

Legislature Approves Redevelopment Heist of \$2.05 Billion; Governor Expected to Sign

Today, the State Legislature passed a devastating take of \$2.05 billion in redevelopment funds as part of a 30-bill package that allegedly will close most of the State's current budget deficit. The State intends to take \$1.7 billion in FY 2009-10 and another \$350 million in FY 2010-11, which will be deposited in county "Supplemental" Educational Revenue Augmentation Funds (SERAF) to be distributed to meet the State's Prop 98 obligations to schools. In separate legislation, AB 27 4x, the Senate approved the City of Industry plan to securitize future redevelopment tax increment, but the bill was not taken up in the Assembly.

The Legislature also voted to borrow \$1.9 billion from local governments under Prop. 1A, but Senate-approved legislation to borrow \$2 billion in local gas tax funds was sent to the inactive file in the Assembly. The Governor is expected to sign all bills in the budget package.

In response to the unconstitutional taking of redevelopment funds, CRA's legal team has begun preparation of another lawsuit to challenge the State's action.

A table of each agency's estimated redevelopment fund loss for the current fiscal year is posted on the CRA website, www.calredevelop.org, under Hot Topics.

Provisions Taking \$2.05 Billion from Local Agencies

The provisions implementing the \$2.05 billion taking of redevelopment tax increment are contained in AB 26 4x and are summarized as follows:

The structure for the redevelopment take is similar to that in last year's budget trailer bill, AB 1389, which attempted to take \$350 million from local communities. The Department of Finance will determine each agency's ERAF payment by November 15 of each year. The formula for calculating the amount each agency must surrender is based half on net tax increment (net of pass-throughs) and half on gross tax increment. The legislation states that the calculations for FY 2009-10 and FY 2010-11 both will be based for some unknown reason on old State Controller's Office Tax Increment data for FY 2006-07. (The table we posted earlier this week on our website used more current 2007-08 data.)

Payments are due by May 10 of the applicable year. Agencies that do not make their payment by the May 10 deadline suffer the "death penalty" and must

increase their housing set aside to 25%.

If an agency is unable to pay its required amount because of existing indebtedness, it must adopt a resolution by December 31 of the relevant year. The legislative body of the redevelopment agency must report to the county auditor by March 1 how it intends to fund the payment.

The agency can use any available funds to make the SERAF payment. For FY 2009-10, the agency may "suspend" all or part of the required allocation to its low and moderate income housing fund in order to make the payment. The Housing Fund must be repaid by June 30, 2015. If the agency fails to repay the Housing Fund, the required allocation of tax increment to the Housing Fund is increased to 25% for as long as the project area continues to receive tax increment.

A separate, but overlapping (and confusing), section of the bill permits an agency to borrow the amount required to be allocated to the Housing Fund in order to make the SERAF payment. This provision apparently applies to fiscal years 2009-10 and 2010-11. It requires a finding that there are insufficient other funds to make the SERAF payment. (There is no parallel requirement to make findings for the "suspension" in FY 2009-10.) Amounts "borrowed" from the current year allocation to the Housing Fund under this section must also be repaid by June 30, 2015.

In an effort to get around the finding in CRA's successful lawsuit against the State overturning the ERAF shift last year, the funds must be deposited into a county Supplemental ERAF and distributed to K-12 school districts located in any project area of the agency in proportion to the average daily attendance of the district. The funds distributed to schools from the SERAF must be used to serve pupils living in the project area or in housing supported by redevelopment funds. The total amount of SERAF funds received by a school district is deemed to be local property taxes and will reduce dollar-for-dollar the State's Prop 98 obligations to fund education, the real purpose of the legislation.

The funds in the Supplemental ERAF can not go to cities and counties to compensate them for the Vehicle License Fee swap and Triple Flip as is the case under ERAF.

An agency that fails to make payments to ERAF must increase the set aside for their Housing Fund to 25% for the remainder of the redevelopment project area's life, in addition to suffering the "death penalty."

The local legislative body may lend the ERAF payment to the agency and in that case, the agency is authorized to repay the legislative body from tax increment. The legislative body is also authorized to make the payment on behalf of the agency. The provisions of existing law which permit a joint powers authority to sell bonds and loan the proceeds to redevelopment agencies in order to make ERAF payments are also available for the 2009-10 and 2010-11 payments.

Agencies are entitled to a one-year extension on their AB 1290 time limits if they make timely ERAF payments. This extension does not trigger pass-through

payments under Health and Safety Code Section 33607.7.

The obligation to make the ERAF payment is subordinate to obligations to repay bonds and other indebtedness. An agency may pay less than the amount required if it finds that it is necessary to make payments on existing obligations required to be committed, set-aside or reserved by the agency during the applicable fiscal year. An agency that intends to pay less than the required amount in order to pay existing obligations must adopt a resolution prior to December 31, 2009, listing the existing indebtedness and the payments required to be made during the applicable fiscal year.

An agency failing to timely make its ERAF payment--even if it must do so to pay existing obligations--is subject to what we call the "death penalty." An agency subject to the death penalty may not adopt a new redevelopment plan, amend an existing plan to add territory, issue bonds, further encumber funds or expend any moneys derived from any source except to pay pre-existing indebtedness, contractual obligations and 75% of the amount expended on agency administration for the preceding fiscal year. This penalty would last until the required payments have been made.

More Details Are Forthcoming

CRA will be providing more information about its legal challenge to this latest attempt to take redevelopment funds. It violates Article 16, Section XVI of the State Constitution because funds would not flow to redevelopment agencies for the purpose of paying debts and obligations.

Members can learn more about this legislation and possible legal actions to be taken by attending CRA's Legal Issues Symposium in Sacramento, August 5-6. To register online, [click here](#).