amendment pursuant to
14 subdivision (a), not less than 30 percent of all taxes that are allocated to the agency
15 pursuant to Section 33670 from the redevelopment project area so amended shall
16 be deposited into that project's Low and Moderate Income Housing Fund for the
17 purposes specified in subdivision (f).

18 (2) In any fiscal year, the agency may deposit less than the amount required by
19 paragraph (1), but not less than the amount required by Section 33334.2 or
20 33334.6, into the Low and Moderate Income Housing Fund if the agency finds
21 that the difference between the amount deposited and the amount required by
22 paragraph (1) is necessary to make principal and interest payments during that
23 fiscal year on bonds sold by the agency to finance or refinance the redevelopment
24 project prior to six months before the date of adoption of the amendment pursuant
25 to subdivision (a). Bonds sold by the agency prior to six months before the date of
26 the adoption of the amendment pursuant to subdivision (a) may only be
27 refinanced, refunded, or restructured after the date of the amendment pursuant to
28 subdivision (a). However, for purposes of this section, bonds refinanced, refunded,
29 or restructured after the date of the amendment pursuant to subdivision (a) may
30 only be treated as if sold on the date the original bonds were sold if (A) the net
31 proceeds were used to refinance the original bonds, (B) there is no increase in the
32 amount of principal at the time of refinancing, restructuring, or refunding, and (C)
33 the time during which the refinanced indebtedness is to be repaid does not exceed
34 the date on which the existing indebtedness would have been repaid.

35 (3) No later than 120 days prior to depositing less than the amount required by
36 paragraph (1) into the Low and Moderate Income Housing Fund, the agency shall
37 adopt, by resolution after a noticed public hearing, a finding that the difference
38 between the amount allocated and the amount required by paragraph (1) is
39 necessary to make payments on bonds sold by the agency to finance or refinance
40 the redevelopment project and identified in the preliminary report adopted
41 pursuant to paragraph (9) of subdivision (e) of Section 33333.11, and specifying
42 the amount of principal remaining on the bonds, the amount of annual payments,
43 and the date on which the indebtedness will be repaid. Notice of the time and place

1 of the public hearing shall be published in a newspaper of general circulation once
2 a week for at least two successive weeks prior to the public hearing. The agency
3 shall make available to the public the proposed resolution no later than the time of
4 the publication of the first notice of the public hearing. A copy of the resolution
5 shall be transmitted to the Department of Housing and Community Development
6 within 10 days after adoption.

7 (4) Notwithstanding paragraph (1), an agency that sells bonds on or after the
8 date of adoption of an amendment pursuant to subdivision (a), the repayment of
9 which is to be made from taxes allocated to the agency pursuant to Section 33670
10 from the project so amended, may elect to subordinate up to 16 2/3 percent of its
11 annual 30-percent Low and Moderate Income Housing Fund deposit obligation to
12 the payment of debt service on the bonds. If the agency makes that election and in
13 any year the agency has insufficient tax-increment revenue available to pay debt
14 service on the bonds to which the funds from the Low and Moderate Income
15 Housing Fund are subordinated, the agency may deposit less than the full 100
16 percent of its annual 30-percent Low and Moderate Income Housing Fund
17 obligation but only to the extent necessary to pay that debt service and in no event
18 shall less than 83 1/3 percent of that obligation be deposited into the Low and
19 Moderate Income Housing Fund for that year. The difference between the amount
20 that is actually deposited in the Low and Moderate Income Housing Fund and the
21 full 100 percent of the agency's 30-percent Low and Moderate Income Housing
22 Fund deposit obligation shall constitute a deficit in the Low and Moderate Income
23 Housing Fund subject to repayment pursuant to paragraph (5).

24 (5) If, pursuant to paragraph (2) or (4), the agency deposits less than 30 percent
25 of the taxes allocated to the agency pursuant to Section 33670 in any fiscal year in
26 the Low and Moderate Income Housing Fund, the amount equal to the difference
27 between 30 percent of the taxes allocated to the agency pursuant to Section 33670
28 for each affected redevelopment project area and the amount actually deposited in
29 the Low and Moderate Income Housing Fund for that fiscal year shall be
30 established as a deficit in the Low and Moderate Income Housing Fund. Any new
31 tax increment funds not encumbered pursuant to paragraph (2) or (4) shall be
32 utilized to reduce or eliminate the deficit prior to entering into any new contracts,
33 commitments, or indebtedness. The obligations imposed by this section are hereby
34 declared to be an indebtedness of the redevelopment project to which they relate,
35 payable from taxes allocated to the agency pursuant to Section 33670 and,
36 notwithstanding any other provision of law, shall constitute an indebtedness of the
37 agency with respect to the redevelopment project, and the agency shall continue to
38 receive allocations of taxes pursuant to Section 33670 until the deficit is paid in
39 full.

40 (h) An agency may not amend its redevelopment plan pursuant to this section
41 unless the agency first adopts a resolution that finds, based on substantial
42 evidence, all of the following:

1 (1) The community has adopted a housing element that the department has
2 determined pursuant to Section 65585 of the Government Code to be in substantial
3 compliance with the requirements of Article 10.6 (commencing with Section
4 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code, or if
5 applicable, an eligible city or county within the jurisdiction of the San Diego
6 Association of Governments has adopted a self-certification of compliance with its
7 adopted housing element pursuant to Section 65585.1 of the Government Code.

8 (2) During the three fiscal years prior to the year in which the amendment is
9 adopted, the agency has not been included in the report sent by the Controller to
10 the Attorney General pursuant to subdivision (b) of Section 33080.8 as an agency
11 that has a “major violation” pursuant to Section 33080.8.

12 (3) After a written request by the agency and provision of the information
13 requested by the department, the department has issued a letter to the agency,
14 confirming that the agency has not accumulated an excess surplus in its Low and
15 Moderate Income Housing Fund. As used in this section, “excess surplus” has the
16 same meaning as that term is defined in Section 33334.12. The department shall
17 develop a methodology to collect information required by this section. Information
18 requested by the department shall include a certification by the agency’s
19 independent auditor on the status of excess surplus and submittal of data for the
20 department to verify the status of excess surplus. The independent auditor shall
21 make the required certification based on the Controller’s office guidelines which
22 shall include the methodology prescribed by the department pursuant to
23 subparagraph (D) of paragraph (3) of subdivision (g) of Section 33334.12. If the
24 department does not respond to the written request of the agency for this
25 determination within 90 days after receipt of the written request, compliance with
26 this requirement shall be deemed confirmed.

27 (i) Each redevelopment plan that has been adopted prior to January 1, 1976, that
28 is amended pursuant to subdivision (a) shall also be amended at the same time to
29 make subdivision (b) of Section 33413 applicable to the redevelopment plan in
30 accordance with paragraph (1) of subdivision (d) of Section 33413.

31 (j) The amendment to the redevelopment plan authorized pursuant to this section
32 shall be made by ordinance pursuant to Article 12 (commencing with Section
33 33450). The ordinance shall be subject to referendum as prescribed by law for
34 ordinances of the legislative body.

35 (k) This section shall not apply to a project area that retains its eligibility to
36 incur indebtedness and receive tax increment revenues pursuant to Section
37 33333.7.

38 (l) The limitations established in the ordinance adopted pursuant to this section
39 shall not be applied to limit allocation of taxes to an agency to the extent required
40 to comply with Section 33333.8. In the event of a conflict between these
41 limitations and the obligations under Section 33333.8, the limitation established in
42 the ordinance shall be suspended pursuant to Section 33333.8.

1 § 33334.2. Minimum amount of taxes RDA must use for affordable housing where
2 redevelopment plan is adopted on or after Jan. 1, 1977

3 33334.2. (a) Except as provided in subdivision (k), not less than 20 percent of all
4 taxes that are allocated to the agency pursuant to Section 33670 shall be used by
5 the agency for the purposes of increasing, improving, and preserving the
6 community's supply of low- and moderate-income housing available at affordable
7 housing cost, as defined by Section 50052.5, to persons and families of low or
8 moderate income, as defined in Section 50093, lower income households, as
9 defined by Section 50079.5, very low income households, as defined in Section
10 50105, and extremely low income households, as defined by Section 50106, that is
11 occupied by these persons and families, unless one of the following findings is
12 made annually by resolution:

13 (1)(A) That no need exists in the community to improve, increase, or preserve
14 the supply of low- and moderate-income housing, including housing for very low
15 income households in a manner that would benefit the project area and that this
16 finding is consistent with the housing element of the community's general plan
17 required by Article 10.6 (commencing with Section 65580) of Chapter 3 of
18 Division 1 of Title 7 of the Government Code, including its share of the regional
19 housing needs of very low income households and persons and families of low or
20 moderate income.

21 (B) This finding shall only be made if the housing element of the community's
22 general plan demonstrates that the community does not have a need to improve,
23 increase, or preserve the supply of low- and moderate-income housing available at
24 affordable housing cost to persons and families of low or moderate income and to
25 very low income households. This finding shall only be made if it is consistent
26 with the planning agency's annual report to the legislative body on
27 implementation of the housing element required by subdivision (b) of Section
28 65400 of the Government Code. No agency of a charter city shall make this
29 finding unless the planning agency submits the report pursuant to subdivision (b)
30 of Section 65400 of the Government Code. This finding shall not take effect until
31 the agency has complied with subdivision (b) of this section.

32 (2)(A) That some stated percentage less than 20 percent of the taxes that are
33 allocated to the agency pursuant to Section 33670 is sufficient to meet the housing
34 needs of the community, including its share of the regional housing needs of
35 persons and families of low- or moderate-income and very low income
36 households, and that this finding is consistent with the housing element of the
37 community's general plan required by Article 10.6 (commencing with Section
38 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

39 (B) This finding shall only be made if the housing element of the community's
40 general plan demonstrates that a percentage of less than 20 percent will be
41 sufficient to meet the community's need to improve, increase, or preserve the
42 supply of low- and moderate-income housing available at affordable housing cost
43 to persons and families of low or moderate income and to very low income

1 households. This finding shall only be made if it is consistent with the planning
2 agency's annual report to the legislative body on implementation of the housing
3 element required by subdivision (b) of Section 65400 of the Government Code.
4 No agency of a charter city shall make this finding unless the planning agency
5 submits the report pursuant to subdivision (b) of Section 65400 of the Government
6 Code. This finding shall not take effect until the agency has complied with
7 subdivision (b) of this section.

8 (C) For purposes of making the findings specified in this paragraph and
9 paragraph (1), the housing element of the general plan of a city, county, or city and
10 county shall be current, and shall have been determined by the department
11 pursuant to Section 65585 to be in substantial compliance with Article 10.6
12 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the
13 Government Code.

14 (3)(A) That the community is making a substantial effort to meet its existing and
15 projected housing needs, including its share of the regional housing needs, with
16 respect to persons and families of low and moderate income, particularly very low
17 income households, as identified in the housing element of the community's
18 general plan required by Article 10.6 (commencing with Section 65580) of
19 Chapter 3 of Division 1 of Title 7 of the Government Code, and that this effort,
20 consisting of direct financial contributions of local funds used to increase and
21 improve the supply of housing affordable to, and occupied by, persons and
22 families of low or moderate income and very low income households is equivalent
23 in impact to the funds otherwise required to be set aside pursuant to this section. In
24 addition to any other local funds, these direct financial contributions may include
25 federal or state grants paid directly to a community and that the community has the
26 discretion of using for the purposes for which moneys in the Low and Moderate
27 Income Housing Fund may be used. The legislative body shall consider the need
28 that can be reasonably foreseen because of displacement of persons and families of
29 low or moderate income or very low income households from within, or adjacent
30 to, the project area, because of increased employment opportunities, or because of
31 any other direct or indirect result of implementation of the redevelopment plan. No
32 finding under this subdivision may be made until the community has provided or
33 ensured the availability of replacement dwelling units as defined in Section
34 33411.2 and until it has complied with Article 9 (commencing with Section
35 33410).

36 (B) In making the determination that other financial contributions are equivalent
37 in impact pursuant to this subdivision, the agency shall include only those
38 financial contributions that are directly related to programs or activities authorized
39 under subdivision (e).

40 (C) The authority for making the finding specified in this paragraph shall expire
41 on June 30, 1993, except that the expiration shall not be deemed to impair
42 contractual obligations to bondholders or private entities incurred prior to May 1,
43 1991, and made in reliance on the provisions of this paragraph. Agencies that

1 make this finding after June 30, 1993, shall show evidence that the agency entered
2 into the specific contractual obligation with the specific intention of making a
3 finding under this paragraph in order to provide sufficient revenues to pay off the
4 indebtedness.

5 (b) Within 10 days following the making of a finding under either paragraph (1)
6 or (2) of subdivision (a), the agency shall send the Department of Housing and
7 Community Development a copy of the finding, including the factual information
8 supporting the finding and other factual information in the housing element that
9 demonstrates that either (1) the community does not need to increase, improve, or
10 preserve the supply of housing for low- and moderate-income households,
11 including very low income households, or (2) a percentage less than 20 percent
12 will be sufficient to meet the community's need to improve, increase, and preserve
13 the supply of housing for low- and moderate-income households, including very
14 low income households. Within 10 days following the making of a finding under
15 paragraph (3) of subdivision (a), the agency shall send the Department of Housing
16 and Community Development a copy of the finding, including the factual
17 information supporting the finding that the community is making a substantial
18 effort to meet its existing and projected housing needs. Agencies that make this
19 finding after June 30, 1993, shall also submit evidence to the department of its
20 contractual obligations with bondholders or private entities incurred prior to May
21 1, 1991, and made in reliance on this finding.

22 (c) In any litigation to challenge or attack a finding made under paragraph (1),
23 (2), or (3) of subdivision (a), the burden shall be upon the agency to establish that
24 the finding is supported by substantial evidence in light of the entire record before
25 the agency. If an agency is determined by a court to have knowingly
26 misrepresented any material facts regarding the community's share of its regional
27 housing need for low- and moderate-income housing, including very low income
28 households, or the community's production record in meeting its share of the
29 regional housing need pursuant to the report required by subdivision (b) of Section
30 65400 of the Government Code, the agency shall be liable for all court costs and
31 plaintiff's attorney's fees, and shall be required to allocate not less than 25 percent
32 of the agency's tax increment revenues to its Low and Moderate Income Housing
33 Fund in each year thereafter.

34 (d) Nothing in this section shall be construed as relieving any other public entity
35 or entity with the power of eminent domain of any legal obligations for
36 replacement or relocation housing arising out of its activities.

37 (e) In carrying out the purposes of this section, the agency may exercise any or
38 all of its powers for the construction, rehabilitation, or preservation of affordable
39 housing for extremely low, very low, low- and moderate-income persons or
40 families, including the following:

41 (1) Acquire real property or building sites subject to Section 33334.16.

42 (2)(A) Improve real property or building sites with onsite or offsite
43 improvements, but only if both (i) the improvements are part of the new

1 construction or rehabilitation of affordable housing units for low- or moderate-
2 income persons that are directly benefited by the improvements, and are a
3 reasonable and fundamental component of the housing units, and (ii) the agency
4 requires that the units remain available at affordable housing cost to, and occupied
5 by, persons and families of extremely low, very low, low, or moderate income for
6 the same time period and in the same manner as provided in subdivision (c) and
7 paragraph (2) of subdivision (f) of Section 33334.3.

8 (B) If the newly constructed or rehabilitated housing units are part of a larger
9 project and the agency improves or pays for onsite or offsite improvements
10 pursuant to the authority in this subdivision, the agency shall pay only a portion of
11 the total cost of the onsite or offsite improvement. The maximum percentage of
12 the total cost of the improvement paid for by the agency shall be determined by
13 dividing the number of housing units that are affordable to low- or moderate-
14 income persons by the total number of housing units, if the project is a housing
15 project, or by dividing the cost of the affordable housing units by the total cost of
16 the project, if the project is not a housing project.

17 (3) Donate real property to private or public persons or entities.

18 (4) Finance insurance premiums pursuant to Section 33136.

19 (5) Construct buildings or structures.

20 (6) Acquire buildings or structures.

21 (7) Rehabilitate buildings or structures.

22 (8) Provide subsidies to, or for the benefit of, extremely low income households,
23 as defined by Section 50106, very low income households, as defined by Section
24 50105, lower income households, as defined by Section 50079.5, or persons and
25 families of low or moderate income, as defined by Section 50093, to the extent
26 those households cannot obtain housing at affordable costs on the open market.
27 Housing units available on the open market are those units developed without
28 direct government subsidies.

29 (9) Develop plans, pay principal and interest on bonds, loans, advances, or other
30 indebtedness, or pay financing or carrying charges.

31 (10) Maintain the community's supply of mobilehomes.

32 (11) Preserve the availability to lower income households of affordable housing
33 units in housing developments that are assisted or subsidized by public entities and
34 that are threatened with imminent conversion to market rates.

35 (f) The agency may use these funds to meet, in whole or in part, the replacement
36 housing provisions in Section 33413. However, nothing in this section shall be
37 construed as limiting in any way the requirements of that section.

38 (g)(1) The agency may use these funds inside or outside the project area. The
39 agency may only use these funds outside the project area upon a resolution of the
40 agency and the legislative body that the use will be of benefit to the project. The
41 determination by the agency and the legislative body shall be final and conclusive
42 as to the issue of benefit to the project area. The Legislature finds and declares that
43 the provision of replacement housing pursuant to Section 33413 is always of

1 benefit to a project. Unless the legislative body finds, before the redevelopment
2 plan is adopted, that the provision of low- and moderate-income housing outside
3 the project area will be of benefit to the project, the project area shall include
4 property suitable for low- and moderate-income housing.

5 (2)(A) The Contra Costa County Redevelopment Agency may use these funds
6 anywhere within the unincorporated territory, or within the incorporated limits of
7 the City of Walnut Creek on sites contiguous to the Pleasant Hill BART Station
8 Area Redevelopment Project area. The agency may only use these funds outside
9 the project area upon a resolution of the agency and board of supervisors
10 determining that the use will be of benefit to the project area. In addition, the
11 agency may use these funds within the incorporated limits of the City of Walnut
12 Creek only if the agency and the board of supervisors find all of the following:

13 (i) Both the County of Contra Costa and the City of Walnut Creek have adopted
14 and are implementing complete and current housing elements of their general
15 plans that the Department of Housing and Community Development has
16 determined to be in compliance with the requirements of Article 10.6
17 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the
18 Government Code.

19 (ii) The development to be funded shall not result in any residential
20 displacement from the site where the development is to be built.

21 (iii) The development to be funded shall not be constructed in an area that
22 currently has more than 50 percent of its population comprised of racial minorities
23 or low-income families.

24 (iv) The development to be funded shall allow construction of affordable
25 housing closer to a rapid transit station than could be constructed in the
26 unincorporated territory outside the Pleasant Hill BART Station Area
27 Redevelopment Project.

28 (B) If the agency uses these funds within the incorporated limits of the City of
29 Walnut Creek, all of the following requirements shall apply:

30 (i) The funds shall be used only for the acquisition of land for, and the design
31 and construction of, the development of housing containing units affordable to,
32 and occupied by, low- and moderate-income persons.

33 (ii) If less than all the units in the development are affordable to, and occupied
34 by, low- or moderate-income persons, any agency assistance shall not exceed the
35 amount needed to make the housing affordable to, and occupied by, low- or
36 moderate-income persons.

37 (iii) The units in the development that are affordable to, and occupied by, low-
38 or moderate-income persons shall remain affordable for a period of at least 55
39 years.

40 (iv) The agency and the City of Walnut Creek shall determine, if applicable,
41 whether Article XXXIV of the California Constitution permits the development.

1 (h) The Legislature finds and declares that expenditures or obligations incurred
2 by the agency pursuant to this section shall constitute an indebtedness of the
3 project.

4 (i) This section shall only apply to taxes allocated to a redevelopment agency for
5 which a final redevelopment plan is adopted on or after January 1, 1977, or for any
6 area that is added to a project by an amendment to a redevelopment plan, which
7 amendment is adopted on or after the effective date of this section. An agency
8 may, by resolution, elect to make all or part of the requirements of this section
9 applicable to any redevelopment project for which a redevelopment plan was
10 adopted prior to January 1, 1977, subject to any indebtedness incurred prior to the
11 election.

12 (j)(1)(A) An action to compel compliance with the requirement of Section
13 33334.3 to deposit not less than 20 percent of all taxes that are allocated to the
14 agency pursuant to Section 33670 in the Low and Moderate Income Housing Fund
15 shall be commenced within 10 years of the alleged violation. A cause of action for
16 a violation accrues on the last day of the fiscal year in which the funds were
17 required to be deposited in the Low and Moderate Income Housing Fund.

18 (B) An action to compel compliance with the requirement of this section or
19 Section 33334.6 that money deposited in the Low and Moderate Income Housing
20 Fund be used by the agency for purposes of increasing, improving, and preserving
21 the community's supply of low- and moderate-income housing available at
22 affordable housing cost shall be commenced within 10 years of the alleged
23 violation. A cause of action for a violation accrues on the date of the actual
24 expenditure of the funds.

25 (C) An agency found to have deposited less into the Low and Moderate Income
26 Housing Fund than mandated by Section 33334.3 or to have spent money from the
27 Low and Moderate Income Housing Fund for purposes other than increasing,
28 improving, and preserving the community's supply of low- and moderate-income
29 housing, as mandated, by this section or Section 33334.6 shall repay the funds
30 with interest in one lump sum pursuant to Section 970.4 or 970.5 of the
31 Government Code or may do either of the following:

32 (i) Petition the court under Section 970.6 for repayment in installments.

33 (ii) Repay the portion of the judgment due to the Low and Moderate Income
34 Housing Fund in equal installments over a period of five years following the
35 judgment.

36 (2) Repayment shall not be made from the funds required to be set aside or used
37 for low- and moderate-income housing pursuant to this section.

38 (3) Notwithstanding clauses (i) and (ii) of subparagraph (C) of paragraph (1), all
39 costs, including reasonable attorney's fees if included in the judgment, are due and
40 shall be paid upon entry of judgment or order.

41 (4) Except as otherwise provided in this subdivision, Chapter 2 (commencing
42 with Section 970) of Part 5 of Division 3.6 of Title 1 of the Government Code for

1 the enforcement of a judgment against a local public entity applies to a judgment
2 against a local public entity that violates this section.

3 (5) This subdivision applies to actions filed on and after January 1, 2006.

4 (6) The limitations period specified in subparagraphs (A) and (B) of paragraph
5 (1) does not apply to a cause of action brought pursuant to Chapter 9 (commencing
6 with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.

7 (k)(1) From July 1, 2009, to June 30, 2010, inclusive, an agency may suspend all
8 or part of its required allocation to the Low and Moderate Income Housing Fund
9 from taxes that are allocated to that agency pursuant to Section 33670.

10 (2) An agency that suspends revenue pursuant to paragraph (1) shall pay back to
11 its low- and moderate-income housing fund the amount of revenue that was
12 suspended in the 2009–10 fiscal year pursuant to this subdivision from July 1,
13 2010, to June 30, 2015, inclusive.

14 (3) An agency that suspends revenue pursuant to paragraph (1) and fails to repay
15 or have repaid on its behalf the amount of revenue suspended pursuant to
16 paragraph (2) shall, commencing July 1, 2015, be required to allocate an
17 additional 5 percent of all taxes that are allocated to that agency pursuant to
18 Section 33670 for low- and moderate-income housing for the remainder of the
19 time that the agency receives allocations of tax revenue pursuant to Section 33670.

20 (4) An agency that fails to pay or have paid on its behalf the full amount
21 calculated pursuant to subparagraph (J) of paragraph (2) of subdivision (a) of
22 Section 33690, or subparagraph (J) of paragraph (2) of subdivision (a) of Section
23 33690.5, as the case may be, shall, commencing July 1, 2010, or July 1, 2011, as
24 applicable, be required to allocate an additional 5 percent of all taxes that are
25 allocated to that agency pursuant to Section 33670 for low- and moderate-income
26 housing for the remainder of the time that the agency receives allocations of tax
27 revenue pursuant to Section 33670.

28 **§ 33334.3. Affordable housing covenants and Low and Moderate Income Housing Fund**

29 33334.3. (a) The funds that are required by Section 33334.2 or 33334.6 to be
30 used for the purposes of increasing, improving, and preserving the community's
31 supply of low- and moderate-income housing shall be held in a separate Low and
32 Moderate Income Housing Fund until used.

33 (b) Any interest earned by the Low and Moderate Income Housing Fund and
34 any repayments or other income to the agency for loans, advances, or grants, of
35 any kind from the Low and Moderate Income Housing Fund, shall accrue to and
36 be deposited in, the fund and may only be used in the manner prescribed for the
37 Low and Moderate Income Housing Fund.

38 (c) The moneys in the Low and Moderate Income Housing Fund shall be used to
39 increase, improve, and preserve the supply of low- and moderate-income housing
40 within the territorial jurisdiction of the agency.

41 (d) It is the intent of the Legislature that the Low and Moderate Income Housing
42 Fund be used to the maximum extent possible to defray the costs of production,

1 improvement, and preservation of low- and moderate-income housing and that the
2 amount of money spent for planning and general administrative activities
3 associated with the development, improvement, and preservation of that housing
4 not be disproportionate to the amount actually spent for the costs of production,
5 improvement, or preservation of that housing. The agency shall determine
6 annually that the planning and administrative expenses are necessary for the
7 production, improvement, or preservation of low- and moderate-income housing.

8 (e)(1) Planning and general administrative costs which may be paid with
9 moneys from the Low and Moderate Income Housing Fund are those expenses
10 incurred by the agency which are directly related to the programs and activities
11 authorized under subdivision (e) of Section 33334.2 and are limited to the
12 following:

13 (A) Costs incurred for salaries, wages, and related costs of the agency's staff or
14 for services provided through interagency agreements, and agreements with
15 contractors, including usual indirect costs related thereto.

16 (B) Costs incurred by a nonprofit corporation which are not directly attributable
17 to a specific project.

18 (2) Legal, architectural, and engineering costs and other salaries, wages, and
19 costs directly related to the planning and execution of a specific project that are
20 authorized under subdivision (e) of Section 33334.2 and that are incurred by a
21 nonprofit housing sponsor are not planning and administrative costs for the
22 purposes of this section, but are instead project costs.

23 (f)(1) The requirements of this subdivision apply to all new or substantially
24 rehabilitated housing units developed or otherwise assisted with moneys from the
25 Low and Moderate Income Housing Fund, pursuant to an agreement approved by
26 an agency on or after January 1, 1988. Except to the extent that a longer period of
27 time may be required by other provisions of law, the agency shall require that
28 housing units subject to this subdivision shall remain available at affordable
29 housing cost to, and occupied by, persons and families of low or moderate income
30 and very low income and extremely low income households for the longest
31 feasible time, but for not less than the following periods of time:

32 (A) Fifty-five years for rental units. However, the agency may replace rental
33 units with equally affordable and comparable rental units in another location
34 within the community if (i) the replacement units are available for occupancy prior
35 to the displacement of any persons and families of low or moderate income
36 residing in the units to be replaced and (ii) the comparable replacement units are
37 not developed with moneys from the Low and Moderate Income Housing Fund.

38 (B) Forty-five years for owner-occupied units. However, the agency may permit
39 sales of owner-occupied units prior to the expiration of the 45-year period for a
40 price in excess of that otherwise permitted under this subdivision pursuant to an
41 adopted program which protects the agency's investment of moneys from the Low
42 and Moderate Income Housing Fund, including, but not limited to, an equity
43 sharing program which establishes a schedule of equity sharing that permits

1 retention by the seller of a portion of those excess proceeds based on the length of
2 occupancy. The remainder of the excess proceeds of the sale shall be allocated to
3 the agency and deposited in the Low and Moderate Income Housing Fund. Only
4 the units originally assisted by the agency shall be counted towards the agency's
5 obligations under Section 33413.

6 (C) Fifteen years for mutual self-help housing units that are occupied by and
7 affordable to very low and low-income households. However, the agency may
8 permit sales of mutual self-help housing units prior to expiration of the 15-year
9 period for a price in excess of that otherwise permitted under this subdivision
10 pursuant to an adopted program that (i) protects the agency's investment of
11 moneys from the Low and Moderate Income Housing Fund, including, but not
12 limited to, an equity sharing program that establishes a schedule of equity sharing
13 that permits retention by the seller of a portion of those excess proceeds based on
14 the length of occupancy; and (ii) ensures through a recorded regulatory agreement,
15 deed of trust, or similar recorded instrument that if a mutual self-help housing unit
16 is sold at any time after expiration of the 15-year period and prior to 45 years after
17 the date of recording of the covenants or restrictions required pursuant to
18 paragraph (2), the agency recovers, at a minimum, its original principal from the
19 Low and Moderate Income Housing Fund from the proceeds of the sale and
20 deposits those funds into the Low and Moderate Income Housing Fund. The
21 remainder of the excess proceeds of the sale not retained by the seller shall be
22 allocated to the agency and deposited in the Low and Moderate Income Housing
23 Fund. For the purposes of this subparagraph, "mutual self-help housing unit"
24 means an owner-occupied housing unit for which persons and families of very low
25 and low income contribute no fewer than 500 hours of their own labor in
26 individual or group efforts to provide a decent, safe, and sanitary ownership
27 housing unit for themselves, their families, and others authorized to occupy that
28 unit. Nothing in this subparagraph precludes the agency and the developer of the
29 mutual self-help housing units from agreeing to 45-year deed restrictions.

30 (2) If land on which those dwelling units are located is deleted from the project
31 area, the agency shall continue to require that those units remain affordable as
32 specified in this subdivision.

33 (3) The agency shall require the recording in the office of the county recorder of
34 the following documents:

35 (A) The covenants or restrictions implementing this subdivision for each parcel
36 or unit of real property subject to this subdivision. The agency shall obtain and
37 maintain a copy of the recorded covenants or restrictions for not less than the life
38 of the covenant or restriction.

39 (B) For all new or substantially rehabilitated units developed or otherwise
40 assisted with moneys from the Low and Moderate Income Housing Fund on or
41 after January 1, 2008, a separate document called "Notice of Affordability
42 Restrictions on Transfer of Property," set forth in 14-point type or larger. This
43 document shall contain all of the following information:

1 (i) A recitation of the affordability covenants or restrictions. If the document
2 recorded under this subparagraph is recorded concurrently with the covenants or
3 restrictions recorded under subparagraph (A), the recitation of the affordability
4 covenants or restrictions shall also reference the concurrently recorded document.
5 If the document recorded under this subparagraph is not recorded concurrently
6 with the covenants or restrictions recorded under subparagraph (A), the recitation
7 of the affordability covenants or restrictions shall also reference the recorder's
8 identification number of the document recorded under subparagraph (A).

9 (ii) The date the covenants or restrictions expire.

10 (iii) The street address of the property, including, if applicable, the unit number,
11 unless the property is used to confidentially house victims of domestic violence.

12 (iv) The assessor's parcel number for the property.

13 (v) The legal description of the property.

14 (4) The agency shall require the recording of the document required under
15 subparagraph (B) of paragraph (3) not more than 30 days after the date of
16 recordation of the covenants or restrictions required under subparagraph (A) of
17 paragraph (3).

18 (5) The county recorder shall index the documents required to be recorded under
19 paragraph (3) by the agency and current owner.

20 (6) Notwithstanding Section 27383 of the Government Code, a county recorder
21 may charge all authorized recording fees to any party, including a public agency,
22 for recording the document specified in subparagraph (B) of paragraph (3).

23 (7) Notwithstanding any other provision of law, the covenants or restrictions
24 implementing this subdivision shall run with the land and shall be enforceable
25 against any owner who violates a covenant or restriction and each successor in
26 interest who continues the violation, by any of the following:

27 (A) The agency.

28 (B) The community, as defined in Section 33002.

29 (C) A resident of a unit subject to this subdivision.

30 (D) A residents' association with members who reside in units subject to this
31 subdivision.

32 (E) A former resident of a unit subject to this subdivision who last resided in
33 that unit.

34 (F) An applicant seeking to enforce the covenants or restrictions for a particular
35 unit that is subject to this subdivision, if the applicant conforms to all of the
36 following:

37 (i) Is of low or moderate income, as defined in Section 50093.

38 (ii) Is able and willing to occupy that particular unit.

39 (iii) Was denied occupancy of that particular unit due to an alleged breach of a
40 covenant or restriction implementing this subdivision.

41 (G) A person on an affordable housing waiting list who is of low or moderate
42 income, as defined in Section 50093, and who is able and willing to occupy a unit
43 subject to this subdivision.

1 (8) A dwelling unit shall not be counted as satisfying the affordable housing
2 requirements of this part, unless covenants for that dwelling unit are recorded in
3 compliance with subparagraph (A) of paragraph (3).

4 (9) Failure to comply with the requirements of subparagraph (B) of paragraph
5 (3) shall not invalidate any covenants or restrictions recorded pursuant to
6 subparagraph (A) of paragraph (3).

7 (g) "Housing," as used in this section, includes residential hotels, as defined in
8 subdivision (k) of Section 37912. The definitions of "lower income households,"
9 "very low income households," and "extremely low income households" in
10 Sections 50079.5, 50105, and 50106 shall apply to this section. "Longest feasible
11 time," as used in this section, includes, but is not limited to, unlimited duration.

12 (h) "Increasing, improving, and preserving the community's supply of low- and
13 moderate-income housing," as used in this section and in Section 33334.2,
14 includes the preservation of rental housing units assisted by federal, state, or local
15 government on the condition that units remain affordable to, and occupied by,
16 low- and moderate-income households, including extremely low and very low
17 income households, for the longest feasible time, but not less than 55 years,
18 beyond the date the subsidies and use restrictions could be terminated and the
19 assisted housing units converted to market rate rentals. In preserving these units
20 the agency shall require that the units remain affordable to, and occupied by,
21 persons and families of low- and moderate-income and extremely low and very
22 low income households for the longest feasible time but not less than 55 years.
23 However, the agency may replace rental units with equally affordable and
24 comparable rental units in another location within the community if (1) the
25 replacement units in another location are available for occupancy prior to the
26 displacement of any persons and families of low or moderate income residing in
27 the units to be replaced and (2) the comparable replacement units are not
28 developed with moneys from the Low and Moderate Income Housing Fund.

29 (i) Agencies that have more than one project area may satisfy the requirements
30 of Sections 33334.2 and 33334.6 and of this section by allocating, in any fiscal
31 year, less than 20 percent in one project area, if the difference between the amount
32 allocated and the 20 percent required is instead allocated, in that same fiscal year,
33 to the Low and Moderate Income Housing Fund from tax increment revenues from
34 other project areas. Prior to allocating funds pursuant to this subdivision, the
35 agency shall make the finding required by subdivision (g) of Section 33334.2.

36 (j) Funds from the Low and Moderate Income Housing Fund shall not be used to
37 the extent that other reasonable means of private or commercial financing of the
38 new or substantially rehabilitated units at the same level of affordability and
39 quantity are reasonably available to the agency or to the owner of the units. Prior
40 to the expenditure of funds from the Low and Moderate Income Housing Fund for
41 new or substantially rehabilitated housing units, where those funds will exceed 50
42 percent of the cost of producing the units, the agency shall find, based on
43 substantial evidence, that the use of the funds is necessary because the agency or

1 owner of the units has made a good faith attempt but been unable to obtain
2 commercial or private means of financing the units at the same level of
3 affordability and quantity.

4 **§ 33334.6. Minimum amount of taxes RDA must use for affordable housing where Section**
5 **33334.2 does not apply or is voluntarily applied by resolution**

6 33334.6. (a) The Legislature finds and declares that the provision of housing is
7 itself a fundamental purpose of the Community Redevelopment Law and that a
8 generally inadequate statewide supply of decent, safe, and sanitary housing
9 affordable to persons and families of low or moderate income, as defined by
10 Section 50093, threatens the accomplishment of the primary purposes of the
11 Community Redevelopment Law, including job creation, attracting new private
12 investments, and creating physical, economic, social, and environmental
13 conditions to remove and prevent the recurrence of blight. The Legislature further
14 finds and declares that the provision and improvement of affordable housing, as
15 provided by Section 33334.2, outside of redevelopment project areas can be of
16 direct benefit to those projects in assisting the accomplishment of project
17 objectives whether or not those redevelopment projects provide for housing within
18 the project area. The Legislature finds and determines that the provision of
19 affordable housing by redevelopment agencies and the use of taxes allocated to the
20 agency pursuant to subdivision (b) of Section 33670 is of statewide benefit and of
21 particular benefit and assistance to all local governmental agencies in the areas
22 where the housing is provided.

23 (b) This section is applicable to all project areas, or portions of project areas,
24 which are not subject to Section 33334.2, except that a project area, or portion of a
25 project area, for which a resolution was adopted pursuant to subdivision (i) of
26 Section 33334.2 is subject to this section. Project areas subject to this section
27 which are merged are subject to the requirements of both this section and Section
28 33487. The deposit of taxes into the Low and Moderate Income Housing Fund in
29 compliance with either this section or Section 33487 shall satisfy the requirements
30 of both sections in the year those taxes are deposited.

31 (c) Except as otherwise permitted by subdivisions (d) and (e), not less than 20
32 percent of the taxes allocated to the agency pursuant to Section 33670 from project
33 areas specified in subdivision (b) for the 1985–86 fiscal year and each succeeding
34 fiscal year shall be deposited into the Low and Moderate Income Housing Fund
35 established pursuant to Section 33334.3 and used for the purposes set forth in
36 Section 33334.2, unless the agency, by resolution, makes one of the findings
37 described in paragraphs (1) to (3), inclusive, of subdivision (a) of Section 33334.2,
38 except that the authority to make the finding specified in paragraph (3) of
39 subdivision (a) of that section shall expire as specified in that paragraph.
40 Subdivisions (b) and (c) of Section 33334.2 apply if an agency makes any of those
41 findings.

1 (d) In any fiscal year, the agency may deposit less than the amount required by
2 subdivision (c) into the Low and Moderate Income Housing Fund if the agency
3 finds that the difference between the amount deposited and the amount required by
4 subdivision (c) is necessary to make payments under existing obligations of
5 amounts due or required to be committed, set aside, or reserved by the agency
6 during that fiscal year and which are used by the agency for that purpose. For
7 purposes of this section, “existing obligations” means the principal of, and interest
8 on, loans, moneys advanced to, or indebtedness (whether funded, refunded,
9 assumed, or otherwise) incurred by the agency to finance or refinance, in whole or
10 in part, any redevelopment project existing on, and created prior to January 1,
11 1986, and contained on the statement of existing obligations adopted pursuant to
12 subdivision (f). Obligations incurred on or after January 1, 1986, shall be deemed
13 existing obligations for purposes of this section if the net proceeds are used to
14 refinance existing obligations contained on the statement.

15 (e) In each fiscal year prior to July 1, 1996, the agency may deposit less than the
16 amount required by subdivisions (c) and (d) into the Low and Moderate Income
17 Housing Fund if the agency finds that the deposit of less than the amount required
18 by those subdivisions is necessary in order to provide for the orderly and timely
19 completion of public and private projects, programs, or activities approved by the
20 agency prior to January 1, 1986, which are contained on the statement of existing
21 programs adopted pursuant to subdivision (f). Approval of these projects,
22 programs, and activities means approval by the agency of written documents
23 which demonstrate an intent to implement a specific project, program, or activity
24 and is not limited to final approval of a specific project, program, or activity.

25 (f) Any agency which deposits less than the amount required by subdivision (c)
26 into the Low and Moderate Income Housing Fund pursuant to subdivision (d) or
27 (e) shall adopt prior to September 1, 1986, by resolution, after a noticed public
28 hearing, a statement of existing obligations or a statement of existing programs, or
29 both.

30 (1) The agency shall prepare and submit the proposed statement to the
31 legislative body and to the Department of Housing and Community Development
32 prior to giving notice of the public hearing. Notice of the time and place of the
33 public hearing shall be transmitted to the Department of Housing and Community
34 Development at least 15 days prior to the public hearing and notice of the time and
35 place of the public hearing shall be published in a newspaper of general circulation
36 in the community once a week for at least two successive weeks prior to the public
37 hearing. The legislative body shall maintain a record of the public hearing.

38 (2) A copy of the resolution adopted by the agency, together with any
39 amendments to the statement of the agency, shall be transmitted to the Department
40 of Housing and Community Development within 10 days following adoption of
41 the resolution by the agency.

42 (3) A statement of existing obligations shall describe each existing obligation
43 and, based upon the best available information, as determined by the agency, list

1 the total amount of the existing obligation, the annual payments required to be
2 made by the agency pursuant to the existing obligation, and the date the existing
3 obligation will be discharged in full.

4 (4) A statement of existing programs shall list the specific public and private
5 projects, programs, or activities approved prior to January 1, 1986, which are
6 necessary for the orderly completion of the redevelopment plan as it existed on
7 January 1, 1986. No project, program, or activity shall be included on the
8 statement of existing programs unless written evidence of the existence and
9 approval of the project, program, or activity prior to January 1, 1986, is attached to
10 the statement of existing programs.

11 (g) If, pursuant to subdivision (d) or (e), the agency deposits less than 20 percent
12 of the taxes allocated to the agency pursuant to Section 33670 in the 1985–86
13 fiscal year or any subsequent fiscal year in the Low and Moderate Income
14 Housing Fund, the amount equal to the difference between 20 percent of the taxes
15 allocated to the agency pursuant to Section 33670 for each affected project and the
16 amount deposited that year shall constitute a deficit of the project. The agency
17 shall adopt a plan to eliminate the deficit in subsequent years as determined by the
18 agency.

19 (h) The obligations imposed by this section, including deficits, if any, created
20 under this section, are hereby declared to be an indebtedness of the redevelopment
21 project to which they relate, payable from taxes allocated to the agency pursuant to
22 Section 33670, and shall constitute an indebtedness of the agency with respect to
23 the redevelopment project until paid in full.

24 (i) In any litigation to challenge or attack a statement of existing obligations, the
25 decision by the agency after the public hearing to include an existing obligation on
26 the statement of existing obligations, or the decision by the agency after the public
27 hearing to include a project, program, or activity on the statement of existing
28 programs, the court shall uphold the action of the agency unless the court finds
29 that the agency has abused its discretion. The Legislature finds and declares that
30 this standard of review is necessary in order to protect against the possible
31 impairment of existing obligations, programs, and activities because agencies with
32 project areas adopted prior to January 1, 1977, have incurred existing obligations
33 and have adopted projects, programs, and activities with the authority to receive
34 and pledge the entire allocation of funds authorized by Section 33670.

35 **§ 33334.9. Credit and offset for providing low income housing assistance**

36 33334.9. Notwithstanding Sections 33334.2 and 33334.3, assistance provided by
37 an agency to preserve the availability to lower income households of affordable
38 housing units which are assisted or subsidized by public entities and which are
39 threatened with imminent conversion to market rates may be credited and offset
40 against an agency's obligations under Section 33334.2.

1 **§ 33334.10. Excess surplus in Low and Moderate Income Housing Fund**

2 33334.10. (a) Except as otherwise provided in this subdivision, not later than six
3 months following the close of any fiscal year of an agency in which excess surplus
4 accumulates in the agency’s Low and Moderate Income Housing Fund, the agency
5 may adopt a plan pursuant to this section for expenditure of all moneys in the Low
6 and Moderate Income Housing Fund within five years from the end of that fiscal
7 year. The plan may be general and need not be site-specific, but shall include
8 objectives respecting the number and type of housing to be assisted, identification
9 of the entities, which will administer the plan, alternative means of ensuring the
10 affordability of housing units for the longest feasible time, as specified in
11 subdivision (e) of Section 33334.3 the income groups to be assisted, and a
12 schedule by fiscal year for expenditure of the excess surplus.

13 (b) The agency shall separately account for each excess surplus either as part of
14 or in addition to a Low and Moderate Income Housing Fund.

15 (c) If the agency develops a plan for expenditure of excess surplus or other
16 moneys in the Low and Moderate Income Housing Fund, a copy of that plan and
17 any amendments thereto shall be included in the agency’s annual report required
18 by Article 6 (commencing with Section 33080).

19 **§ 33334.12. Failure to timely expend excess surplus in Low and Moderate Income Housing**
20 **Fund**

21 33334.12. (a)(1) Upon failure of the agency to expend or encumber excess
22 surplus in the Low and Moderate Income Housing Fund within one year from the
23 date the moneys become excess surplus, as defined in paragraph (1) of subdivision
24 (g), the agency shall do either of the following:

25 (A) Disburse voluntarily its excess surplus to the county housing authority or to
26 another public agency exercising housing development powers within the
27 territorial jurisdiction of the agency in accordance with subdivision (b).

28 (B) Expend or encumber its excess surplus within two additional years.

29 (2) If an agency, after three years has elapsed from the date that the moneys
30 become excess surplus, has not expended or encumbered its excess surplus, the
31 agency shall be subject to sanctions pursuant to subdivision (e), until the agency
32 has expended or encumbered its excess surplus plus an additional amount, equal to
33 50 percent of the amount of the excess surplus that remains at the end of the three-
34 year period. The additional expenditure shall not be from the agency’s Low and
35 Moderate Income Housing Fund, but shall be used in a manner that meets all
36 requirements for expenditures from that fund.

37 (b) The housing authority or other public agency to which the money is
38 transferred shall utilize the moneys for the purposes of, and subject to the same
39 restrictions that are applicable to, the redevelopment agency under this part, and
40 for that purpose may exercise all of the powers of a housing authority under Part 2
41 (commencing with Section 34200) to an extent not inconsistent with these
42 limitations.

1 (c) Notwithstanding Section 34209 or any other provision of law, for the
2 purpose of accepting a transfer of, and using, moneys pursuant to this section, the
3 housing authority of a county or other public agency may exercise its powers
4 within the territorial jurisdiction of a city redevelopment agency located in that
5 county.

6 (d) The amount of excess surplus that shall be transferred to the housing
7 authority or other public agency because of a failure of the redevelopment agency
8 to expend or encumber excess surplus within one year shall be the amount of the
9 excess surplus that is not so expended or encumbered. The housing authority or
10 other public agency to which the moneys are transferred shall expend or encumber
11 these moneys for authorized purposes not later than three years after the date these
12 moneys were transferred from the Low and Moderate Income Housing Fund.

13 (e)(1) Until a time when the agency has expended or encumbered excess surplus
14 moneys pursuant to subdivision (a), the agency shall be prohibited from
15 encumbering any funds or expending any moneys derived from any source, except
16 that the agency may encumber funds and expend moneys to pay the following
17 obligations, if any, that were incurred by the agency prior to three years from the
18 date the moneys became excess surplus:

19 (A) Bonds, notes, interim certificates, debentures, or other obligations issued by
20 an agency, whether funded, refunded, assumed, or otherwise, pursuant to Article 5
21 (commencing with Section 33640).

22 (B) Loans or moneys advanced to the agency, including, but not limited to, loans
23 from federal, state, or local agencies, or a private entity.

24 (C) Contractual obligations which, if breached, could subject the agency to
25 damages or other liabilities or remedies.

26 (D) Obligations incurred pursuant to Section 33445.

27 (E) Indebtedness incurred pursuant to Section 33334.2 or 33334.6.

28 (F) Obligations incurred pursuant to Section 33401.

29 (G) An amount, to be expended for the operation and administration of the
30 agency, that may not exceed 75 percent of the amount spent for those purposes in
31 the preceding fiscal year.

32 (2) This subdivision shall not be construed to prohibit the expenditure of excess
33 surplus funds or other funds to meet the requirement in paragraph (2) of
34 subdivision (a) that the agency spend or encumber excess surplus funds, plus an
35 amount equal to 50 percent of excess surplus, prior to spending or encumbering
36 funds for any other purpose.

37 (f) Nothing in this section shall be construed to limit any authority a
38 redevelopment agency may have under other provisions of this part to contract
39 with a housing authority for increasing or improving the community's supply of
40 low- and moderate-income housing.

41 (g) For purposes of this section:

42 (1) "Excess surplus" means any unexpended and unencumbered amount in an
43 agency's Low and Moderate Income Housing Fund that exceeds the greater of one

1 million dollars (\$1,000,000) or the aggregate amount deposited into the Low and
2 Moderate Income Housing Fund pursuant to Sections 33334.2 and 33334.6 during
3 the agency's preceding four fiscal years. The first fiscal year to be included in this
4 computation is the 1989-90 fiscal year, and the first date on which an excess
5 surplus may exist is July 1, 1994.

6 (2) Moneys shall be deemed encumbered if committed pursuant to a legally
7 enforceable contract or agreement for expenditure for purposes specified in
8 Section 33334.2 or 33334.3.

9 (3)(A) For purposes of determining whether an excess surplus exists, it is the
10 intent of the Legislature to give credit to agencies which convey land for less than
11 fair market value, on which low- and moderate-income housing is built or is to be
12 built if at least 49 percent of the units developed on the land are available at
13 affordable housing cost to lower income households for at least the time specified
14 in subdivision (e) of Section 33334.3, and otherwise comply with all of the
15 provisions of this division applicable to expenditures of moneys from a low- and
16 moderate-income housing fund established pursuant to Section 33334.3.
17 Therefore, for the sole purpose of determining the amount, if any, of an excess
18 surplus, an agency may make the following calculation: if an agency sells, leases,
19 or grants land acquired with moneys from the Low and Moderate Income Housing
20 Fund, established pursuant to Section 33334.3, for an amount which is below fair
21 market value, and if at least 49 percent of the units constructed or rehabilitated on
22 the land are affordable to lower income households, as defined in Section 50079.5,
23 the difference between the fair market value of the land and the amount the agency
24 receives may be subtracted from the amount of moneys in an agency's Low and
25 Moderate Income Housing Fund.

26 (B) If taxes that are deposited in the Low and Moderate Income Housing Fund
27 are used as security for bonds or other indebtedness, the proceeds of the bonds or
28 other indebtedness, and income and expenditures related to those proceeds, shall
29 not be counted in determining whether an excess surplus exists. The unspent
30 portion of the proceeds of bonds or other indebtedness, and income related thereto,
31 shall be excluded from the calculation of the unexpended and unencumbered
32 amount in the Low and Moderate Income Housing Fund when determining
33 whether an excess surplus exists.

34 (C) Nothing in this subdivision shall be construed to restrict the authority of an
35 agency provided in any other provision of this part to expend funds from the Low
36 and Moderate Income Housing Fund.

37 (D) The department shall develop and periodically revise the methodology to be
38 used in the calculation of excess surplus as required by this section. The director
39 shall appoint an advisory committee to advise in the development of this
40 methodology. The advisory committee shall include department staff, affordable
41 housing advocates, and representatives of the California Redevelopment
42 Association, the California Society of Certified Public Accountants, the

1 Controller, and any other authorities or persons interested in the field that the
2 director deems necessary and appropriate.

3 (h) Communities in which an agency has disbursed excess surplus funds
4 pursuant to this section shall not disapprove a low- or moderate-income housing
5 project funded in whole or in part by the excess surplus funds if the project is
6 consistent with applicable building codes and the land use designation specified in
7 any element of the general plan as it existed on the date the application was
8 deemed complete. A local agency may require compliance with local development
9 standards and policies appropriate to and consistent with meeting the quantified
10 objectives relative to the development of housing, as required in housing elements
11 of the community pursuant to subdivision (b) of Section 65583 of the Government
12 Code.

13 (i) Notwithstanding subdivision (a), any agency that has funds that become
14 excess surplus on July 1, 1994, shall have, pursuant to subdivision (a), until
15 January 1, 1995, to decide to transfer the funds to a housing authority or other
16 public agency, or until January 1, 1997, to expend or encumber those funds, or
17 face sanctions pursuant to subdivision (e).

18 CHAPTER 6. FINANCIAL PROVISIONS

19 Article 1. General

20 § 33607.5. Statutory pass-through payments

21 33607.5. (a)(1) This section shall apply to each redevelopment project area that,
22 pursuant to a redevelopment plan which contains the provisions required by
23 Section 33670, is either: (A) adopted on or after January 1, 1994, including later
24 amendments to these redevelopment plans; or (B) adopted prior to January 1,
25 1994, but amended, after January 1, 1994, to include new territory. For plans
26 amended after January 1, 1994, only the tax increments from territory added by
27 the amendment shall be subject to this section. All the amounts calculated
28 pursuant to this section shall be calculated after the amount required to be
29 deposited in the Low and Moderate Income Housing Fund pursuant to Sections
30 33334.2, 33334.3, and 33334.6 has been deducted from the total amount of tax
31 increment funds received by the agency in the applicable fiscal year.

32 (2) The payments made pursuant to this section shall be in addition to any
33 amounts the affected taxing entities receive pursuant to subdivision (a) of Section
34 33670. The payments made pursuant to this section to the affected taxing entities,
35 including the community, shall be allocated among the affected taxing entities,
36 including the community if the community elects to receive payments, in
37 proportion to the percentage share of property taxes each affected taxing entity,
38 including the community, receives during the fiscal year the funds are allocated,
39 which percentage share shall be determined without regard to any amounts

1 allocated to a city, a city and county, or a county pursuant to Sections 97.68 and
2 97.70 of the Revenue and Taxation Code, and without regard to any allocation
3 reductions to a city, a city and county, a county, a special district, or a
4 redevelopment agency pursuant to Sections 97.71, 97.72, and 97.73 of the
5 Revenue and Taxation Code and Section 33681.12. The agency shall reduce its
6 payments pursuant to this section to an affected taxing entity by any amount the
7 agency has paid, directly or indirectly, pursuant to Section 33445, 33445.5,
8 33445.6, 33446, or any other provision of law other than this section for, or in
9 connection with, a public facility owned or leased by that affected taxing agency,
10 except: (A) any amounts the agency has paid directly or indirectly pursuant to an
11 agreement with a taxing entity adopted prior to January 1, 1994; or (B) any
12 amounts that are unrelated to the specific project area or amendment governed by
13 this section. The reduction in a payment by an agency to a school district,
14 community college district, or county office of education, or for special education,
15 shall be subtracted only from the amount that otherwise would be available for use
16 by those entities for educational facilities pursuant to paragraph (4). If the amount
17 of the reduction exceeds the amount that otherwise would have been available for
18 use for educational facilities in any one year, the agency shall reduce its payment
19 in more than one year.

20 (3) If an agency reduces its payment to a school district, community college
21 district, or county office of education, or for special education, the agency shall do
22 all of the following:

23 (A) Determine the amount of the total payment that would have been made
24 without the reduction.

25 (B) Determine the amount of the total payment without the reduction which: (i)
26 would have been considered property taxes; and (ii) would have been available to
27 be used for educational facilities pursuant to paragraph (4).

28 (C) Reduce the amount available to be used for educational facilities.

29 (D) Send the payment to the school district, community college district, or
30 county office of education, or for special education, with a statement that the
31 payment is being reduced and including the calculation required by this
32 subdivision showing the amount to be considered property taxes and the amount,
33 if any, available for educational facilities.

34 (4)(A) Except as specified in subparagraph (E), of the total amount paid each
35 year pursuant to this section to school districts, 43.3 percent shall be considered to
36 be property taxes for the purposes of paragraph (1) of subdivision (h) of Section
37 42238 of the Education Code, and 56.7 percent shall not be considered to be
38 property taxes for the purposes of that section and shall be available to be used for
39 educational facilities, including, in the case of amounts paid during the 2011–12
40 fiscal year through the 2015–16 fiscal year, inclusive, land acquisition, facility
41 construction, reconstruction, remodeling, maintenance, or deferred maintenance.

42 (B) Except as specified in subparagraph (E), of the total amount paid each year
43 pursuant to this section to community college districts, 47.5 percent shall be

1 considered to be property taxes for the purposes of Section 84751 of the Education
2 Code, and 52.5 percent shall not be considered to be property taxes for the
3 purposes of that section and shall be available to be used for educational facilities,
4 including, in the case of amounts paid during the 2011–12 fiscal year through the
5 2015–16 fiscal year, inclusive, land acquisition, facility construction,
6 reconstruction, remodeling, maintenance, or deferred maintenance.

7 (C) Except as specified in subparagraph (E), of the total amount paid each year
8 pursuant to this section to county offices of education, 19 percent shall be
9 considered to be property taxes for the purposes of Section 2558 of the Education
10 Code, and 81 percent shall not be considered to be property taxes for the purposes
11 of that section and shall be available to be used for educational facilities,
12 including, in the case of amounts paid during the 2011–12 fiscal year through the
13 2015–16 fiscal year, inclusive, land acquisition, facility construction,
14 reconstruction, remodeling, maintenance, or deferred maintenance.

15 (D) Except as specified in subparagraph (E), of the total amount paid each year
16 pursuant to this section for special education, 19 percent shall be considered to be
17 property taxes for the purposes of Section 56712 of the Education Code, and 81
18 percent shall not be considered to be property taxes for the purposes of that section
19 and shall be available to be used for education facilities, including, in the case of
20 amounts paid during the 2011–12 fiscal year through the 2015–16 fiscal year,
21 inclusive, land acquisition, facility construction, reconstruction, remodeling,
22 maintenance, or deferred maintenance.

23 (E) If, pursuant to paragraphs (2) and (3), an agency reduces its payments to an
24 educational entity, the calculation made by the agency pursuant to paragraph (3)
25 shall determine the amount considered to be property taxes and the amount
26 available to be used for educational facilities in the year the reduction was made.

27 (5) Local education agencies that use funds received pursuant to this section for
28 school facilities shall spend these funds at schools that are: (A) within the project
29 area, (B) attended by students from the project area, (C) attended by students
30 generated by projects that are assisted directly by the redevelopment agency, or
31 (D) determined by the governing board of a local education agency to be of benefit
32 to the project area.

33 (b) Commencing with the first fiscal year in which the agency receives tax
34 increments and continuing through the last fiscal year in which the agency
35 receives tax increments, a redevelopment agency shall pay to the affected taxing
36 entities, including the community if the community elects to receive a payment, an
37 amount equal to 25 percent of the tax increments received by the agency after the
38 amount required to be deposited in the Low and Moderate Income Housing Fund
39 has been deducted. In any fiscal year in which the agency receives tax increments,
40 the community that has adopted the redevelopment project area may elect to
41 receive the amount authorized by this paragraph.

42 (c) Commencing with the 11th fiscal year in which the agency receives tax
43 increments and continuing through the last fiscal year in which the agency

1 receives tax increments, a redevelopment agency shall pay to the affected taxing
2 entities, other than the community which has adopted the project, in addition to the
3 amounts paid pursuant to subdivision (b) and after deducting the amount allocated
4 to the Low and Moderate Income Housing Fund, an amount equal to 21 percent of
5 the portion of tax increments received by the agency, which shall be calculated by
6 applying the tax rate against the amount of assessed value by which the current
7 year assessed value exceeds the first adjusted base year assessed value. The first
8 adjusted base year assessed value is the assessed value of the project area in the
9 10th fiscal year in which the agency receives tax increment revenues.

10 (d) Commencing with the 31st fiscal year in which the agency receives tax
11 increments and continuing through the last fiscal year in which the agency
12 receives tax increments, a redevelopment agency shall pay to the affected taxing
13 entities, other than the community which has adopted the project, in addition to the
14 amounts paid pursuant to subdivisions (b) and (c) and after deducting the amount
15 allocated to the Low and Moderate Income Housing Fund, an amount equal to 14
16 percent of the portion of tax increments received by the agency, which shall be
17 calculated by applying the tax rate against the amount of assessed value by which
18 the current year assessed value exceeds the second adjusted base year assessed
19 value. The second adjusted base year assessed value is the assessed value of the
20 project area in the 30th fiscal year in which the agency receives tax increments.

21 (e)(1) Prior to incurring any loans, bonds, or other indebtedness, except loans or
22 advances from the community, the agency may subordinate to the loans, bonds, or
23 other indebtedness the amount required to be paid to an affected taxing entity by
24 this section, provided that the affected taxing entity has approved these
25 subordinations pursuant to this subdivision.

26 (2) At the time the agency requests an affected taxing entity to subordinate the
27 amount to be paid to it, the agency shall provide the affected taxing entity with
28 substantial evidence that sufficient funds will be available to pay both the debt
29 service and the payments required by this section, when due.

30 (3) Within 45 days after receipt of the agency's request, the affected taxing
31 entity shall approve or disapprove the request for subordination. An affected
32 taxing entity may disapprove a request for subordination only if it finds, based
33 upon substantial evidence, that the agency will not be able to pay the debt
34 payments and the amount required to be paid to the affected taxing entity. If the
35 affected taxing entity does not act within 45 days after receipt of the agency's
36 request, the request to subordinate shall be deemed approved and shall be final and
37 conclusive.

38 (f)(1) The Legislature finds and declares both of the following:

39 (A) The payments made pursuant to this section are necessary in order to
40 alleviate the financial burden and detriment that affected taxing entities may incur
41 as a result of the adoption of a redevelopment plan, and payments made pursuant
42 to this section will benefit redevelopment project areas.

1 (B) The payments made pursuant to this section are the exclusive payments that
2 are required to be made by a redevelopment agency to affected taxing entities
3 during the term of a redevelopment plan.

4 (2) Notwithstanding any other provision of law, a redevelopment agency shall
5 not be required, either directly or indirectly, as a measure to mitigate a significant
6 environmental effect or as part of any settlement agreement or judgment brought
7 in any action to contest the validity of a redevelopment plan pursuant to Section
8 33501, to make any other payments to affected taxing entities, or to pay for public
9 facilities that will be owned or leased to an affected taxing entity.

10 (g) As used in this section, a “local education agency” is a school district, a
11 community college district, or a county office of education.

12 **§ 33607.7. Pass-through payments for RDAs that satisfy specified criteria**

13 33607.7. (a) This section shall apply to a redevelopment plan amendment for
14 any redevelopment plans adopted prior to January 1, 1994, that increases the
15 limitation on the number of dollars to be allocated to the redevelopment agency or
16 that increases, or eliminates pursuant to paragraph (1) of subdivision (e) of Section
17 33333.6, the time limit on the establishing of loans, advances, and indebtedness
18 established pursuant to paragraphs (1) and (2) of subdivision (a) of Section
19 33333.6, as those paragraphs read on December 31, 2001, or that lengthens the
20 period during which the redevelopment plan is effective if the redevelopment plan
21 being amended contains the provisions required by subdivision (b) of Section
22 33670. However, this section shall not apply to those redevelopment plans that add
23 new territory.

24 (b) If a redevelopment agency adopts an amendment that is governed by the
25 provisions of this section, it shall pay to each affected taxing entity either of the
26 following:

27 (1) If an agreement exists that requires payments to the taxing entity, the amount
28 required to be paid by an agreement between the agency and an affected taxing
29 entity entered into prior to January 1, 1994.

30 (2) If an agreement does not exist, the amounts required pursuant to subdivisions
31 (b), (c), (d), and (e) of Section 33607.5, until termination of the redevelopment
32 plan, calculated against the amount of assessed value by which the current year
33 assessed value exceeds an adjusted base year assessed value. The amounts shall be
34 allocated between property taxes and educational facilities, including, in the case
35 of amounts paid during the 2011–12 fiscal year through the 2015–16 fiscal year,
36 inclusive, land acquisition, facility construction, reconstruction, remodeling,
37 maintenance, or deferred maintenance, according to the appropriate formula in
38 paragraph (3) of subdivision (a) of Section 33607.5. In determining the applicable
39 amount under Section 33607.5, the first fiscal year shall be the first fiscal year
40 following the fiscal year in which the adjusted base year value is determined.

41 (c) The adjusted base year assessed value shall be the assessed value of the
42 project area in the year in which the limitation being amended would have taken

1 effect without the amendment or, if more than one limitation is being amended,
2 the first year in which one or more of the limitations would have taken effect
3 without the amendment. The agency shall commence making these payments
4 pursuant to the terms of the agreement, if applicable, or, if an agreement does not
5 exist, in the first fiscal year following the fiscal year in which the adjusted base
6 year value is determined.

7 **§ 33607.8. Payment to state water supply contractor**

8 33607.8. (a) Notwithstanding any other provision of law, a redevelopment
9 agency may make payments from tax increment funds to an affected taxing entity
10 that is a state water supply contractor in accordance with both of the following
11 requirements:

12 (1) The payment shall not exceed the amount that, but for the activities of the
13 redevelopment agency, otherwise would have been received by the affected taxing
14 entity pursuant to a tax that was originally approved by the state’s voters prior to
15 July 1, 1978.

16 (2) The payments shall be made for the purpose of funding the payments of the
17 state water supply contractor pursuant to its water supply contract with the
18 Department of Water Resources for the costs of building, operating, maintaining,
19 and replacing the State Water Resources Development System.

20 (b) Allocations made by a redevelopment agency for payments made pursuant to
21 subdivision (a) shall not cause any reduction in payments to an affected taxing
22 entity pursuant to paragraph (2) of subdivision (a) of Section 33607.5.

23 (c) For purposes of this section:

24 (1) “State Water Resources Development System” has the same meaning as
25 used in Section 12931 of the Water Code.

26 (2) “State water supply contractor” has the same meaning as used in Section
27 11975 of the Water Code.

28 **§ 33608. Validation of specified “reimbursement agreement”**

29 33608. (a) All acts and proceedings heretofore or hereafter taken under color of
30 law by a charter city meeting the criteria of subdivision (g) and its redevelopment
31 agency in a county with a population over 4,000,000 with respect to a
32 reimbursement agreement executed pursuant to Section 33445 of the Health and
33 Safety Code dated July 7, 1986, and as amended as of July 13, 1987, are hereby
34 confirmed, validated, and declared legally effective to the extent the agreement
35 could have been authorized by the Legislature initially, except as to limitations
36 imposed by the California and United States Constitutions. The validation
37 provided by this section shall be the only determination necessary to satisfy the
38 requirement of subdivision (e) of Section 33675 of the Health and Safety Code
39 and those provisions shall not apply to the agreement otherwise. The Legislature
40 finds and declares that this section is consistent with existing law and does not

1 conflict with either Article XIII B or Section 16 of Article XVI of the California
2 Constitution.

3 (b) If the commencement of reimbursement of the principal amount of
4 indebtedness of the agency under an agreement referred to in subdivision (a), or
5 any predecessor agreement executed pursuant to Section 33445 of the Health and
6 Safety Code, is delayed beyond 10 years after the date of execution of the
7 agreement for any reason, the agency and the city may amend or enforce the
8 reimbursement agreement, or any predecessor thereto, to provide for the payment
9 of interest. The interest may accrue, as to reimbursement for any particular
10 property or improvement, from the date of acquisition, construction, or installation
11 thereof until the date of the reimbursement agreement and thereafter, until
12 payment of the principal and interest by the agency. The interest shall be at the
13 rate specified in the reimbursement agreement, not to exceed the rate of interest
14 earned by the treasurer of the city on investments of the city's pooled funds.
15 Subject to that limitation, interest on the indebtedness may be calculated pursuant
16 to any generally accepted method of computation, including, without limitation,
17 any method which allows the compounding of interest monthly or at other
18 appropriate intervals.

19 (c) Reimbursements for any indebtedness under the reimbursement agreement
20 referred to in subdivision (a) shall be (1) first allocated for the funding
21 requirements of the fire and police retirement fund of the city and (2) then
22 deposited into the Low and Moderate Income Housing Fund of the agency.
23 However, this section shall not be construed to authorize any reimbursement of
24 indebtedness which is not permissible under Section 16 of Article XVI of the
25 California Constitution.

26 (d) The reimbursement agreement shall not be amended without the approval of
27 the Legislature, by statute, and the obligation created by the reimbursement
28 agreement shall terminate on December 31, 2014.

29 (e) In addition to any amounts provided to the city's fire and police retirement
30 system under the reimbursement agreement, to the extent permitted by law, the
31 city shall undertake, by ordinance, to contribute additional moneys from its
32 general fund annually and transfer assets (including, without limitation, income
33 producing assets such as parking garages) as necessary and actuarially appropriate
34 to satisfy its fire and police retirement fund obligation. When this obligation has
35 been actuarily funded, all assets contributed pursuant to this section shall revert to
36 the city.

37 (f) The obligations created by the reimbursement agreement specified in
38 subdivision (a) shall be deemed to be existing obligations for purposes of
39 subdivision (d) of Section 33334.6 incurred by the agency to finance a
40 redevelopment project existing on, and created prior to, January 1, 1986. The
41 statement of existing obligations required by subdivision (f) of Section 33334.6
42 shall be deemed amended to include the obligations created by this reimbursement
43 agreement. The agency shall make deposits into the Low and Moderate Income

1 Housing Fund of the agency in accordance with the reimbursement agreement.
2 These deposits shall be the only obligations that the agency shall have to deposit
3 money in the Low and Moderate Income Housing Fund under subdivision (a) of
4 Section 33334.2 or Section 33334.6, with respect to the project area subject to the
5 reimbursement agreement, notwithstanding any other provision of law.

6 (g) This section applies to any charter city meeting all of the following criteria:

7 (1) The city's retirement system is part of the city's charter and was approved by
8 the voters before July 1, 1978.

9 (2) The city did not levy a separate ad valorem property tax rate to support the
10 retirement system in the 1983–84 fiscal year.

11 (3) The retirement system provides for a cost-of-living adjustment which is
12 indexed to a consumer price index and does not limit the annual increases which
13 may be paid to members after their retirement.

14 (4) The retirement system is not currently available to newly hired fire and
15 police employees and will not be available in the future.

16 (5) Before January 1, 1985, the city unsuccessfully litigated a limit to the cost-
17 of-living adjustment which may be paid to members of the retirement system after
18 their retirement.

19 (6) The governing body of the city has, by resolution, elected to make this
20 section applicable to it. This election shall be final and binding and may not be
21 revoked for any reason.

22 (h) "Agency," as used in this section, includes a community development
23 commission exercising the powers of a redevelopment agency pursuant to Section
24 34141.

25 Article 6. Taxation

26 § 33670.9. Payments to Orange County

27 33670.9. (a) For a period of 20 years commencing on July 1, 1996, the Orange
28 County Development Agency shall transfer to the general fund of the County of
29 Orange an amount equal to four million dollars (\$4,000,000) a year in two equal
30 installments on June 15 and February 15 of each year. The Orange County
31 Development Agency shall not incur any obligation with respect to loans,
32 advances of money, or indebtedness, whether funded, refunded, assumed, or
33 otherwise, that would impair its ability to make the foregoing transfers or that
34 would cause the foregoing transfers to violate Section 16 of Article XVI of the
35 California Constitution or subdivision (b) of Section 33670. Funds allocated to
36 low- and moderate-income housing pursuant to Section 33334.2 shall not be used
37 for purposes of this section.

38 (b) This section shall not take effect unless and until (1) a plan of adjustment is
39 confirmed in Case No. SA-94-22272-JR in the United States Bankruptcy Court for
40 the Central District of California or (2) a trustee is appointed pursuant to Chapter

1 10 (commencing with Section 30400) of Division 3 of Title 3 of the Government
2 Code.

3 **§ 33670.95. Alternative payments to Orange County**

4 33670.95. (a) The board of supervisors of a county of the second class may,
5 upon adoption of a resolution or resolutions approved by a majority of all of its
6 members, provide for the repayment by the county's redevelopment agency of its
7 debt to the county for general and specific benefits previously provided by the
8 county to redevelopment project areas within the county. Such resolution or
9 resolutions may provide for the transfer of (1) amounts equal to four million
10 dollars (\$4,000,000) a year in two equal installments on June 15 and February 15
11 of each year and (2) such additional amounts, at such times as are specified in the
12 resolution or resolutions, as may be necessary to assure full repayment of the debt,
13 provided that those additional amounts shall not exceed, in the aggregate, the sum
14 of any amounts required to be repaid by the county to the redevelopment agency
15 pursuant to, or as a consequence of, the final determination described in
16 subdivision (c).

17 (b) A redevelopment agency of a county of the second class shall not incur any
18 obligation with respect to loans, advances of money, or indebtedness, whether
19 funded, refunded, assumed, or otherwise, that would impair its ability to make the
20 transfers described in subdivision (a) or that would cause those transfers to violate
21 Section 16 of Article XVI of the California Constitution or subdivision (b) of
22 Section 33670. Funds allocated to low- and moderate-income housing pursuant to
23 Section 33334.2 shall not be used for purposes of this section.

24 (c) This section shall become operative on the earlier of the date that a court of
25 appellate jurisdiction renders a final determination invalidating Chapter 745 of the
26 Statutes of 1995 or the date of a court action suspending or preventing the
27 operation of any provision of Chapter 745. This section shall become inoperative
28 on July 1, 2016, and, as of January 1, 2017, is repealed, unless a later enacted
29 statute, that becomes operative on or before January 1, 2017, deletes or extends the
30 dates on which it becomes inoperative and is repealed.

31 **Article 7. School Finance**

32 **§ 33680. Legislative findings and declarations**

33 33680. (a) The Legislature finds and declares that the effectuation of the primary
34 purposes of the Community Redevelopment Law, including job creation,
35 attracting new private commercial investments, the physical and social
36 improvement of residential neighborhoods, and the provision and maintenance of
37 low- and moderate-income housing, is dependent upon the existence of an
38 adequate and financially solvent school system which is capable of providing for
39 the safety and education of students who live within both redevelopment project
40 areas and housing assisted by redevelopment agencies. The attraction of new

1 businesses to redevelopment project areas depends upon the existence of an
2 adequately trained work force, which can only be accomplished if education at the
3 primary and secondary schools is adequate and general education and job training
4 at community colleges is available. The ability of communities to build residential
5 development and attract residents in redevelopment project areas depends upon the
6 existence of adequately maintained and operating schools serving the
7 redevelopment project area. The development and maintenance of low- and
8 moderate-income housing both within redevelopment project areas and throughout
9 the community can only be successful if adequate schools exist to serve the
10 residents of this housing.

11 (b) Redevelopment agencies have financially assisted schools which benefit and
12 serve the project area by paying part or all of land and the construction of school
13 facilities and other improvements pursuant to the authority in Section 33445.
14 Redevelopment agencies have financially assisted schools to alleviate the financial
15 burden or detriment caused by the establishment of redevelopment project areas
16 pursuant to the authority in Sections 33401 and 33445.5. Funds also have been
17 allocated to schools and community colleges pursuant to the authority in Section
18 33676.

19 (c) The Legislature further finds and declares that, because of the reduced funds
20 available to the state to assist schools and community colleges which benefit and
21 serve redevelopment project areas during the 1992–93, 1993–94, and 1994–95
22 fiscal years, it is necessary for redevelopment agencies to make additional
23 payments to assist the programs and operations of these schools and colleges in
24 order to ensure that the objectives stated in this section can be met. The
25 Legislature further finds and declares that the payments to schools and community
26 college districts pursuant to Section 33681 are of benefit to redevelopment project
27 areas.

28 (d) The Legislature further finds and declares all of the following:

29 (1) Because of the reduced funds available to the state to assist schools that
30 benefit and serve redevelopment project areas during the 2008–09 fiscal year, it is
31 necessary for redevelopment agencies to make additional payments to assist the
32 programs and operations of these schools to ensure that the objectives stated in
33 this section can be met.

34 (2) The payments to schools pursuant to Section 33685 are of benefit to
35 redevelopment project areas.

36 **§ 33681.6. Exception to former Section 33681.5**

37 33681.6. Notwithstanding any other provision of this article to the contrary, the
38 amount determined pursuant to subparagraphs (A) and (B) of paragraph (2) of
39 subdivision (a) of Section 33681.5 shall not include any tax increment apportioned
40 to the downtown project area of a charter city meeting all of the criteria specified
41 in Section 33608.

1 **§ 33681.7. RDA ERAF contribution in 2002-03 fiscal year**

2 33681.7. (a)(1) During the 2002–03 fiscal year, a redevelopment agency shall,
3 prior to May 10, remit an amount equal to the amount determined for that agency
4 pursuant to subparagraph (I) of paragraph (2) to the county auditor for deposit in
5 the county’s Educational Revenue Augmentation Fund created pursuant to Article
6 3 (commencing with Section 97) of Chapter 6 of Part 0.5 of Division 1 of the
7 Revenue and Taxation Code.

8 (2) For the 2002–03 fiscal year, on or before October 1, the Director of Finance
9 shall do all of the following:

10 (A) Determine the net tax increment apportioned to each agency pursuant to
11 Section 33670, excluding any amounts apportioned to affected taxing agencies
12 pursuant to Section 33401 or 33676, in the 2000–01 fiscal year.

13 (B) Determine the net tax increment apportioned to all agencies pursuant to
14 Section 33670, excluding any amounts apportioned to affected taxing agencies
15 pursuant to Section 33401 or 33676, in the 2000–01 fiscal year.

16 (C) Determine a percentage factor by dividing thirty-seven million five hundred
17 thousand dollars (\$37,500,000) by the amount determined pursuant to
18 subparagraph (B).

19 (D) Determine an amount for each agency by multiplying the amount
20 determined pursuant to subparagraph (A) by the percentage factor determined
21 pursuant to subparagraph (C).

22 (E) Determine the total amount of property tax revenue apportioned to each
23 agency pursuant to Section 33670, including any amounts apportioned to affected
24 taxing agencies pursuant to Section 33401 or 33676, in the 2000–01 fiscal year.

25 (F) Determine the total amount of property tax revenue apportioned to all
26 agencies pursuant to Section 33670, including any amounts apportioned to
27 affected taxing agencies pursuant to Section 33401 or 33676, in the 2000–01 fiscal
28 year.

29 (G) Determine a percentage factor by dividing thirty-seven million five hundred
30 thousand dollars (\$37,500,000) by the amount determined pursuant to
31 subparagraph (F).

32 (H) Determine an amount for each agency by multiplying the amount
33 determined pursuant to subparagraph (E) by the percentage factor determined
34 pursuant to subparagraph (G).

35 (I) Add the amount determined pursuant to subparagraph (D) to the amount
36 determined pursuant to subparagraph (H).

37 (J) Notify each agency and each legislative body of the amount determined
38 pursuant to subparagraph (I).

39 (K) Notify each county auditor of the amounts determined pursuant to
40 subparagraph (I) for each agency in his or her county.

41 (b)(1) Notwithstanding Sections 33334.2, 33334.3, and 33334.6, and any other
42 provision of law, in order to make the full allocation required by this section, an
43 agency may borrow up to 50 percent of the amount required to be allocated to the

1 Low and Moderate Income Housing Fund pursuant to Sections 33334.2, 33334.3,
2 and 33334.6 during the 2002–03 fiscal year, unless executed contracts exist that
3 would be impaired if the agency reduced the amount allocated to the Low and
4 Moderate Income Housing Fund pursuant to the authority of this subdivision.

5 (2) As a condition of borrowing pursuant to this subdivision, an agency shall
6 make a finding that there are insufficient other moneys to meet the requirements of
7 subdivision (a). Funds borrowed pursuant to this subdivision shall be repaid in full
8 within 10 years following the date on which moneys were borrowed.

9 (c) In order to make the allocation required by this section, an agency may use
10 any funds that are legally available and not legally obligated for other uses,
11 including, but not limited to, reserve funds, proceeds of land sales, proceeds of
12 bonds or other indebtedness, lease revenues, interest, and other earned income. No
13 moneys held in a low- and moderate-income fund as of July 1 of that fiscal year
14 may be used for this purpose.

15 (d) The legislative body shall by March 1 report to the county auditor as to how
16 the agency intends to fund the allocation required by this section.

17 (e) The allocation obligations imposed by this section, including amounts owed,
18 if any, created under this section, are hereby declared to be an indebtedness of the
19 redevelopment project to which they relate, payable from taxes allocated to the
20 agency pursuant to Section 33670, and shall constitute an indebtedness of the
21 agency with respect to the redevelopment project until paid in full.

22 (f) It is the intent of the Legislature, in enacting this section, that these
23 allocations directly or indirectly assist in the financing or refinancing, in whole or
24 in part, of the community’s redevelopment projects pursuant to Section 16 of
25 Article XVI of the California Constitution.

26 (g) In making the determinations required by subdivision (a), the Director of
27 Finance shall use those amounts reported as the “Tax Increment Retained by
28 Agency” for all agencies and for each agency in Table 7 of the 2000–01 fiscal year
29 Controller’s State of California Community Redevelopment Agencies Annual
30 Report.

31 (h) If revised reports have been accepted by the Controller on or before January
32 1, 2003, the Director of Finance shall use appropriate data that has been certified
33 by the Controller for the purpose of making the determinations required by
34 subdivision (a).

35 **§ 33681.8. Loan from legislative body to make ERAF payment in 2002-03 fiscal year**

36 33681.8. (a)(1) For the purposes of this section, “existing indebtedness” means
37 one or more of the following obligations incurred by a redevelopment agency prior
38 to the effective date of this section, the payment of which is to be made in whole
39 or in part, directly or indirectly, out of taxes allocated to the agency pursuant to
40 Section 33670, and that is required by law or provision of the existing
41 indebtedness to be made during the fiscal year of the relevant allocation required
42 by Section 33681.7:

1 (A) Bonds, notes, interim certificates, debentures, or other obligations issued by
2 the agency, whether funded, refunded, assumed, or otherwise, pursuant to Article
3 5 (commencing with Section 33640).

4 (B) Loans or moneys advanced to the agency, including, but not limited to, loans
5 from federal, state, or local agencies, or a private entity.

6 (C) A contractual obligation that, if breached, could subject the agency to
7 damages or other liabilities or remedies.

8 (D) An obligation incurred pursuant to Section 33445.

9 (E) Indebtedness incurred pursuant to Section 33334.2.

10 (F) An amount, to be expended for the operation and administration of the
11 agency, that may not exceed 90 percent of the amount spent for those purposes in
12 the 2000–01 fiscal year.

13 (G) Obligations imposed by law with respect to activities that occurred prior to
14 the effective date of the act that adds this section.

15 (2) Existing indebtedness incurred prior to the effective date of this section may
16 be refinanced, refunded, or restructured after that date, and shall remain existing
17 indebtedness for the purposes of this section, if the annual debt service during that
18 fiscal year does not increase over the prior fiscal year and the refinancing does not
19 reduce the ability of the agency to make the payment required by subdivision (a)
20 of Section 33681.7.

21 (3) For the purposes of this section, indebtedness shall be deemed to be incurred
22 prior to the effective date of this section if the agency has entered into a binding
23 contract subject to normal marketing conditions, to deliver the indebtedness, or if
24 the redevelopment agency has received bids for the sale of the indebtedness prior
25 to that date and the indebtedness is issued for value and evidence thereof is
26 delivered to the initial purchaser no later than 30 days after the date of the contract
27 or sale.

28 (b) During the 2002–03 fiscal year, an agency that has adopted a resolution
29 pursuant to subdivision (c) may, pursuant to subdivision (a) of Section 33681.7,
30 allocate to the auditor less than the amount required by subdivision (a) of Section
31 33681.7, if the agency finds that either of the following has occurred:

32 (1) That the difference between the amount allocated to the agency and the
33 amount required by subdivision (a) of Section 33681.7 is necessary to make
34 payments on existing indebtedness that are due or required to be committed, set
35 aside, or reserved by the agency during the applicable fiscal year and that are used
36 by the agency for that purpose, and the agency has no other funds that can be used
37 to pay this existing indebtedness, and no other feasible method to reduce or avoid
38 this indebtedness.

39 (2) The agency has no other funds to make the allocation required by
40 subdivision (a) of Section 33681.7.

41 (c)(1) Any agency that, pursuant to subdivision (b), allocates to the auditor less
42 than the amount required by subdivision (a) of Section 33681.7 shall adopt, prior

1 to December 31, 2002, after a noticed public hearing, a resolution that lists all of
2 the following:

3 (A) Each existing indebtedness incurred prior to the effective date of this
4 section.

5 (B) Each indebtedness on which a payment is required to be made during the
6 2002–03 fiscal year.

7 (C) The amount of each payment, the time when it is required to be paid, and the
8 total of the payments required to be made during the 2002–03 fiscal year. For
9 indebtedness that bears interest at a variable rate, or for short-term indebtedness
10 that is maturing during the fiscal year and that is expected to be refinanced, the
11 amount of payments during the fiscal year shall be estimated by the agency.

12 (2) The information contained in the resolution required by this subdivision shall
13 be reviewed for accuracy by the chief fiscal officer of the agency.

14 (3) The legislative body shall additionally adopt the resolution required by this
15 section.

16 (d)(1) Any agency that, pursuant to subdivision (b), determines that it will be
17 unable in the 2002–03 fiscal year, to allocate the full amount required by
18 subdivision (a) of Section 33681.7 shall, subject to paragraph (3), enter into an
19 agreement with the legislative body by February 15, 2003, to fund the payment of
20 the difference between the full amount required to be paid pursuant to subdivision
21 (a) of Section 33681.7 and the amount available for allocation by the agency.

22 (2) The obligations imposed by paragraph (1) are hereby declared to be
23 indebtedness incurred by the redevelopment agency to finance a portion of a
24 redevelopment project within the meaning of Section 16 of Article XVI of the
25 California Constitution. This indebtedness shall be payable from tax revenues
26 allocated to the agency pursuant to Section 33670, and any other funds received by
27 the agency. The obligations imposed by paragraph (1) shall remain an
28 indebtedness of the agency to the legislative body until paid in full, or until the
29 agency and the legislative body otherwise agree.

30 (3) The agreement described in paragraph (1) shall be subject to these terms and
31 conditions specified in a written agreement between the legislative body and the
32 agency.

33 (e) If the agency fails, under either Section 33681.7 or subdivision (d), to
34 transmit the full amount of funds required by Section 33681.7, is precluded by
35 court order from transmitting that amount, or is otherwise unable to meet its full
36 obligation pursuant to Section 33681.7, the county auditor, by no later than May
37 15, 2003, shall transfer any amount necessary to meet the obligation determined
38 for that agency in subparagraph (D) of paragraph (2) of subdivision (a) of Section
39 33681.7 from the legislative body’s property tax allocation pursuant to Chapter 6
40 (commencing with Section 95) of Part 0.5 of Division 1 of the Revenue and
41 Taxation Code.

1 **§ 33681.9. RDA ERAF contribution in 2003-04 fiscal year**

2 33681.9. (a)(1) During the 2003–04 fiscal year, a redevelopment agency shall,
3 prior to May 10, remit an amount equal to the amount determined for that agency
4 pursuant to subparagraph (I) of paragraph (2) to the county auditor for deposit in
5 the county’s Educational Revenue Augmentation Fund created pursuant to Article
6 3 (commencing with Section 97) of Chapter 6 of Part 0.5 of Division 1 of the
7 Revenue and Taxation Code.

8 (2) For the 2003–04 fiscal year, on or before October 1, the Director of Finance
9 shall do all of the following:

10 (A) Determine the net tax increment apportioned to each agency pursuant to
11 Section 33670, excluding any amounts apportioned to affected taxing agencies
12 pursuant to Section 33401, 33607.5, or 33676, in the 2001–02 fiscal year.

13 (B) Determine the net tax increment apportioned to all agencies pursuant to
14 Section 33670, excluding any amounts apportioned to affected taxing agencies
15 pursuant to Section 33401, 33607.5, or 33676, in the 2001–02 fiscal year.

16 (C) Determine a percentage factor by dividing sixty-seven million five hundred
17 thousand dollars (\$67,500,000) by the amount determined pursuant to
18 subparagraph (B).

19 (D) Determine an amount for each agency by multiplying the amount
20 determined pursuant to subparagraph (A) by the percentage factor determined
21 pursuant to subparagraph (C).

22 (E) Determine the total amount of property tax revenue apportioned to each
23 agency pursuant to Section 33670, including any amounts apportioned to affected
24 taxing agencies pursuant to Section 33401, 33607.5, or 33676, in the 2001–02
25 fiscal year.

26 (F) Determine the total amount of property tax revenue apportioned to all
27 agencies pursuant to Section 33670, including any amounts apportioned to
28 affected taxing agencies pursuant to Section 33401, 33607.5, or 33676, in the
29 2001–02 fiscal year.

30 (G) Determine a percentage factor by dividing sixty-seven million five hundred
31 thousand dollars (\$67,500,000) by the amount determined pursuant to
32 subparagraph (F).

33 (H) Determine an amount for each agency by multiplying the amount
34 determined pursuant to subparagraph (E) by the percentage factor determined
35 pursuant to subparagraph (G).

36 (I) Add the amount determined pursuant to subparagraph (D) to the amount
37 determined pursuant to subparagraph (H).

38 (J) Notify each agency and each legislative body of the amount determined
39 pursuant to subparagraph (I).

40 (K) Notify each county auditor of the amounts determined pursuant to
41 subparagraph (I) for each agency in his or her county.

42 (b)(1) Notwithstanding Sections 33334.2, 33334.3, and 33334.6, and any other
43 provision of law, in order to make the full allocation required by this section, an

1 agency may borrow up to 50 percent of the amount required to be allocated to the
2 Low and Moderate Income Housing Fund pursuant to Sections 33334.2, 33334.3,
3 and 33334.6 during the 2003–04 fiscal year, unless executed contracts exist that
4 would be impaired if the agency reduced the amount allocated to the Low and
5 Moderate Income Housing Fund pursuant to the authority of this subdivision.

6 (2) As a condition of borrowing pursuant to this subdivision, an agency shall
7 make a finding that there are insufficient other moneys to meet the requirements of
8 subdivision (a). Funds borrowed pursuant to this subdivision shall be repaid in full
9 within 10 years following the date on which moneys were borrowed.

10 (c) In order to make the allocation required by this section, an agency may use
11 any funds that are legally available and not legally obligated for other uses,
12 including, but not limited to, reserve funds, proceeds of land sales, proceeds of
13 bonds or other indebtedness, lease revenues, interest, and other earned income. No
14 moneys held in a low- and moderate-income fund as of July 1 of that fiscal year
15 may be used for this purpose.

16 (d) The legislative body shall by March 1 report to the county auditor as to how
17 the agency intends to fund the allocation required by this section, or that the
18 legislative body intends to remit the amount in lieu of the agency pursuant to
19 Section 33681.11.

20 (e) The allocation obligations imposed by this section, including amounts owed,
21 if any, created under this section, are hereby declared to be an indebtedness of the
22 redevelopment project to which they relate, payable from taxes allocated to the
23 agency pursuant to Section 33670, and shall constitute an indebtedness of the
24 agency with respect to the redevelopment project until paid in full.

25 (f) It is the intent of the Legislature, in enacting this section, that these
26 allocations directly or indirectly assist in the financing or refinancing, in whole or
27 in part, of the community’s redevelopment projects pursuant to Section 16 of
28 Article XVI of the California Constitution.

29 (g) In making the determinations required by subdivision (a), the Director of
30 Finance shall use those amounts reported as the “Tax Increment Retained by
31 Agency” for all agencies and for each agency in Table 7 of the 2001–02 fiscal year
32 Controller’s State of California Community Redevelopment Agencies Annual
33 Report.

34 (h) If revised reports have been accepted by the Controller on or before January
35 1, 2004, the Director of Finance shall use appropriate data that has been certified
36 by the Controller for the purpose of making the determinations required by
37 subdivision (a).

38 **§ 33681.10. Loan from legislative body to make ERAF payment in 2003-04 fiscal year**

39 33681.10. (a)(1) For the purposes of this section, “existing indebtedness” means
40 one or more of the following obligations incurred by a redevelopment agency prior
41 to the effective date of this section, the payment of which is to be made in whole
42 or in part, directly or indirectly, out of taxes allocated to the agency pursuant to

1 Section 33670, and that is required by law or provision of the existing
2 indebtedness to be made during the fiscal year of the relevant allocation required
3 by Section 33681.9:

4 (A) Bonds, notes, interim certificates, debentures, or other obligations issued by
5 the agency, whether funded, refunded, assumed, or otherwise, pursuant to Article
6 5 (commencing with Section 33640).

7 (B) Loans or moneys advanced to the agency, including, but not limited to, loans
8 from federal, state, or local agencies, or a private entity.

9 (C) A contractual obligation that, if breached, could subject the agency to
10 damages or other liabilities or remedies.

11 (D) An obligation incurred pursuant to Section 33445.

12 (E) Indebtedness incurred pursuant to Section 33334.2.

13 (F) An amount, to be expended for the operation and administration of the
14 agency, that may not exceed 90 percent of the amount spent for those purposes in
15 the 2001–02 fiscal year.

16 (G) Obligations imposed by law with respect to activities that occurred prior to
17 the effective date of the act that adds this section.

18 (2) Existing indebtedness incurred prior to the effective date of this section may
19 be refinanced, refunded, or restructured after that date, and shall remain existing
20 indebtedness for the purposes of this section, if the annual debt service during that
21 fiscal year does not increase over the prior fiscal year and the refinancing does not
22 reduce the ability of the agency to make the payment required by subdivision (a)
23 of Section 33681.9.

24 (3) For the purposes of this section, indebtedness shall be deemed to be incurred
25 prior to the effective date of this section if the agency has entered into a binding
26 contract subject to normal marketing conditions, to deliver the indebtedness, or if
27 the redevelopment agency has received bids for the sale of the indebtedness prior
28 to that date and the indebtedness is issued for value and evidence thereof is
29 delivered to the initial purchaser no later than 30 days after the date of the contract
30 or sale.

31 (b) During the 2003–04 fiscal year, an agency that has adopted a resolution
32 pursuant to subdivision (c) may, pursuant to subdivision (a) of Section 33681.9,
33 allocate to the auditor less than the amount required by subdivision (a) of Section
34 33681.9, if the agency finds that either of the following has occurred:

35 (1) That the difference between the amount allocated to the agency and the
36 amount required by subdivision (a) of Section 33681.9 is necessary to make
37 payments on existing indebtedness that are due or required to be committed, set
38 aside, or reserved by the agency during the applicable fiscal year and that are used
39 by the agency for that purpose, and the agency has no other funds that can be used
40 to pay this existing indebtedness, and no other feasible method to reduce or avoid
41 this indebtedness.

42 (2) The agency has no other funds to make the allocation required by
43 subdivision (a) of Section 33681.9.

1 (c)(1) Any agency that, pursuant to subdivision (b), intends to allocate to the
2 auditor less than the amount required by subdivision (a) of Section 33681.9 shall
3 adopt, prior to December 31, 2003, after a noticed public hearing, a resolution that
4 lists all of the following:

5 (A) Each existing indebtedness incurred prior to the effective date of this
6 section.

7 (B) Each indebtedness on which a payment is required to be made during the
8 2003–04 fiscal year.

9 (C) The amount of each payment, the time when it is required to be paid, and the
10 total of the payments required to be made during the 2003–04 fiscal year. For
11 indebtedness that bears interest at a variable rate, or for short-term indebtedness
12 that is maturing during the fiscal year and that is expected to be refinanced, the
13 amount of payments during the fiscal year shall be estimated by the agency.

14 (2) The information contained in the resolution required by this subdivision shall
15 be reviewed for accuracy by the chief fiscal officer of the agency.

16 (3) The legislative body shall additionally adopt the resolution required by this
17 section.

18 (d)(1) Any agency that, pursuant to subdivision (b), determines that it will be
19 unable in the 2003–04 fiscal year, to allocate the full amount required by
20 subdivision (a) of Section 33681.9 shall, subject to paragraph (3), enter into an
21 agreement with the legislative body by February 15, 2004, to fund the payment of
22 the difference between the full amount required to be paid pursuant to subdivision
23 (a) of Section 33681.9 and the amount available for allocation by the agency.

24 (2) The obligations imposed by paragraph (1) are hereby declared to be
25 indebtedness incurred by the redevelopment agency to finance a portion of a
26 redevelopment project within the meaning of Section 16 of Article XVI of the
27 California Constitution. This indebtedness shall be payable from tax revenues
28 allocated to the agency pursuant to Section 33670, and any other funds received by
29 the agency. The obligations imposed by paragraph (1) shall remain an
30 indebtedness of the agency to the legislative body until paid in full, or until the
31 agency and the legislative body otherwise agree.

32 (3) The agreement described in paragraph (1) shall be subject to these terms and
33 conditions specified in a written agreement between the legislative body and the
34 agency.

35 (e) If the agency fails, under either Section 33681.9 or subdivision (d), to
36 transmit the full amount of funds required by Section 33681.9, is precluded by
37 court order from transmitting that amount, or is otherwise unable to meet its full
38 obligation pursuant to Section 33681.9, the county auditor, by no later than May
39 15, 2004, shall transfer any amount necessary to meet the obligation determined
40 for that agency in paragraph (1) of subdivision (c) of Section 33681.9 from the
41 legislative body's property tax allocation pursuant to Chapter 6 (commencing with
42 Section 95) of Part 0.5 of Division 1 of the Revenue and Taxation Code.

1 **§ 33681.11. Legislative body remittance in lieu of RDA ERAF contribution in 2003-04 fiscal**
2 **year**

3 33681.11. (a) In lieu of the remittance required by Section 33681.9, during the
4 2003–04 fiscal year, a legislative body may, prior to May 10, 2004, remit an
5 amount equal to the amount determined for the agency pursuant to subparagraph
6 (I) of paragraph (2) of subdivision (a) of Section 33681.9 to the county auditor for
7 deposit in the county’s Educational Revenue Augmentation Fund created pursuant
8 to Article 3 (commencing with Section 97) of Chapter 6 of Part 0.5 of Division 1
9 of the Revenue and Taxation Code.

10 (b) The legislative body may make the remittance authorized by this section
11 from any funds that are legally available for this purpose. No moneys held in an
12 agency’s Low and Moderate Income Housing Fund shall be used for this purpose.

13 (c) If the legislative body, pursuant to subdivision (d) of Section 33681.9,
14 reported to the county auditor that it intended to remit the amount in lieu of the
15 agency and the legislative body fails to transmit the full amount as authorized by
16 this section by May 10, 2004, the county auditor, no later than May 15, 2004, shall
17 transfer an amount necessary to meet the obligation from the legislative body’s
18 property tax allocation pursuant to Chapter 6 (commencing with Section 95) of
19 Part 0.5 of Division 1 of the Revenue and Taxation Code. If the amount of the
20 legislative body’s property tax allocation is not sufficient to meet this obligation,
21 the county auditor shall transfer an additional amount necessary to meet this
22 obligation from the property tax increment revenue apportioned to the agency
23 pursuant to Section 33670, provided that no moneys allocated to the agency’s Low
24 and Moderate Income Housing Fund shall be used for this purpose.

25 **§ 33681.12. RDA ERAF contribution in 2004-05 and 2005-06 fiscal years**

26 33681.12. (a)(1) During the 2004–05 fiscal year, a redevelopment agency shall,
27 prior to May 10, remit an amount equal to the amount determined for that agency
28 pursuant to subparagraph (I) of paragraph (2) to the county auditor for deposit in
29 the county’s Educational Revenue Augmentation Fund created pursuant to Article
30 3 (commencing with Section 97) of Chapter 6 of Part 0.5 of Division 1 of the
31 Revenue and Taxation Code. During the 2005–06 fiscal year, a redevelopment
32 agency shall, prior to May 10, remit an amount equal to the amount determined for
33 that agency pursuant to subparagraph (I) of paragraph (2) to the county auditor for
34 deposit in the county’s Educational Revenue Augmentation Fund created pursuant
35 to Article 3 (commencing with Section 97) of Chapter 6 of Part 0.5 of Division 1
36 of the Revenue and Taxation Code.

37 (2) For the 2004–05 and 2005–06 fiscal years, on or before November 15, the
38 Director of Finance shall do all of the following:

39 (A) Determine the net tax increment apportioned to each agency pursuant to
40 Section 33670, excluding any amounts apportioned to affected taxing agencies
41 pursuant to Section 33401, 33607.5, or 33676.

1 (B) Determine the net tax increment apportioned to all agencies pursuant to
2 Section 33670, excluding any amounts apportioned to affected taxing agencies
3 pursuant to Section 33401, 33607.5, or 33676.

4 (C) Determine a percentage factor by dividing one hundred twenty-five million
5 dollars (\$125,000,000) by the amount determined pursuant to subparagraph (B).

6 (D) Determine an amount for each agency by multiplying the amount
7 determined pursuant to subparagraph (A) by the percentage factor determined
8 pursuant to subparagraph (C).

9 (E) Determine the total amount of property tax revenue apportioned to each
10 agency pursuant to Section 33670, including any amounts apportioned to affected
11 taxing agencies pursuant to Section 33401, 33607.5, or 33676.

12 (F) Determine the total amount of property tax revenue apportioned to all
13 agencies pursuant to Section 33670, including any amounts apportioned to
14 affected taxing agencies pursuant to Section 33401, 33607.5, or 33676.

15 (G) Determine a percentage factor by dividing one hundred twenty-five million
16 dollars (\$125,000,000) by the amount determined pursuant to subparagraph (F).

17 (H) Determine an amount for each agency by multiplying the amount
18 determined pursuant to subparagraph (E) by the percentage factor determined
19 pursuant to subparagraph (G).

20 (I) Add the amount determined pursuant to subparagraph (D) to the amount
21 determined pursuant to subparagraph (H).

22 (J) Notify each agency and each legislative body of the amount determined
23 pursuant to subparagraph (I).

24 (K) Notify each county auditor of the amounts determined pursuant to
25 subparagraph (I) for each agency in his or her county.

26 (3) The obligation of any agency to make the payments required pursuant to this
27 subdivision shall be subordinate to the lien of any pledge of collateral securing,
28 directly or indirectly, the payment of the principal, or interest on any bonds of the
29 agency including, without limitation, bonds secured by a pledge of taxes allocated
30 to the agency pursuant to Section 33670.

31 (b)(1) Notwithstanding Sections 33334.2, 33334.3, and 33334.6, and any other
32 provision of law, in order to make the full allocation required by this section, an
33 agency may borrow up to 50 percent of the amount required to be allocated to the
34 Low and Moderate Income Housing Fund pursuant to Sections 33334.2, 33334.3,
35 and 33334.6 during the 2004–05 fiscal year and, if applicable, the 2005–06 fiscal
36 year, unless executed contracts exist that would be impaired if the agency reduced
37 the amount allocated to the Low and Moderate Income Housing Fund pursuant to
38 the authority of this subdivision.

39 (2) As a condition of borrowing pursuant to this subdivision, an agency shall
40 make a finding that there are insufficient other moneys to meet the requirements of
41 subdivision (a). Funds borrowed pursuant to this subdivision shall be repaid in full
42 within 10 years following the date on which moneys are remitted to the county

1 auditor for deposit in the county’s Educational Revenue Augmentation Fund
2 pursuant to subdivision (a).

3 (c) In order to make the allocation required by this section, an agency may use
4 any funds that are legally available and not legally obligated for other uses,
5 including, but not limited to, reserve funds, proceeds of land sales, proceeds of
6 bonds or other indebtedness, lease revenues, interest, and other earned income. No
7 moneys held in a low- and moderate-income fund as of July 1 of the applicable
8 fiscal year may be used for this purpose.

9 (d) The legislative body shall by March 1 report to the county auditor as to how
10 the agency intends to fund the allocation required by this section, or that the
11 legislative body intends to remit the amount in lieu of the agency pursuant to
12 Section 33681.14.

13 (e) The allocation obligations imposed by this section, including amounts owed,
14 if any, created under this section, are hereby declared to be an indebtedness of the
15 redevelopment project to which they relate, payable from taxes allocated to the
16 agency pursuant to Section 33670, and shall constitute an indebtedness of the
17 agency with respect to the redevelopment project until paid in full.

18 (f) It is the intent of the Legislature, in enacting this section, that these
19 allocations directly or indirectly assist in the financing or refinancing, in whole or
20 in part, of the community’s redevelopment project pursuant to Section 16 of
21 Article XVI of the California Constitution.

22 (g) In making the determinations required by subdivision (a), the Director of
23 Finance shall use those amounts reported as the “Tax Increment Retained by
24 Agency” for all agencies and for each agency in the most recent published edition
25 of the Controller’s Community Redevelopment Agencies Annual Report made
26 pursuant to Section 12463.3 of the Government Code.

27 (h) If revised reports have been accepted by the Controller on or before
28 September 1, 2005, the Director of Finance shall use appropriate data that has
29 been certified by the Controller for the purpose of making the determinations
30 required by subdivision (a).

31 (i)(1) Notwithstanding any other provision of law, a city, city and county, or
32 county redevelopment agency may enter into a loan agreement with the legislative
33 body to have the agency remit to the county’s Educational Revenue Augmentation
34 Fund for each of the 2004–05 and 2005–06 fiscal years an amount greater than
35 that determined pursuant to subparagraph (I) of paragraph (2) of subdivision (a)
36 or, for the 2009–10 fiscal year, to have the agency remit to the county auditor on
37 the city’s, city and county’s, or county’s behalf all or a portion of the reduction
38 amount determined for the county under Section 100.06 of the Revenue and
39 Taxation Code, if, in either instance, all of the following conditions are met:

40 (A) The agency does not exercise its authority under subdivision (b) to borrow
41 from its Low and Moderate Income Housing Fund to finance its payments to the
42 county’s Educational Revenue Augmentation Fund or to the county auditor.

1 (B) The agency does not have any outstanding loans from its Low and Moderate
2 Income Housing Fund that were made under subdivision (b) of Section 33681.7,
3 or subdivision (b) of Section 33681.9.

4 (C) The loan agreement requires the city, city and county, or county to repay any
5 excess remitted amounts or amounts paid to the city, city and county, or county
6 auditor on the county's behalf in the 2009–10 fiscal year, including interest, to the
7 agency within three fiscal years subsequent to the fiscal year in which the loan is
8 made.

9 (D) The agency making the loan does not participate in pooled borrowing under
10 Section 33681.15.

11 (2) A loan agreement described in paragraph (1) shall be transmitted to the
12 county auditor not later than December 1 of the fiscal year in which the loan is
13 made. Any amount remitted by the agency to the county Educational Revenue
14 Augmentation Fund for the 2004–05 or 2005–06 fiscal year in excess of the
15 amount determined pursuant to paragraph (1) of subdivision (a) shall be credited
16 to the amount that would otherwise be subtracted by the county auditor pursuant to
17 subdivision (a) of Section 97.71 of the Revenue and Taxation Code for, as
18 applicable, the 2004–05 and 2005–06 fiscal years.

19 (3) Notwithstanding subparagraph (C) of paragraph (1), a county redevelopment
20 agency and a legislative body that have entered into a loan agreement for the
21 2004–05 or 2005–06 fiscal year under paragraph (1) may, by mutual consent,
22 adopt either or both of the following modifications to that agreement:

23 (A) The repayment period may be extended, but the full repayment shall be
24 completed no later than June 30, 2021.

25 (B) The repayment obligation may be offset by the amount of any expenditures
26 by the county for capital improvements or deferred maintenance that substantially
27 benefit any or all of the redevelopment project areas of the redevelopment agency
28 if the agency approves the expenditure and the agency adopts a finding that the
29 expenditure furthers the goals and objectives of the agency's redevelopment plan
30 or plans.

31 **§ 33681.13. Loan from legislative body to make ERAF payment in 2004-05 and 2005-06**
32 **fiscal years**

33 33681.13. (a)(1) For the purpose of this section, “existing indebtedness” means
34 one or more of the following obligations incurred by a redevelopment agency prior
35 to the effective date of this section, the payment of which is to be made in whole
36 or in part, directly or indirectly, out of taxes allocated to the agency pursuant to
37 Section 33670, and that is required by law or provision of the existing
38 indebtedness to be made during the fiscal year of the relevant allocation required
39 by Section 33681.12.

40 (A) Bonds, notes, interim certificates, debentures, or other obligations issued by
41 the agency whether funded, refunded, assumed, or otherwise pursuant to Article 5
42 (commencing with Section 33640).

1 (B) Loans or moneys advanced to the agency, including, but not limited to, loans
2 from federal, state, or local agencies, or a private entity.

3 (C) A contractual obligation that, if breached, could subject the agency to
4 damages or other liabilities or remedies.

5 (D) An obligation incurred pursuant to Section 33445.

6 (E) Indebtedness incurred pursuant to Section 33334.2.

7 (F) An amount, to be expended for the operation and administration of the
8 agency, that may not exceed 90 percent of the amount spent for those purposes in
9 the 2002–03 fiscal year.

10 (G) Obligations imposed by law with respect to activities that occurred prior to
11 the effective date of the act that adds this section.

12 (2) Existing indebtedness incurred prior to the effective date of this section may
13 be refinanced, refunded, or restructured after that date, and shall remain existing
14 indebtedness for the purposes of this section, if the annual debt service during that
15 fiscal year does not increase over the prior fiscal year and the refinancing does not
16 reduce the ability of the agency to make the payment required by subdivision (a)
17 of Section 33681.12.

18 (3) For the purposes of this section, indebtedness shall be deemed to be incurred
19 prior to the effective date of this section if the agency has entered into a binding
20 contract subject to normal marketing conditions, to deliver the indebtedness, or if
21 the redevelopment agency has received bids for the sale of the indebtedness prior
22 to that date and the indebtedness is issued for value and evidence thereof is
23 delivered to the initial purchaser no later than 30 days after the date of the contract
24 or sale.

25 (b) During the 2004–05 and 2005–06 fiscal years, an agency that has adopted a
26 resolution pursuant to subdivision (c) may, pursuant to subdivision (a) of Section
27 33681.12, allocate to the auditor less than the amount required by subdivision (a)
28 of Section 33681.12, if the agency finds that either of the following has occurred:

29 (1) That the difference between the amount allocated to the agency and the
30 amount required by subdivision (a) of Section 33681.12 is necessary to make
31 payments on existing indebtedness that are due or required to be committed, set
32 aside, or reserved by the agency during the applicable fiscal year and that are used
33 by the agency for that purpose, and the agency has no other funds that can be used
34 to pay this existing indebtedness, and no other feasible method to reduce or avoid
35 this indebtedness.

36 (2) The agency has no other funds to make the allocation required by
37 subdivision (a) of Section 33681.12.

38 (c)(1) Any agency that, pursuant to subdivision (b), intends to allocate to the
39 auditor less than the amount required by subdivision (a) of Section 33681.12 shall
40 adopt, prior to December 31 of the applicable fiscal year, after a noticed public
41 hearing, a resolution that lists all of the following:

42 (A) Each existing indebtedness incurred prior to the effective date of this
43 section.

1 (B) Each indebtedness on which a payment is required to be made during the
2 applicable fiscal year.

3 (C) The amount of each payment, the time when it is required to be paid, and the
4 total of the payments required to be made during the applicable fiscal year. For
5 indebtedness that bears interest at a variable rate, or for short-term indebtedness
6 that is maturing during the fiscal year and that is expected to be refinanced, the
7 amount of payments during the fiscal year shall be estimated by the agency.

8 (2) The information contained in the resolution required by this subdivision shall
9 be reviewed for accuracy by the chief fiscal officer of the agency.

10 (3) The legislative body shall additionally adopt the resolution required by this
11 section.

12 (d)(1) Any agency that, pursuant to subdivision (b), determines that it will be
13 unable either in the 2004–05 or the 2005–06 fiscal year, to allocate the full amount
14 required by subdivision (a) of Section 33681.12 shall, subject to paragraph (3),
15 enter into an agreement with the legislative body by February 15 of the applicable
16 fiscal year, to fund the payment of the difference between the full amount required
17 to be paid pursuant to subdivision (a) of Section 33681.12 and the amount
18 available for allocation by the agency.

19 (2) The obligations imposed by paragraph (1) are hereby declared to be
20 indebtedness incurred by the redevelopment agency to finance a portion of a
21 redevelopment project within the meaning of Section 16 of Article XVI of the
22 California Constitution. This indebtedness shall be payable from tax revenues
23 allocated to the agency pursuant to Section 33670, and any other funds received by
24 the agency. The obligations imposed by paragraph (1) shall remain an
25 indebtedness of the agency to the legislative body until paid in full, or until the
26 agency and the legislative body otherwise agree.

27 (3) The agreement described in paragraph (1) shall be subject to these terms and
28 conditions specified in a written agreement between the legislative body and the
29 agency.

30 (e) If the agency fails, under either Section 33681.12 or subdivision (d), to
31 transmit the full amount of funds required by Section 33681.12, is precluded by
32 court order from transmitting that amount, or is otherwise unable to meet its full
33 obligation pursuant to Section 33681.12, the county auditor, by no later than May
34 15 of the applicable fiscal year, shall transfer any amount necessary to meet the
35 obligation determined for that agency in paragraph (1) of subdivision (c) of
36 Section 33681.12 from the legislative body's allocations pursuant to Chapter 6
37 (commencing with Section 95) of Part 0.5 of Division 1 of the Revenue and
38 Taxation Code.

39 **§ 33681.14. Legislative body remittance in lieu of RDA ERAF contribution in 2004-05 and**
40 **2005-06 fiscal years**

41 33681.14. (a) In lieu of the remittance required by Section 33681.12, during
42 either the 2004–05 or 2005–06 fiscal year, a legislative body may, prior to May 10

1 of the applicable fiscal year, remit an amount equal to the amount determined for
2 the agency pursuant to subparagraph (I) of paragraph (2) of subdivision (a) of
3 Section 33681.12 to the county auditor for deposit in the county's Educational
4 Revenue Augmentation Fund created pursuant to Article 3 (commencing with
5 Section 97) of Chapter 6 of Part 0.5 of Division 1 of the Revenue and Taxation
6 Code.

7 (b) The legislative body may make the remittance authorized by this section
8 from any funds that are legally available for this purpose. No moneys held in an
9 agency's Low and Moderate Income Housing Fund shall be used for this purpose.

10 (c) If the legislative body, pursuant to subdivision (d) of Section 33681.12,
11 reported to the county auditor that it intended to remit the amount in lieu of the
12 agency and the legislative body fails to transmit the full amount as authorized by
13 this section by May 10 of the applicable fiscal year, the county auditor, no later
14 than May 15 of the applicable fiscal year, shall transfer an amount necessary to
15 meet the obligation from the legislative body's allocations pursuant to Chapter 6
16 (commencing with Section 95) of Part 0.5 of Division 1 of the Revenue and
17 Taxation Code. If the amount of the legislative body's allocations are not
18 sufficient to meet this obligation, the county auditor shall transfer an additional
19 amount necessary to meet this obligation from the property tax increment revenue
20 apportioned to the agency pursuant to Section 33670, provided that no moneys
21 allocated to the agency's Low and Moderate Income Housing Fund shall be used
22 for this purpose.

23 **§ 33681.15. Loan by "authorized issuer" to make RDA ERAF contribution in 2004-05 and**
24 **2005-06 fiscal years**

25 33681.15. (a) For the purposes of this section, an "authorized issuer" is limited
26 to a joint powers entity created pursuant to Article 1 (commencing with Section
27 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code that consists
28 of no less than 100 local agencies issuing bonds pursuant to the Marks-Roos Local
29 Bond Pooling Act of 1984 (commencing with Section 6584) of the Government
30 Code.

31 (b) An authorized issuer may issue bonds, notes, or other evidence of
32 indebtedness to provide net proceeds to make one or more loans to one or more
33 redevelopment agencies to be used by the agency to timely make the payment
34 required by Section 33681.12.

35 (c) With the prior approval of the legislative body by adoption of a resolution by
36 a majority of that body that recites that a first lien on the property tax revenues
37 allocated to the legislative body will be created in accordance with subdivision (h),
38 an agency may enter into an agreement with an authorized issuer issuing bonds
39 pursuant to subdivision (b) to repay a loan used to make the payment required by
40 Section 33681.12, notwithstanding the expiration of the time limit on establishing
41 loans, advances, advances and indebtedness, and the time limit on repayment of
42 indebtedness. For the purpose of calculating the amount that has been divided and

1 allocated to the redevelopment agency to determine whether the limitation adopted
2 pursuant to Section 33333.2 or 33333.4 or pursuant to an agreement or court order
3 has been reached, any funds used to repay a loan entered into pursuant to this
4 section shall be deducted from the amount of property tax revenue deemed to have
5 been received by the agency.

6 (d) A loan made pursuant to this section shall be repayable by the agency from
7 any available funds of the agency not otherwise obligated for other uses and shall
8 be repayable by the agency on a basis subordinate to all existing and future
9 obligations of the agency.

10 (e) Upon making a loan to an agency pursuant to this section, the trustee for the
11 bonds issued to provide the funds to make the loan shall timely pay, on behalf of
12 the agency, to the county auditor of the county in which the agency is located the
13 net proceeds (after payment of costs of issuance, credit enhancement costs, and
14 reserves, if any) of the loan in payment in full or in part, as directed by the agency,
15 of the amount required to be paid by the agency pursuant to Section 33681.12 and
16 shall provide the county auditor with the repayment schedule for the loan, together
17 with the name of the trustee.

18 (f) In the event the agency shall, at any time and from time to time, fail to repay
19 timely the loan in accordance with the schedule provided to the county auditor, the
20 trustee for the bonds shall promptly notify the county auditor of the amount of the
21 payment on the loan that is past due.

22 (g) The county auditor shall reallocate from the legislative body and shall pay,
23 on behalf of the agency, the past due amount from the first available proceeds of
24 the property tax allocation that would otherwise be transferred to the legislative
25 body pursuant to Chapter 6 (commencing with Section 95) of Part 0.5 of Division
26 1 of the Revenue and Taxation Code. This transfer shall be deemed a reallocation
27 of the property tax revenue from the legislative body to the agency for the purpose
28 of payment of the loan, and not as a payment by the legislative body on the loan.

29 (h) To secure repayment of a loan to an agency made pursuant to this section,
30 the trustee for the bonds issued to provide the funds to make the loan shall have a
31 lien on the property tax revenues allocated to the legislative body pursuant to
32 Chapter 6 (commencing with Section 95) of Part 0.5 of Division 1 of the Revenue
33 and Taxation Code. This lien shall arise by operation of this section automatically
34 upon the making of the loan without the need for any action on the part of any
35 person. This lien shall be valid, binding, perfected, and enforceable against the
36 legislative body, its successors, creditors, purchasers, and all others asserting
37 rights in those property tax revenues, irrespective of whether those persons have
38 notice of the lien, irrespective of the fact that the property tax revenues subject to
39 the lien may be commingled with other property, and without the need for physical
40 delivery, recordation, public notice, or any other act. This lien shall be a first
41 priority lien on these property tax revenues. This lien shall not apply to any
42 portion of the property taxes allocated to the agency pursuant to Section 33670.

1 § 33682 (as added by 1992 Cal. Stat. ch. 699) (made inoperative by § 33682(f) (as added by
2 1992 Cal. Stat. ch. 700))

3 33682. (a)(1) For the purposes of this section, “existing indebtedness” means
4 one or more of the following obligations incurred by a redevelopment agency prior
5 to the effective date of the statute that adds this chapter, the payment of which is to
6 be made in whole or in part, directly or indirectly, out of taxes allocated to the
7 agency pursuant to Section 33670, and which is required by law or provision of
8 the existing indebtedness to be made during the 1992–93 fiscal year:

9 (A) Bonds, notes, interim certificates, debentures, or other obligations issued by
10 an agency (whether funded, refunded, assumed, or otherwise) pursuant to Article 5
11 (commencing with Section 33640).

12 (B) Loans or moneys advanced to the agency, including, but not limited to, loans
13 from federal, state, or local agencies, or a private entity.

14 (C) A contractual obligation which, if breached, could subject the agency to
15 damages or other liabilities or remedies.

16 (D) An obligation incurred pursuant to Section 33445.

17 (E) Indebtedness incurred pursuant to Section 33334.2.

18 (F) An amount, to be expended for the operation and administration of the
19 agency, which may not exceed 90 percent of the amount spent for those purposes
20 in the 1991–92 fiscal year.

21 (G) Obligations imposed by law with respect to activities which occurred prior
22 to the effective date of the act that adds this chapter.

23 (2) Existing indebtedness incurred prior to the effective date of the statute that
24 adds this article may be refinanced, funded, or restructured after that date, and
25 shall remain existing indebtedness for the purposes of this section, if the annual
26 debt service during the 1992–93 fiscal year does not increase and the refinancing
27 does not reduce the ability of the agency to make the payment required by
28 subdivision (a) of Section 33681.

29 (3) For the purposes of this section, indebtedness shall be deemed to be incurred
30 prior to the effective date of this chapter if the agency has entered into a binding
31 contract subject to normal marketing conditions, to deliver the indebtedness, or if
32 the redevelopment agency has received bids for the sale of the indebtedness prior
33 to that date and the indebtedness is issued for value and evidence thereof is
34 delivered to the initial purchaser no later than 30 days after the date of the contract
35 or sale.

36 (b)(1) During the 1992–93 fiscal year, an agency that has adopted a resolution
37 pursuant to subdivision (c) may allocate to the school and community college
38 districts less than the amount required by subdivision (a) of Section 33681, if the
39 agency finds that either of the following has occurred:

40 (A) That the difference between the amount allocated and the amount required
41 by subdivision (a) of Section 33681 is necessary to make payments on existing
42 indebtedness that are due or required to be committed, set aside, or reserved by the
43 agency during the 1992–93 fiscal year and that are used by the agency for that

1 purpose, and the agency has no other funds that can be used to pay this existing
2 indebtedness.

3 (B) The agency has no other funds to make the allocation required by
4 subdivision (a) of Section 33681.

5 (2) If the agency allocates to the school and community college districts less
6 than the total amount required by subdivision (a) of Section 33681, it shall reduce
7 the payments to each district on a pro rata basis.

8 (c)(1) Any agency which, pursuant to subdivision (b), allocates to the school or
9 community college districts less than the amount required by subdivision (a) of
10 Section 33681 shall adopt, prior to November 1, 1992, for the 1992–93 fiscal year,
11 after a noticed public hearing, a resolution which lists all of the following:

12 (A) Each existing indebtedness incurred prior to the effective date of the act that
13 adds this article.

14 (B) Each indebtedness on which a payment is required to be made during the
15 1992–93 fiscal year.

16 (C) The amount of each payment, the time when it is required to be paid, and the
17 total of the payments required to be made during the 1992–93 fiscal year. For
18 indebtedness that bears interest at a variable rate, or for short-term indebtedness
19 that is maturing during the fiscal year and expected to be refinanced, the amount
20 of payments during the fiscal year shall be estimated by the agency.

21 (2) The information contained in the resolution required by this subdivision shall
22 be certified by the chief fiscal officer of the agency.

23 (d) Any agency that pays to the school or community college districts less than
24 the amount required by subdivision (a) of Section 33681 during the 1992–93 fiscal
25 year shall pay the difference between the full amount required to be paid by this
26 section and the amount already paid to the school or community college districts
27 prior to June 30, 1997.

28 **§ 33682 (as added by 1992 Cal. Stat. ch. 700). Loan from legislative body to make ERAF**
29 **payment in 1992-93 fiscal year, pursuant to former Section 33681**

30 33682. (a)(1) For the purposes of this section, “existing indebtedness” means
31 one or more of the following obligations incurred by a redevelopment agency prior
32 to the effective date of the statute that adds this chapter, the payment of which is to
33 be made in whole or in part, directly or indirectly, out of taxes allocated to the
34 agency pursuant to Section 33670, and which is required by law or provision of
35 the existing indebtedness to be made during the 1992–93 fiscal year:

36 (A) Bonds, notes, interim certificates, debentures, or other obligations issued by
37 an agency (whether funded, refunded, assumed, or otherwise) pursuant to Article 5
38 (commencing with Section 33640).

39 (B) Loans or moneys advanced to the agency, including, but not limited to, loans
40 from federal, state, or local agencies, or a private entity.

41 (C) A contractual obligation which, if breached, could subject the agency to
42 damages or other liabilities or remedies.

- 1 (D) An obligation incurred pursuant to Section 33445.
- 2 (E) Indebtedness incurred pursuant to Section 33334.2.
- 3 (F) An amount, to be expended for the operation and administration of the
4 agency, which may not exceed 90 percent of the amount spent for those purposes
5 in the 1991–92 fiscal year.
- 6 (G) Obligations imposed by law with respect to activities which occurred prior
7 to the effective date of the act that adds this chapter.
- 8 (2) Existing indebtedness incurred prior to the effective date of the statute that
9 adds this article may be refinanced, refunded, or restructured after that date, and
10 shall remain existing indebtedness for the purposes of this section, if the annual
11 debt service during the 1992–93 fiscal year does not increase and the refinancing
12 does not reduce the ability of the agency to make the payment required by
13 subdivision (a) of Section 33681.
- 14 (3) For the purposes of this section, indebtedness shall be deemed to be incurred
15 prior to the effective date of this chapter if the agency has entered into a binding
16 contract subject to normal marketing conditions, to deliver the indebtedness, or if
17 the redevelopment agency has received bids for the sale of the indebtedness prior
18 to that date and the indebtedness is issued for value and evidence thereof is
19 delivered to the initial purchaser no later than 30 days after the date of the contract
20 or sale.
- 21 (b) During the 1992–93 fiscal year, an agency that has adopted a resolution
22 pursuant to subdivision (c) may, pursuant to subdivision (a) of Section 33681,
23 allocate to the auditor less than the amount required by subdivision (a) of Section
24 33681, if the agency finds that either of the following has occurred:
- 25 (1) That the difference between the amount allocated and the amount required
26 by subdivision (a) of Section 33681 is necessary to make payments on existing
27 indebtedness that are due or required to be committed, set aside, or reserved by the
28 agency during the 1992–93 fiscal year and that are used by the agency for that
29 purpose, and the agency has no other funds that can be used to pay this existing
30 indebtedness, and no other feasible method to reduce or avoid this indebtedness.
- 31 (2) The agency has no other funds to make the allocation required by
32 subdivision (a) of Section 33681.
- 33 (c)(1) Any agency that, pursuant to subdivision (b), allocates to the auditor less
34 than the amount required by subdivision (a) of Section 33681 shall adopt, prior to
35 December 31, 1992, for the 1992–93 fiscal year, after a noticed public hearing, a
36 resolution which lists all of the following:
- 37 (A) Each existing indebtedness incurred prior to the effective date of the act that
38 adds this article.
- 39 (B) Each indebtedness on which a payment is required to be made during the
40 1992–93 fiscal year.
- 41 (C) The amount of each payment, the time when it is required to be paid, and the
42 total of the payments required to be made during the 1992–93 fiscal year. For
43 indebtedness that bears interest at a variable rate, or for short-term indebtedness

1 that is maturing during the fiscal year and expected to be refinanced, the amount
2 of payments during the fiscal year shall be estimated by the agency.

3 (2) The information contained in the resolution required by this subdivision shall
4 be certified by the chief fiscal officer of the agency.

5 (3) The legislative body shall additionally adopt the resolution required by this
6 section.

7 (d)(1) Any agency that, pursuant to subdivision (b), determines that it will be
8 unable to allocate the full amount required by subdivision (a) of Section 33681
9 shall, subject to paragraph (3), enter into an agreement with the legislative body by
10 February 15, 1993, to fund the payment of the difference between the full amount
11 required to be paid pursuant to subdivision (a) of Section 33681 and the amount
12 available for allocation by the agency.

13 (2) The obligations imposed by paragraph (1) are hereby declared to be
14 indebtedness incurred by the redevelopment agency to finance a portion of a
15 redevelopment project within the meaning of Section 16 of Article XVI the
16 California Constitution. This indebtedness shall be payable from tax revenues
17 allocated to the agency pursuant to Section 33670, and any other funds received by
18 the agency. The obligations imposed by paragraph (1) shall remain an
19 indebtedness of the agency to the legislative body until paid in full, or until the
20 agency and the legislative body otherwise agree.

21 (3) The agreement described in paragraph (1) shall be subject to these terms and
22 conditions specified in a written agreement between the legislative body and the
23 agency.

24 (e) If the agency fails, under either Section 33681 or subdivision (d), to transmit
25 the full amount of funds required by Section 33681, is precluded by court order
26 from transmitting that amount, or is otherwise unable to meet its full obligation
27 pursuant to Section 33681, the county auditor, by no later than May 15, 1993, shall
28 transfer any amount necessary to meet the obligation determined for that agency in
29 subparagraph (D) of paragraph (2) of subdivision (a) of Section 33681 from the
30 legislative body's property tax allocation pursuant to Chapter 6 (commencing with
31 Section 95) of Part 0.5 of Division 1 of the Revenue and Taxation Code.

32 (f) It is the intent of the Legislature in enacting this section that this section
33 supersede and be operative in place of Section 33682 of the Health and Safety
34 Code as added by Senate Bill 617 of the 1991–92 Regular Session.

35 **§ 33682.1. Supplement to rule provided in § 33682**

36 33682.1. For purposes of Section 33682, "existing indebtedness" also means an
37 obligation incurred pursuant to a reimbursement agreement made for the purpose
38 of funding an unfunded liability of a fire and police retirement system of a charter
39 city meeting all of the criteria specified in Section 33608. This section shall not be
40 applied retroactively.

1 § 33682.5. Loan from legislative body to make ERAF payment in 1993-94 or 1994-95 fiscal
2 years, pursuant to former Section 33681.5

3 33682.5. (a)(1) For the purposes of this section, “existing indebtedness” means
4 one or more of the following obligations incurred by a redevelopment agency prior
5 to the effective date of the statute that adds this chapter, the payment of which is to
6 be made in whole or in part, directly or indirectly, out of taxes allocated to the
7 agency pursuant to Section 33670, and which is required by law or provision of
8 the existing indebtedness to be made during the fiscal year of the relevant
9 allocation required by Section 33681.5:

10 (A) Bonds, notes, interim certificates, debentures, or other obligations issued by
11 an agency (whether funded, refunded, assumed, or otherwise) pursuant to Article 5
12 (commencing with Section 33640).

13 (B) Loans or moneys advanced to the agency, including, but not limited to, loans
14 from federal, state, or local agencies, or a private entity.

15 (C) A contractual obligation that, if breached, could subject the agency to
16 damages or other liabilities or remedies.

17 (D) An obligation incurred pursuant to Section 33445.

18 (E) Indebtedness incurred pursuant to Section 33334.2.

19 (F) An amount, to be expended for the operation and administration of the
20 agency, that may not exceed 90 percent of the amount spent for those purposes in
21 the 1991–92 fiscal year.

22 (G) Obligations imposed by law with respect to activities which occurred prior
23 to the effective date of the act that adds this chapter.

24 (2) Existing indebtedness incurred prior to the effective date of the statute that
25 adds this article may be refinanced, refunded, or restructured after that date, and
26 shall remain existing indebtedness for the purposes of this section, if the annual
27 debt service during that fiscal year does not increase over the prior fiscal year and
28 the refinancing does not reduce the ability of the agency to make the payment
29 required by subdivision (a) of Section 33681.5.

30 (3) For the purposes of this section, indebtedness shall be deemed to be incurred
31 prior to the effective date of this chapter if the agency has entered into a binding
32 contract subject to normal marketing conditions, to deliver the indebtedness, or if
33 the redevelopment agency has received bids for the sale of the indebtedness prior
34 to that date and the indebtedness is issued for value and evidence thereof is
35 delivered to the initial purchaser no later than 30 days after the date of the contract
36 or sale.

37 (b) During the 1993–94 or 1994–95 fiscal year, an agency that has adopted a
38 resolution pursuant to subdivision (c) may, pursuant to subdivision (a) of Section
39 33681.5, allocate to the auditor less than the amount required by subdivision (a) of
40 Section 33681.5, if the agency finds that either of the following has occurred:

41 (1) That the difference between the amount allocated and the amount required
42 by subdivision (a) of Section 33681.5 is necessary to make payments on existing
43 indebtedness that are due or required to be committed, set aside, or reserved by the

1 agency during the applicable fiscal year and that are used by the agency for that
2 purpose, and the agency has no other funds that can be used to pay this existing
3 indebtedness, and no other feasible method to reduce or avoid this indebtedness.

4 (2) The agency has no other funds to make the allocation required by
5 subdivision (a) of Section 33681.5.

6 (c)(1) Any agency that, pursuant to subdivision (b), allocates to the auditor less
7 than the amount required by subdivision (a) of Section 33681.5 shall adopt, prior
8 to December 31 of the relevant fiscal year, after a noticed public hearing, a
9 resolution which lists all of the following:

10 (A) Each existing indebtedness incurred prior to the effective date of the act that
11 adds this article.

12 (B) Each indebtedness on which a payment is required to be made during the
13 relevant fiscal year.

14 (C) The amount of each payment, the time when it is required to be paid, and the
15 total of the payments required to be made during the relevant fiscal year. For
16 indebtedness that bears interest at a variable rate, or for short-term indebtedness
17 that is maturing during the fiscal year and expected to be refinanced, the amount
18 of payments during the fiscal year shall be estimated by the agency.

19 (2) The information contained in the resolution required by this subdivision shall
20 be reviewed for accuracy by the chief fiscal officer of the agency.

21 (3) The legislative body shall additionally adopt the resolution required by this
22 section.

23 (d)(1) Any agency that, pursuant to subdivision (b), determines that it will be
24 unable in either the 1993–94 or 1994–95 fiscal year to allocate the full amount
25 required by subdivision (a) of Section 33681.5 shall, subject to paragraph (3),
26 enter into an agreement with the legislative body by February 15 of the relevant
27 fiscal year to fund the payment of the difference between the full amount required
28 to be paid pursuant to subdivision (a) of Section 33681.5 and the amount available
29 for allocation by the agency.

30 (2) The obligations imposed by paragraph (1) are hereby declared to be
31 indebtedness incurred by the redevelopment agency to finance a portion of a
32 redevelopment project within the meaning of Section 16 of Article XVI the
33 California Constitution. This indebtedness shall be payable from tax revenues
34 allocated to the agency pursuant to Section 33670, and any other funds received by
35 the agency. The obligations imposed by paragraph (1) shall remain an
36 indebtedness of the agency to the legislative body until paid in full, or until the
37 agency and the legislative body otherwise agree.

38 (3) The agreement described in paragraph (1) shall be subject to these terms and
39 conditions specified in a written agreement between the legislative body and the
40 agency.

41 (e) If the agency fails, under either Section 33681.5 or subdivision (d), to
42 transmit the full amount of funds required by Section 33681.5, is precluded by
43 court order from transmitting that amount, or is otherwise unable to meet its full

1 obligation pursuant to Section 33681.5, the county auditor, by no later than May
2 15 of the fiscal year, shall transfer any amount necessary to meet the obligation
3 determined for that agency in subparagraph (D) of paragraph (2) of subdivision (a)
4 of Section 33681.5 from the legislative body's property tax allocation pursuant to
5 Chapter 6 (commencing with Section 95) of Part 0.5 of Division 1 of the Revenue
6 and Taxation Code.

7 **§ 33683. Specified payments not counted against tax increment limits**

8 33683. For the purpose of calculating the amount that has been divided and
9 allocated to the redevelopment agency to determine whether the limitation adopted
10 pursuant to Section 33333.2 or 33333.4 or pursuant to agreement or court order
11 has been reached, any payments made pursuant to subdivision (a) of Sections
12 33681, 33681.5, 33681.7, 33681.9, and 33681.12 or subdivision (d) of Sections
13 33681.8, 33681.10, 33682, and 33682.5 with property tax revenues shall be
14 deducted from the amount of property tax dollars deemed to have been received
15 by the agency.

16 **§ 33684. Outstanding pass-through payment obligation reporting and consequences**

17 33684. (a)(1) This section shall apply to each redevelopment project area that,
18 pursuant to a redevelopment plan that contains the provisions required by Section
19 33670, meets any of the following:

20 (A) Was adopted on or after January 1, 1994, including later amendments to
21 these redevelopment plans.

22 (B) Was adopted prior to January 1, 1994, but amended after January 1, 1994, to
23 include new territory. For plans amended after January 1, 1994, only the tax
24 increments from territory added by the amendment shall be subject to this section.

25 (C) Was adopted prior to January 1, 1994, but amended after January 1, 1994, to
26 increase the limitation on the number of dollars to be allocated to the agency or
27 that increased, or eliminated, pursuant to paragraph (1) of subdivision (e) of
28 Section 33333.6, the time limit on the establishing of loans, advances, and
29 indebtedness established pursuant to paragraphs (1) and (2) of subdivision (a) of
30 Section 33333.6, as those paragraphs read on December 31, 2001, or that
31 lengthened the period during which the redevelopment plan is effective if the
32 redevelopment plan being amended contains the provisions required by
33 subdivision (b) of Section 33670.

34 (2) This section shall apply to passthrough payments, as required by Sections
35 33607.5 and 33607.7, for the 2003–04 to 2008–09, inclusive, fiscal years. For
36 purposes of this section, a passthrough payment shall be considered the
37 responsibility of an agency in the fiscal year the agency receives the tax increment
38 revenue for which the passthrough payment is required.

39 (3) For purposes of this section, "local educational agency" is a school district, a
40 community college district, or a county office of education.

1 (b) On or before October 1, 2008, each agency shall submit a report to the
2 county auditor and to each affected taxing entity that describes each project area,
3 including its location, purpose, date established, date or dates amended, and
4 statutory and contractual passthrough requirements. The report shall specify, by
5 year, for each project area all of the following:

6 (1) Gross tax increment received between July 1, 2003, and June 30, 2008, that
7 is subject to a passthrough payment pursuant to Sections 33607.5 and 33607.7,
8 and accumulated gross tax increments through June 30, 2003.

9 (2) Total passthrough payments to each taxing entity that the agency deferred
10 pursuant to a subordination agreement approved by the taxing agency under
11 subdivision (e) of Section 33607.5 and the dates these deferred payments will be
12 made.

13 (3) Total passthrough payments to each taxing entity that the agency was
14 responsible to make between July 1, 2003, and June 30, 2008, pursuant to Sections
15 33607.5 and 33607.7, excluding payments identified in paragraph (2).

16 (4) Total passthrough payments that the agency disbursed to each taxing entity
17 between July 1, 2003, and June 30, 2008, pursuant to Sections 33607.5 and
18 33607.7.

19 (5) Total sums reported in paragraph (4) for each local educational agency that
20 are considered to be property taxes under the provisions of paragraph (4) of
21 subdivision (a) of Section 33607.5 and Section 33607.7.

22 (6) Total outstanding payment obligations to each taxing entity as of June 30,
23 2008. This amount shall be calculated by subtracting the amounts reported in
24 paragraph (4) from paragraph (3) and reporting any positive difference.

25 (7) Total outstanding overpayments to each taxing entity as of June 30, 2008.
26 This amount shall be calculated by subtracting the amounts reported in paragraph
27 (3) from paragraph (4) and reporting any positive difference.

28 (8) The dates on which the agency made payments identified in paragraph (6) or
29 intends to make the payments identified in paragraph (6).

30 (9) A revised estimate of the agency's total outstanding passthrough payment
31 obligation to each taxing agency pursuant to paragraph (6) of subdivision (b) and
32 paragraph (6) of subdivision (c) and the dates on which the agency intends to
33 make these payments.

34 (c) On or before October 1, 2009, each agency shall submit a report to the
35 county auditor and to each affected taxing entity that describes each project area,
36 including its location, purpose, date established, date or dates amended, and
37 statutory and contractual passthrough requirements. The report shall specify, by
38 year, for each project area all of the following:

39 (1) Gross tax increment received between July 1, 2008, and June 30, 2009, that
40 is subject to a passthrough payment pursuant to Sections 33607.5 and 33607.7.

41 (2) Total passthrough payments to each taxing entity that the agency deferred
42 pursuant to a subordination agreement approved by the taxing entity under

1 subdivision (e) of Section 33607.5 and the dates these deferred payments will be
2 made.

3 (3) Total passthrough payments to each taxing entity that the agency was
4 responsible to make between July 1, 2008, and June 30, 2009, pursuant to Sections
5 33607.5 and 33607.7, excluding payments identified in paragraph (2).

6 (4) Total passthrough payments that the agency disbursed to each taxing entity
7 between July 1, 2008, and June 30, 2009, pursuant to Sections 33607.5 and
8 33607.7.

9 (5) Total sums reported in paragraph (4) for each local educational agency that
10 are considered to be property taxes under the provisions of paragraph (4) of
11 subdivision (a) of Sections 33607.5 and 33607.7.

12 (6) Total outstanding payment obligations to each taxing entity as of June 30,
13 2009. This amount shall be calculated by subtracting the amounts reported in
14 paragraph (4) from paragraph (3) and reporting any positive difference.

15 (7) Total outstanding overpayments to each taxing entity as of June 30, 2009.
16 This amount shall be calculated by subtracting the amounts reported in paragraph
17 (3) from paragraph (4) and reporting any positive difference.

18 (8) The dates on which the agency made payments identified in paragraph (6) or
19 intends to make the payments identified in paragraph (6).

20 (d) If an agency reports pursuant to paragraph (6) of subdivision (b) or
21 paragraph (6) of subdivision (c) that it has an outstanding passthrough payment
22 obligation to any taxing entity, the agency shall submit annual updates to the
23 county auditor on October 1 of each year until such time as the county auditor
24 notifies the agency in writing that the agency's outstanding payment obligations
25 have been fully satisfied. The report shall contain both of the following:

26 (1) A list of payments to each taxing agency and to the Educational Revenue
27 Augmentation Fund pursuant to subdivision (j) that the agency disbursed after the
28 agency's last update filed pursuant to this subdivision or, if no update has been
29 filed, after the agency's submission of the reports required pursuant to
30 subdivisions (b) and (c). The list of payments shall include only those payments
31 that address obligations identified pursuant to paragraph (6) of subdivision (b) and
32 paragraph (6) of subdivision (c). The update shall specify the date on which each
33 payment was disbursed.

34 (2) A revised estimate of the agency's total outstanding passthrough payment
35 obligation to each taxing agency pursuant to paragraph (6) of subdivision (b) and
36 paragraph (6) of subdivision (c) and the dates on which the agency intends to
37 make these payments.

38 (e) The county auditor shall review each agency's reports submitted pursuant to
39 subdivisions (b) and (c) and any other relevant information to determine whether
40 the county auditor concurs with the information included in the reports.

41 (1) If the county auditor concurs with the information included in a report, the
42 county auditor shall issue a finding of concurrence within 45 days.

1 (2) If the county auditor does not concur with the information included in a
2 report or considers the report to be incomplete, the county auditor shall return the
3 report to the agency within 45 days with information identifying the elements of
4 the report with which the county auditor does not concur or considers to be
5 incomplete. The county auditor shall provide the agency at least 15 days to
6 respond to concerns raised by the county auditor regarding the information
7 contained in the report. An agency may revise a report that has not received a
8 finding of concurrence and resubmit it to the county auditor.

9 (3) If an agency and county auditor do not agree regarding the passthrough
10 requirements of Sections 33607.5 and 33607.7, an agency may submit a report
11 pursuant to subdivisions (b) and (c) and a statement of dispute identifying the
12 issue needing resolution.

13 (4) An agency may amend a report for which the county auditor has issued a
14 finding of concurrence and resubmit the report pursuant to paragraphs (1), (2), and
15 (3) if any of the following apply:

16 (A) The county auditor and agency agree that an issue identified in the agency's
17 statement of dispute has been resolved and the agency proposes to modify the
18 sections of the report to conform with the resolution of the statement of dispute.

19 (B) The county auditor and agency agree that the amount of gross tax increment
20 or the amount of a passthrough payment to a taxing entity included in the report is
21 not accurate.

22 (5) The Controller may revoke a finding of concurrence and direct the agency to
23 resubmit a report to the county auditor pursuant to paragraphs (1), (2), and (3) if
24 the Controller finds significant errors in a report.

25 (f) On or before December 15, 2008, and annually thereafter through 2014, the
26 county auditor shall submit a report to the Controller that includes all of the
27 following:

28 (1) The name of each redevelopment project area in the county for which an
29 agency must submit a report pursuant to subdivision (b) or (c) and information as
30 to whether the county auditor has issued a finding of concurrence regarding the
31 report.

32 (2) A list of the agencies for which the county auditor has issued a finding of
33 concurrence for all project areas identified in paragraph (1).

34 (3) A list of agencies for which the county auditor has not issued a finding of
35 concurrence for all project areas identified in paragraph (1).

36 (4) Using information applicable to agencies listed in paragraph (2), the county
37 auditor shall report all of the following:

38 (A) The total sums reported by each redevelopment agency related to each
39 taxing entity pursuant to paragraphs (1) to (7), inclusive, of subdivision (b) and, on
40 or after December 15, 2009, pursuant to paragraphs (1) to (7), inclusive, of
41 subdivision (c).

1 (B) The names of agencies that have outstanding passthrough payment
2 obligations to a local educational agency that exceed the amount of outstanding
3 passthrough payments to the local educational agency.

4 (C) Summary information regarding agencies' stated plans to pay the
5 outstanding amounts identified in paragraph (6) of subdivision (b) and paragraph
6 (6) of subdivision (c) and the actual amounts that have been deposited into the
7 county Educational Revenue Augmentation Fund pursuant to subdivision (j).

8 (D) All unresolved statements of dispute filed by agencies pursuant to paragraph
9 (3) of subdivision (e) and the county auditor's analyses supporting the county
10 auditor's conclusions regarding the issues under dispute.

11 (g)(1) On or before February 1, 2009, and annually thereafter through 2015, the
12 Controller shall submit a report to the Legislative Analyst's Office and the
13 Department of Finance and provide a copy to the Board of Governors of the
14 California Community Colleges. The report shall provide information as follows:

15 (A) Identify agencies for which the county auditor has issued a finding of
16 concurrence for all reports required under subdivisions (b) and (c).

17 (B) Identify agencies for which the county auditor has not issued a finding of
18 concurrence for all reports required pursuant to subdivision (b) and all reports
19 required pursuant to subdivision (c) or for which a finding of concurrence has
20 been withdrawn by the Controller.

21 (C) Summarize the information reported in paragraph (4) of subdivision (f). This
22 summary shall identify, by local educational agency and by year, the total amount
23 of passthrough payments that each local educational agency received, was entitled
24 to receive, subordinated, or that has not yet been paid, and the portion of these
25 amounts that are considered to be property taxes for purposes of Sections 2558,
26 42238, and 84751 of the Education Code. The report shall identify, by agency, the
27 amounts that have been deposited to the county Educational Revenue
28 Augmentation Fund pursuant to subdivision (j).

29 (D) Summarize the statements of dispute. The Controller shall specify the status
30 of these disputes, including whether the Controller or other state entity has
31 provided instructions as to how these disputes should be resolved.

32 (E) Identify agencies that have outstanding passthrough payment liabilities to a
33 local educational agency that exceed the amount of outstanding passthrough
34 overpayments to the local educational agency.

35 (2) On or before February 1, 2009, and annually thereafter through 2015, the
36 Controller shall submit a report to the State Department of Education and the
37 Board of Governors of the California Community Colleges. The report shall
38 identify, by local educational agency and by year of receipt, the total amount of
39 passthrough payments that the local educational agency received from
40 redevelopment agencies listed in subparagraph (A) of paragraph (1).

41 (h)(1) On or before April 1, 2009, and annually thereafter until April 1, 2015,
42 the State Department of Education shall do all of the following:

1 (A) Calculate for each school district for the 2003–04 to 2007–08, inclusive,
2 fiscal years the difference between 43.3 percent of the amount reported pursuant to
3 paragraph (2) of subdivision (g) and the amount subtracted from each school
4 district’s apportionment pursuant to paragraph (6) of subdivision (h) of Section
5 42238 of the Education Code.

6 (B) Calculate for each county superintendent of schools for the 2003–04 to
7 2007–08, inclusive, fiscal years the difference between 19 percent of the amount
8 reported pursuant to paragraph (2) of subdivision (g) and the amount received
9 pursuant to Sections 33607.5 and 33607.7 and subtracted from each county
10 superintendent of schools apportionment pursuant to subdivision (c) of Section
11 2558 of the Education Code.

12 (C) Notify each school district and county superintendent of schools for which
13 any amount calculated in subparagraph (A) or (B) is nonzero as to the reported
14 change and its resulting impact on apportionments. After April 1, 2009, however,
15 the department shall not notify a school district or county superintendent of
16 schools if the amount calculated in subparagraph (A) or (B) is the same amount as
17 the department calculated in the preceding year.

18 (2) On or before April 1, 2010, and annually thereafter until April 1, 2015, the
19 State Department of Education shall do all of the following:

20 (A) Calculate for each school district for the 2008–09 fiscal year the difference
21 between 43.3 percent of the amount reported pursuant to paragraph (2) of
22 subdivision (g) and the amount subtracted from each school district’s
23 apportionment pursuant to paragraph (6) of subdivision (h) of Section 42238 of the
24 Education Code.

25 (B) Calculate for each county superintendent of schools for the 2008–09 fiscal
26 year the difference between 19 percent of the amount reported pursuant to
27 paragraph (2) of subdivision (g) and the amount received pursuant to Sections
28 33607.5 and 33607.7 and subtracted from each county superintendent of schools
29 apportionment pursuant to subdivision (c) of Section 2558 of the Education Code.

30 (C) Notify each school district and county superintendent of schools for which
31 any amount calculated in subparagraph (A) or (B) is nonzero as to the reported
32 change and its resulting impact on revenue limit apportionments. After April 1,
33 2010, however, the department shall not notify a school district or county
34 superintendent of schools if the amount calculated in subparagraph (A) or (B) is
35 the same amount as the department calculated in the preceding year.

36 (3) For the purposes of Article 3 (commencing with Section 41330) of Chapter 3
37 of Part 24 of Division 3 of Title 2 of the Education Code, the amounts reported to
38 each school district and county superintendent of schools in the notification
39 required pursuant to subparagraph (C) of paragraph (1) and subparagraph (C) of
40 paragraph (2) shall be deemed to be apportionment significant audit exceptions
41 and the date of receipt of that notification shall be deemed to be the date of receipt
42 of the final audit report that includes those audit exceptions.

1 (4) On or before March 1, 2009, and annually thereafter until March 1, 2015, the
2 Board of Governors of the California Community Colleges shall do all of the
3 following:

4 (A) Calculate for each community college district for the 2003–04 to 2007–08,
5 inclusive, fiscal years the difference between 47.5 percent of the amount reported
6 pursuant to paragraph (2) of subdivision (g) and the amount subtracted from each
7 district’s total revenue owed pursuant to subdivision (d) of Section 84751 of the
8 Education Code.

9 (B) Notify each community college district for which any amount calculated in
10 subparagraph (A) is nonzero as to the reported change and its resulting impact on
11 apportionments. After March 1, 2009, however, the board shall not notify a school
12 district or county superintendent of schools if the amount calculated in
13 subparagraph (A) is the same amount as the board calculated in the preceding
14 year.

15 (5) On or before March 1, 2010, and annually thereafter until March 1, 2015, the
16 Board of Governors of the California Community Colleges shall do all of the
17 following:

18 (A) Calculate for each community college district for the 2003–04 to 2007–08,
19 inclusive, fiscal years the difference between 47.5 percent of the amount reported
20 pursuant to paragraph (2) of subdivision (g) and the amount subtracted from each
21 district’s total revenue owed pursuant to subdivision (d) of Section 84751 of the
22 Education Code.

23 (B) Notify each community college district for which any amount calculated in
24 subparagraph (A) is nonzero as to the reported change and its resulting impact on
25 revenue apportionments. After March 1, 2010, however, the board shall not notify
26 a community college district if the amount calculated in subparagraph (A) is the
27 same amount as the board calculated in the preceding year.

28 (6) A community college district may submit documentation to the Board of
29 Governors of the California Community Colleges showing that all or part of the
30 amount reported to the district pursuant to subparagraph (B) of paragraph (4) and
31 subparagraph (B) of paragraph (5) was previously reported to the California
32 Community Colleges for the purpose of the revenue level calculations made
33 pursuant to Section 84751 of the Education Code. Upon acceptance of the
34 documentation, the board shall adjust the amounts calculated in paragraphs (4) and
35 (5) accordingly.

36 (7) The Board of Governors of the California Community Colleges shall make
37 corrections in any amounts allocated in any fiscal year to each community college
38 district for which any amount calculated in paragraphs (4) and (5) is nonzero so as
39 to account for the changes reported pursuant to paragraph (4) of subdivision (b)
40 and paragraph (4) of subdivision (c). The board may make the corrections over a
41 period of time, not to exceed five years.

1 (i)(1) After February 1, 2009, for an agency listed on the most recent
2 Controller's report pursuant to subparagraph (B) or (E) of paragraph (1) of
3 subdivision (g), all of the following shall apply:

4 (A) The agency shall be prohibited from adding new project areas or expanding
5 existing project areas. For purposes of this paragraph, "project area" has the same
6 meaning as in Sections 33320.1 to 33320.3, inclusive, and Section 33492.3.

7 (B) The agency shall be prohibited from issuing new bonds, notes, interim
8 certificates, debentures, or other obligations, whether funded, refunded, assumed,
9 or otherwise, pursuant to Article 5 (commencing with Section 33640).

10 (C) The agency shall be prohibited from encumbering any funds or expending
11 any moneys derived from any source, except that the agency may encumber funds
12 and expend funds to pay, if any, all of the following:

13 (i) Bonds, notes, interim certificates, debentures, or other obligations issued by
14 an agency before the imposition of the prohibition in subparagraph (B) whether
15 funded, refunded, assumed, or otherwise, pursuant to Article 5 (commencing with
16 Section 33460).

17 (ii) Loans or moneys advanced to the agency, including, but not limited to, loans
18 from federal, state, local agencies, or a private entity.

19 (iii) Contractual obligations that, if breached, could subject the agency to
20 damages or other liabilities or remedies.

21 (iv) Obligations incurred pursuant to Section 33445.

22 (v) Indebtedness incurred pursuant to Section 33334.2 or 33334.6.

23 (vi) Obligations incurred pursuant to Section 33401.

24 (vii) An amount, to be expended for the monthly operation and administration of
25 the agency, that may not exceed 75 percent of the average monthly amount spent
26 for those purposes in the fiscal year preceding the fiscal year in which the agency
27 was first listed on the Controller's report pursuant to subparagraph (B) or (E) of
28 paragraph (1) of subdivision (g).

29 (2) After February 1, 2009, an agency identified in subparagraph (B) or (E) of
30 paragraph (1) of subdivision (g) shall incur interest charges on any passthrough
31 payment that is made to a local educational agency more than 60 days after the
32 close of the fiscal year in which the passthrough payment was required. Interest
33 shall be charged at a rate equal to 150 percent of the current Pooled Money
34 Investment Account earnings annual yield rate and shall be charged for the period
35 beginning 60 days after the close of the fiscal year in which the passthrough
36 payment was due through the date that the payment is made.

37 (3) The Controller, with the concurrence of the Director of Finance, may waive
38 the provisions of paragraphs (1) and (2) for a period of up to 12 months if the
39 Controller determines all of the following:

40 (A) The county auditor has identified the agency in its most recent report issued
41 pursuant to paragraph (2) of subdivision (f) as an agency for which the auditor has
42 issued a finding of concurrence for all reports required pursuant to subdivisions (b)
43 and (c).

1 (B) The agency has filed a statement of dispute on an issue or issues that, in the
2 opinion of the Controller, are likely to be resolved in a manner consistent with the
3 agency's position.

4 (C) The agency has made passthrough payments to local educational agencies
5 and the county Educational Revenue Augmentation Fund, or has had funds
6 previously withheld by the auditor, in amounts that would satisfy the agency's
7 passthrough payment requirements to local educational agencies if the issue or
8 issues addressed in the statement of dispute were resolved in a manner consistent
9 with the agency's position.

10 (D) The agency would sustain a fiscal hardship if it made passthrough payments
11 to local educational agencies and the county Educational Revenue Augmentation
12 Fund in the amounts estimated by the county auditor.

13 (j) Notwithstanding any other provision of law, if an agency report submitted
14 pursuant to subdivision (b) or (c) indicates outstanding payment obligations to a
15 local educational agency, the agency shall make these outstanding payments as
16 follows:

17 (1) Of the outstanding payments owed to school districts, including any interest
18 payments pursuant to paragraph (2) of subdivision (i), 43.3 percent shall be
19 deposited in the county Educational Revenue Augmentation Fund and the
20 remainder shall be allocated to the school district or districts.

21 (2) Of the outstanding payments owed to community college districts, including
22 any interest payments pursuant to paragraph (2) of subdivision (i), 47.5 percent
23 shall be deposited in the county Educational Revenue Augmentation Fund and the
24 remainder shall be allocated to the community college district or districts.

25 (3) Of the outstanding payments owed to county offices of education, including
26 any interest payments pursuant to paragraph (2) of subdivision (i), 19 percent shall
27 be deposited in the county Educational Revenue Augmentation Fund and the
28 remainder shall be allocated to the county office of education.

29 (k)(1) This section shall not be construed to increase any allocations of excess,
30 additional, or remaining funds that would otherwise have been allocated to cities,
31 counties, cities and counties, or special districts pursuant to clause (i) of
32 subparagraph (B) of paragraph (4) of subdivision (d) of Section 97.2 of, clause (i)
33 of subparagraph (B) of paragraph (4) of subdivision (d) of Section 97.3 of, or
34 Article 4 (commencing with Section 98) of Chapter 6 of Part 0.5 of Division 1 of,
35 the Revenue and Taxation Code had this section not been enacted.

36 (2) Notwithstanding any other provision of law, no funds deposited in the
37 county Educational Revenue Augmentation Fund pursuant to subdivision (j) shall
38 be distributed to a community college district.

39 (l) A county may require an agency to reimburse the county for any expenses
40 incurred by the county in performing the services required by this section.

1 § 33685. RDA ERAF contribution in 2008-09 fiscal year

2 33685. (a)(1) For the 2008–09 fiscal year a redevelopment agency shall remit, as
3 determined by the Director of Finance, prior to May 10, an amount equal to the
4 amount determined for that agency pursuant to subparagraph (K) of paragraph (2)
5 to the county auditor for deposit in the county Educational Revenue Augmentation
6 Fund, created pursuant to Article 3 (commencing with Section 97) of Chapter 6 of
7 Part 0.5 of Division 1 of the Revenue and Taxation Code. Notwithstanding any
8 other provision of law, in the 2008–09 fiscal year, no funds deposited in the
9 county Educational Revenue Augmentation Fund pursuant to this section shall be
10 distributed to a community college district.

11 (2) On or before November 15, 2008, the Director of Finance shall do all of the
12 following:

13 (A)(i) Determine the value of five percent of the statewide total property tax
14 revenue apportioned to agencies pursuant to Section 33670.

15 (ii) If the value determined pursuant to clause (i) exceeds three-hundred fifty
16 million dollars (\$350,000,000), the value determined in clause (i) shall be
17 allocated to each agency as provided in paragraphs (B) to (J), inclusive.

18 (iii) If the value determined pursuant to clause (i) does not exceed three-hundred
19 fifty million dollars (\$350,000,000), three-hundred fifty million dollars
20 (\$350,000,000) shall be allocated to each agency as provided in subparagraphs (B)
21 to (J), inclusive.

22 (B) Determine the net tax increment apportioned to each agency pursuant to
23 Section 33670, excluding any amounts apportioned to affected taxing entities
24 pursuant to Section 33401, 33607.5, or 33676.

25 (C) Determine the net tax increment apportioned to all agencies pursuant to
26 Section 33670, excluding any amounts allocated to affected taxing entities
27 pursuant to Section 33401, 33607.5, or 33676.

28 (D) Determine a percentage factor by dividing the amount determined pursuant
29 to subparagraph (A) by two and then by the amount determined pursuant to
30 subparagraph (C).

31 (E) Determine an amount for each agency by multiplying the amount
32 determined pursuant to subparagraph (B) by the percentage factor determined
33 pursuant to subparagraph (D).

34 (F) Determine the total amount of property tax revenue apportioned to each
35 agency pursuant to Section 33670, including any amounts allocated to affected
36 taxing entities pursuant to Section 33401, 33607.5, or 33676.

37 (G) Determine the total amount of property tax revenue apportioned to all
38 agencies pursuant to Section 33670, including any amounts allocated to affected
39 taxing entities pursuant to Section 33401, 33607.5, or 33676.

40 (H) Determine a percentage factor by dividing the amount determined pursuant
41 to subparagraph (A) by two and then by the amount determined pursuant to
42 subparagraph (G).

1 (I) Determine an amount for each agency by multiplying the amount determined
2 pursuant to subparagraph (F) by the percentage factor determined pursuant to
3 subparagraph (H).

4 (J) Add the amount determined pursuant to subparagraph (E) to the amount
5 determined pursuant to subparagraph (I).

6 (K) Notify each agency, each legislative body, and each county auditor of each
7 agency's amount. The county auditor shall deposit these amounts in the county
8 Educational Revenue Augmentation Fund pursuant to paragraph (1).

9 (3) The obligation of any agency to make the payments required pursuant to this
10 subdivision shall be subordinate to the lien of any pledge of collateral securing,
11 directly or indirectly, the payment of the principal, or interest on any bonds of the
12 agency including, without limitation, bonds secured by a pledge of taxes allocated
13 to the agency pursuant to Section 33670. Agencies shall factor in the fiscal
14 obligations created by this subdivision when issuing bonded indebtedness.

15 (b)(1) Notwithstanding any other provision of law, to make the full allocation
16 required by this section, an agency may borrow up to 50 percent of the amount
17 required to be allocated to the Low and Moderate Income Housing Fund, pursuant
18 to Sections 33334.2, 33334.3, and 33334.6, unless, in a given fiscal year, executed
19 contracts exist that would be impaired if the agency reduced the amount allocated
20 to the Low and Moderate Income Housing Fund pursuant to the authority of this
21 subdivision.

22 (2) As a condition of borrowing pursuant to this subdivision, an agency shall
23 make a finding that there are insufficient other moneys to meet the requirements of
24 subdivision (a). Funds borrowed pursuant to this subdivision shall be repaid in full
25 within 10 years following the date on which moneys are remitted to the county
26 auditor for deposit in the county Educational Revenue Augmentation Fund
27 pursuant to subdivision (a).

28 (c) To make the allocation required by this section, an agency may use any
29 funds that are legally available and not legally obligated for other uses, including,
30 but not limited to, reserve funds, proceeds of land sales, proceeds of bonds or
31 other indebtedness, lease revenues, interest, and other earned income. No moneys
32 held in a low- and moderate-income fund as of July 1 of the applicable fiscal year
33 may be used for this purpose.

34 (d) The legislative body shall by March 1 of each year report to the county
35 auditor as to how the agency intends to fund the allocation required by this
36 section, or that the legislative body intends to remit the amount in lieu of the
37 agency pursuant to Section 33687.

38 (e) The allocation obligations imposed by this section, including amounts owed,
39 if any, created under this section, are hereby declared to be an indebtedness of the
40 redevelopment project to which they relate, payable from taxes allocated to the
41 agency pursuant to Section 33670, and shall constitute an indebtedness of the
42 agency with respect to the redevelopment project until paid in full.

1 (f) It is the intent of the Legislature, in enacting this section, that these
2 allocations directly or indirectly assist in the financing or refinancing, in whole or
3 in part, of the community's redevelopment project pursuant to Section 16 of
4 Article XVI of the California Constitution.

5 (g) In making the annual determinations required by subdivision (a), the
6 Director of Finance shall use those amounts reported in "Table 7, Assessed
7 Valuation, Tax Increment Distribution and Statement of Indebtedness" for all
8 agencies and for each agency in the most recent published edition of the
9 Controller's Community Redevelopment Agencies Annual Report made pursuant
10 to Section 12463.3 of the Government Code.

11 (h) If revised reports have been accepted by the Controller on or before
12 September 1 of the applicable fiscal year, the Director of Finance shall use
13 appropriate data that has been certified by the Controller for the purpose of
14 making the determinations required by subdivision (a).

15 (i) Nothing in this section shall be construed as extending the time limits on the
16 ability of agencies to do any of the following:

17 (1) Establish loans, advances, or indebtedness.

18 (2) Receive tax increment revenues.

19 (3) Exercise eminent domain powers.

20 **§ 33686. Loan from legislative body to make ERAF payment in 2008-09 fiscal year**

21 33686. (a)(1) For purposes of this section, "existing indebtedness" means one or
22 more of the following obligations incurred by a redevelopment agency prior to the
23 effective date of this section, the payment of which is to be made in whole or in
24 part, directly or indirectly, out of taxes allocated to the agency pursuant to Section
25 33670, and that is required by law or provision of the existing indebtedness to be
26 made during the fiscal year of the relevant allocation required by Section 33685:

27 (A) Bonds, notes, interim certificates, debentures, or other obligations issued by
28 the agency whether funded, refunded, assumed, or otherwise pursuant to Article 5
29 (commencing with Section 33640).

30 (B) Loans or moneys advanced to the agency, including, but not limited to, loans
31 from federal, state, or local agencies, or a private entity.

32 (C) A contractual obligation that, if breached, could subject the agency to
33 damages or other liabilities or remedies.

34 (D) An obligation incurred pursuant to Section 33445.

35 (E) Indebtedness incurred pursuant to Section 33334.2.

36 (F) An amount, to be expended for the operation and administration of the
37 agency, that may not exceed 90 percent of the amount spent for those purposes in
38 the 2005-06 fiscal year.

39 (G) Obligations imposed by law with respect to activities that occurred prior to
40 the effective date of the act that adds this section.

41 (2) Existing indebtedness incurred prior to the effective date of this section may
42 be refinanced, refunded, or restructured after that date, and shall remain existing

1 indebtedness for the purposes of this section if the annual debt service during that
2 fiscal year does not increase over the prior fiscal year and the refinancing does not
3 reduce the ability of the agency to make the payment required by subdivision (a)
4 of Section 33685.

5 (3) For purposes of this section, indebtedness shall be deemed to be incurred
6 prior to the effective date of this section if the agency has entered into a binding
7 contract subject to normal marketing conditions or to deliver the indebtedness, or
8 if the redevelopment agency has received bids for the sale of the indebtedness
9 prior to that date and the indebtedness is issued for value and evidence thereof is
10 delivered to the initial purchaser no later than 30 days after the date of the contract
11 or sale.

12 (b) For the 2008–09 fiscal year, an agency that has adopted a resolution pursuant
13 to subdivision (c) may allocate, pursuant to subdivision (a) of Section 33685, to
14 the auditor less than the amount required by subdivision (a) of Section 33685 if the
15 agency finds that any of the following has occurred:

16 (1) That the difference between the amount allocated to the agency and the
17 amount required by subdivision (a) of Section 33685 is necessary to make
18 payments on existing indebtedness that are due or required to be committed, set
19 aside, or reserved by the agency during the 2008–09 fiscal year and that are used
20 by the agency for that purpose, and the agency has no other funds that can be used
21 to pay this existing indebtedness and no other feasible method to reduce or avoid
22 this indebtedness.

23 (2) The agency has no other funds to make the allocation required by
24 subdivision (a) of Section 33685.

25 (c)(1) Any agency that intends to allocate, pursuant to subdivision (b), to the
26 auditor less than the amount required by subdivision (a) of Section 33685 shall
27 adopt, prior to December 31, 2008, after a noticed public hearing, a resolution that
28 lists all of the following:

29 (A) Each existing indebtedness incurred prior to the effective date of this
30 section.

31 (B) Each indebtedness on which a payment is required to be made during the
32 applicable fiscal year.

33 (C) The amount of each payment, the time when it is required to be paid, and the
34 total of the payments required to be made during the applicable fiscal year. For
35 indebtedness that bears interest at a variable rate, or for short-term indebtedness
36 that is maturing during the fiscal year and that is expected to be refinanced, the
37 amount of payments during the fiscal year shall be estimated by the agency.

38 (2) The information contained in the resolution required by this subdivision shall
39 be reviewed for accuracy by the chief fiscal officer of the agency.

40 (3) The legislative body shall additionally adopt the resolution required by this
41 section.

42 (d)(1) Any agency that determines, pursuant to subdivision (b), that it will be
43 unable in the 2008–09 fiscal year to allocate the full amount required by

1 subdivision (a) of Section 33685 may enter into, subject to paragraph (3), an
2 agreement with the legislative body by February 15, 2009, to fund the payment of
3 the difference between the full amount required to be paid pursuant to subdivision
4 (a) of Section 33685 and the amount available for allocation by the agency.

5 (2) The obligations imposed by paragraph (1) are hereby declared to be
6 indebtedness incurred by the agency to finance a portion of a redevelopment
7 project within the meaning of Section 16 of Article XVI of the California
8 Constitution. This indebtedness shall be payable from tax revenues apportioned to
9 the agency pursuant to Section 33670, and any other funds received by the agency.
10 The obligations imposed by paragraph (1) shall remain an indebtedness of the
11 agency to the legislative body until paid in full, or until the agency and the
12 legislative body otherwise agree.

13 (3) The agreement described in paragraph (1) shall be subject to those terms and
14 conditions specified in a written agreement between the legislative body and the
15 agency.

16 (e) If the agency fails to provide to the county auditor the full payment required
17 under Section 33685, or fails to arrange for full payment to be provided on the
18 agency's behalf pursuant to subdivision (d) or by Section 33687 or 33688, all of
19 the following shall apply:

20 (1) The agency shall be prohibited from adding new project areas or expanding
21 existing project areas. For purposes of this paragraph, "project area" has the same
22 meaning as in Sections 33320.1 to 33320.3, inclusive, and Section 33492.3.

23 (2) The agency shall be prohibited from issuing new bonds, notes, interim
24 certificates, debentures, or other obligations, whether funded, refunded, assumed,
25 or otherwise, pursuant to Article 5 (commencing with Section 33640) of this
26 chapter.

27 (3) The agency shall be prohibited from encumbering any funds or expending
28 any moneys derived from any source, except that the agency may encumber funds
29 and expend funds to pay, if any, all of the following:

30 (A) Bonds, notes, interim certificates, debentures, or other obligations issued by
31 an agency before the imposition of the prohibition in paragraph (2), whether
32 funded, refunded, assumed, or otherwise, pursuant to Article 5 (commencing with
33 Section 33460) of this chapter.

34 (B) Loans or moneys advanced to the agency, including, but not limited to, loans
35 from federal, state, local agencies, or a private entity.

36 (C) Contractual obligations that, if breached, could subject the agency to
37 damages or other liabilities or remedies.

38 (D) Obligations incurred pursuant to Section 33445.

39 (E) Indebtedness incurred pursuant to Section 33334.2 or 33334.6.

40 (F) Obligations incurred pursuant to Section 33401.

41 (G) An amount, to be expended for the monthly operation and administration of
42 the agency, that may not exceed 75 percent of the average monthly amount spent

1 for those purposes in the fiscal year preceding the fiscal year in which the agency
2 failed to make the payment required by subdivision (a) of Section 33685.

3 (f) The prohibitions identified in subdivision (e) shall be lifted once the county
4 auditor certifies to the Director of Finance that the payment required by Section
5 33685 has been made by the agency, or that payment has been made on the
6 agency's behalf pursuant to this section or to Section 33687 or 33688.

7 **§ 33687. Legislative body remittance in lieu of RDA ERAF contribution in 2008-09 fiscal**
8 **year**

9 33687. (a) In lieu of the remittance required by Section 33685, for the 2008–09
10 fiscal year, a legislative body may remit, prior to May 10, 2009, an amount equal
11 to the amount determined for the agency pursuant to subparagraph (J) of paragraph
12 (2) of subdivision (a) of Section 33685 to the county auditor for deposit in the
13 county Educational Revenue Augmentation Fund, created pursuant to Article 3
14 (commencing with Section 97) of Chapter 6 of Part 0.5 of Division 1 of the
15 Revenue and Taxation Code. Notwithstanding any other provision of law, in the
16 2008–09 fiscal year, no funds deposited in the county Educational Revenue
17 Augmentation Fund pursuant to this section shall be distributed to a community
18 college district.

19 (b) The legislative body may make the remittance authorized by this section
20 from any funds that are legally available for this purpose. No moneys held in an
21 agency's Low and Moderate Income Housing Fund, pursuant to Sections 33334.2,
22 33334.3, and 33334.6, shall be used for this purpose.

23 (c) If the legislative body, pursuant to subdivision (d) of Section 33685, reported
24 to the county auditor that it intended to remit the amount in lieu of the agency and
25 the legislative body fails to transmit the full amount as authorized by this section
26 by May 10, 2009, the county auditor, no later than May 15, 2009, shall transfer an
27 amount necessary to meet the obligation from the legislative body's allocations
28 pursuant to Chapter 6 (commencing with Section 95) of Part 0.5 of Division 1 of
29 the Revenue and Taxation Code. If the amount of the legislative body's allocations
30 are not sufficient to meet this obligation, the county auditor shall transfer an
31 additional amount necessary to meet this obligation from the property tax
32 increment revenue apportioned to the agency pursuant to Section 33670, provided
33 that no moneys allocated to the agency's Low and Moderate Income Housing
34 Fund shall be used for this purpose.

35 **§ 33688. Loan by "authorized issuer" to make RDA ERAF contribution in 2008-09, 2009-10,**
36 **and 2010-11 fiscal years**

37 33688. (a) For purposes of this section, an "authorized issuer" is limited to a
38 joint powers entity created pursuant to Article 1 (commencing with Section 6500)
39 of Chapter 5 of Division 7 of Title 1 of the Government Code that consists of no
40 less than 100 local agencies issuing bonds pursuant to the Marks-Roos Local Bond

1 Pooling Act of 1984 (Article 4 (commencing with Section 6584) of Chapter 5 of
2 Division 7 of Title 1 of the Government Code).

3 (b) An authorized issuer may issue bonds, notes, or other evidence of
4 indebtedness to provide net proceeds to make one or more loans to one or more
5 agencies to be used by the agency to timely make the payment required by Section
6 33685, 33690, or 33690.5.

7 (c) With the prior approval of the legislative body by adoption of a resolution by
8 a majority of that body that recites that a first lien on the property tax revenues
9 allocated to the legislative body will be created in accordance with subdivision (h),
10 an agency may enter into an agreement with an authorized issuer issuing bonds
11 pursuant to subdivision (b) to repay a loan used to make the payment required by
12 Section 33685, 33690, or 33690.5. For the purpose of calculating the amount that
13 has been divided and allocated to the agency to determine whether the limitation
14 adopted pursuant to Section 33333.2 or 33333.4 or pursuant to an agreement or
15 court order that has been reached, any funds used to repay a loan entered into
16 pursuant to this section shall be deducted from the amount of property tax revenue
17 deemed to have been received by the agency.

18 (d) A loan made pursuant to this section shall be repayable by the agency from
19 any available funds of the agency not otherwise obligated for other uses and shall
20 be repayable by the agency on a basis subordinate to all existing and future
21 obligations of the agency.

22 (e) Upon making a loan to an agency pursuant to this section, the trustee for the
23 bonds issued to provide the funds to make the loan shall timely pay, on behalf of
24 the agency, to the county auditor of the county in which the agency is located the
25 net proceeds (after payment of costs of issuance, credit enhancement costs, and
26 reserves, if any) of the loan in payment in full or in part, as directed by the agency,
27 of the amount required to be paid by the agency pursuant to Section 33685, 33690,
28 or 33690.5 and shall provide the county auditor with the repayment schedule for
29 the loan, together with the name of the trustee.

30 (f) In the event the agency shall fail to repay timely, at any time and from time
31 to time, the loan in accordance with the schedule provided to the county auditor,
32 the trustee for the bonds shall promptly notify the county auditor of the amount of
33 the payment on the loan that is past due.

34 (g) The county auditor shall reallocate from the legislative body and shall pay,
35 on behalf of the agency, the past due amount from the first available proceeds of
36 the property tax allocation that would otherwise be transferred to the legislative
37 body pursuant to Chapter 6 (commencing with Section 95) of Part 0.5 of Division
38 1 of the Revenue and Taxation Code. This transfer shall be deemed a reallocation
39 of the property tax revenue from the legislative body to the agency for the purpose
40 of payment of the loan, and not as a payment by the legislative body on the loan.

41 (h) To secure repayment of a loan to an agency made pursuant to this section,
42 the trustee for the bonds issued to provide the funds to make the loan shall have a
43 lien on the property tax revenues allocated to the legislative body pursuant to

1 Chapter 6 (commencing with Section 95) of Part 0.5 of Division 1 of the Revenue
2 and Taxation Code. This lien shall arise by operation of this section automatically
3 upon the making of the loan without the need for any action on the part of any
4 person. This lien shall be valid, binding, perfected, and enforceable against the
5 legislative body, its successors, creditors, purchasers, and all others asserting
6 rights in those property tax revenues, irrespective of whether those persons have
7 notice of the lien, irrespective of the fact that the property tax revenues subject to
8 the lien may be commingled with other property, and without the need for physical
9 delivery, recordation, public notice, or any other act. This lien shall be a first
10 priority lien on these property tax revenues. This lien shall not apply to any
11 portion of the property taxes allocated to the agency pursuant to Section 33670.

12 **§ 33689. Specified payment not counted against tax increment limits**

13 33689. For the purpose of calculating the amount that has been divided and
14 allocated to the agency to determine whether the limitation adopted pursuant to
15 Section 33333.2 or 33333.4 or pursuant to agreement or court order that has been
16 reached, any payments made pursuant to subdivision (a) of Section 33685 with
17 property tax revenues shall be deducted from the amount of property tax dollars
18 deemed to have been received by the agency.

19 **§ 33690. RDA ERAF contribution in 2009-10 fiscal year**

20 33690. (a)(1)(A) For the 2009–10 fiscal year, a redevelopment agency shall
21 remit, as determined by the Director of Finance, prior to May 10, 2010, an amount
22 equal to the amount determined for that agency pursuant to paragraph (2) to the
23 county auditor for deposit in the county Supplemental Educational Revenue
24 Augmentation Fund that is established in the county treasury. Notwithstanding any
25 other law, any funds deposited in the Supplemental Educational Revenue
26 Augmentation Fund shall not be distributed to a community college district.

27 (B) On or before May 25, 2010, the county auditor shall report to the
28 Department of Finance each amount transferred to the Supplemental Educational
29 Revenue Augmentation Fund for the 2009–10 fiscal year.

30 (2) On or before November 15, 2009, the Director of Finance shall do all of the
31 following:

32 (A) Determine the net tax increment apportioned to each agency pursuant to
33 Section 33670, excluding any amounts apportioned to affected taxing entities
34 pursuant to Section 33401, 33607.5, or 33676.

35 (B) Determine the net tax increment apportioned to all agencies pursuant to
36 Section 33670, excluding any amounts allocated to affected taxing entities
37 pursuant to Section 33401, 33607.5, or 33676.

38 (C) Determine a percentage factor by dividing one billion seven hundred million
39 dollars (\$1,700,000,000) by two and then by the amount determined pursuant to
40 subparagraph (B).

1 (D) Determine an amount for each agency by multiplying the amount
2 determined pursuant to subparagraph (A) by the percentage factor determined
3 pursuant to subparagraph (C).

4 (E) Determine the total amount of property tax revenue apportioned to each
5 agency pursuant to Section 33670, including any amounts allocated to affected
6 taxing entities pursuant to Section 33401, 33607.5, or 33676.

7 (F) Determine the total amount of property tax revenue apportioned to all
8 agencies pursuant to Section 33670, including any amounts allocated to affected
9 taxing entities pursuant to Section 33401, 33607.5, or 33676.

10 (G) Determine a percentage factor by dividing one billion seven hundred million
11 dollars (\$1,700,000,000) by two and then by the amount determined pursuant to
12 subparagraph (F).

13 (H) Determine an amount for each agency by multiplying the amount
14 determined pursuant to subparagraph (E) by the percentage factor determined
15 pursuant to subparagraph (G).

16 (I) Add the amount determined pursuant to subparagraph (D) to the amount
17 determined pursuant to subparagraph (H).

18 (J) Notify each agency, each legislative body, and each county auditor of each
19 agency's amount. The county auditor shall deposit these amounts in the county
20 Supplemental Educational Revenue Augmentation Fund pursuant to paragraph (1).

21 (3) The obligation of any agency to make the payments required pursuant to this
22 subdivision shall be subordinate to the lien of any pledge of collateral securing,
23 directly or indirectly, the payment of the principal, or interest on any bonds of the
24 agency including, without limitation, bonds secured by a pledge of taxes allocated
25 to the agency pursuant to Section 33670. Agencies shall factor in the fiscal
26 obligations created by this subdivision when issuing bonded indebtedness.

27 (b) To make the allocation required by this section, an agency may use any
28 funds that are legally available and not legally obligated for other uses, including,
29 but not limited to, reserve funds, proceeds of land sales, proceeds of bonds or
30 other indebtedness, lease revenues, interest, and other earned income.

31 (c)(1) Notwithstanding any other law, to make the full allocation required by
32 this section, an agency may borrow from either the amount required to be
33 allocated to the Low and Moderate Income Housing Fund, pursuant to Sections
34 33334.2, 33334.3, and 33334.6, or any moneys in that fund, or both, unless
35 executed contracts exist that would be impaired if the agency reduced the amount
36 allocated to the Low and Moderate Income Housing Fund or the amount of
37 moneys in the fund, or both, pursuant to the authority of this subdivision.

38 (2) As a condition of borrowing pursuant to this subdivision, an agency shall
39 make a finding that there are insufficient other moneys to meet the requirements of
40 subdivision (a). Funds borrowed pursuant to this subdivision shall be repaid in full
41 on or before June 30, 2015. An agency that fails to repay funds borrowed pursuant
42 to this subdivision shall be required to allocate an additional 5 percent of all taxes
43 that are allocated to that agency pursuant to Section 33670 for low- and moderate-

1 income housing for the remainder of the time the agency receives tax revenue
2 pursuant to Section 33670.

3 (d) The legislative body shall by March 1, 2010, report to the county auditor as
4 to how the agency intends to fund the allocation required by this section, or that
5 the legislative body intends to remit the amount in lieu of the agency pursuant to
6 Section 33692.

7 (e) The allocation obligations imposed by this section, including amounts owed,
8 if any, created under this section, are hereby declared to be an indebtedness of the
9 redevelopment project to which they relate, payable from taxes allocated to the
10 agency pursuant to Section 33670, and shall constitute an indebtedness of the
11 agency with respect to the redevelopment project until paid in full.

12 (f) It is the intent of the Legislature, in enacting this section, that these
13 allocations directly or indirectly assist in the financing or refinancing, in whole or
14 in part, of the community's redevelopment project pursuant to Section 16 of
15 Article XVI of the California Constitution.

16 (g) In making the determination required by subdivision (a), the Director of
17 Finance shall use those amounts reported in "Table 7, Assessed Valuation, Tax
18 Increment Distribution and Statement of Indebtedness" for all agencies and for
19 each agency in the 2006-07 edition of the Controller's Community
20 Redevelopment Agencies Annual Report made pursuant to Section 12463.3 of the
21 Government Code, subject to any adjustments required by subdivision (h).

22 (h) With respect to the use of amounts reported in the 2006-07 edition of the
23 Controller's Community Redevelopment Agencies Annual Report for purposes of
24 subdivision (a), both of the following shall apply:

25 (1) If revised reports were accepted by the Controller on or before September 1,
26 2008, the Director of Finance shall use appropriate data that has been certified by
27 the Controller for the purpose of making the determinations required by
28 subdivision (a).

29 (2) The director shall adjust the reported amounts of net and total tax increment
30 revenue to exclude amounts apportioned to any redevelopment agency from any
31 territory that has been deleted from any project area, as reported to the State Board
32 of Equalization in accordance with Section 33375 prior to August 1, 2009, and
33 that deletion is not reflected in the Controller's 2006-07 published report or in the
34 revised reports described in paragraph (1).

35 (i) Except as provided in Section 33331.5, nothing in this section shall be
36 construed as extending the time limits on the ability of agencies to do both of the
37 following:

38 (1) Establish loans, advances, or indebtedness.

39 (2) Exercise eminent domain powers.

40 (j)(1) Notwithstanding Sections 97.2 and 97.3 of Revenue and Taxation Code,
41 the county auditor-controller shall distribute the funds that are remitted to the
42 county Supplemental Educational Revenue Augmentation Fund by a
43 redevelopment agency pursuant to this section only to a K-12 school district or

1 county office of education that is located partially or entirely within any project
2 area of that redevelopment agency in an amount proportional to the average daily
3 attendance of each school district.

4 (2) The county auditor-controller shall notify each K-12 school district, and the
5 State Department of Education, of the amount of Supplemental Educational
6 Revenue Augmentation Fund moneys a district receives pursuant to this section
7 from each redevelopment agency. The county auditor-controller shall also notify
8 each K-12 school district receiving funds pursuant to paragraph (1) of the project
9 area boundaries of each redevelopment agency from which the K-12 school
10 district received funds.

11 (3)(A) The county superintendent of schools shall provide the average daily
12 attendance reported for each school district as of the Second Principal
13 Apportionment for the 2009–10 fiscal year to the county auditor-controller.

14 (B) The county auditor-controller shall, based on information provided by the
15 county superintendent of schools pursuant to subparagraph (A), allocate the
16 funding pursuant to this subdivision to those districts within the county.

17 (4) The county auditor-controller shall notify, on or before May 25, 2010, the
18 Department of Finance of the amount of funding apportioned to each district or
19 county office of education pursuant to this subdivision.

20 (5) School districts and county offices of education shall use the funds received
21 under this section to serve pupils living in the redevelopment areas or in housing
22 supported by redevelopment agency funds. Redevelopment agencies shall provide
23 whatever information school districts and county offices of education need to
24 accomplish this purpose.

25 (k)(1) For the 2009–10 fiscal year, the amount of property tax revenues
26 apportioned to each school district, pursuant to Article 2 (commencing with
27 Section 96.1) of Chapter 6 of Part 0.5 of Division 1 of the Revenue and Taxation
28 Code, shall be reduced by the total amount of Supplemental Educational Revenue
29 Augmentation Fund moneys the district receives. The amount of property tax
30 revenues that is the product of this reduction shall be deposited in the county
31 Supplemental Revenue Augmentation Fund established pursuant to Section 100.06
32 of the Revenue and Taxation Code.

33 (2) For the purposes of making the computations required by Section 8 of
34 Article XVI of the California Constitution, the total amount of Supplemental
35 Educational Revenue Augmentation Fund moneys a district receives, regardless of
36 the actual date the funds are received, pursuant to this section from each
37 redevelopment agency shall be deemed to be “allocated local proceeds of taxes,”
38 as defined in subdivisions (g) and (h) of Section 41202, and for purposes of
39 Section 42238 of the Education Code, for the 2009–10 fiscal year.

40 (l) For purposes of this section, “K-12 school district” has the same meaning as
41 a school district, as defined in Section 80 of the Education Code.

42 (m) This section shall not be construed to increase any allocations of excess,
43 additional, or remaining funds that would otherwise have been allocated to cities,

1 counties, cities and counties, or special districts pursuant to clause (i) of
2 subparagraph (B) of paragraph (4) of subdivision (d) of Section 97.2 of, clause (i)
3 of subparagraph (B) of paragraph (4) of subdivision (d) of Section 97.3 of, or
4 Article 4 (commencing with Section 98) of Chapter 6 of Part 0.5 of Division 1 of,
5 the Revenue and Taxation Code had this section not been enacted.

6 **§ 33690.5. RDA ERAF contribution in 2010-11 fiscal year**

7 33690.5. (a)(1)(A) For the 2010–11 fiscal year a redevelopment agency shall
8 remit, as determined by the Director of Finance, prior to May 10, 2011, an amount
9 equal to the amount determined for that agency pursuant to paragraph (2) to the
10 county auditor for deposit in the county Supplemental Educational Revenue
11 Augmentation Fund.

12 (B) On or before May 25, 2011, the county auditor shall report to the
13 Department of Finance each amount transferred to the Supplemental Educational
14 Revenue Augmentation Fund for the 2010–11 fiscal year.

15 (2) On or before November 15, 2010, the Director of Finance shall do all of the
16 following:

17 (A) Determine the net tax increment apportioned to each agency pursuant to
18 Section 33670, excluding any amounts apportioned to affected taxing entities
19 pursuant to Section 33401, 33607.5, or 33676.

20 (B) Determine the net tax increment apportioned to all agencies pursuant to
21 Section 33670, excluding any amounts allocated to affected taxing entities
22 pursuant to Section 33401, 33607.5, or 33676.

23 (C) Determine a percentage factor by dividing three hundred fifty million dollars
24 (\$350,000,000) by two and then by the amount determined pursuant to
25 subparagraph (B).

26 (D) Determine an amount for each agency by multiplying the amount
27 determined pursuant to subparagraph (A) by the percentage factor determined
28 pursuant to subparagraph (C).

29 (E) Determine the total amount of property tax revenue apportioned to each
30 agency pursuant to Section 33670, including any amounts allocated to affected
31 taxing entities pursuant to Section 33401, 33607.5, or 33676.

32 (F) Determine the total amount of property tax revenue apportioned to all
33 agencies pursuant to Section 33670, including any amounts allocated to affected
34 taxing entities pursuant to Section 33401, 33607.5, or 33676.

35 (G) Determine a percentage factor by dividing three hundred fifty million
36 dollars (\$350,000,000) by two and then by the amount determined pursuant to
37 subparagraph (F).

38 (H) Determine an amount for each agency by multiplying the amount
39 determined pursuant to subparagraph (E) by the percentage factor determined
40 pursuant to subparagraph (G).

41 (I) Add the amount determined pursuant to subparagraph (D) to the amount
42 determined pursuant to subparagraph (H).

1 (J) Notify each agency, each legislative body, and each county auditor of each
2 agency's amount. The county auditor shall deposit these amounts in the county
3 Supplemental Educational Revenue Augmentation Fund pursuant to paragraph (1).

4 (3) The obligation of any agency to make the payments required pursuant to this
5 subdivision shall be subordinate to the lien of any pledge of collateral securing,
6 directly or indirectly, the payment of the principal, or interest on any bonds of the
7 agency including, without limitation, bonds secured by a pledge of taxes allocated
8 to the agency pursuant to Section 33670. Agencies shall factor in the fiscal
9 obligations created by this subdivision when issuing bonded indebtedness.

10 (b) To make the allocation required by this section, an agency may use any
11 funds that are legally available and not legally obligated for other uses, including,
12 but not limited to, reserve funds, proceeds of land sales, proceeds of bonds or
13 other indebtedness, lease revenues, interest, and other earned income.

14 (c)(1) Notwithstanding any other law, to make the full allocation required by
15 this section, an agency may borrow the amount required to be allocated to the Low
16 and Moderate Income Housing Fund, pursuant to Sections 33334.2, 33334.3, and
17 33334.6, unless, in a given fiscal year, executed contracts exist that would be
18 impaired if the agency reduced the amount allocated to the Low and Moderate
19 Income Housing Fund pursuant to the authority of this subdivision.

20 (2) As a condition of borrowing pursuant to this subdivision, an agency shall
21 make a finding that there are insufficient other moneys to meet the requirements of
22 subdivision (a). Funds borrowed pursuant to this subdivision shall be repaid in full
23 on or before June 30, 2016. An agency that fails to repay funds borrowed pursuant
24 to this subdivision shall be required to allocate an additional 5 percent of all taxes
25 that are allocated to that agency pursuant to Section 33670 for low- and moderate-
26 income housing for the remainder of the time the agency receives tax revenue
27 pursuant to Section 33670.

28 (d) The legislative body shall by March 1, 2011, report to the county auditor as
29 to how the agency intends to fund the allocation required by this section, or that
30 the legislative body intends to remit the amount in lieu of the agency pursuant to
31 Section 33692.

32 (e) The allocation obligations imposed by this section, including amounts owed,
33 if any, created under this section, are hereby declared to be an indebtedness of the
34 redevelopment project to which they relate, payable from taxes allocated to the
35 agency pursuant to Section 33670, and shall constitute an indebtedness of the
36 agency with respect to the redevelopment project until paid in full.

37 (f) It is the intent of the Legislature, in enacting this section, that these
38 allocations directly or indirectly assist in the financing or refinancing, in whole or
39 in part, of the community's redevelopment project pursuant to Section 16 of
40 Article XVI of the California Constitution.

41 (g) In making the determination required by subdivision (a), the Director of
42 Finance shall use those amounts reported in "Table 7, Assessed Valuation, Tax
43 Increment Distribution and Statement of Indebtedness" for all agencies and for

1 each agency in the 2006–07 edition of the Controller’s Community
2 Redevelopment Agencies Annual Report made pursuant to Section 12463.3 of the
3 Government Code, subject to any adjustments required by subdivision (h).

4 (h) With respect to the use of amounts reported in the 2006–07 edition of the
5 Controller’s Community Redevelopment Agencies Annual Report for purposes of
6 subdivision (a), both of the following shall apply:

7 (1) If revised reports were accepted by the Controller on or before September 1,
8 2008, the Director of Finance shall use appropriate data that has been certified by
9 the Controller for the purpose of making the determinations required by
10 subdivision (a).

11 (2) The director shall adjust the reported amounts of net and total tax increment
12 revenue to exclude amounts apportioned to any redevelopment agency from any
13 territory that has been deleted from any project area, as reported to the State Board
14 of Equalization in accordance with Section 33375 prior to August 1, 2009, and
15 that deletion is not reflected in the Controller’s 2006–07 published report or in the
16 revised reports described in paragraph (1).

17 (i) Except as provided in Section 33331.5, nothing in this section shall be
18 construed as extending the time limits on the ability of agencies to do both of the
19 following:

20 (1) Establish loans, advances, or indebtedness.

21 (2) Exercise eminent domain powers.

22 (j)(1) Notwithstanding Sections 97.2 and 97.3 of Revenue and Taxation Code,
23 the county auditor-controller shall distribute the funds that are remitted to the
24 county Supplemental Educational Revenue Augmentation Fund by a
25 redevelopment agency pursuant to this section only to a K-12 school district or
26 county office of education that is located partially or entirely within any project
27 area of that redevelopment agency in an amount proportional to the average daily
28 attendance of each school district.

29 (2) The county auditor-controller shall notify each K-12 school district, and the
30 State Department of Education, of the amount of Supplemental Educational
31 Revenue Augmentation Fund moneys a district receives pursuant to this section
32 from each redevelopment agency. The county auditor-controller shall also notify
33 each K-12 school district receiving funds pursuant to paragraph (1) of the project
34 area boundaries of each redevelopment agency from which the K-12 school
35 district received funds.

36 (3)(A) The county superintendent of schools shall provide the average daily
37 attendance reported for each school district as of the Second Principal
38 Apportionment for the 2009–10 fiscal year to the county auditor-controller.

39 (B) The county auditor-controller shall, based on information provided by the
40 county superintendent of schools pursuant to subparagraph (A), allocate the
41 funding pursuant to this subdivision to those districts within the county.

1 (4) The county auditor-controller shall notify, on or before May 25, 2011, the
2 Department of Finance of the amount of funding apportioned to each district or
3 county office of education pursuant to this subdivision.

4 (5) School districts and county offices of education shall use the funds received
5 under this section to serve pupils living in the redevelopment areas or in housing
6 supported by redevelopment agency funds. Redevelopment agencies shall provide
7 whatever information school districts need to accomplish this purpose.

8 (k)(1) For the 2010–11 fiscal year, the amount of property tax revenues
9 apportioned to each school district, pursuant to Article 2 (commencing with
10 Section 96.1) of Chapter 6 of Part 0.5 of Division 1 of the Revenue and Taxation
11 Code, shall be reduced by the total amount of Supplemental Educational Revenue
12 Augmentation Fund moneys the district receives. The amount of property tax
13 revenues that is the product of this reduction shall be deposited in the county
14 Supplemental Revenue Augmentation Fund established pursuant to Section 100.06
15 of the Revenue and Taxation Code.

16 (2) For the purposes of making the computations required by Section 8 of
17 Article XVI of the California Constitution, the total amount of Supplemental
18 Educational Revenue Augmentation Fund moneys a district receives, regardless of
19 the actual date the funds are received, pursuant to this section from each
20 redevelopment agency shall be deemed to be “allocated local proceeds of taxes,”
21 as defined in subdivisions (g) and (h) of Section 41202 and for purposes of Section
22 42238 of the Education Code, for the 2010–11 fiscal year.

23 (l) For purposes of this section, “K-12 school district” has the same meaning as
24 a school district, as defined in Section 80 of the Education Code.

25 (m) This section shall not be construed to increase any allocations of excess,
26 additional, or remaining funds that would otherwise have been allocated to cities,
27 counties, cities and counties, or special districts pursuant to clause (i) of
28 subparagraph (B) of paragraph (4) of subdivision (d) of Section 97.2 of, clause (i)
29 of subparagraph (B) of paragraph (4) of subdivision (d) of Section 97.3 of, or
30 Article 4 (commencing with Section 98) of Chapter 6 of Part 0.5 of Division 1 of,
31 the Revenue and Taxation Code had this section not been enacted.

32 **§ 33691. Loan from legislative body to make ERAF payment in 2009-10 and 2010-11 fiscal**
33 **years**

34 33691. (a)(1) For purposes of this section, “existing indebtedness” means one or
35 more of the following obligations incurred by a redevelopment agency prior to the
36 effective date of this section, the payment of which is to be made in whole or in
37 part, directly or indirectly, out of taxes allocated to the agency pursuant to Section
38 33670, and that is required by law or provision of the existing indebtedness to be
39 made during the fiscal year of the relevant allocation required by Section 33690 or
40 33690.5:

1 (A) Bonds, notes, interim certificates, debentures, or other obligations issued by
2 the agency whether funded, refunded, assumed, or otherwise pursuant to Article 5
3 (commencing with Section 33640).

4 (B) Loans or moneys advanced to the agency, including, but not limited to, loans
5 from federal, state, or local agencies, or a private entity.

6 (C) A contractual obligation that, if breached, could subject the agency to
7 damages or other liabilities or remedies.

8 (D) An obligation incurred pursuant to Section 33445.

9 (E) Indebtedness incurred pursuant to Section 33334.2.

10 (F) An amount, to be expended for the operation and administration of the
11 agency, that may not exceed 90 percent of the amount spent for those purposes in
12 the 2005–06 fiscal year.

13 (G) Obligations imposed by law with respect to activities that occurred prior to
14 the effective date of the act that adds this section.

15 (2) Existing indebtedness incurred prior to the effective date of this section may
16 be refinanced, refunded, or restructured after that date, and shall remain existing
17 indebtedness for the purposes of this section if the annual debt service during that
18 fiscal year does not increase over the prior fiscal year and the refinancing does not
19 reduce the ability of the agency to make the payment required by subdivision (a)
20 of Section 33690 or subdivision (a) of Section 33690.5.

21 (3) For purposes of this section, indebtedness shall be deemed to be incurred
22 prior to the effective date of this section if the agency has entered into a binding
23 contract subject to normal marketing conditions or to deliver the indebtedness, or
24 if the redevelopment agency has received bids for the sale of the indebtedness
25 prior to that date and the indebtedness is issued for value and evidence thereof is
26 delivered to the initial purchaser no later than 30 days after the date of the contract
27 or sale.

28 (b) For the 2009–10 fiscal year or the 2010–11 fiscal year, as applicable, an
29 agency that has adopted a resolution pursuant to subdivision (c) may allocate,
30 pursuant to subdivision (a) of Section 33690 or subdivision (a) of Section 33690.5,
31 as applicable, to the auditor less than the amount required by subdivision (a) of
32 Section 33690 or subdivision (a) of Section 33690.5, as applicable, if the agency
33 finds that any of the following has occurred:

34 (1) That the difference between the amount allocated to the agency and the
35 amount required by subdivision (a) of Section 33690 or subdivision (a) of Section
36 33690.5, as applicable, is necessary to make payments on existing indebtedness
37 that are due or required to be committed, set aside, or reserved by the agency
38 during the 2009–10 fiscal year or the 2010–11 fiscal year, as applicable, and that
39 are used by the agency for that purpose, and the agency has no other funds that can
40 be used to pay this existing indebtedness and no other feasible method to reduce or
41 avoid this indebtedness.

1 (2) The agency has no other funds to make the allocation required by
2 subdivision (a) of Section 33690 or subdivision (a) of Section 33690.5, as
3 applicable.

4 (c)(1) Any agency that intends to allocate, pursuant to subdivision (b), to the
5 auditor less than the amount required by subdivision (a) of Section 33690 shall
6 adopt, prior to December 31, 2009, after a noticed public hearing, a resolution that
7 lists all of the following:

8 (A) Each existing indebtedness incurred prior to the effective date of this
9 section.

10 (B) Each indebtedness on which a payment is required to be made during the
11 applicable fiscal year.

12 (C) The amount of each payment, the time when it is required to be paid, and the
13 total of the payments required to be made during the applicable fiscal year. For
14 indebtedness that bears interest at a variable rate, or for short-term indebtedness
15 that is maturing during the fiscal year and that is expected to be refinanced, the
16 amount of payments during the fiscal year shall be estimated by the agency.

17 (2) Any agency that intends to allocate, pursuant to subdivision (b), to the
18 auditor less than the amount required by subdivision (a) of Section 33690.5 shall
19 adopt, prior to December 31, 2010, after a noticed public hearing, a resolution that
20 lists all of the following:

21 (A) Each existing indebtedness incurred prior to the effective date of this
22 section.

23 (B) Each indebtedness on which a payment is required to be made during the
24 applicable fiscal year.

25 (C) The amount of each payment, the time when it is required to be paid, and the
26 total of the payments required to be made during the applicable fiscal year. For
27 indebtedness that bears interest at a variable rate, or for short-term indebtedness
28 that is maturing during the fiscal year and that is expected to be refinanced, the
29 amount of payments during the fiscal year shall be estimated by the agency.

30 (3) The information contained in the resolution required by this subdivision shall
31 be reviewed for accuracy by the chief fiscal officer of the agency.

32 (4) The legislative body shall additionally adopt the resolution required by this
33 section.

34 (d)(1)(A) Any agency that determines, pursuant to subdivision (b), that it will be
35 unable in the 2009–10 fiscal year to allocate the full amount required by
36 subdivision (a) of Section 33690 may enter into, subject to paragraph (3), an
37 agreement with the legislative body by February 15, 2010, to fund the payment of
38 the difference between the full amount required to be paid pursuant to subdivision
39 (a) of Section 33690 and the amount available for allocation by the agency.

40 (B) Any agency that determines, pursuant to subdivision (b), that it will be
41 unable in the 2010–11 fiscal year to allocate the full amount required by
42 subdivision (a) of Section 33690.5 may enter into, subject to paragraph (3), an
43 agreement with the legislative body by February 15, 2011, to fund the payment of

1 the difference between the full amount required to be paid pursuant to subdivision
2 (a) of Section 33690.5 and the amount available for allocation by the agency.

3 (2) The obligations imposed by paragraph (1) are hereby declared to be
4 indebtedness incurred by the agency to finance a portion of a redevelopment
5 project within the meaning of Section 16 of Article XVI of the California
6 Constitution. This indebtedness shall be payable from tax revenues apportioned to
7 the agency pursuant to Section 33670, and any other funds received by the agency.
8 The obligations imposed by paragraph (1) shall remain an indebtedness of the
9 agency to the legislative body until paid in full, or until the agency and the
10 legislative body otherwise agree.

11 (3) The agreements described in paragraph (1) shall be subject to those terms
12 and conditions specified in a written agreement between the legislative body and
13 the agency.

14 (e) If the agency fails to provide to the county auditor the full payment required
15 under Section 33690 by May 10, 2010, or 33690.5 by May 10, 2011, as applicable,
16 or fails to arrange for full payment to be provided on the agency's behalf pursuant
17 to subdivision (d) or by Section 33688 or 33692, all of the following shall apply:

18 (1) The agency shall be prohibited from adding new project areas or expanding
19 existing project areas. For purposes of this paragraph, "project area" has the same
20 meaning as in Sections 33320.1 to 33320.3, inclusive, and Section 33492.3.

21 (2) The agency shall be prohibited from issuing new bonds, notes, interim
22 certificates, debentures, or other obligations, whether funded, refunded, assumed,
23 or otherwise, pursuant to Article 5 (commencing with Section 33640) of this
24 chapter.

25 (3) The agency shall be prohibited from encumbering any funds or expending
26 any moneys derived from any source, except that the agency may encumber funds
27 and expend funds to pay, if any, all of the following:

28 (A) Bonds, notes, interim certificates, debentures, or other obligations issued by
29 an agency before the imposition of the prohibition in paragraph (2), whether
30 funded, refunded, assumed, or otherwise, pursuant to Article 5 (commencing with
31 Section 33460) of this chapter.

32 (B) Loans or moneys advanced to the agency, including, but not limited to, loans
33 from federal, state, local agencies, or a private entity.

34 (C) Contractual obligations that, if breached, could subject the agency to
35 damages or other liabilities or remedies.

36 (D) Obligations incurred pursuant to Section 33445.

37 (E) Indebtedness incurred pursuant to Section 33334.2 or 33334.6.

38 (F) Obligations incurred pursuant to Section 33401.

39 (G) An amount, to be expended for the monthly operation and administration of
40 the agency, that may not exceed 75 percent of the average monthly amount spent
41 for those purposes in the fiscal year preceding the fiscal year in which the agency
42 failed to make the payment required by subdivision (a) of Section 33690 or
43 subdivision (a) of Section 33690.5, as applicable.

1 (f) The prohibitions identified in subdivision (e) shall be lifted once the county
2 auditor certifies to the Director of Finance that the payment required by Section
3 33690 or 33690.5, as applicable, has been made by the agency, or that payment
4 has been made on the agency's behalf pursuant to this section or to Section 33688
5 or 33692.

6 **§ 33691.5. Alternative provisions for payment of RDA ERAF contribution in 2009-10 or**
7 **2010-11 fiscal years**

8 33691.5. (a) A redevelopment agency that fails to allocate to the county auditor
9 either or both of the full remittances required pursuant to subdivision (a) of
10 Section 33690 or subdivision (a) of Section 33690.5, respectively, or that fails to
11 arrange for full payment of either or both of those remittances pursuant to
12 subdivision (c) of Section 33688, subdivision (d) of Section 33691, or Section
13 33692, shall be exempt from the prohibitions set forth in subdivision (e) of Section
14 33691 and the requirement set forth in paragraph (4) of subdivision (k) of Section
15 33334.2, if the county auditor certifies to the Department of Finance that all of the
16 following conditions have been met:

17 (1) The agency adopted the resolution described in paragraph (1) or paragraph
18 (2) of subdivision (c) of Section 33691, and failed to make the full remittance by
19 May 10, 2010, or May 10, 2011, as applicable, pursuant to Section 33692.

20 (2) The county reduced the tax increment revenue payable to the agency by at
21 least 20 percent in the 2009–10 fiscal year.

22 (3) The agency has entered into an agreement with the Department of Finance,
23 as described in subdivision (d) of Section 33691, with respect to either or both of
24 the full remittances, and that agreement (A) commits the agency to paying the
25 remaining amount due to satisfy either or both of the full remittances over a time
26 period of no more than the earlier of 30 years or the life of the redevelopment
27 agency and (B) requires the first payment towards that obligation to be due to the
28 county on or before May 10, 2011, without regard to whether that payment is for
29 the full remittance for the 2009–10 fiscal year, 2010–11 fiscal year, or both.

30 (b) An agency that is making payments as described in paragraph (3) of
31 subdivision (a) may use all legally available funds to make those payments, and
32 may pay off the outstanding balance of either or both of those full remittances at
33 any time.

34 **§ 33692. Legislative body remittance in lieu of RDA ERAF contribution in 2009-10 and**
35 **2010-11 fiscal years**

36 33692. (a) In lieu of the remittance required by Section 33690, for the 2009–10
37 fiscal year, a legislative body may remit, prior to May 10, 2010, an amount equal
38 to the amount determined for the agency pursuant to paragraph (2) of subdivision
39 (a) of Section 33690 to the county auditor for deposit in the county Supplemental
40 Educational Revenue Augmentation Fund, to be established in the county treasury
41 pursuant to paragraph (1) of subdivision (a) of Section 33690.

1 (b) In lieu of the remittance required by Section 33690.5, for the 2010–11 fiscal
2 year, a legislative body may remit, prior to May 10, 2011, an amount equal to the
3 amount determined for the agency pursuant to paragraph (2) of subdivision (a) of
4 Section 33690.5 to the county auditor for deposit in the county Supplemental
5 Educational Revenue Augmentation Fund, to be established in the county treasury
6 pursuant to paragraph (1) of subdivision (a) of Section 33690.

7 (c) The legislative body may make the remittance authorized by this section
8 from any funds that are legally available for this purpose.
