

Analysis of SBX1 14 & 15 and ABX1 26 & 27

What do the bills do?

SBX1 14 and ABX1 26

SBX1 14 and ABX1 26 are very similar to the Governor's initial proposal to eliminate redevelopment agencies – AB 101 and SB 77. The bills do not, however, provide for any payment to the State, as the Governor's initial proposal did. Redevelopment agencies would cease to exist as corporate governmental entities as of October 1, 2011. Until that date, agencies are prohibited from taking essentially any actions other than payment of existing indebtedness and performance of existing contractual obligations. On October 1, all agency property and obligations would be transferred to successor agencies, except for the assets of the low and moderate income housing fund, and overseen by an oversight board, the county auditor-controller and the Department of Finance, as previously proposed. Assets in the low and moderate income housing fund would be transferred to the auditor-controller for distribution to taxing agencies. Successor agencies would be charged with repaying existing indebtedness, completing performance of existing contractual obligations and otherwise winding down operations and preserving agency assets for the benefit of taxing agencies.

SBX1 15 and ABX1 27

SBX1 15 and ABX1 27 provide that, notwithstanding SBX1 14 or ABX1 26, an agency may continue to operate and function if the community has enacted an ordinance by November 1, 2011. The contents of the ordinance are not described however, it apparently involves the host city or county making a commitment to make annual payments into a Special District Allocation Fund ("SDAF") and Educational Revenue Augmentation Fund ("ERAF") established for each county and administered by the county auditor-controller. The amount of the payment for each city or county is calculated by the Department of Finance and communicated to cities and counties not later than August 1, 2011. The formula is different than previous ERAF and SERAF calculations. For FY 2011-12, the Department of Finance would:

1. Determine the net tax increment apportioned to each agency and all agencies state-wide. Net tax increment is gross tax increment received in FY 2008-09, less pass-through payments (contractual and statutory), debt service on tax allocation bonds ¹ and property tax administration fees paid to the county.
2. Determine each agency's proportionate share of state-wide net tax increment by dividing each agency's net tax increment by total state-wide net tax increment.
3. Multiply \$1.7 billion by the agency's proportionate share of state-wide net tax increment.
4. Perform the same exercise using gross instead of net tax increment.
5. The amount of the payment for each city or county is the average of the agency's net and

¹ The language of the bill apparently limits the deduction for debt service to tax allocation bonds and does not recognize other forms of indebtedness for which tax increment may be pledged, including certificates of participation, revenue bonds, reimbursement agreements, etc.

gross share. There is a provision for an abbreviated appeal of the calculation to the Director of the Department of Finance.

For FY 2012-13 and subsequent years, the payments would be the sum of:

1. A base payment equal to the base payment in the prior fiscal year, increased or decreased by the percentage growth or reduction in the total adjusted amount of property tax increment allocated to the agency from project areas in existence during FY 2011-12. "Adjusted amount of property tax revenue" means gross tax increment less debt service or other payments for new debt issuances or obligations. For FY 2012-13, the base payment in the prior fiscal year is the payment described above for 2011-12 multiplied by a ratio of \$400 million to \$1.7 billion; and
2. Eighty percent (or a lesser percentage, as explained below) of the total net school share of debt service for debt issued on or after November 1, 2011, excluding low and moderate income housing fund indebtedness. The "net school share" is defined as the share of tax increment that would have been received by schools in the absence of redevelopment, less pass-through payments to schools.

The Legislature declares its intention to enact legislation in 2011-12 to prescribe a schedule of reductions in the amount of the payments related to the school share of tax increment for bonds issued for the purpose of funding projects that advance state-wide goals with respect to transportation, housing, economic development and job creation, environmental protection and remediation, and climate change.

Payments are made in two equal installments on January 15 and May 15.

Payments are divided among fire protection districts, transit districts and schools in redevelopment project areas. In FY 2011-12, the total amount paid to schools would be considered property taxes and offset State Prop. 98 obligations to fund education. The bills are ambiguous on this point, but it appears that in subsequent years, the payments would not be considered property taxes and would not offset payments to schools, thus providing no State budget relief.

A city or county may enter into an agreement with its redevelopment agency whereby the redevelopment agency will transfer a portion of its tax increment to the city or county in an amount not to exceed the required payments for the purpose of financing activities within the project area that are related to accomplishing redevelopment project goals. This would presumably compensate the city or county for the payments to the State however, use of tax increment is limited by Constitutional and statutory provisions that limit its use for general municipal purposes.

For FY 2011-12 only, an agency within a city or county that makes the required payments is exempt from making the full allocation required to be made to its low and moderate income housing fund. The agency must find that there are insufficient other moneys to make the payment. 3

If a city or county fails to make the required payments after adopting the ordinance, then its redevelopment agency would become subject to the elimination provisions of SBX1 14 and ABX1 26.

The bill also contains a provision designed specifically for the Los Angeles Community Redevelopment Agency that would reverse a court ruling, permitting the Agency to receive tax increment from two recent redevelopment projects adopted to replace the expiring Central Business District Redevelopment Project, using a base year of FY 2011-12.

What Are the Legal Problems?

The basic legal problem is that the bills are inconsistent with various Constitutional provisions which protect city and county property tax and redevelopment agency tax increment. These bills ignore these protections by: (1) accomplishing indirectly what cannot be done directly; and (2) calling the payments “voluntary.” “Voluntary” means acting or done willingly and without constraint or expectation of reward.” The bills’ “voluntary payment” would be done with constraint and the expectation that the payment would stave off elimination of the redevelopment agency.

Specifically, the bills violate the following provisions of the California Constitution:

1. Article XIII A, section 25.5, which prohibits city or county property tax from being used for schools.
2. Article XIII A, section 1, which prohibits the transfer of property tax to transit districts.
3. Article XIII, section 24, which prohibits the Legislature from restricting the use of taxes imposed by local governments for their local purposes.
4. Article XIII A, section 25.5, which prohibits indirect allocation of tax increment to schools, transit districts and fire protection districts.
5. Article XVI, section 6, which prohibits the transfer of city or county revenues to schools and transit districts and fire protection districts which is an unlawful gift of public funds.
6. Article XIII B, which prohibits the use of property tax to fund state mandates.
7. Article XVI, section 16, which requires all tax increment to be used to repay indebtedness incurred by the redevelopment agency to carry out the redevelopment project.
8. Article XIII A, section 25.5, which prohibits city and county property tax from being transferred to special districts without a 2/3 vote.