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2009–10 FOURTH EXTRAORDINARY SESSION
AMENDMENTS TO ASSEMBLY BILL NO. 26

Amendment 1

In line 1 of the heading, strike out “Assembly Member Evans” and insert:

Committee on Budget

Amendment 2

Strike out line 1 of the title, and insert:

An act to amend Sections 33334.2 and 33688 of, and to add Sections 33020.5, 33331.5, 33690, 33690.5, 33691, and 33692 to, the Health and Safety Code, relating to community redevelopment, and declaring the urgency thereof, to take effect immediately.

Amendment 3

On page 1, before line 1, insert:

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) The effectuation of the primary purposes of the Community Redevelopment Law, including job creation, attracting new private commercial investments, the physical and social improvement of residential neighborhoods, and the provision and maintenance of low- and moderate-income housing, is dependent upon the existence of an adequate and financially solvent school system that is capable of providing for the safety and education of students who live within both redevelopment project areas and housing assisted by redevelopment agencies. The attraction of new businesses to redevelopment project areas depends upon the existence of an adequately trained workforce, which can only be accomplished if education at the primary and secondary schools is adequate. The ability of communities to build residential development and attract residents in redevelopment project areas depends upon the existence of adequately maintained and operating schools serving the redevelopment project area. The development and maintenance of low- and moderate-income housing that are both within redevelopment project areas and throughout the community can only be successful if adequate schools exist to serve the residents of this housing.

(2) Redevelopment agencies have financially assisted schools that benefit and serve the project area by paying part or all of the land and the construction of school facilities and other improvements. Redevelopment agencies have financially assisted

schools to alleviate the financial burden or detriment caused by the establishment of redevelopment project areas.

(3) Because of the reduced funds available to the state to assist schools that benefit and serve redevelopment project areas during the 2009–10 fiscal year, it is necessary for redevelopment agencies to make additional payments to assist the programs and operations of these schools to ensure that the objectives stated in this act can be met.

(4) The payments to schools pursuant to this act are of benefit to redevelopment project areas.

(5) The ability for a redevelopment area to attract and maintain a vibrant workforce is dependent on the existence of adequate primary and secondary schools within the redevelopment project areas or throughout the community to provide and educate the children of those in the workforce.

(b) It is the intent of the Legislature in enacting this act to create a procedure to ensure that the funds contributed by a redevelopment agency pursuant to this act are allocated to serve persons living within or in the vicinity of any project area of that redevelopment agency.

SEC. 2. Section 33020.5 is added to the Health and Safety Code, to read:

33020.5. In addition to Section 33020, “redevelopment” also means payments to school districts in the fiscal years specified in Sections 33690 and 33690.5.

SEC. 3. Section 33331.5 is added to the Health and Safety Code, to read:

33331.5. Notwithstanding Section 33333.2 or 33333.6, when an agency is required pursuant to Section 33690 to make a payment to the county auditor for deposit

in the county's Supplemental Educational Revenue Augmentation Fund to be established in the county treasury pursuant to paragraph (1) of subdivision (a) of Section 33690 and the agency has allocated the full amount calculated pursuant to paragraph (2) of subdivision (a) of Section 33690, the legislative body may amend the redevelopment plan to extend the time limits required pursuant to paragraphs (2) and (3) of subdivision (a) of Section 33333.2 or subdivision (a) of Section 33333.6 by one year. When amending a redevelopment plan pursuant to this section, neither the legislative body nor the agency is required to comply with Section 33354.6, Article 12 (commencing with Section 33450), or any other provision of this part relating to the amendment of redevelopment plans, including, but not limited to, the requirement to make the payment to the affected taxing entities required by Section 33607.7.

SEC. 4. Section 33334.2 of the Health and Safety Code is amended to read:

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

(1) (A) That no need exists in the community to improve, increase, or preserve the supply of low- and moderate-income housing, including housing for very low

income households in a manner that would benefit the project area and that this finding is consistent with the housing element of the community's general plan required by Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code, including its share of the regional housing needs of very low income households and persons and families of low or moderate income.

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

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

(B) This finding shall only be made if the housing element of the community's general plan demonstrates that a percentage of less than 20 percent will be sufficient to meet the community's need to improve, increase, or preserve the supply of low- and moderate-income housing available at affordable housing cost to persons and families of low or moderate income and to very low income households. This finding shall only be made if it is consistent with the planning agency's annual report to the legislative body on implementation of the housing element required by subdivision (b) of Section 65400 of the Government Code. No agency of a charter city shall make this finding unless the planning agency submits the report pursuant to subdivision (b) of Section 65400 of the Government Code. This finding shall not take effect until the agency has complied with subdivision (b) of this section.

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

(3) (A) That the community is making a substantial effort to meet its existing and projected housing needs, including its share of the regional housing needs, with respect to persons and families of low and moderate income, particularly very low income households, as identified in the housing element of the community's general plan required by Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code, and that this effort, consisting of direct financial contributions of local funds used to increase and improve the supply of housing

affordable to, and occupied by, persons and families of low or moderate income and very low income households is equivalent in impact to the funds otherwise required to be set aside pursuant to this section. In addition to any other local funds, these direct financial contributions may include federal or state grants paid directly to a community and that the community has the discretion of using for the purposes for which moneys in the Low and Moderate Income Housing Fund may be used. The legislative body shall consider the need that can be reasonably foreseen because of displacement of persons and families of low or moderate income or very low income households from within, or adjacent to, the project area, because of increased employment opportunities, or because of any other direct or indirect result of implementation of the redevelopment plan. No finding under this subdivision may be made until the community has provided or ensured the availability of replacement dwelling units as defined in Section 33411.2 and until it has complied with Article 9 (commencing with Section 33410).

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

(C) The authority for making the finding specified in this paragraph shall expire on June 30, 1993, except that the expiration shall not be deemed to impair contractual obligations to bondholders or private entities incurred prior to May 1, 1991, and made in reliance on the provisions of this paragraph. Agencies that make this finding after June 30, 1993, shall show evidence that the agency entered into the specific contractual

obligation with the specific intention of making a finding under this paragraph in order to provide sufficient revenues to pay off the indebtedness.

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

(c) In any litigation to challenge or attack a finding made under paragraph (1), (2), or (3) of subdivision (a), the burden shall be upon the agency to establish that the finding is supported by substantial evidence in light of the entire record before the agency. If an agency is determined by a court to have knowingly misrepresented any material facts regarding the community's share of its regional housing need for low-

and moderate-income housing, including very low income households, or the community's production record in meeting its share of the regional housing need pursuant to the report required by subdivision (b) of Section 65400 of the Government Code, the agency shall be liable for all court costs and plaintiff's attorney's fees, and shall be required to allocate not less than 25 percent of the agency's tax increment revenues to its Low and Moderate Income Housing Fund in each year thereafter.

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

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

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

(2) (A) Improve real property or building sites with onsite or offsite improvements, but only if both (i) the improvements are part of the new construction or rehabilitation of affordable housing units for low- or moderate-income persons that are directly benefited by the improvements, and are a reasonable and fundamental component of the housing units, and (ii) the agency requires that the units remain available at affordable housing cost to, and occupied by, persons and families of extremely low, very low, low, or moderate income for the same time period and in the same manner as provided in subdivision (c) and paragraph (2) of subdivision (f) of Section 33334.3.

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

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

(4) Finance insurance premiums pursuant to Section 33136.

(5) Construct buildings or structures.

(6) Acquire buildings or structures.

(7) Rehabilitate buildings or structures.

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

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

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

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

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

(g) (1) The agency may use these funds inside or outside the project area. The agency may only use these funds outside the project area upon a resolution of the agency and the legislative body that the use will be of benefit to the project. The determination by the agency and the legislative body shall be final and conclusive as to the issue of benefit to the project area. The Legislature finds and declares that the provision of replacement housing pursuant to Section 33413 is always of benefit to a project. Unless the legislative body finds, before the redevelopment plan is adopted, that the provision of low- and moderate-income housing outside the project area will be of benefit to the project, the project area shall include property suitable for low- and moderate-income housing.

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

the incorporated limits of the City of Walnut Creek only if the agency and the board of supervisors find all of the following:

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

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

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

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

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

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

(ii) If less than all the units in the development are affordable to, and occupied by, low- or moderate-income persons, any agency assistance shall not exceed the

amount needed to make the housing affordable to, and occupied by, low- or moderate-income persons.

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

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

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

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

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

(B) An action to compel compliance with the requirement of this section or Section 33334.6 that money deposited in the Low and Moderate Income Housing Fund

be used by the agency for purposes of increasing, improving, and preserving the community's supply of low- and moderate-income housing available at affordable housing cost shall be commenced within 10 years of the alleged violation. A cause of action for a violation accrues on the date of the actual expenditure of the funds.

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

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

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

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

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

(4) Except as otherwise provided in this subdivision, Chapter 2 (commencing with Section 970) of Part 5 of Division 3.6 of Title 1 of the Government Code for the enforcement of a judgment against a local public entity applies to a judgment against a local public entity that violates this section.

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

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

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

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

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

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

of the time that the agency receives allocations of tax revenue pursuant to Section 33670.

SEC. 5. Section 33688 of the Health and Safety Code is amended to read:

33688. (a) For purposes of this section, an “authorized issuer” is limited to a joint powers entity created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code that consists of no less than 100 local agencies issuing bonds pursuant to the Marks-Roos Local Bond Pooling Act of 1984 (Article 4 (commencing with Section 6584) of Chapter 5 of Division 7 of Title 1 of the Government Code).

(b) An authorized issuer may issue bonds, notes, or other evidence of indebtedness to provide net proceeds to make one or more loans to one or more agencies to be used by the agency to timely make the payment required by Section ~~33684~~ 33685, 33690, or 33690.5.

(c) With the prior approval of the legislative body by adoption of a resolution by a majority of that body that recites that a first lien on the property tax revenues allocated to the legislative body will be created in accordance with subdivision (h), an agency may enter into an agreement with an authorized issuer issuing bonds pursuant to subdivision (b) to repay a loan used to make the payment required by Section 33685, 33690, or 33690.5. For the purpose of calculating the amount that has been divided and allocated to the agency to determine whether the limitation adopted pursuant to Section 33333.2 or 33333.4 or pursuant to an agreement or court order that has been reached, any funds used to repay a loan entered into pursuant to this section shall be

deducted from the amount of property tax revenue deemed to have been received by the agency.

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

(e) Upon making a loan to an agency pursuant to this section, the trustee for the bonds issued to provide the funds to make the loan shall timely pay, on behalf of the agency, to the county auditor of the county in which the agency is located the net proceeds (after payment of costs of issuance, credit enhancement costs, and reserves, if any) of the loan in payment in full or in part, as directed by the agency, of the amount required to be paid by the agency pursuant to Section 33685, 33690, or 33690.5 and shall provide the county auditor with the repayment schedule for the loan, together with the name of the trustee.

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

(g) The county auditor shall reallocate from the legislative body and shall pay, on behalf of the agency, the past due amount from the first available proceeds of the property tax allocation that would otherwise be transferred to the legislative body pursuant to Chapter 6 (commencing with Section 95) of Part 0.5 of Division 1 of the Revenue and Taxation Code. This transfer shall be deemed a reallocation of the property

tax revenue from the legislative body to the agency for the purpose of payment of the loan, and not as a payment by the legislative body on the loan.

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

SEC. 6. Section 33690 is added to the Health and Safety Code, to read:

33690. (a) (1) (A) For the 2009–10 fiscal year, a redevelopment agency shall remit, as determined by the Director of Finance, prior to May 10, 2010, an amount equal to the amount determined for that agency pursuant to paragraph (2) to the county auditor for deposit in the county Supplemental Educational Revenue Augmentation Fund that is established in the county treasury. Notwithstanding any other law, any

funds deposited in the Supplemental Educational Revenue Augmentation Fund shall not be distributed to a community college district.

(B) On or before May 25, 2010, the county auditor shall report to the Department of Finance each amount transferred to the Supplemental Educational Revenue Augmentation Fund for the 2009–10 fiscal year.

(2) On or before November 15, 2009, the Director of Finance shall do all of the following:

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

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

(C) Determine a percentage factor by dividing one billion seven hundred million dollars (\$1,700,000,000) by two and then by the amount determined pursuant to subparagraph (B).

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

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

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

(G) Determine a percentage factor by dividing one billion seven hundred million dollars (\$1,700,000,000) by two and then by the amount determined pursuant to subparagraph (F).

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

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

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

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

(b) To make the allocation required by this section, an agency may use any funds that are legally available and not legally obligated for other uses, including, but not

limited to, reserve funds, proceeds of land sales, proceeds of bonds or other indebtedness, lease revenues, interest, and other earned income.

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

(2) As a condition of borrowing pursuant to this subdivision, an agency shall make a finding that there are insufficient other moneys to meet the requirements of subdivision (a). Funds borrowed pursuant to this subdivision shall be repaid in full on or before June 30, 2015. An agency that fails to repay funds borrowed pursuant to this subdivision shall be required to allocate an additional 5 percent of all taxes that are allocated to that agency pursuant to Section 33670 for low- and moderate-income housing for the remainder of the time the agency receives tax revenue pursuant to Section 33670.

(d) The legislative body shall by March 1, 2010, report to the county auditor as to how the agency intends to fund the allocation required by this section, or that the legislative body intends to remit the amount in lieu of the agency pursuant to Section 33692.

(e) The allocation obligations imposed by this section, including amounts owed, if any, created under this section, are hereby declared to be an indebtedness of the redevelopment project to which they relate, payable from taxes allocated to the agency

pursuant to Section 33670, and shall constitute an indebtedness of the agency with respect to the redevelopment project until paid in full.

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

(g) In making the determination required by subdivision (a), the Director of Finance shall use those amounts reported in "Table 7, Assessed Valuation, Tax Increment Distribution and Statement of Indebtedness" for all agencies and for each agency in the 2006–07 edition of the Controller's Community Redevelopment Agencies Annual Report made pursuant to Section 12463.3 of the Government Code.

(h) If revised reports were accepted by the Controller on or before September 1, 2008, the Director of Finance shall use appropriate data that has been certified by the Controller for the purpose of making the determinations required by subdivision (a).

(i) Except as provided in Section 33331.5, nothing in this section shall be construed as extending the time limits on the ability of agencies to do both of the following:

- (1) Establish loans, advances, or indebtedness.
- (2) Exercise eminent domain powers.

(j) (1) Notwithstanding Sections 97.2 and 97.3 of Revenue and Taxation Code, the county auditor-controller shall distribute the funds that are remitted to the county Supplemental Educational Revenue Augmentation Fund by a redevelopment agency pursuant to this section only to a K-12 school district or county office of education that

is located partially or entirely within any project area of that redevelopment agency in an amount proportional to the average daily attendance of each school district.

(2) The county auditor-controller shall notify each K-12 school district, and the State Department of Education, of the amount of Supplemental Educational Revenue Augmentation Fund moneys a district receives pursuant to this section from each redevelopment agency. The county auditor-controller shall also notify each K-12 school district receiving funds pursuant to paragraph (1) of the project area boundaries of each redevelopment agency from which the K-12 school district received funds.

(3) (A) The county superintendent of schools shall provide the average daily attendance reported for each school district as of the Second Principal Apportionment for the 2009–10 fiscal year to the county auditor-controller.

(B) The county auditor-controller shall, based on information provided by the county superintendent of schools pursuant to subparagraph (A), allocate the funding pursuant to this subdivision to those districts within the county.

(4) The county auditor-controller shall notify, on or before May 25, 2010, the Department of Finance of the amount of funding apportioned to each district or county office of education pursuant to this subdivision.

(5) School districts and county offices of education shall use the funds received under this section to serve pupils living in the redevelopment areas or in housing supported by redevelopment agency funds. Redevelopment agencies shall provide whatever information school districts and county offices of education need to accomplish this purpose.

(k) (1) For the 2009–10 fiscal year, the amount of property tax revenues apportioned to each school district, pursuant to Article 2 (commencing with Section 96.1) of Chapter 6 of Part 0.5 of Division 1 of the Revenue and Taxation Code, shall be reduced by the total amount of Supplemental Educational Revenue Augmentation Fund moneys the district receives. The amount of property tax revenues that is the product of this reduction shall be deposited in the county Supplemental Revenue Augmentation Fund established pursuant to Section 100.06 of the Revenue and Taxation Code.

(2) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the total amount of Supplemental Educational Revenue Augmentation Fund moneys a district receives, regardless of the actual date the funds are received, pursuant to this section from each redevelopment agency shall be deemed to be “allocated local proceeds of taxes,” as defined in subdivisions (g) and (h) of Section 41202, and for purposes of Section 42238 of the Education Code, for the 2009–10 fiscal year.

(l) For purposes of this section, “K-12 school district” has the same meaning as a school district, as defined in Section 80 of the Education Code.

(m) This section shall not be construed to increase any allocations of excess, additional, or remaining funds that would otherwise have been allocated to cities, counties, cities and counties, or special districts pursuant to clause (i) of subparagraph (B) of paragraph (4) of subdivision (d) of Section 97.2 of, clause (i) of subparagraph (B) of paragraph (4) of subdivision (d) of Section 97.3 of, or Article 4 (commencing

with Section 98) of Chapter 6 of Part 0.5 of Division 1 of, the Revenue and Taxation Code had this section not been enacted.

SEC. 7. Section 33690.5 is added to the Health and Safety Code, to read:

33690.5. (a) (1) (A) For the 2010–11 fiscal year a redevelopment agency shall remit, as determined by the Director of Finance, prior to May 10, 2011, an amount equal to the amount determined for that agency pursuant to paragraph (2) to the county auditor for deposit in the county Supplemental Educational Revenue Augmentation Fund.

(B) On or before May 25, 2011, the county auditor shall report to the Department of Finance each amount transferred to the Supplemental Educational Revenue Augmentation Fund for the 2010–11 fiscal year.

(2) On or before November 15, 2010, the Director of Finance shall do all of the following:

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

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

(C) Determine a percentage factor by dividing three hundred fifty million dollars (\$350,000,000) by two and then by the amount determined pursuant to subparagraph (B).

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

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

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

(G) Determine a percentage factor by dividing three hundred fifty million dollars (\$350,000,000) by two and then by the amount determined pursuant to subparagraph (F).

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

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

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

(3) The obligation of any agency to make the payments required pursuant to this subdivision shall be subordinate to the lien of any pledge of collateral securing, directly or indirectly, the payment of the principal, or interest on any bonds of the agency

including, without limitation, bonds secured by a pledge of taxes allocated to the agency pursuant to Section 33670. Agencies shall factor in the fiscal obligations created by this subdivision when issuing bonded indebtedness.

(b) To make the allocation required by this section, an agency may use any funds that are legally available and not legally obligated for other uses, including, but not limited to, reserve funds, proceeds of land sales, proceeds of bonds or other indebtedness, lease revenues, interest, and other earned income.

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

(2) As a condition of borrowing pursuant to this subdivision, an agency shall make a finding that there are insufficient other moneys to meet the requirements of subdivision (a). Funds borrowed pursuant to this subdivision shall be repaid in full on or before June 30, 2016. An agency that fails to repay funds borrowed pursuant to this subdivision shall be required to allocate an additional 5 percent of all taxes that are allocated to that agency pursuant to Section 33670 for low- and moderate-income housing for the remainder of the time the agency receives tax revenue pursuant to Section 33670.

(d) The legislative body shall by March 1, 2011, report to the county auditor as to how the agency intends to fund the allocation required by this section, or that the

legislative body intends to remit the amount in lieu of the agency pursuant to Section 33692.

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

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

(g) In making the determination required by subdivision (a), the Director of Finance shall use those amounts reported in "Table 7, Assessed Valuation, Tax Increment Distribution and Statement of Indebtedness" for all agencies and for each agency in the 2006–07 edition of the Controller's Community Redevelopment Agencies Annual Report made pursuant to Section 12463.3 of the Government Code.

(h) If revised reports were accepted by the Controller on or before September 1, 2008, the Director of Finance shall use appropriate data that has been certified by the Controller for the purpose of making the determinations required by subdivision (a).

(i) Except as provided in Section 33331.5, nothing in this section shall be construed as extending the time limits on the ability of agencies to do both of the following:

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

(2) Exercise eminent domain powers.

(j) (1) Notwithstanding Sections 97.2 and 97.3 of Revenue and Taxation Code, the county auditor-controller shall distribute the funds that are remitted to the county Supplemental Educational Revenue Augmentation Fund by a redevelopment agency pursuant to this section only to a K-12 school district or county office of education that is located partially or entirely within any project area of that redevelopment agency in an amount proportional to the average daily attendance of each school district.

(2) The county auditor-controller shall notify each K-12 school district, and the State Department of Education, of the amount of Supplemental Educational Revenue Augmentation Fund moneys a district receives pursuant to this section from each redevelopment agency. The county auditor-controller shall also notify each K-12 school district receiving funds pursuant to paragraph (1) of the project area boundaries of each redevelopment agency from which the K-12 school district received funds.

(3) (A) The county superintendent of schools shall provide the average daily attendance reported for each school district as of the Second Principal Apportionment for the 2009–10 fiscal year to the county auditor-controller.

(B) The county auditor-controller shall, based on information provided by the county superintendent of schools pursuant to subparagraph (A), allocate the funding pursuant to this subdivision to those districts within the county.

(4) The county auditor-controller shall notify, on or before May 25, 2011, the Department of Finance of the amount of funding apportioned to each district or county office of education pursuant to this subdivision.

(5) School districts and county offices of education shall use the funds received under this section to serve pupils living in the redevelopment areas or in housing supported by redevelopment agency funds. Redevelopment agencies shall provide whatever information school districts need to accomplish this purpose.

(k) (1) For the 2010–11 fiscal year, the amount of property tax revenues apportioned to each school district, pursuant to Article 2 (commencing with Section 96.1) of Chapter 6 of Part 0.5 of Division 1 of the Revenue and Taxation Code, shall be reduced by the total amount of Supplemental Educational Revenue Augmentation Fund moneys the district receives. The amount of property tax revenues that is the product of this reduction shall be deposited in the county Supplemental Revenue Augmentation Fund established pursuant to Section 100.06 of the Revenue and Taxation Code.

(2) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the total amount of Supplemental Educational Revenue Augmentation Fund moneys a district receives, regardless of the actual date the funds are received, pursuant to this section from each redevelopment agency shall be deemed to be “allocated local proceeds of taxes,” as defined in subdivisions (g) and (h) of Section 41202 and for purposes of Section 42238 of the Education Code, for the 2010–11 fiscal year.

(l) For purposes of this section, “K-12 school district” has the same meaning as a school district, as defined in Section 80 of the Education Code.

(m) This section shall not be construed to increase any allocations of excess, additional, or remaining funds that would otherwise have been allocated to cities,

counties, cities and counties, or special districts pursuant to clause (i) of subparagraph (B) of paragraph (4) of subdivision (d) of Section 97.2 of, clause (i) of subparagraph (B) of paragraph (4) of subdivision (d) of Section 97.3 of, or Article 4 (commencing with Section 98) of Chapter 6 of Part 0.5 of Division 1 of, the Revenue and Taxation Code had this section not been enacted.

SEC. 8. Section 33691 is added to the Health and Safety Code, to read:

33691. (a) (1) For purposes of this section, “existing indebtedness” means one or more of the following obligations incurred by a redevelopment agency prior to the effective date of this section, the payment of which is to be made in whole or in part, directly or indirectly, out of taxes allocated to the agency pursuant to Section 33670, and that is required by law or provision of the existing indebtedness to be made during the fiscal year of the relevant allocation required by Section 33690 or 33690.5:

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

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

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

(D) An obligation incurred pursuant to Section 33445.

(E) Indebtedness incurred pursuant to Section 33334.2.

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

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

(2) Existing indebtedness incurred prior to the effective date of this section may be refinanced, refunded, or restructured after that date, and shall remain existing indebtedness for the purposes of this section if the annual debt service during that fiscal year does not increase over the prior fiscal year and the refinancing does not reduce the ability of the agency to make the payment required by subdivision (a) of Section 33690 or subdivision (a) of Section 33690.5.

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

(b) For the 2009–10 fiscal year or the 2010–11 fiscal year, as applicable, an agency that has adopted a resolution pursuant to subdivision (c) may allocate, pursuant to subdivision (a) of Section 33690 or subdivision (a) of Section 33690.5, as applicable, to the auditor less than the amount required by subdivision (a) of Section 33690 or subdivision (a) of Section 33690.5, as applicable, if the agency finds that any of the following has occurred:

(1) That the difference between the amount allocated to the agency and the amount required by subdivision (a) of Section 33690 or subdivision (a) of Section 33690.5, as applicable, is necessary to make payments on existing indebtedness that are due or required to be committed, set aside, or reserved by the agency during the 2009–10 fiscal year or the 2010–11 fiscal year, as applicable, and that are used by the agency for that purpose, and the agency has no other funds that can be used to pay this existing indebtedness and no other feasible method to reduce or avoid this indebtedness.

(2) The agency has no other funds to make the allocation required by subdivision (a) of Section 33690 or subdivision (a) of Section 33690.5, as applicable.

(c) (1) Any agency that intends to allocate, pursuant to subdivision (b), to the auditor less than the amount required by subdivision (a) of Section 33690 shall adopt, prior to December 31, 2009, after a noticed public hearing, a resolution that lists all of the following:

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

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

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

(2) Any agency that intends to allocate, pursuant to subdivision (b), to the auditor less than the amount required by subdivision (a) of Section 33690.5 shall adopt, prior

to December 31, 2010, after a noticed public hearing, a resolution that lists all of the following:

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

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

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

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

(4) The legislative body shall additionally adopt the resolution required by this section.

(d) (1) (A) Any agency that determines, pursuant to subdivision (b), that it will be unable in the 2009–10 fiscal year to allocate the full amount required by subdivision (a) of Section 33690 may enter into, subject to paragraph (3), an agreement with the legislative body by February 15, 2010, to fund the payment of the difference between the full amount required to be paid pursuant to subdivision (a) of Section 33690 and the amount available for allocation by the agency.

(B) Any agency that determines, pursuant to subdivision (b), that it will be unable in the 2010–11 fiscal year to allocate the full amount required by subdivision (a) of Section 33690.5 may enter into, subject to paragraph (3), an agreement with the

legislative body by February 15, 2011, to fund the payment of the difference between the full amount required to be paid pursuant to subdivision (a) of Section 33690.5 and the amount available for allocation by the agency.

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

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

(e) If the agency fails to provide to the county auditor the full payment required under Section 33690 by May 10, 2010, or 33690.5 by May 10, 2011, as applicable, or fails to arrange for full payment to be provided on the agency's behalf pursuant to subdivision (d) or by Section 33688 or 33692, all of the following shall apply:

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

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

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

(A) Bonds, notes, interim certificates, debentures, or other obligations issued by an agency before the imposition of the prohibition in paragraph (2), whether funded, refunded, assumed, or otherwise, pursuant to Article 5 (commencing with Section 33460) of this chapter.

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

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

(D) Obligations incurred pursuant to Section 33445.

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

(F) Obligations incurred pursuant to Section 33401.

(G) An amount, to be expended for the monthly operation and administration of the agency, that may not exceed 75 percent of the average monthly amount spent for those purposes in the fiscal year preceding the fiscal year in which the agency failed to make the payment required by subdivision (a) of Section 33690 or subdivision (a) of Section 33690.5, as applicable.

(f) The prohibitions identified in subdivision (e) shall be lifted once the county auditor certifies to the Director of Finance that the payment required by Section 33690 or 33690.5, as applicable, has been made by the agency, or that payment has been made on the agency's behalf pursuant to this section or to Section 33688 or 33692.

SEC. 9. Section 33692 is added to the Health and Safety Code, to read:

33692. (a) In lieu of the remittance required by Section 33690, for the 2009–10 fiscal year, a legislative body may remit, prior to May 10, 2010, an amount equal to the amount determined for the agency pursuant to paragraph (2) of subdivision (a) of Section 33690 to the county auditor for deposit in the county Supplemental Educational Revenue Augmentation Fund, to be established in the county treasury pursuant to paragraph (1) of subdivision (a) of Section 33690.

(b) In lieu of the remittance required by Section 33690.5, for the 2010–11 fiscal year, a legislative body may remit, prior to May 10, 2011, an amount equal to the amount determined for the agency pursuant to paragraph (2) of subdivision (a) of Section 33690.5 to the county auditor for deposit in the county Supplemental Educational Revenue Augmentation Fund, to be established in the county treasury pursuant to paragraph (1) of subdivision (a) of Section 33690.

(c) The legislative body may make the remittance authorized by this section from any funds that are legally available for this purpose.

SEC. 10. If a court of competent jurisdiction determines that the remittance required by Section 33690 or 33690.5 is not legally permissible for a particular redevelopment agency, such a determination shall have no effect on the requirement of all other redevelopment agencies to make the required remittances.

SEC. 11. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 12. This act addresses the fiscal emergency declared by the Governor by proclamation on July 1, 2009, pursuant to subdivision (f) of Section 10 of Article IV of the California Constitution.

SEC. 13. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to address the current, severe state fiscal hardships, it is necessary that this act go into effect immediately.

Amendment 4

On page 1, strike out lines 1 to 4, inclusive, and strike out page 2