

Memorandum 2012-16

Community Redevelopment Law Cleanup: Redevelopment Agencies

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.”

At its February 2012 meeting, the Commission approved a 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).
- 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 the Commission discovers a possible substantive defect in ABx1 26 or any other provision of the community redevelopment statutes, the matter will be noted 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

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.

Commission evaluated the issue and concluded that it is unproblematic.

- If the Commission determines that a provision of the community redevelopment statute is wholly obsolete, it shall recommend the provision's repeal.
- The staff will prepare a general "savings provision" for review by the Commission at its next meeting. 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.

The "savings provision" noted in the last bullet point above is discussed in Memorandum 2012-11, with a draft of the proposed provision set out on pages 9-11 of that memorandum.

This memorandum provides preliminary analysis and staff recommendations regarding Chapter 2 ("Redevelopment Agencies") of Part 1 of Division 24 of the Health and Safety Code (Health & Safety Code §§ 33100-33142). Those provisions are reproduced in the attached Exhibit.

Throughout this memorandum, the staff uses the term "transitional period" as it is defined in the proposed savings provision:

"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) An arbitration, administrative adjudication or other administrative proceeding, civil action or proceeding, criminal action or proceeding, or any other kind of legally binding proceeding relating to redevelopment is pending or may be brought without violating the applicable statute of limitations.

See Memorandum 2012-11, p. 9.

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 Chapter 2 by subject matter. Each group will then be analyzed separately, using a two-step process:

- (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 redevelopment agencies (“RDAs”) have been wound down and all redevelopment-related litigation has 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.

REDEVELOPMENT AGENCIES

The provisions of Chapter 2 of Part 1 of Division 24 of the Health and Safety Code can be organized into the following groups, by subject matter:

- (1) Existence and establishment of RDAs.
- (2) Membership and powers of RDAs.
- (3) Employee compensation.
- (4) Deactivation of RDAs.

Each of these subject matter groups will be analyzed separately, below.

EXISTENCE AND ESTABLISHMENT OF RDAS

Article 1 of Chapter 2 governs the existence of RDAs and the procedure used to establish an RDA’s authority to transact business.

Section 33100 broadly declares that RDAs exist in every community. See also Section 33002 (“Community” means a city, county, city and county, or Indian tribe, band, or group which is incorporated or which otherwise exercises some local governmental powers.”)

However, before an RDA can act, the legislative body must adopt an ordinance declaring the need for the agency to function. Section 33101. The ordinance is “subject to referendum as prescribed by law for a county or a city ordinance.” *Id.* If the ordinance is filed with the Secretary of State, there is a conclusive presumption that the RDA exists and has been authorized to act. Sections 33102, 33103. For special rules relating to those procedures see Sections 33103.5 (RDA in Crescent City), 33104 (RDA in existence before September 15, 1961), 33105 (RDA dissolved and inactive for 10 years or more).

Relevance After Transitional Period

The provisions discussed above (Sections 33100-33105) govern the existence of RDAs and their authority to act. Once successor agencies have entirely wound down the affairs of the former RDAs, there would not seem to be any need for such provisions. There will not be any RDAs (or their successor agencies) in existence or transacting any business. **Consequently, these provisions will be obsolete and should be repealed.**

Relevance During Transitional Period

The existence of the former RDAs and their authority to act may continue to be a relevant issue during the transitional period. Successor agencies are vested with the authority of the former RDAs. Any question about whether a former RDA was properly established may affect the existence and authority of its successor agency. Thus, the provisions of Article 1 could be grounds for legal action challenging an action of the former RDA or of its successor agency. Therefore, the provisions discussed here would appear to be relevant during the transitional period and their import should not be disturbed by the Commission’s clean-up legislation.

The proposed savings provision should be sufficient to achieve that result. As recommended by the staff, subdivision (b) of the savings provision would make clear that the repeal of a provision by the clean-up legislation (the Redevelopment Law Clean-Up Act) would have no effect, during the transitional period, on the “substance, construction, or application” of former law with regards to any redevelopment-related matter. See Memorandum 2012-11, p. 9. That language would broadly preserve the effect of the provisions governing the existence of RDAs and their authority to transact business.

Moreover, the broad language just described is supplemented by more specific language indicating that the Redevelopment Law Clean-Up Act would have no impact on:

- The authority, rights, powers, duties, and obligations of any person or entity who is granted or charged with authority, rights, powers, duties, and obligations relating to redevelopment. See proposed Section 33090(b)(1).
- Any redevelopment-related litigation or other type of adjudicative proceeding. See proposed Section 33090(b)(4), (c)(3) & (4); see also Memorandum 2012-14, pp. 4-5.

If the Redevelopment Clean-Up Act were to repeal Sections 33100-33105, the specific language referenced here would help to ensure that any adjudication would proceed as if the repeal had not occurred, and the roles to be played by the various entities referenced in those sections (i.e., the legislative body, the office of the county clerk, the Secretary of State, and others) would likewise be unaffected.

Further, paragraph (b)(6) of the proposed savings provision would specifically state that the Redevelopment Clean-Up Act has no effect on the “validity of any redevelopment-related *ordinance*, regulation, plan, or other legally operative document promulgated by a former redevelopment agency, a successor agency, or other entity.” (Emphasis added.) That language would encompass any ordinance adopted by a legislative body declaring the need for an RDA to function, as required by Section 33101.

But what of a referendum overturning such an ordinance, or of the referendum process authorized by Section 33101? The broad language in subdivision (b) of the proposed savings clause probably would be sufficient to cover these matters, particularly when coupled with the specific references to “[t]he authority ... of any person ... who is granted ... authority ... relating to redevelopment” (proposed Section 33090(b)(1)) and “the validity of any redevelopment-related legally operative document promulgated by [any] entity” (proposed Section 33090(b)(6)).

Nonetheless, it might be helpful to make the point more explicit, perhaps by **revising subdivision (b) of the proposed savings provision to specifically refer to a referendum and the referendum process, along the following lines:**

(b) The repeal or amendment of a provision of former law by the Redevelopment Clean-Up Act shall have no effect, during the transitional period, on the substance, construction, or application of

former law with regards to any redevelopment-related matter, including, without limitation, any of the following redevelopment-related matters:

....
(6) The validity of any redevelopment-related ordinance, referendum, regulation, plan, or other legally operative document promulgated by a former redevelopment agency, a successor agency, or ~~other entity~~ anyone else.

(7) Any rules or procedures relating to any aspect of redevelopment, including, without limitation, any rules relating to ordinances, resolutions, referenda, regulations, bylaws, or other legislative acts in connection with redevelopment.

Would the Commission like to make this change?

MEMBERSHIP AND POWERS OF REDEVELOPMENT AGENCIES

The provisions in Articles 2 and 3 of Chapter 2 govern the composition of an RDA's governing body and the general powers of an RDA, respectively.

Membership

Article 2 contains provisions that govern the appointment, service, and removal of the members and officers of an RDA. See Sections 33110 (composition of RDA membership), 33111 (compatible and incompatible offices), 33112 (terms of office), 33113 (chair), 33114-33114.5 (compensation and reimbursement of expenses), 33115 (removal of member).

General Powers

Article 3 governs the general jurisdiction and powers of an RDA. See Sections 33120 (territorial jurisdiction), 33121 (agency powers vested in its members), 33121.5 (delegation of authority generally prohibited), 33122-33123 (RDA functions "governmental" and "public"). RDAs are required to keep records of their proceedings, which are open to public inspection "to the extent required by law." Section 33125.5.

An RDA has access to the services and facilities of "the planning commission, the city engineer, and other departments and offices of the community." Section 33128. However, an RDA is not a "department of the community" and the personnel of the RDA are not "under the civil service of the community." Section 33129.

In addition, RDAs are granted certain general powers. See Sections 33125 (sue and be sued; adopt seal; make contracts; adopt regulations and bylaws), 33126

(employ personnel), 33127 (purchasing), 33134 & 33136 (obtain insurance). RDAs are also granted powers specific to the redevelopment process. See Sections 33131, 33135. RDAs are also expressly authorized to receive assistance from private and public sources. See Sections 33132-33133.

Finally, Sections 33130 and 33130.5 provide conflict of interest rules for agency and “community” officers and employees who are involved in formulating or approving plans and policies for the redevelopment of a project area. Such persons shall not acquire any property interest in the project area. If the person already has an interest, that person is required to immediately disclose it. See Section 33130(a). For exceptions to the general rule, see Sections 33130(b) (new interest substantially equal to interest owned for three years immediately preceding selection of project area), 33130(c) (specified leasehold property), 33130.5 (personal residence in area where redevelopment work completed).

Relevance After Transitional Period

On February 1, 2012, all RDAs in California were dissolved and ceased to exist as entities. See Section 34172. Consequently, provisions governing the membership of RDAs are no longer needed.

It is *possible* that the provisions governing the membership of RDAs could have some relevance to successor agencies. However, once successor agencies have completely wound down the affairs of the former RDAs, there will be no need for them to continue to exist. **Consequently, the provisions governing the membership of an RDA will be entirely obsolete after the end of the transitional period and should be repealed.**

The same is true of the provisions establishing the general powers of an RDA. As discussed below, successor agencies will need to exercise some of the powers of former RDAs in the process of winding down its affairs, but once that process is complete there will no longer be any need for successor agencies to exist or exercise any powers. **At that point, the provisions establishing the general powers of RDAs will be obsolete. Those provisions should be repealed.**

Provisions relating to employee compensation are discussed further, below.

Relevance During Transitional Period

In general, the provisions governing the membership and general powers of an RDA will have some continuing relevance during the transitional period and should therefore not be disturbed.

Some of the powers of the former RDAs will vest with successor agencies pursuant to Section 34173(b). In addition, there may be litigation that contests the actions of a former RDA or successor agency based on a claim that the entity's membership is not legally constituted or that the contested action exceeds the authority granted by the provisions at issue here.

For the most part, the savings provision should be sufficient to preserve the effect of the existing membership and powers provisions during the transitional period. As recommended by the staff, the savings provision would make clear that the repeal of a provision by the clean-up legislation would have no effect, during the transitional period, on the "substance, construction, or application" of former law, including

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.

See Memorandum 2012-11, p. 9. Consequently, the repeal of the provisions establishing the membership and powers of the former RDAs would not have any effect on the obligations and powers of a former RDA or the obligations and powers that vest in the successor agencies.

However, the staff sees two issues worth noting. They are discussed more fully below.

Conflict of Interest Provision

The first sentence of Section 33130(a) provides:

No agency or community officer or employee who in the course of his or her duties is required to participate in the formulation of, or to approve plans or policies for, the redevelopment of a project area shall acquire any interest in any property included within a project area within the community.

On first glance, that section might be read to establish a prohibition that applies only to current officers and employees on active redevelopment projects. It makes good policy sense to prohibit such persons from acquiring property interests in projects that they are influencing. However, the provision could be read more broadly, to also regulate a *former* officer or employee. Read most broadly, the provision could perhaps be understood to create a *permanent* prohibition. Under that reading, the specified persons would be barred from ever

acquiring property interests within the project area, even long after the redevelopment process has been completed.

The staff could not find any published appellate case directly addressing the scope or duration of the prohibition in Section 33130. (There was one case in which a party attempted to apply the prohibition in Section 33130 to a *former* official, but that case was dismissed on other grounds without reaching the question of whether the section applies to former officials. See *Brandenburg v. Eureka Redevelopment Agency*, 152 Cal. App. 4th 1350, 1355-56, n.7, 62 Cal. Rptr. 3d 339 (2007).)

Fortunately, the savings provision should be sufficient to avoid any change in the meaning or application of Section 33130, whatever duration that provision was intended to have. The proposed savings provision applies during the “transitional period,” which is defined to include the period in which any redevelopment-related legal action may be brought. An action grounded on the prohibition in Section 33130 would seem to be redevelopment-related. Consequently, the savings provision would continue to apply for however long Section 33130 remains enforceable.

Legal Action Not Related to Redevelopment

Section 33125(a) provides that an RDA may “sue and be sued.” The savings provision would make clear that, notwithstanding the repeal of Section 33125, the effect of that provision would not be disturbed during the transitional period. In other words, a former RDA (or its successor in interest, which is presumably the successor agency) would remain susceptible to suit during the transitional period.

Recall that the proposed savings provision would define “transitional period” as including the period in which

An arbitration, administrative adjudication or other administrative proceeding, civil action or proceeding, criminal action or proceeding, or any other kind of legally binding proceeding *relating to redevelopment* is pending or may be brought without violating the applicable statute of limitations.

Proposed Section 33090(a)(3)(B) (emphasis added). See Memorandum 2012-11, p. 9.

The staff is concerned that use of the phrase “relating to redevelopment” in that definition may be too limiting. Suppose that an RDA is sued for a garden-variety tort, which has no necessary connection to redevelopment (e.g., sexual

harassment of an employee). Would such an action “relate to redevelopment” simply because the RDA is a party? If not, it might be argued that the repeal of Section 33125 would limit the ability to bring a legal action against a former RDA (or its successor in interest), if the action is not clearly “redevelopment related.”

In order to avoid any uncertainty on this point, the staff recommends that the language quoted above be revised, along the following lines:

An arbitration, administrative adjudication or other administrative proceeding, civil action or proceeding, criminal action or proceeding, or any other kind of legally binding proceeding relating to redevelopment is pending or may be brought without violating the applicable statute of limitations. For the purposes of this section, a proceeding relates to redevelopment if an agency or successor agency is a party to the proceeding or if a provision of the former law is at issue in the proceeding.

EMPLOYEE COMPENSATION

One of the guiding principles that the Commission adopted in February focuses on persons formerly employed by redevelopment agencies:

- The Commission’s clean-up work will not alter the existing status of the employees of former redevelopment agencies, as established by ABx1 26.

Minutes (Feb. 2012), p. 6. Consistent with that principle, the Commission should pay special attention to any redevelopment statute relating to employment, compensation, benefits, reimbursement of expenses, or the like.

Several of the provisions relating to membership and powers of redevelopment agencies fall into that category. In particular, Section 33126(a) states that a redevelopment agency “may select, appoint, and employ such permanent and temporary officers, agents, counsel, and employees as it requires, and determine their qualifications, duties, benefits, and compensation, subject only to the conditions and restrictions imposed by the legislative body on the expenditure or encumbrance of the budgetary funds appropriated to the community redevelopment agency administrative fund.” Each agency is required to adopt personnel rules and regulations, which must cover certain subjects and be of public record. *Id.* “To the greatest extent feasible, the opportunities for training and employment arising from a redevelopment project planning and execution shall be given to lower income residents of the project area.” *Id.*

As an alternative to hiring its own employees, a redevelopment agency may contract with the Department of Housing and Community Development, or any other agency, to provide staff services “associated with or required by redevelopment.” Section 33126(b).

Redevelopment agencies are also authorized to pay the travel expenses incurred by their employees on agency business, as well as the travel expenses of their members, officers, agents, and counsel. Section 33127; see also Sections 33114 (agency members shall receive all actual and necessary expenses incurred in discharge of their duties, not just travel expenses), 33114.5 (same).

Compensation of the members of a redevelopment agency (as opposed to the employees) is prescribed by the legislative body that creates the agency, not by the agency itself. See Section 33114; see also Section 33114.5 (establishing limits on compensation under specified circumstances).

Neither the employees, nor the officers, agents, or counsel, of a redevelopment agency are “under civil service of the community.” Section 33129.

Relevance After Transitional Period

Under the first prong of our two-step methodology, we are to analyze the relevance of the above provisions *after* the transitional period. However, merely raising that question brings to light a number of related questions, as explained below.

Under Section 34190, a successor agency “shall become the employer of all employees of the redevelopment agency as of the date of the redevelopment agency’s dissolution.” Section 34190(e). The successor agency “shall be deemed to have assumed the obligations under any memorandum of understanding in effect between the redevelopment agency and [a] recognized employee organization as of the date of the redevelopment agency’s dissolution.” *Id.* Further, the successor agency “shall be deemed a successor employer and shall be obligated to recognize and to meet and confer” with any recognized employee organization that represented employees of the redevelopment agency. *Id.* “Individuals formerly employed by redevelopment agencies that are subsequently employed by successor agencies shall, for a minimum of two years, transfer their status and classification in the civil service system of the redevelopment agency to the successor agency” Section 34190(h).

In other words, upon dissolution of a redevelopment agency, the successor agency essentially steps into the redevelopment agency’s shoes as employer of

the persons who previously worked for the redevelopment agency. That might be an oversimplification of the situation, but it is probably sufficient for purposes of this discussion.

In that role, a successor agency may not only have to compensate former RDA employees while those employees wind down the affairs of the RDA, but it may also bear responsibility for retirement benefits of RDA employees (whether currently employed or already retired), perhaps in conjunction with another entity such as CALPERS or a city or county retirement system. Such benefits would seem to constitute an “enforceable obligation” under Section 34171(d)(1)(C), which refers to “legally enforceable payments required in connection with the agencies’ employees, including, but not limited to, pension payments, pension obligation debt service, unemployment payments, or other obligations conferred through a collective bargaining agreement.” Under Section 34177(a), successor agencies are required to “[c]ontinue to make payments due for enforceable obligations,” including the types of payments just enumerated.

We have defined the “transitional period” as follows:

“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) An arbitration, administrative adjudication or other administrative proceeding, civil action or proceeding, criminal action or proceeding, or any other kind of legally binding proceeding relating to redevelopment is pending or may be brought without violating the applicable statute of limitations.

See Memorandum 2012-11, p. 9. How that definition would apply to payment of retirement benefits earned by RDA employees is perhaps not sufficiently clear. Payment of such benefits would seem to constitute an aspect of “winding down the affairs of a former redevelopment agency,” and thus to fall within the definition of “transitional period.” But the obligation to pay retirement benefits is likely to continue for many years into the future, and might be borne (in whole or in part) by an entity other than a successor agency.

To eliminate any question as to whether the Commission’s definition of “transitional period” encompasses payment of retirement benefits earned by RDA employees, as well as similar types of obligations, **it may be appropriate to revise that definition as shown in ~~strikeout~~ and underscore below:**

“Transitional period” means the period during which ~~either or both~~ any or all of the following are true:

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

(B) An arbitration, administrative adjudication or other administrative proceeding, civil action or proceeding, criminal action or proceeding, or any other kind of legally binding proceeding relating to redevelopment is pending or may be brought without violating the applicable statute of limitations.

(C) A former employee, officer, agent, or counsel of a redevelopment agency may legally enforce an obligation based on services rendered to a redevelopment agency, or to a successor agency winding down the affairs of a redevelopment agency, including but not limited to a legally enforceable right to pension payments or post-retirement health insurance.

If the Commission were to revise the definition of “transitional period” in this manner, then the employment-related and other compensation-related statutes described above (Sections 33114, 33114.5, 33126, 33127, and 33129) would clearly be obsolete by the end of the transitional period, because any legally enforceable obligations created by those statutes would have been extinguished. **Accordingly, those statutes would be unnecessary and should be repealed.**

Relevance During Transitional Period

During the transitional period, successor agencies and perhaps others will be responsible for fulfilling personnel-related obligations of the former redevelopment agencies. If one or more statutes giving rise to such obligations are to be repealed by the Commission’s clean-up legislation, then the Commission must **make it crystal clear that the repeal is not intended to affect those obligations in any way.**

As currently drafted, the proposed savings provision would state:

(b) The repeal or amendment of a provision of former law by the Redevelopment Clean-Up Act shall have no effect, during the transitional period, on the substance, construction, or application of former law with regards to any redevelopment-related matter, *including, without limitation, any of the following redevelopment-related matters:*

....

(3) *The rights of an employee of a former redevelopment agency who became an employee of a successor agency pursuant to Section 34190.*

(Emphasis added.) Paragraph (b)(3) would merely be *an illustration* of the types of “redevelopment-related matters” that the Redevelopment Clean-Up Act would not affect. It and the other numbered paragraphs in subdivision (b) are not intended to be a comprehensive list, as is clear from the phrase “including, *without limitation.*” (Emphasis added.)

Nonetheless, employment-related and other compensation-related obligations are likely to be of particular concern to a substantial number of people. **It may therefore be helpful to broaden the language in paragraph (b)(3), perhaps along the following lines:**

(b) The repeal or amendment of a provision of former law by the Redevelopment Clean-Up Act shall have no effect, during the transitional period, on the substance, construction, or application of former law with regards to any redevelopment-related matter, *including, without limitation, any of the following redevelopment-related matters:*

....

(3) The rights or obligations of an employee, officer, agent, or counsel of a former redevelopment agency, regardless of whether that person ~~who~~ became an employee of a successor agency pursuant to Section 34190, or otherwise became associated with a successor agency.

Does the Commission agree with this approach in concept? If so, then Commissioners and other interested persons should carefully consider whether the language proposed above is sufficient, or could be improved upon in some manner. **Suggestions on this point would be helpful.**

DEACTIVATION OF REDEVELOPMENT AGENCY

Article 4 of Chapter 2 contains two sections, which specify procedures by which a legislative body can suspend or deactivate an RDA, vacating its offices and removing its authority to transact business. Sections 33140-33141.

Relevance After Transitional Period

Once all successor agencies have completely wound down the affairs of the former RDAs there will not be any need for procedures to suspend or deactivate RDAs. **Those provisions will be obsolete and should be repealed.**

Relevance During Transitional Period

The provisions governing suspension and deactivation of RDAs are probably not intended to have any application to successor agencies. However, even if those provisions do have some application to successor agencies, that application would be preserved by the savings provision, which provides that the repeal of a provision by the clean-up legislation would have no effect, during the transitional period, on the “substance, construction, or application” of former law, including

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.

See Memorandum 2012-11, p. 9 (emphasis added). That would include any powers held by a legislative body pursuant to the suspension and deactivation provisions.

The staff does not see any need to adjust the savings provision to account for the suspension and deactivation provisions.

However, in researching this issue, the staff could not find any provision in Part 1.85 of Division 24 that governs the dissolution of successor agencies, once their work is completed. Compare Section 34179(m), which provides for the dissolution of oversight boards:

Any oversight board for a given successor agency shall cease to exist when all of the indebtedness of the dissolved redevelopment agency has been repaid.

Does a successor agency dissolve under the same circumstances? If so, what happens to its remaining assets and obligations? Its employees? Its records?

The Commission should consider adding the following item to its list of *Minor Issues for Possible Future Legislative Attention* (attached to Memorandum 2012-13):

- **Dissolution of Successor Agency.** Section 34179(m) provides that an oversight board “for a given successor agency shall cease to exist when all of the indebtedness of the dissolved redevelopment agency has been repaid.” However, the law does not appear to address the dissolution of a successor agency when its work is completed. Nor does the law specify the treatment of a dissolved successor agency’s assets, obligations, records, or employees.

Respectfully submitted,

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HEALTH AND SAFETY CODE

DIVISION 24. COMMUNITY DEVELOPMENT
AND HOUSING

PART 1. COMMUNITY REDEVELOPMENT LAW

CHAPTER 2. REDEVELOPMENT AGENCIES

Article 1. Creation of Agencies

§ 33100. Redevelopment agency

33100. There is in each community a public body, corporate and politic, known as the redevelopment agency of the community.

§ 33101. Declaration by legislative body of need for agency

33101. An agency which, on September 15, 1961, was not authorized to transact any business or exercise any powers by a resolution adopted prior to such date, shall not transact any business or exercise any powers under this part unless, by ordinance, the legislative body declares that there is need for an agency to function in the community. The ordinance of the legislative body declaring that there is need for an agency to function in the community shall be subject to referendum as prescribed by law for a county or a city ordinance.

§ 33102. Filing of ordinance

33102. The agency shall cause a certified copy of the ordinance to be filed in the office of the county clerk.

§ 33103. Presumption relating to agency's establishment and authority

33103. In any proceeding involving the validity or enforcement of, or relating to, any contract by an agency, the agency is conclusively deemed to have been established and authorized to transact business and exercise its powers upon proof of the filing with the Secretary of State of such an ordinance.

§ 33103.5. Ordinance declaring need for agency in Crescent City

33103.5. Any ordinance of a legislative body heretofore adopted declaring the need for an agency to function in Crescent City is hereby validated, and in any proceeding involving the validity of, or enforcement of, or relating to, any contract by such an agency, the agency is conclusively deemed to have been established and authorized to transact business and exercise its powers upon proof that a copy of such ordinance has been filed with the Secretary of State. Notwithstanding

1 Section 33101, any such ordinance adopted as an emergency ordinance is not
2 subject to referendum.

3 **§ 33104. Presumption relating to establishment and authority of agency in operation prior**
4 **to September 15, 1961**

5 33104. Agencies which transacted business and exercised powers prior to
6 September 15, 1961, shall, in any proceeding involving the validity of, or
7 enforcement of, or relating to, any contract by an agency, be conclusively deemed
8 to have been established and authorized to transact business and exercise its
9 powers upon proof of the adoption of a resolution adopted pursuant to the
10 provisions of this part which were in effect prior to September 15, 1961, or upon
11 proof that a copy of such resolution has been filed with the Secretary of State.

12 **§ 33105. Reactivation of agency purportedly dissolved and inactive for 10 years**

13 33105. In any case where an agency was activated in a community by a
14 resolution adopted pursuant to Section 33101 prior to January 1, 1951, and where
15 thereafter and prior to January 1, 1951, the legislative body of the community
16 purported to dissolve the agency under circumstances where Section 33140 was
17 not applicable, and where as a result of such purported dissolution the agency was
18 inactive for a period of at least 10 years, and where subsequent to January 1, 1962,
19 the legislative body of the community adopted an ordinance pursuant to Section
20 33101 declaring that there is need for an agency to function in the community,
21 which ordinance was not suspended by referendum, and where subsequent to the
22 adoption of such ordinance new members of the agency were appointed pursuant
23 to Section 33110, such agency is a valid and existing agency with full power to
24 transact any business and exercise its powers and the members appointed
25 subsequent to the adoption of such ordinance are the legally appointed and
26 existing members of the agency, each for the term designated in his appointment.
27 For the purpose of applying Section 33140 to such agency, the two-year period
28 referred to in that section shall be measured from the date of adoption of such
29 ordinance.

30 **Article 2. Appointment, Compensation, and Removal of Agency**

31 **§ 33110. Membership of agency**

32 33110. When the legislative body adopts an ordinance declaring the need for an
33 agency, the mayor or chairman of the board of supervisors, with the approval of
34 the legislative body, shall appoint five persons, who are resident electors of the
35 community, and may include tenants of a public housing authority created
36 pursuant to Part 2 (commencing with Section 34200) of this division, as members
37 of the agency. The legislative body may, either at the time of the adoption of the
38 ordinance declaring the need for an agency or at any time thereafter, adopt an
39 ordinance increasing to seven the number of members to be appointed to the

1 agency. Upon the exercise of such option by the legislative body, the membership
2 of the agency shall remain at seven.

3 **§ 33111. Conflict of interest**

4 33111. A member may not be an elective officer or an employee of the
5 community, but, notwithstanding any other law, he may be a member,
6 commissioner, or employee of any other agency or authority of, or created for, the
7 community.

8 **§ 33112. Terms of office**

9 33112. Three of the members first appointed shall be designated to serve the
10 terms of one, two, and three years, respectively, from the date of their
11 appointments and two shall be designated to serve for terms of four years from the
12 date of their appointments. If and when the membership of the agency is increased
13 to seven, one of the additional members shall be appointed to a term, or unexpired
14 portion thereof, which is concurrent with the term then held by the member
15 originally appointed for a term of three years or by his successor, and the other
16 additional member shall be appointed to a term, or unexpired portion thereof,
17 which is concurrent with the term then held by the member originally appointed
18 for a term of two years or by his successor. Their successors shall be appointed for
19 four-year terms. Vacancies occurring during a term shall be filled for the
20 unexpired term. A member shall hold office until his successor has been appointed
21 and has qualified.

22 **§ 33113. Chairperson**

23 33113. The appointing officer shall designate the first chairman from among the
24 members. When there is a vacancy in such office, the agency shall elect a
25 chairman from among its members. Unless otherwise prescribed by the legislative
26 body, the term of office as chairman is for the calendar year, or for that portion
27 remaining after he is designated or elected.

28 **§ 33114. Expenses and compensation of members**

29 § 33114. Members shall receive their actual and necessary expenses, including
30 traveling expenses incurred in the discharge of their duties. They may receive such
31 other compensation as the legislative body prescribes.

32 **§ 33114.5. Compensation of members of legislative body of city or county**

33 33114.5. Notwithstanding any other provision of law, whenever the legislative
34 body of a city having a population of less than 200,000 or the legislative body of a
35 county declares itself to be the agency pursuant to Section 33200, the
36 compensation provided for in Section 33114 shall not exceed thirty dollars (\$30)
37 per member for each meeting of the agency attended by the member. No member
38 shall receive compensation for attending more than four meetings of the agency

1 during any calendar month. In addition, members shall receive their actual and
2 necessary expenses incurred in the discharge of their duties.

3 **§ 33115. Removal of member**

4 33115. For inefficiency, neglect of duty, or misconduct in office, a member may
5 be removed by the appointing officer, but only after he has been given a copy of
6 the charges at least 10 days prior to a public hearing on them and has had an
7 opportunity to be heard in person or by counsel. If a member is removed, a record
8 of the proceedings and the charges and findings shall be filed in the office of the
9 clerk of the community.

10 Article 3. Nature, Jurisdiction, and General Powers of Agencies

11 **§ 33120. Territorial jurisdiction**

12 33120. The territorial jurisdiction of the agency of a county is the
13 unincorporated territory in the county, and that of a city or city and county is the
14 territory within its limits.

15 **§ 33121. Vesting of agency powers**

16 33121. The powers of each agency are vested in the members in office.

17 **§ 33121.5. Delegation by agency or legislative body**

18 33121.5. When a decision, determination, or other action by the agency or
19 legislative body is required by this part, neither the agency nor the legislative body
20 shall delegate the obligation to decide, determine, or act to another entity unless a
21 provision of this part specifically provides for that delegation.

22 **§ 33122. Nature of agency functions and powers**

23 33122. Each redevelopment agency exercises governmental functions and has
24 the powers prescribed in this part.

25 **§ 33123. Public function**

26 33123. Each agency is performing a public function of the community.

27 **§ 33125. Agency powers**

28 33125. An agency may:

29 (a) Sue and be sued.

30 (b) Have a seal.

31 (c) Make and execute contracts and other instruments necessary or convenient to
32 the exercise of its powers.

33 (d) Make, amend, and repeal bylaws and regulations not inconsistent with, and
34 to carry into effect, the powers and purposes of this part.

1 **§ 33125.5. Record of agency proceedings**

2 33125.5. An agency shall keep a record of the proceedings of its meetings and
3 those records shall be open to examination by the public to the extent required by
4 law.

5 **§ 33126. Personnel**

6 33126. (a) An agency may select, appoint, and employ such permanent and
7 temporary officers, agents, counsel, and employees as it requires, and determine
8 their qualifications, duties, benefits, and compensation, subject only to the
9 conditions and restrictions imposed by the legislative body on the expenditure or
10 encumbrance of the budgetary funds appropriated to the community
11 redevelopment agency administrative fund. To the greatest extent feasible, the
12 opportunities for training and employment arising from a redevelopment project
13 planning and execution shall be given to lower income residents of the project
14 area. The agency shall adopt personnel rules and regulations applicable to all
15 employees. Such rules shall contain procedures affecting conflicts of interest, use
16 of funds, personnel procedures on hiring and firing including removal of personnel
17 for inefficiency, neglect of duties, or misconduct in office. Such rules and
18 regulations shall be of public record.

19 (b) An agency may contract with the Department of Housing and Community
20 Development, or any other agency, for the furnishing by the department, or
21 agency, of any necessary staff services associated with or required by
22 redevelopment and which could be performed by the staff of an agency.

23 **§ 33127. Additional agency powers**

24 33127. An agency may:

25 (a) Obtain, hire, purchase, or rent office space, equipment, supplies, insurance,
26 or services.

27 (b) Authorize and pay the travel expenses of agency members, officers, agents,
28 counsel, and employees on agency business.

29 **§ 33128. Services and facilities available to agency**

30 33128. For the purposes of the agency, it shall have access to the services and
31 facilities of the planning commission, the city engineer, and other departments and
32 offices of the community.

33 **§ 33129. Agency not department of community**

34 33129. The grant of money appropriated by the legislative body of the
35 community to the community redevelopment agency administrative fund is not to
36 be construed as making the agency a department of the community or placing the
37 officers, agents, counsel, and employees under civil service of the community.

1 **§ 33130. Financial interest in property within redevelopment project area**

2 33130. (a) No agency or community officer or employee who in the course of
3 his or her duties is required to participate in the formulation of, or to approve plans
4 or policies for, the redevelopment of a project area shall acquire any interest in any
5 property included within a project area within the community. If any such officer
6 or employee owns or has any direct or indirect financial interest in property
7 included within a project area, that officer or employee shall immediately make a
8 written disclosure of that financial interest to the agency and the legislative body
9 and the disclosure shall be entered on the minutes of the agency and the legislative
10 body. Failure to make the disclosure required by this subdivision constitutes
11 misconduct in office.

12 (b) Subdivision (a) does not prohibit any agency or community officer or
13 employee from acquiring an interest in property within the project area for the
14 purpose of participating as an owner or reentering into business pursuant to this
15 part if that officer or employee has owned a substantially equal interest as that
16 being acquired for the three years immediately preceding the selection of the
17 project area.

18 (c) A rental agreement or lease of property which meets all of the following
19 conditions is not an interest in property for purposes of subdivision (a):

20 (1) The rental or lease agreement contains terms that are substantially equivalent
21 to the terms of a rental or lease agreement available to any member of the general
22 public for comparable property in the project area.

23 (2) The rental or lease agreement includes a provision which prohibits any
24 subletting, sublease, or other assignment at a rate in excess of the rate in the
25 original rental or lease agreement.

26 (3) The property which is subject to the rental or lease agreement is used in the
27 pursuit of the principal business, occupation, or profession of the officer or
28 employee.

29 (4) The agency or community officer or employee who obtains the rental or
30 lease agreement immediately makes a written disclosure of that fact to the agency
31 and the legislative body.

32 **§ 33130.5. Financial interest in completed redevelopment project**

33 33130.5. Notwithstanding any other provisions of law, an officer, employee,
34 consultant, or agent of the agency or community, for personal residential use, may
35 purchase or lease property within a project area after the agency has certified that
36 the improvements to be constructed or the work to be done on the property to be
37 purchased or leased have been completed, or has certified that no improvements
38 need to be constructed or that no work needs to be done on the property. Any such
39 officer or employee who purchases or leases such property shall immediately
40 make a written disclosure to the agency and the legislative body, which disclosure
41 shall be entered on the minutes of the agency. Any such officer or employee shall
42 thereafter be disqualified from voting on any matters directly affecting such a

1 purchase, lease, or residency. Failure to so disclose constitutes misconduct in
2 office.

3 **§ 33131. Additional agency authority**

4 33131. An agency may:

5 (a) From time to time prepare and carry out plans for the improvement,
6 rehabilitation, and redevelopment of blighted areas.

7 (b) Disseminate redevelopment information.

8 (c) Prepare applications for various federal programs and grants relating to
9 housing and community development and plan and carry out such programs within
10 authority otherwise granted by this part, at the request of the legislative body.

11 **§ 33132. Authorized financial assistance**

12 33132. The agency may accept financial assistance from public or private
13 sources as authorized by Chapter 6 (commencing with Section 33600) or any other
14 provision in this part.

15 **§ 33133. Other authorized assistance**

16 33133. The agency may accept any other assistance from the state or federal
17 government or any public or private source for any redevelopment project within
18 its area of operation or for the agency's activities, powers, and duties.

19 **§ 33134. Insurance**

20 33134. Within the survey area or for purposes of redevelopment an agency may
21 insure or provide for the insurance of any operations of the agency against risks or
22 hazards.

23 **§ 33135. Relocation and rehabilitation assistance**

24 33135. Upon request from and at the expense of any public body, an agency
25 may, outside any survey area, with the approval of the legislative body, provide
26 (1) relocation assistance to persons displaced by governmental action, and (2) aid
27 and assistance to property owners in connection with rehabilitation loans and
28 grants.

29 **§ 33136. Financing cost of insurance coverage for certain projects**

30 33136. An agency may finance the cost of premiums necessary for the provision
31 of insurance during the construction or rehabilitation of properties that are
32 administered by governmental entities or nonprofit organizations to provide
33 housing for lower income households, as defined in Section 50079.5, including
34 rental properties, emergency shelters, transitional housing, or special residential
35 care facilities.

1 Article 4. Suspension and Dissolution of Agencies

2 **§ 33140. Suspension of agency**

3 33140. If an agency has not redeveloped or acquired land for, or commenced the
4 redevelopment of, a project, or entered into contracts for redevelopment within
5 two years after the adoption of an ordinance pursuant to Section 33101, or, in the
6 case of an agency authorized to transact business and exercise powers by
7 resolution adopted pursuant to the provisions of Section 33101 that were in effect
8 prior to the adoption of that resolution, the legislative body may, by ordinance,
9 declare that there is no further need for the agency. A legislative body shall not
10 adopt an ordinance declaring that there is no further need for the agency if, in one
11 or more project areas, the agency has not complied with subdivision (a) of Section
12 33333.8. Upon the adoption of the ordinance, the offices of the agency members
13 are vacated and the capacity of the agency to transact business or exercise any
14 powers is suspended until the legislative body adopts an ordinance declaring the
15 need for the agency to function.

16 **§ 33141. Deactivation of agency**

17 33141. Upon the motion of the legislative body or upon recommendation of the
18 agency, the legislative body of the community may, by ordinance, order the
19 deactivation of an agency by declaring that there is no need for an agency to
20 function in the community, if the agency has no outstanding bonded indebtedness,
21 no other unpaid loans, indebtedness, or advances, and no legally binding
22 contractual obligations with persons or entities other than the community, unless
23 the community assumes the bonded indebtedness, unpaid loans, indebtedness, and
24 advances, and legally binding contractual obligations. A legislative body shall not
25 adopt an ordinance declaring that there is no need for the agency, if in one or more
26 project areas, the agency has not complied with subdivision (a) of Section
27 33333.8. An ordinance of a legislative body declaring there is no need for an
28 agency to function in the community shall be subject to referendum as prescribed
29 by law for the ordinances of the legislative body.

30 **§ 33142. Filing of ordinance suspending or dissolving agency**

31 33142. The legislative body of the community shall file with the Secretary of
32 State a certified copy of any ordinance suspending or dissolving an agency
33 pursuant to Section 33140 or 33141.