CITY OF OAKLAND
AGENDA REPORT

TO: Office of the City Administrator
ATTN: Dan Lindheim
FROM: Budget Office
DATE: May 25, 2010
RE: **Supplemental Report on the Status of the State's Budget Development and Its Potential Impact on the City of Oakland's Proposed Budget for FY 2009-11**

SUMMARY

At the May 11th Finance and Management Committee meeting, staff reported that Sacramento Superior Court Judge Lloyd Connelly upheld AB X4 26, the state budget bill requiring redevelopment agencies statewide to transfer $2.05 billion in local redevelopment funds over the next two years. The budget bill enables the State to meet its obligation to fund K-12 education under Proposition 98 by using redevelopment funds from local agencies, and freeing up State General Purpose Funds for budget balancing. For the Oakland Redevelopment Agency (ORA), this takeaway amounts to $41 million in the current year and $8.5 million in FY 2010-11. The Agency Board approved a plan to pay this amount to the State at its October 6, 2009 meeting, mainly using available Oakland Redevelopment Agency balances (see ***Attachment A*** for resolution no. 2009-0090 C.M.S.). The California Redevelopment Association (CRA) had filed a lawsuit against the State on behalf of local redevelopment agencies, challenging the bill's constitutionality on behalf of redevelopment agencies statewide.

In this supplemental report, staff addresses the following questions posed by Committee Members:

- On what legal basis did the CRA challenge AB X4 26?
- How will Oakland Redevelopment Agency funds flow to Oakland public schools?

Responses to these questions are reflected in ***Attachment B*** and are copied below. Committee members also asked for a listing of Oakland Redevelopment Agency (ORA) projects and programs that would be delayed or cancelled to pay its obligation to the State; see ***Attachment A***.

On what grounds did CRA sue to invalidate AB X4 26?
Article XVI, Section 16 of the California Constitution states that redevelopment tax increment funds can only be used for specified redevelopment activities, specifically *"to finance or refinance ... the redevelopment project."* Taking redevelopment funds to balance the State's budget – the real purpose of ABX4-26 – does not qualify as a constitutionally permitted use of redevelopment funds and is therefore unconstitutional.

Additionally, the State and U.S. Constitutions prohibit the Legislature from enacting laws that impair the obligation of contract. Raiding $2.05 billion in redevelopment funds could jeopardize bond covenants and other contractual obligations entered into by many redevelopment agencies creating an unconstitutional impairment of contract.

(See ***Attachment C*** for the CRA's complete challenge.)

What is ERAF? What is the difference between past ERAF takes and AB X4 26's "SERAF" take?

In 1992, the State of California found itself in a serious deficit position. To meet its obligations to fund education at specified levels under Proposition 98, the state enacted legislation that shifted partial financial responsibility for funding education to local government (cities, counties and special districts). The state did this by instructing county auditors to shift the allocation of local property tax revenues from local government to "educational revenue augmentation funds" (ERAFs), directing that specified amounts of city, county and other local agency property taxes be deposited into these funds to support schools.

The structure for the redevelopment fund shift is similar to last year's budget trailer bill, AB 1389. The primary difference is that, in an effort to get around CRA's successful lawsuit, the Legislature created a new county "Supplemental" ERAF (SERAF). Under this new SERAF, redevelopment funds are to be distributed to a K-12 school district(s) or county office of education located partially or entirely within any project area of the agency.

How does the new SERAF work?

The funds deposited into the new county SERAF must be distributed to a K-12 school district or county office of education located partially or entirely within any project area of the agency.

- The funds distributed to schools or county offices of education from the SERAF must be used to serve pupils living in the project area or in housing supported by redevelopment funds. *(It is unclear how an agency is supposed to determine how many students are in housing supported by redevelopment funds).*
- The total amount of SERAF funds received by a school district is deemed to be local property taxes and will reduce dollar-for-dollar the State's Prop 98 obligations to fund education.

CONCLUSION

The Judge denied CRA's arguments that (a) AB X4 26 is an unconstitutional use of redevelopment funds; (b) it substantially impairs existing obligations of redevelopment agencies and (c)it is a violation of equal protection laws. ***Attachment D*** contains Judge Connelly's decision.

CRA is appealing the Judge's decision, which "effectively says that the Legislature has unlimited discretion to redirect local redevelopment funds to any purpose it wishes. In his decision, the court accepts the Legislature's findings that SERAF payments to schools are 'reasonably related' to the redevelopment's statutory purposes. Under this logic any State program could be, conveniently, called 'redevelopment.'" Nonetheless, the CRA was recently unsuccessful in its request for a temporary stay that would block agencies from having to make required payments to County SERAFs.

Respectfully submitted,

CHERYL L. TAYLOR
Director, Budget Office

APPROVED FOR FORWARDING TO
THE FINANCE & MANAGEMENT COMMITTEE

Office of the City Administrator

Attachments:

A: Resolution No. 2009-0090 C.M.S.
B: Frequently Asked Questions About the 2009 State Raid of Redevelopment Funds and Litigation
C: Petitioners'/Plaintiffs' Memorandum of Points and Authorities in Support of Writ and Complaint
D: Judge Connelly's Ruling on Submitted Matter

Item: _____
Finance & Management Committee
May 25, 2010

Attachment A

FILED
OFFICE OF THE CITY CLERK
OAKLAND
2009 SEP 24 PM 5:48

Approved as to Form and Legality
By: _____
Agency Counsel

REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND

Resolution No. 2009-0090 C.M.S.

AGENCY RESOLUTION AMENDING THE FISCAL YEARS 2009-11 BIENNIAL BUDGET TO REVISE FY 2009-10 REVENUE PROJECTIONS AND TO PROVIDE FOR FY 2009-10 PAYMENTS TO THE SUPPLEMENTAL EDUCATIONAL REVENUE AUGMENTATION FUND (SERAF), AND AMENDING RESOLUTION NO. 01-85 TO PROVIDE FOR A PORTION OF THE PAYMENTS TO THE SERAF TO COME FROM THE AGENCY'S VOLUNTARY FIVE PERCENT CONTRIBUTION TO THE LOW AND MODERATE INCOME HOUSING FUND

WHEREAS, the Agency adopted its biennial budget for Fiscal Years 2009-2011 on June 30, 2009, Resolution No. 2009-0072 C.M.S.; and

WHEREAS, the state legislature passed AB 26 4x in July of this year as a budget balancing measure, which requires redevelopment agencies, including the Redevelopment Agency of the City of Oakland, to make payments to a Supplemental Educational Revenue Augmentation Fund ("SERAF"); and

WHEREAS, Oakland's required contribution to SERAF would be $41,074,866 for FY 2009-10 and $8,497,000 for FY 2010-11; and

WHEREAS, on December 11, 2001, the Redevelopment Agency adopted Resolution Number 01-85 C.M.S. to provide for the deposit annually into the Low and Moderate Income Housing Fund of an additional amount equal to five percent of the gross tax increment revenues from all redevelopment project areas, if certain conditions are met; and

WHEREAS, payment of the entire SERAF payment from non-housing Agency funds would jeopardize the Agency's ability to carry out other priority redevelopment activities; and

WHEREAS, based on a recent report from the County on assessed valuations for properties in Oakland's redevelopment project areas, there are revised revenue projections that require adjustments to the Agency budget; now, therefore be it

RESOLVED: That the Agency hereby amends its biennial budget for Fiscal Years 2009-2011 as provided for in Exhibits A, B and C, attached to this Resolution; and be it further

RESOLVED: That the Redevelopment Agency hereby amends Resolution Number 01-85 C.M.S. to reduce the Agency's additional contribution of funds to the LMIHF for prior years by $2,492,321, for FY 2009-10 by $6,034,900 and for FY 2010-11 by $2,607,710 in order to allow this amount to be used to pay a portion of the SERAF, should such payments be required; and be it further

RESOLVED: That this reduction in the LMIHF, which is authorized solely for the purpose of making the state-required SERAF payment, in no way changes the Redevelopment Agency's commitment to its policy of voluntarily contributing an additional five percent of gross tax increment to the LMIHF in subsequent years when SERAF payments are not required, and that any necessary reductions for FY 2009-10 and FY 2010-11 may be made solely for this purpose.

IN AGENCY, OAKLAND, CALIFORNIA, OCT 6 2009, 2009

PASSED BY THE FOLLOWING VOTE:

AYES- [redacted], DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, [redacted], AND [redacted] – 5

NOES- Brunner- 1

ABSENT- Reid- 1

ABSTENTION- 0

Excused- Brooks- 1

ATTEST: _____
LaTonda Simmons
Secretary of the Redevelopment Agency
of the City of Oakland, California

AGENCY RESOLUTION AMENDING THE FISCAL YEARS 2009-11 BIENNIAL BUDGET TO REVISE REVENUE PROJECTIONS AND TO PROVIDE FOR PAYMENTS TO THE SUPPLEMENTAL EDUCATIONAL REVENUE AUGMENTATION FUND (SERAF), AND AMENDING THE BUDGET AND RESOLUTION NO. 01-85 TO PROVIDE FOR A PORTION OF THE PAYMENTS TO THE SERAF TO COME FROM THE AGENCY'S ADDITIONAL FIVE PERCENT CONTRIBUTION TO THE LOW AND MODERATE INCOME HOUSING FUND

EXHIBIT A

(attached)

Exhibit A
Tax Increment Analysis

	Gross Tax Increment	AB1290 Pass Through	ERAF Set-Aside	Annual Debt Service	Mandatory Portion - 20%	Voluntary Portion - 5%	Net Available	From Adopted Budget
Central District	$59,094,248	($5,327,020)	($2,710,260)	($23,660,290)	($11,818,850)	($2,954,710)	**$12,623,117**	**$3,932,158**
Coliseum	27,515,305	(6,871,840)	(1,251,090)	(6,844,710)	($5,503,060)	($1,375,770)	**5,668,835**	**(2,632,725)**
Acorn	1,391,929	-	(72,750)	-	($278,390)	($69,600)	**971,189**	**90,459**
Stanford/Adeline	152,433		(9,800)	(74,340)	($30,490)	($7,620)	**30,183**	**(14,207)**
Broadway/MacArthur/San Pablo	5,112,073	(1,022,420)	(249,480)	(1,152,810)	($1,022,420)	($255,600)	**1,409,344**	**(458,127)**
Oakland Army Base	5,717,500	(1,143,500)	(262,540)	-	($1,143,500)	($285,880)	**2,882,080**	**(296,400)**
Central City East	13,806,655	(2,761,330)	(976,690)	(5,122,570)	($2,761,330)	($690,330)	**1,494,405**	**(5,207,345)**
West Oakland	6,570,680	(1,314,140)	(374,270)		($1,314,140)	($328,530)	**3,239,600**	**(1,291,520)**
Oak Knoll	1,337,235	(267,450)	(38,080)		($267,450)	($66,860)	**697,395**	**236,355**
	$120,698,058	**($18,707,700)**	**($5,944,960)**	**($36,854,719)**	**($24,139,630)**	**($6,034,900)**	**$29,016,148**	**($5,641,352)**
Low/Mod (ERAF from additional 5%)			($2,552,040)		$24,139,630	$6,034,900	$30,174,530	($3,273,720)
Total ERAF			**$8,497,000**					

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EXHIBIT B

(attached)

Exhibit B
Budget Revisions

Coliseum	**($2,632,725)**
Reallocation of FY 2008-09 Staffing (Various)	$606,813
Delete Coliseum Internship	$400,000
Delete Coliseum Ambassador (2)	$254,286
Transfer from fund balance	$1,371,626
Total Reallocation	$2,632,725
Broadway/MacArthur/San Pablo	**($458,127)**
Reallocation of FY 2008-09 Staffing (Various)	$108,073
Delete Broadway/MacArthur Internships	$100,000
Delete Broadway/MacArthur Ambassador	$127,142
General O & M (P187510)	$122,912
Total Reallocation	$458,127
Army Base	**($296,400)**
Reallocation of FY 2008-09 Staffing (Various)	$449,589
Allocation to Fund Balance	$153,189
Central City East	**($5,207,345)**
Reallocation of FY 2008-09 Staffing (Various)	$447,542
Delete Central City East Internships	$300,000
Delete Central City East Ambassador (3)	$381,432
General O & M (S233310)	$650,000
Historic (S233340)	$250,000
Assembly/Relocation (S233350)	$300,000
CCE Eastlake/5th Ave	$300,000
CCE Streetlight Upgrades	$114,000
Teen Center District 2	$300,000
Transfer from fund balance	$2,164,371
Total Reallocation	$5,207,345
West Oakland	**($1,291,520)**
Reallocation of FY 2008-09 Staffing	$193,192
Delete West Oakland Internships	$100,000
Delete West Oakland Ambassador	$127,142
General O & M (S233510)	$871,186
Total Reallocation	$1,291,520

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EXHIBIT C

(attached)

Exhibit C
Fund Balance Analysis

Redevelopment Area	Fund Balance 6/30/09	Transfers in FY 2009-10	Fund Balance 6/30/10	September 2010 Debt Service	2010-11 8 Months Personnel	Available Fund Balance * (D - E - F - G)	Appropriation for SERAF
Central District	$15,550,621	($617,420)	$14,933,201	($23,660,290)	($5,210,329)	($13,937,418)	$0
Coliseum	$17,994,984	($365,370)	$17,629,614	($4,290,861)	($3,172,758)	$10,165,995	$8,500,000
Acorn	$1,299,808	$12,610	$1,312,418	($80,874)	($170,823)	$1,060,721	$800,000
Stanford/Adeline	$530,943	$0	$530,943	$0	($18,405)	$512,538	$400,000
Broadway/MacArthur/ San Pablo	$3,699,675	$59,050	$3,758,725	($716,706)	($754,688)	$2,287,331	$1,700,000
Oakland Army Base	$2,487,181	$0	$2,487,181	$0	($941,899)	$1,545,282	$2,300,000
Central City East	$12,928,392	($651,530)	$12,276,862	($3,184,379)	($2,670,077)	$6,422,406	$4,198,002
West Oakland	$4,771,593	$60,300	$4,831,893	($13,444)	($1,201,283)	$3,617,166	$2,700,000
Oak Knoll	($125,229)	$117,650	($7,579)		($232,651)	($240,230)	$0
Total Redevelopment *	$59,137,968	($1,384,710)	$57,753,258	($31,946,554)	($14,372,913)	$25,611,439	$20,598,002

* Total Available Fund Balance does not include the two areas with negative available balance (Central District and Oak Knoll).

Redevelopment. Building Better Communities.

FREQUENTLY ASKED QUESTIONS
About the 2009 State Raid of Redevelopment Funds and Litigation

(Questions about SERAF and payments begin on page 3)

ABOUT THE LAWSUIT

1. **Why is the State taking redevelopment money if CRA was successful in last year's lawsuit challenging AB 1389?**
   CRA was successful in blocking a 2008 proposed shift of $350 million in redevelopment funds in Sacramento Superior Court, and the State recently abandoned its appeal of the Superior Court ruling, meaning the 2008 raid is unconstitutional and agencies do not need to make the payment.

   The State claims the 2009 budget legislation, ABX4-26, fixes the constitutional issues raised by the Superior Court by directing the redevelopment funds to schools with students within the boundaries of a redevelopment agency project area and students living in housing funded by redevelopment. The State claims that funding schools within a redevelopment project area "furthers" the purpose of redevelopment. CRA and its attorneys believe that ABX4-26 is also unconstitutional on the same grounds upon which AB 1389 was successfully challenged, and many additional grounds. Consequently, we've filed a lawsuit in Sacramento Superior Court to invalidate ABX4-26.

2. **Does the new legislative language address the constitutional issues and Superior Court ruling?**
   No. ABX4-26 is unconstitutional because the unquestioned purpose of this budget bill is to help balance the State's budget, not to further the purpose of redevelopment. Under ABX4-26, schools won't receive one dime more than already guaranteed from the State. ABX4-26 simply shifts the obligation from the State to redevelopment agencies.

   The constitutional requirement is that tax increment be spent to repay indebtedness incurred to finance the redevelopment project. ABX4-26's redirection of tax increment to SERAF fails the constitutional requirement because the revenues diverted are not related or proportional to the cost of any direct benefit to the redevelopment project.

3. **On what grounds did CRA sue to invalidate ABX4-26?**
   Article XVI, Section 16 of the California Constitution states that redevelopment tax increment funds can only be used for specified redevelopment activities, specifically *"to finance or refinance ... the redevelopment project."* Taking redevelopment funds to balance the State's budget – the real purpose of ABX4-26 – does not qualify as a constitutionally permitted use of redevelopment funds and is therefore unconstitutional.

   Additionally, the State and U.S. Constitutions prohibit the Legislature from enacting laws that impair the obligation of contract. Raiding $2.05 billion in redevelopment funds could jeopardize bond covenants and other contractual obligations entered into by many redevelopment agencies creating an unconstitutional impairment of contract. (See question #20 below.) Finally, there are a number of other constitutional violations created by ABX4-26.

4. **What is the latest on the appeal of last year's Superior Court ruling.**
   In September, the State of California abandoned its appeal of the Superior Court ruling that found the 2008 raids were unconstitutional. As a result, the Superior Court decision is final and binding. The 2008 $350 million raid is unconstitutional and agencies need not make that payment.

5. **Who are the attorneys representing CRA in the lawsuit?**
   The same legal team that successfully represented CRA in the 2008 litigation has been retained. The two firms retained are McDonough Holland & Allen, and Nielsen, Merksamer, Parrinello, Mueller & Naylor.

6. **In which court did CRA file the second lawsuit?**
   We filed in Sacramento Superior Court on October 20, 2009.

7. **Instead of filing in Superior Court, why doesn't CRA file its lawsuit against the State directly with the Court of Appeal or the Supreme Court?**
   CRA's legal team has carefully evaluated where the case should be initially filed. Their judgment is that the case should be filed in Superior Court for the following reasons:
   (1) Neither the Supreme Court nor the Court of Appeal is required to accept an original petition for writ of mandate. Most petitions for writ of mandate filed in appellate courts are denied without a ruling on the merits. This is the court's way of saying "start in a lower court." It could, however, take weeks or months for the appellate court to decide whether to accept the petition. If the court did not accept the petition and required it to be filed in a lower court, we would lose time critical to getting a decision before May 10 when payments from agencies are due.
   (2) The ability to make a factual record in an appellate court is far more constrained than in the Superior Court. CRA's legal team believes that it will be especially important in this case to make a strong factual record. The best place for doing that is the Superior Court.
   (3) As was the case with the AB 1389 litigation, CRA's objective is to obtain a ruling from the Superior Court that will apply to all agencies prior to May 10.

8. **Who are the plaintiffs in the case?**
   The California Redevelopment Association, the Union City Redevelopment Agency and the Fountain Valley Redevelopment Agency are the plaintiffs, as well as John Shirey, CRA Executive Director, in his role as a California taxpayer and citizen.

9. **Who are the defendants?**
   As in the 2008 litigation, the Director of the State of California Department of Finance will be the principal defendant in the lawsuit. For technical reasons, we have once again included county auditors as defendants, since auditors are the ones charged with the transfer of payments from redevelopment agencies into county Supplemental Educational Revenue Augmentation Funds (SERAF).

10. **How is CRA going to pay for the lawsuit?**
    All CRA member agencies have been asked to pay a proportionate share of the costs of the lawsuit similar to what was done for the first lawsuit. CRA will seek an award of attorney fees if it is successful, as it has done in the AB 1389 litigation, but resolution of attorney fees issues likely will not occur until well after the lawsuit is finished.

11. **Can my agency sue the State directly without joining the CRA lawsuit?**
    We strongly recommend that agencies *not* file separate litigation against the State. Multiple suits will lead to greater costs and possible delays in getting a decision from the court.

12. **Section 10 of ABX4-26 states that, if a court finds a remittance is not legally permissible for a particular redevelopment agency, such determination has no effect on all other agencies. Does that mean that all agencies must join the lawsuit as plaintiffs in order to block the SERAF transfers?**
    Since CRA is challenging the constitutionality of ABX4-26, a favorable finding by the court should invalidate the statute in total so that the ruling would benefit all redevelopment agencies as did the AB 1389 ruling.

    Given the unusual language in section 10 of ABX4-26, the litigation was filed as a plaintiffs' class action, with the two named redevelopment agencies representing a class of all redevelopment agencies required to make the SERAF payment. This class action is intended to eliminate the need for all individual agencies to join the suit.

ABOUT THE NEW SERAF

13. **What is the difference between past ERAF takes and ABX4-26's "SERAF" take?**
    The structure for the redevelopment fund shift is similar to last year's budget trailer bill, AB 1389. The primary difference is that, in an effort to get around CRA's successful lawsuit, the Legislature created a new county "Supplemental" ERAF (SERAF). Under this new SERAF, redevelopment funds are to be distributed to a K-12 school district(s) or county office of education located partially or entirely within any project area of the agency.

14. How does the new SERAF work?

The funds deposited into the new county SERAF must be distributed to a K-12 school district or county office of education located partially or entirely within any project area of the agency.

- The funds distributed to schools or county offices of education from the SERAF must be used to serve pupils living in the project area or in housing supported by redevelopment funds. *(It is unclear how an agency is supposed to determine how many students are in housing supported by redevelopment funds).*
- The total amount of SERAF funds received by a school district is deemed to be local property taxes and will reduce dollar-for-dollar the State's Prop 98 obligations to fund education.

15. How and when is each Agency's SERAF payment calculated?

The Department of Finance will determine each agency's SERAF payment by November 15 of each year. The formula for calculating the amount each agency must pay is based half on net tax increment (net of pass-throughs to local property taxing entities) and half on gross tax increment. The legislation states that the calculations for FY 2009-10 and FY 2010-11 will be based on State Controller's Office Tax Increment data from FY 2006-07.

On November 12, 2009, Governor Schwarzenegger signed SB 68 (Steinberg) which contains another provision regarding the calculation of SERAF payments. If property within a redevelopment project area was deleted prior to August 1, 2009 and this deletion is not accounted for in the FY 2006-07 State Controller's data, the Department of Finance, in calculating the SERAF payment, must adjust an agency's tax increment revenue to account for the subsequent deletion of the property. The new law allows this adjustment to be made for FY 2009-10 and FY 2010-11 SERAF payments.

CRA has posted an *estimate* of each agency's payment for each fiscal year and a total on its website at www.calredevelop.org. It's important to note that these figures are just estimates based on the implementing legislation. The Department of Finance will produce the official SERAF amount owed by each agency for FY 2009-10 by November 15, 2009.

16. Why does ABX4-26 require the Director of Finance to use 2006-07 data from the State Controller to calculate SERAF payments when 2007-08 data is available?

We do not know if this is intentional or an oversight, but differences in payments are significant depending on which year's State Controller data is used by the Department of Finance.

17. When does my agency have to pay its share of the take?

Payments are due by May 10 of the applicable fiscal year. The legislative body of the redevelopment agency must report to the county auditor by March 1 how it intends to fund the payment.

18. Should I pay my SERAF early?

No. Because of the pending litigation, CRA recommends not making any payments until further notice. CRA will regularly inform its members of the progress of the lawsuit.

19. What funds can I use to make the SERAF payment?

The agency can use any legally available funds to make the SERAF payment. For FY 2009-10, the agency may "suspend" all or part of the required 20% allocation or set aside to its Low- and Moderate-Income Housing Fund (Housing Fund) in order to make the payment.

On November 12, 2009, Governor Schwarzenegger signed SB 68 (Steinberg) which amends ABX4-26 to also allow agencies to use accumulated funds in their Housing Funds to make payments. Important Note: Agencies may use accumulated housing funds for SERAF payments for the FY 2009-10 year only. They cannot do the same for the second year, FY 2010-11.

- The Housing Fund must be repaid by June 30, 2015.
- If the agency fails to repay the Housing Fund, the required allocation of tax increment to the Housing Fund is increased by 5 percentage points (to 25% for most project areas) for as long as the project area continues to receive tax increment.

The local legislative body (City Council or County Board of Supervisors) may also lend the SERAF payment to the agency and, in that case, the agency is authorized to repay the legislative body from tax increment.

- The legislative body may make the payment on behalf of the agency.
- The provisions of existing law that permit a joint powers authority (i.e. CSCDA or California Communities) to sell bonds and loan the proceeds to redevelopment agencies in order to make ERAF payments are also available for the 2009-10 and 2010-11 payments.

Lastly, a separate, but overlapping, section of ABX4-26 permits an agency to borrow the amount required to be allocated to the Housing Fund in order to make the SERAF payment.

- This provision apparently applies to fiscal years 2009-10 and 2010-11.
- It requires a finding that there are insufficient non Housing funds to make the SERAF payment. (There is no parallel requirement to make findings for the "suspension" in FY 2009-10.)
- Amounts "borrowed" from the current year allocation to the Housing Fund under this section must also be repaid by June 30, 2015 or June 30, 2016, as applicable.

20. Is the obligation to make the SERAF payment subordinate to obligations to repay bonds and other indebtedness?

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

However, it is important to note that agencies that fail to make their SERAF payments are subject to the "Death Penalty" or "Suspension Penalty" described below.

21. What happens if an agency fails to make its SERAF payment?

An agency failing to timely make its SERAF payment – even if it must do so to pay existing obligations – is subject to the "Death Penalty" as follows:

- An agency may not adopt a new redevelopment plan, amend an existing plan to add territory, issue bonds, further encumber funds, or expend any moneys derived from any source except to pay pre-existing indebtedness, contractual obligations, and 75% of the amount expended on agency administration for the preceding fiscal year.
- This penalty would last until the required SERAF payments have been made.

In addition to suffering the Death Penalty, the agency must increase its housing set-aside by 5 percentage points on July 1, 2010 or July 1, 2011, whichever is applicable, for the remainder of the time the agency receives tax increment.

22. What happens if my agency does not/cannot repay the Housing Fund loan by the required June 2015 or June 2016 deadline?

If the agency fails to repay the Housing Fund, the required allocation of tax increment to the Housing Fund is increased by 5 percentage points (to 25% for most project areas) for as long as the project area continues to receive tax increment.

23. Do I have to pay interest on the use of our current year housing set-aside funds to make the SERAF payment?

No.

24. Can I borrow from the accumulated balance in the Housing Fund to make the SERAF payment?

Yes. When ABX4-26 was passed, its provisions only allowed the agency to borrow from its current year's allocation to the Housing Fund. However, SB 68, which was signed into law November 12, also allows agencies to borrow from the accumulated funds in their Housing Fund to the extent this reduction in funds does not impair executed contracts. Important Note: Agencies may use accumulated housing funds for SERAF payments for the FY 2009-10 year only. They cannot do the same for the second year, FY 2010-11.

25. Can SERAF payments be made with bond proceeds?

Agencies in all cases should first consult with their bond counsel. But the general rule is if the bonds are tax-exempt, you may not make SERAF payments with bond proceeds. If the bonds are taxable, you likely can use proceeds to make your SERAF payment. Again, each agency must consult with bond counsel to make a final determination.

26. What happens to redevelopment funds being accumulated in order to finance a longer-term project?

Under ABX4-26, an agency must make its full required SERAF payments using any available funds, and that includes funds being accumulated in order to fund a project.

27. If my agency pays on time, does the legislation authorize a one-year extension of our project area plan?

Yes. If an agency makes its full payment on time for the current fiscal year, FY 2009-2010, time limits on plans can be extended by one year. Extensions cannot be enacted until after the required payment has been made. This one-year extension does not apply to the second year payment in FY 2010-11.

28. Do funds paid to SERAF count against my project area dollar cap?

Yes. Unlike previous ERAF shifts, ABX4-26 makes no provision for excluding payments from the limit on receipt of tax increment.

29. Should I include the SERAF payment in my annual Statement of Indebtedness?

While ABX4-26 does not go into effect until October 23, 2009 and payments are technically not an indebtedness of the agency until that date, we are advising agencies to include the required SERAF payment in their next SOI.

30. I am currently updating the Five-Year Implementation Plan. Given the pending litigation, how do I write the plan not knowing whether the SERAF payments will have to be made?

There is no one answer to this question and opinions will vary. CRA suggests that your agency develop its implementation plan based on the assumption that there will be no SERAF and then include a paragraph at the end stating that programs may have to be curtailed if and to the extent a SERAF take is imposed by the State.

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Exempt from Filing Fees per Gov. Code §6103

IN THE SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

CALIFORNIA REDEVELOPMENT ASSOCIATION, COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF UNION CITY, FOUNTAIN VALLEY AGENCY FOR COMMUNITY DEVELOPMENT, on their own behalf and as the representatives of all other California redevelopment agencies, and JOHN F. SHIREY, an individual,

Petitioners and Plaintiffs,

vs.

MICHAEL C. GENEST, Director of the Department of Finance; and PATRICK O'CONNELL, Auditor-Controller of the County of ALAMEDA on his own behalf and as the representative of all other County Auditors in the State of California, and Does 1 through 30,

Respondents and Defendants.

CIVIL NO. 34-2009-80000359

PETITIONERS/PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF WRIT AND COMPLAINT

Hearing Date:	February 5, 2010
Time:	9:00 a.m.
Courtroom:	33
Judge:	Hon. Lloyd G. Connelly
Trial Date:	February 5, 2010
Action Filed:	October 20, 2009

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I. INTRODUCTION

This action challenges the constitutionality of ABX4-26, one of the budget trailer bills for the State's fiscal year 2009-10 (Exhibit 19),[1] on its face and as applied, by both petition for writ of mandate and a complaint under the California and U.S. Constitutions ("Petition"). This action is similar to a successful challenge to AB1389 (Exhibit 14) that would have required redevelopment agencies to transfer $350 million in fiscal year 2008-09 to pay part of the State's obligation to fund schools. On April 30, 2009, the Honorable Lloyd G. Connelly ruled for Petitioners, invalidating AB1389 as requested. (Exhibit 17) On May 7, 2009, he entered judgment. (Exhibit 18) Respondent Genest appealed, then abandoned the appeal just as the record was to be filed in the Court of Appeal.

ABX4-26 is frankly even worse than AB1389 both for schools and for redevelopment agencies. As shown in the Petition, ABX4-26 actually diminishes the funds available for schools. Moreover, ABX4-26 is devastating to redevelopment agencies and their bondholders and creditors, violating California Constitution Article XVI §16 and multiple provisions of the California and U.S. Constitutions as detailed in the Petition.

This action transcends redevelopment financing. ABX4-26 casts doubt on whether potential investors can rely on promises made by California public entities in their bond indentures that identified revenues are irrevocably pledged to bonds. ABX4-26 thus adversely impacts the State's credibility as to every prospectus issued to support sale of bonds.

II. JURISDICTION OF THIS COURT

Under the California Constitution, Article VI §10, the "Supreme Court, courts of appeal, superior courts, and their judges have original jurisdiction ... in proceedings for extraordinary relief in the nature of mandamus ...." Mandamus may issue "to any inferior tribunal, corporation, board, or person to compel the performance of an act which the law specifically enjoins, as a duty resulting from an office, trust, or station ...." (CCP §1085) Article VI §10 adds: "Superior courts have original jurisdiction in all other causes." Section 10 provides this Court with complete jurisdiction to

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[1] Exhibits are provided as part of the accompanying Request for Judicial Notice.

address these largely legal issues. Facts detailed in the verified Petition are not repeated here. Facts are all supported as explained in the Request for Judicial Notice.

III. ABX4-26 DOES NOT CURE THE CONSTITUTIONAL FLAW FOUND IN AB1389

In 2008, the Legislature sought to divert $350 million in tax increment funds to local county Educational Revenue Augmentation Funds ("ERAFs") in AB1389. (Exhibit 14) CRA, Shirey and two redevelopment agencies sued in the Sacramento Superior Court principally against Genest, as the State Director of Finance, challenging the diversion. The matter was heard before the Honorable Lloyd G. Connelly who held the diversion violated California Constitution Article XVI §16. (Exhibit 17, 18) Genest's appeal has now been abandoned, so Judge Connelly's decision is res judicata.

After Judge Connelly's decision, on July 28, 2009, the Legislature enacted ABX4-26 in an obvious attempt to address and cure problems in the 2008 law identified by Judge Connelly. (Exhibit 19) ABX4-26 imposes a new transfer obligation for two years, at $1.7 billion for fiscal 2009-2010 and at $350 million for 2010-2011, into new Supplemental Educational Revenue Augmentation Funds ("SERAFs"). Comparing the 2008 and 2009 laws reveals that the Legislature cannot overcome the unconstitutional diversion of tax revenues specifically dedicated by Article XVI §16 to payment of debt service on bonds and other indebtedness issued by redevelopment agencies.

A. Legislative Findings Underlying AB1389 and ABX4-26 Were and Are Fatally Flawed

The 2008 AB1389 contained legislative findings that "effectuation of the primary purposes of the Community Redevelopment Law . . . is dependent upon the existence of an adequate and financially solvent school system which is capable of providing for the safety and education of students who live within both redevelopments project areas and housing assisted by redevelopment agencies." (Health & Safety Code §33680(a) (Exhibit 14))[2] The purpose of these findings was to support the concept that assisting schools is a proper redevelopment purpose for which tax increment financing might be used. To effectuate this purpose, AB1389 directed in §33685(a)(1) that $350 million be deposited in local ERAFs as follows:

> For the 2008-09 fiscal year a redevelopment agency shall remit, as determined by the Director of Finance, prior to May 10, an amount equal to the amount determined for that

[2] Unless otherwise specifically noted, all statutory references are to the Health and Safety Code.

> agency pursuant to subparagraph (K) of paragraph (2) to the county auditor for deposit in the county Educational Revenue Augmentation Fund, created pursuant to Article 3 (commencing with section 97) of Chapter 6 of Part 5 of Division 1 of the Revenue and Taxation Code. Notwithstanding any other provision of law, in the 2008-09 fiscal year, no funds deposited in the county Educational Revenue Augmentation Fund pursuant to this section shall be distributed to a community college district.

Judge Connelly held that this allocation of tax increment revenues would not necessarily benefit any schools in project areas or pupils in housing supported by redevelopment funds. For this reason he held in his April 30, 2009 Ruling on Submitted Matter (Exhibit 17 at 13:11-16):

> These circumstances directly undermine the findings and declarations in subdivision (a) and (d) of section 33680 delineating the benefits provided to redevelopment projects by adequately maintained schools serving students living in redevelopment areas or communities and in housing assisted by RDAs. As a result, the justifications provided by the findings and declarations in subdivisions (a) and (d) of section 33680 for the ERAF payments required by section 33685 are eviscerated.

ABX4-26 enacted in 2009 contains virtually identical legislative findings plus two new findings. Unlike the AB1389 findings codified in §33680, the findings in ABX4-26 are contained in its uncodified §1. (Exhibit 19) The two new findings declare:

> (a) . . . .
>
> 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[3] 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.

To implement these findings, ABX4-26 provides in §33690.5(j):

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[3] The term "community" is defined as "a city, county, city and county, or Indian tribe, band, or group which is incorporated or which otherwise exercises some governmental powers." (§33002.) Thus, "community" has a different meaning depending on whether the redevelopment agency is activated by a city council or a county board of supervisors (ignoring Indian tribes which are irrelevant for purposes of this case). For the agency of a city, the "community" is the city. For the agency of a county, the "community" is the county. Judge Connelly so held. (Exhibit 17 at 5 n.2, at 13 n.6; accord, Pacific States Enterprises, Inc. v. City of Coachella (4th Dist.1993) 13 Cal.App.4th 1414, 1424-25 ["community" means "a given jurisdictional territory" over which the "legislative body" exercises local governmental power]; Meaney v. Sacramento Housing & Redevelopment Agency (1st Dist.1993) 13 Cal.App.4th 566, 580.)

(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 Education 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.

....

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

1. The Finding That SERAF Benefits Redevelopment Violates Article XVI §16

The Legislature's finding that SERAF ("Supplemental Educational Revenue Augmentation Fund") payments to schools benefit redevelopment project areas (ABX4-26 §1(a)(4)) "[b]ecause of the reduced funds available to the state to assist schools that benefit and serve redevelopment project areas during the 2009-10 fiscal year" (ABX4-26 §1(a)(3))[4] turns reality upside down. Redevelopment project payments to schools impacted by redevelopment have always been factually linked to that impact. (§33607.5) As the Legislature itself found: "Redevelopment agencies have financially assisted schools to alleviate the financial burden or detriment caused by the establishment of redevelopment project areas." (ABX4-26 §1(a)(2).) Finding 3, however, reflects no causal relationship between SERAF and redevelopment impact on schools. Instead, the sole causation is entirely founded on the State's lack of funds.

The ABX4-26 finding nullifies any pledge of tax increment for bond payment and violates Article XVI §16. The State controls the funds available to it and the manner in which it disburses the funds; the Legislature has determined to reduce funds available to schools in violation of Proposition 98. The principal purpose of Article XVI §16 is to create a secure financing mechanism for redevelopment using tax increment. The Legislature destroys that mechanism in its finding that transfer of tax increment revenues to schools to diminish the amount the State itself is required to

[4] The same language appeared in the unconstitutional AB1389 §33680(d)(1):

> Because of the reduced funds available to the state to assist schools that benefit and serve redevelopment project areas during the 2008-09 fiscal year, it is necessary for redevelopment agencies to make additional payments to assist the programs and operation of these schools to ensure the objectives stated in this section can be met.

pay to schools benefits redevelopment. Findings with these consequences—patent violation of constitutional provisions—do not warrant the usual deference courts give to legislative findings. Findings are properly disregarded when they are "clearly and palpably wrong and the error appears beyond reasonable doubt from facts and evidence which cannot be controverted and of which the court may properly take notice." (Lockard v. City of Los Angeles (1949) 33 Cal.2d 453, 461-62.)

2. The Findings Falsely Imply That Schools Will Receive a $2.05 Billion Benefit

As explained, SERAF transfers result in no "net" benefit to the schools. ABX4-26 "[o]ffsets state General Fund (GF) costs by $1.7 billion in 2009-10 and $350 million in 2010-11." (July 24, 2009 Assembly Bill Analysis, Exhibit 23 at 4) Schools are no better off with SERAF than with direct State funding. (§§33690(k)(1) and 33690.5(k)(1) ("the amount of property tax revenues apportioned to each school district ... shall be reduced by the total amount of [SERAF] moneys the district receives"). In fact, schools are worse off—they lose general State funding of $2.05 billion and gain restricted funds that can be spent only on specific students. (Petition ¶¶138-47)

Since SERAF (as distinguished from §33607.5 pass-through payments) cannot be sustained as the cost of a project impact or benefit or justified by the text of the tax allocation formula (Petition ¶¶44-50), ABX4-26's directive to agencies to pay a portion of the State's obligation to schools from redevelopment special funds is unconstitutional on its face. As Judge Connelly found (Exhibit 17 at 14 n.8), the minimum showing required for a facial challenge is that the statute is unconstitutional "in the generality or great majority of cases" (San Remo Hotel v. City & County of San Francisco (2002) 27 Cal.4th 643, 673.) A suggestion that constitutional problems may arise in some future hypothetical situation is insufficient, but a court may not facially uphold the statute "simply because in some hypothetical situation it might lead to a permissible result." (California Teachers Assn. v. State of California (1999) 20 Cal.4th 327, 347.)

By its own terms, ABX4-26 does not increase funds available to schools. New §§33690(k)(1) and 33690.5(k)(1), adopted as part of ABX4-26 provide, with added emphasis:

> For the 2009-10 [and 2010-11] fiscal year[s], the amount of property tax revenues apportioned to each school district, pursuant to Article 2 (commencing with §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.

In other words, SERAF deposits reduce the property tax revenues apportioned to school districts. This reality is recognized by the Accounting Standards Committee of the California State Association of County Auditors which has stated: "the net effect on total revenues of the SERAF distribution and the required offsetting reduction in property taxes to those school districts affected by ABX4-26 is zero." (Exhibit 42 at 13). In fact, given constitutional prohibitions on disparities in school funding (Petition ¶¶138-47), ABX4-26 actually results in school districts receiving less financial support than they would otherwise be entitled to under Proposition 98, undermining a stated purpose of ABX4-26; i.e., protecting "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." (Exhibit 19, §1(a)(5) [emphasis added])

ABX4-26 and a companion statute ABX4-15 (Exhibit 45) create two new funds, with confusingly similar names. First, ABX4-26 creates **SERAFs** to be established in each county treasury (§33690(a)(1)(A)) into which agencies are to deposit $1.7 billion by May 10, 2010 and $350 million more by May 10, 2011. SERAF funds may be distributed "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" and used only "to serve pupils residing in the redevelopment areas or in housing supported by redevelopment agency funds." (§§33690(j)(1), (5), 33690.5(j)(1), (5)) Second, Revenue & Taxation Code §100.06 creates **SRAFs** ("Supplemental Revenue Augmentation Fund), also to be established in each county treasury. (Exhibit 45) SRAFs hold property tax revenues taken from school districts receiving SERAF funds (§33690(k)(1)) and funds taken from cities, counties and special districts that the State must ultimately repay because the revenues exceed Proposition 1A limits for State demands on local property tax revenues (Constitution Art. XIII §25.5).

New §33690(k) provides that local property tax revenues allocated to school districts are reduced by SERAF funds the districts receive and that SERAF payments are deemed "allocated proceeds of taxes" for support of the school district within Article XVI §8, even though SERAF payments may be used only to serve pupils residing in redevelopment projects or housing supported by redevelopment, and not school district pupils in general. Property taxes that school districts do not receive because they get SERAF must be paid to SRAF. (§33690(k)(1)) Funds deposited in SRAF

are used "exclusively to reimburse the state for the costs of providing health care, trial court, correctional and other state-funded services and costs, until those moneys are exhausted." (Revenue & Taxation Code §100.06(c)(1) (Exhibit 45)) Moreover, any SRAF funds that the Director of Finance deems unnecessary to fund the state-funded health care, trial court, correctional and other services shall be transferred to the county's ERAF by June 1, 2010. (Revenue & Taxation Code §100.06(c)(3)) The county ERAF is the same fund that Judge Connelly found uses tax increment in a manner fatally inconsistent with Article XVI §16. (Exhibit 17, 18) That ruling is now res judicata.

The ERAF title "Educational Revenue Augmentation Fund" falsely suggests that county ERAFs primarily benefit education and schools. Before any ERAF funds are allocated to schools, however, funds are first allocated to cities and counties to reimburse them for local sales taxes taken by the State in an arrangement called the "Triple Flip" (Revenue & Taxation Code §97.68) and for vehicle license fees that cities and counties would have received if these fees had not been reduced by an arrangement called the "VLF Swap." (Id. §97.70(c)) (November 2007 Review Report for the Governor and State Legislature entitled "Distribution and Reporting of Local Property Tax Revenues" ("Controller's 2007 Report") (Exhibit 27 at 4-8) If funds in a county ERAF are insufficient to pay sums due to cities and counties for the Triple Flip and VLF Swap, Revenue & Taxation Code §97.70(a)(1)(B) directs the county auditor to satisfy the amounts due to cities and counties by taking property tax revenues of school districts. This practice is called "Reverse ERAF" or "Negative ERAF." (Exhibit 27 at 48) In fiscal 2006-2007, in a majority of the most populous California counties, all local government contributions to ERAF and an estimated additional $902 million of school district property tax revenues were taken to satisfy the State's Triple Flip and VLF Swap obligations. (Exhibit 27 at 24-41.) To turn these twists and turns into a graphic,

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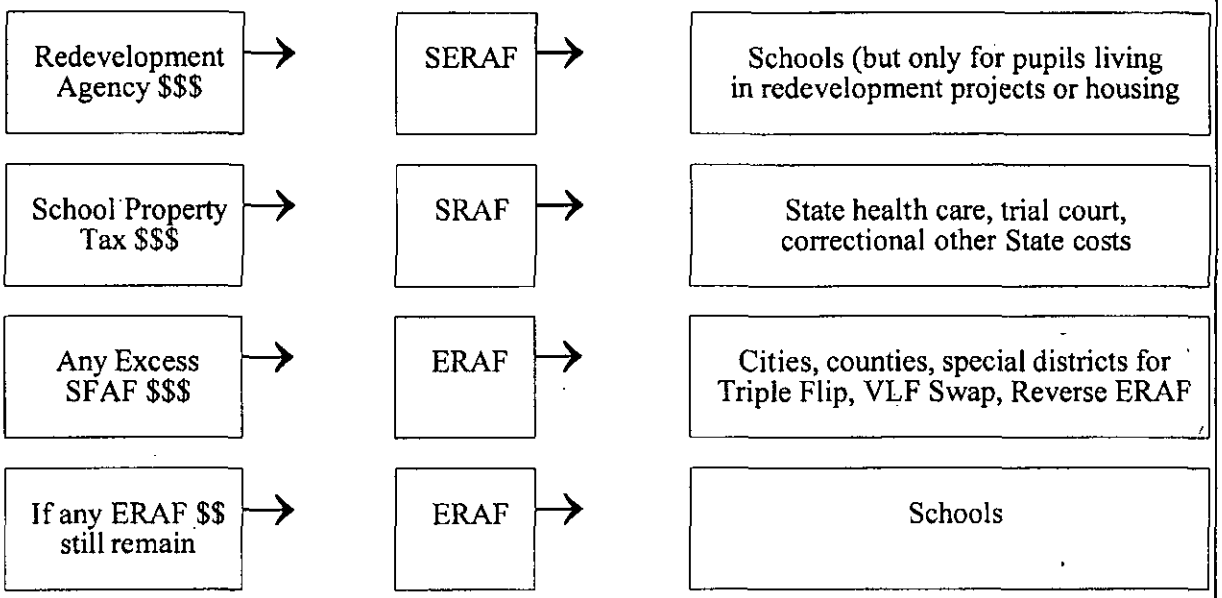

B. ABX4-26's Findings Are Not Entitled to Deference

Since SERAF transfers cannot be justified as a project impact/benefit cost, the diversion of tax increment from a redevelopment special fund to SERAF can be justified only if expressly allowed by Article XVI §16 or §33670. Tax increment can be spent only for indebtedness of the project for which the special fund is established: only for indebtedness "incurred by the redevelopment agency to finance or refinance, in whole or in part, the redevelopment project." (Article XVI §16(b)) The Legislature made patently false findings in ABX4-26 that are not supported in fact or in law.

Although legislative findings are usually given deference (Schabarum v. California Legislature (3d Dist.1998) 60 Cal.App.4th 1205, 1221),[5] a different rule governs in three key circumstances, each independently applicable. First, deference is diminished if the State is self-interested. Hermosa Beach Stop Oil Coalition v. City of Hermosa Beach (2d Dist.2001) 86 Cal.App.4th 534, 560 ("'complete deference to a legislative assessment of reasonableness and necessity is not appropriate because the State's self-interest is at stake'"), quoting United States Trust Co. v. New Jersey (1977) 431 U.S. 1, 25-26.) As held in Board of Administration v. Wilson (3d Dist.1997) 52 Cal.App.4th 1109, 1154, quoting Valdes v. Cory (3d Dist.1983) 139 Cal.App.3d 773, 790: "when the legislation

[5] Schabarum addressed the Legislature's interpretation of its own internal operation, to wit, whether operations of the Legislative Counsel were part of the "operating expenses and equipment for" the Legislature. As that issue was peculiar to the Legislature itself, the court, in a split decision, held that usual judicial deference should be accorded the Legislature's determination.

at issue impairs public contracts, "'complete deference to a legislative assessment of reasonableness and necessity is not appropriate because the State's self-interest is at stake. A governmental entity can always find a use for extra money, especially when taxes do not have to be raised." [Citations.]'" Wilson ruled that United States Trust Co. v. New Jersey (1977) 431 U.S. 1 "'places the justification for an impairment of a contractual funding obligation under the light of strict scrutiny. [Citation.] It requires the state assert a compelling interest for the impairment.' The party claiming justification has the burden of establishing it." (Board of Administration v. Wilson, supra at 1154, quoting California Teachers Assn. v. Cory (3d Dist.1984) 155 Cal.App.3d 494, 511-12.)

Second, deference is diminished if constitutional mandates are in issue (Professional Engineers v. Department of Transp. (1997) 15 Cal.4th 543, 569 and Spiritual Psychic Science Church of Truth v. City of Azusa (1985) 39 Cal.3d 501, 514, disapproved on other grounds in Kasky v. Nike, Inc. (2002) 27 Cal.4th 939.) Judge Connelly opined that these two cases had "no application here where no constitutional mandate, right of free speech or other fundamental right is involved." (Exhibit 17 at 9-10) Multiple constitutional mandates, in both U.S. and California Constitutions are involved here. The rule is not limited to First Amendment and other fundamental rights; Professional Engineers addressed civil service requirements in the California Constitution. (E.g., Amwest Surety Ins. Co. v. Wilson (1995) 11 Cal.4th 1243, 1252 [insurance reform initiative applied to surety insurance]; Vo v. City of Garden Grove (4th Dist.2004) 115 Cal.App.4th 425, 441 [daytime curfew].)

Third, deference to the Legislature is not warranted when the legislative acts conflict with the will of the people expressed through initiative and referendum. (Rossi v. Brown (1995) 9 Cal.4th 688, 715-16.) All of the special State constitutional provisions violated by ABX4-26 fall within this class (Article XVI, §16, Proposition 1A-Article XIII, §25.5, Proposition 98-Article XVI §8, and the Gann Limit-Article XIIIB). For any or all of the these grounds—State self-interest, constitutional rights, will of the people—the usual judicial deference is not warranted for the findings that underpin ABX4-26.

IV. ABX4-26 CREATES ENTIRELY NEW CONSTITUTIONAL VIOLATIONS

A. ABX4-26 Creates Equal Protection and Other Constitutional Violations

Disparities in school funding create constitutional violations. Serrano v. Priest (1971) 5 Cal.3d

584, reaff'd (1976) 18 Cal.3d 728, cert. denied (1977) 432 U.S. 907, fees awarded (1977) 20 Cal.3d 25. Here, as in Serrano, government itself would be a principal source of the disparity (Id. at 603), and "accidents of geography and arbitrary boundary lines of local government can afford no ground for discrimination among a state's citizens." (Id. at 613.) The violation is illustrated by Fountain Valley Redevelopment Agency which has one redevelopment project in an industrial area. (Exhibit 39 at 1) This project area is served by the Garden Grove School District, but the land in the project area is primarily industrial. No public schools are in the Project.[6] Based on information from the 2000 census and Garden Grove School District, the Agency estimates that 56 K-12 students live within the project area. (Petition ¶140) The Agency has assisted development of 15 units of housing outside the project area, excluding units occupied by seniors or others that do not generate student residents. The Agency estimates that these units generate perhaps 8 public school students. (Petition ¶142) Use of the Agency's 2009-2010 SERAF allocation solely to serve these 64 pupils as required by §33690(j) would result in a per-pupil expenditure for fiscal 2009-2010 of $52,518. Average expenditures per pupil in California are $8,594.[7] Thus, 64 students in that school district could enjoy an exorbitant windfall compared with other students, but Serrano prohibits that disparity in funding in public schools. This project is only one of hundreds of examples. (Petition ¶¶138-44) Obviously, not all school districts will be affected to the same degree as schools in Fountain Valley. But the point to understand is that each of the $2.05 billion paid to SERAF represents a dollar spent for education in a mandatory discriminatory manner.

The disparities are caused by ABX4-26; its §§33690(j)(5) and 33690.5(j)(5) provide: "School districts and county offices of education shall use the [SERAF] funds received under this section to serve pupils living in the redevelopment areas or in housing supported by redevelopment agency funds." This limitation coexists with §§33690(k)(1) and 33690.5(k)(1) under which a school

[6] The Industrial Area Redevelopment Project area map is attached as Exhibit A to Exhibit 39. The attendance boundaries for the Garden Grove School District are available at http://www.ggusd.k12.ca.us/parent_information/attendance_boundaries.asp. A zoning map is at http://www.fountainvalley.org/government/departments/planningcommunitydev/documents/zoningmap.color.pdf (both visited October 7, 2009).

[7] 2007-08 Current Cost of Education, http://www.cde.ca.gov/ds/fd/ec/currentexpense.asp (Exhibit 25). The number attending in 2009 may be larger or smaller, but the chance that the number is exactly the perfect number to avoid Serrano violations is extremely small.

district's receipt of SERAF funds diminishes State funds by the amount of SERAF funds received. In other words, a school district's receipt of SERAF funds diminishes State funding available to support the needs of the remaining students that do not receive the SERAF windfall, exacerbating the Serrano violation. A few school districts receive no funding from the State, the "basic aid" districts. (Petition ¶¶78, 146-47) These districts will not suffer the diminution in funding just described, creating a second layer of Serrano violations because of more money per pupil in these districts.

The ABX4-26 limitation on use of SERAF funds necessarily creates the constitutional violations identified in Serrano, although the exact dollar amount of the disparity will vary from project to project. Redevelopment is done in predominantly urban blighted areas with specific physical and economic conditions (§§33030, 33031) so many redevelopment agencies present facts in which great disparities will be created by SERAF distributions solely to "pupils living in the redevelopment areas or in housing supported by redevelopment agency funds." School districts must choose to (1) use SERAF funds to benefit all students, in violation of express ABX4-26 limits and Judge Connelly's ruling, (2) use SERAF funds solely for the permitted pupils, in violation of Serrano, or (3) not use part of the SERAF funds (an unworkable option as SERAF funding diminishes total school funds).

B. SERAF Also Violates Proposition 98 (California Constitution Article XVI §8)

Proposition 98 mandates that "the monies to be applied by the state for the support of school districts and community college districts shall be not less than the greater of" the amounts specified by alternative formulas, depending on the level of State revenues. Sections 33690(j)(5) and 33690.5(j)(5) require that funds paid by redevelopment agencies to SERAF shall be used by districts exclusively to serve "pupils living in the redevelopment areas or in housing supported by the redevelopment agency funds." Under §§33690(k)(2) and 33690.5(k)(2), redevelopment funds paid to SERAF are deemed to be "allocated local proceeds of taxes" for purposes of Proposition 98, i.e., revenues allocated to the support of school districts within the meaning of Article XVI §8(b). (Petition ¶¶72-73, 133-37, 159)

SERAF funds cannot lawfully satisfy Proposition 98 because SERAF funds are severely limited in how and on whom they can be spent. SERAF money is not available "for the support of school districts" as required by Proposition 98 because SERAF money is limited solely to "pupils living in

the redevelopment areas or in housing supported by the redevelopment agency funds." Nevertheless, the State will diminish its Proposition 98 funding to schools by the SERAF funds they are to receive. (§§33690(k)(1) and 33690.5(k)(1))

V. ABX4-26 FAILED TO CURE CONSTITUTIONAL VIOLATIONS IDENTIFIED IN THE AB1389 LAWSUIT THAT JUDGE CONNELLY DID NOT CONSIDER

Judge Connelly found AB1389 unconstitutional on a single ground, one of many presented to him, and expressly made no ruling on the other grounds. (Exhibit 17 at 14:9-11) ABX4-26 does not respond to any of the other grounds of unconstitutionality identified in the AB1389 litigation.

A. ABX4-26 Is Inconsistent with Article XVI §16

Redevelopment agencies are discrete public entities, created by statute (§33100) and reporting to and controlled by the local governing body in their community ("the legislative body"). (§33007) The principal revenues redevelopment agencies receive (known as "tax increment" funds) are irrevocably pledged to bondholders and other obligees and must be used for specific redevelopment-related purposes as explained in detail in the Petition ¶¶24-62. Redevelopment agencies exist to benefit their local communities and are prohibited from using funds for other purposes. (Petition ¶20; §§33000 *et seq.*) The $2.05 billion that ABX4-26 would force into SERAFs is constitutionally required to be spent instead on the public purposes served by redevelopment that are constitutionally recognized and expressly protected in Article XVI §16.

Article XVI §16 requires that **all** tax increment be deposited in the special/trust fund of the redevelopment agency to repay indebtedness incurred to finance or refinance the project for which the fund is established. (Article XVI §16(b); Marek v. Napa Community Redevelopment Agency (1988) 46 Cal.3d 1070 ("Marek").) All tax increment in the special fund is irrevocably pledged to repay that indebtedness. (§§33641.5, 33671, 33671.5; Petition ¶¶26-30, 34-39, 58-62, 106, 123; e.g., Exhibit 38 at 2-3, 29) The pledge is a first lien with "priority over any claim to those taxes not secured by a prior express pledge of those taxes." (§33671.5) The pledge mandates use of all tax increment for principal and interest payments to secured creditors or, if all tax increment is not required for current obligations, use of the excess in a way that does not prejudice the security for future payments that excess funds provide to creditors. (Marek at 1802) ABX4-26's constitutional

violation is its breach of that lien itself—the pledge of 100% of tax increment—the covenant that no tax increment will be diverted to uses that do not preserve the benefit of the tax increment for creditor/beneficiaries of the pledge. That is the very breach condemned in United States Trust Co. v. New Jersey (1977) 431 U.S. 1. The $2.05 billion alone is enough to force some redevelopment agencies into default; many others will be forced to breach existing contracts, and all will violate their bond pledges to bondholders. (Petition ¶¶90-120, 151, 159, 161) Moreover, if the State can take $2.05 billion in irrevocably pledged funds, then it can take all pledged funds, jeopardizing the tax increment financing scheme adopted by Article XVI §16.

Article XVI §16 authorizes the Legislature to enact a specific statutory formula to allocate tax increment to special funds of redevelopment projects and irrevocably pledge these funds to finance the projects from which tax increments are allocated. The constitutional authorization is expressly limited to the specific allocation formula and the irrevocable pledge, so the allocation of tax increment can be changed only by constitutional amendment, **and** any change can affect only future redevelopment projects, future bonds and future contracts. Laws that change the deal made by redevelopment creditors after the fact violate multiple constitutional requirements. (Petition ¶¶9, 30, 98) Having enacted a tax increment system consistent with the Constitution, the Legislature is not free to alter that system by statute to be inconsistent with the Constitution. (Petition ¶¶30, 106)

As Judge Connelly held, education in general cannot be characterized as a redevelopment project cost under Article XVI §16. Consistent with Article XVI §16, §33607.5(a)(5) provides:

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

In contrast, SERAF is unrelated to the financial burden or detriment of the project or to a benefit specifically conferred on the project. ABX4-26 has no finding that redevelopment projects have caused burdens or detriment to schools beyond that already being compensated by payments required under §§33607.5 and 33607.7. The purpose of SERAF is to relieve the Proposition 98 burden on the State's general fund to pay for education, not to assist redevelopment projects. (ABX4-26, enacting §§33690(k)(1) and 33690.5(k)(1); Petition ¶¶60, 134-35, 177; Exhibits 15 at 30, 23 at 4)

B. ABX4-26 Violates the Special Fund Doctrine Embodied in Article XVI §16

Special funds are trust funds—money set aside for a special purpose pursuant to promises made to third parties and fiduciary duties assumed by the holder of the funds. (California Highway Comm'n v. Ballard (3d Dist. 1926) 77 Cal.App. 404, 413 ["well settled that where by special taxes, bond issue, or the like a special fund is raised for a particular purpose, it cannot be used for a different purpose"].) Government Code §16372 recognizes special funds at the state level, providing:

> Whenever any law provides for the payment of money into the treasury which has been collected or received for specific purposes by any State agency, and no fund has been created in the treasury to which it is to be credited, the money shall be credited to the "Special Deposit Fund," and shall be held subject to the right of the State agency to recover it, on claims properly presented, for fulfilling the purposes for which the money was collected or received.

Section 16372 recognizes the "trust or special fund character" of the funds. (Daugherty v. Riley (1934) 1 Cal.2d 298, 309.) Special funds are imbued with the specific purpose for which they were collected or received and are not available to be spent on other purposes. Federal law also recognizes special funds. (E.g., IRC §7501(a) [tax an employer or other person "collected or withheld shall be held to be a special fund in trust for the United States"].) These special fund rules govern funds held by County Auditors on behalf of redevelopment agencies. The fundamental rule governing special fund money is that **it belongs to someone else** or **is reserved to a special purpose**.

California statutes create a wide variety of special funds in multiple contexts.[8] Not only do they ensure that funds will be available for the specific purposes intended, but they also avoid state constitutional debt limits and other restrictions applicable to general fund moneys. (E.g., §33644; Taxpayers for Improving Public Safety v. Schwarzenegger (3d Dist.2009) 172 Cal.App.4th 749, 762-63, 771-75; State ex rel. Pension Obligation Bond Committee v. All Persons Interested in

[8] E.g., Military & Veterans Code §§988 *et seq.* ("Veterans' Farm and Home Building Fund"), construed in Veterans of Foreign Wars v. State (3d Dist.1974) 36 Cal.App.3d 688 (reversing Legislature's appropriation of $500,000 annually from this Fund for purpose of defraying other county expenses; at 694: "the fund cannot finance the later appropriation without violating part of its earlier commitment"); Public Resources Code §5363 ("Natural Landmarks Program Administration Fund" "is hereby created as a special fund in the State Treasury"); Revenue & Taxation Code §7237 ("Motor Carrier Safety Improvement Fund"); Revenue & Taxation Code §18773 ("California Seniors Special Fund"); Vehicle Code §42200 (Traffic Safety Fund"); Water Code §74871 (water district bond special funds); City of Glendale v. Chapman (2d Dist.1951) 108 Cal.App.2d 74 (bonds and special fund for waterworks).

Validity of California Pension Obligation Bonds to Be Issued (3d Dist.2007) 152 Cal.App.4th 1386.)

Bonds and other indebtedness issued by a redevelopment agency are secured by the special fund of the agency created pursuant to §33670. (Redevelopment Agency of San Francisco v. Cooper (1st Dist.1968) 267 Cal.App.2d 70, 75-76.) This fund is comprised of allocations from taxes that are levied annually by taxing agencies within the city or county on taxable properties inside the project area. (Id.) Under the special fund doctrine, bondholders may look only to revenues specifically pledged to repayment of the bond as a source of repayment. If moneys in the special fund are insufficient to pay principal and interest, bondholders are not repaid. (Marek v. Napa Community Redevelopment Agency (1988) 46 Cal.3d 1070, 1083.) The reverse is also true. Money pledged to a special fund must be deposited in the special fund and cannot be used for any other purpose. (Id.; Petition ¶¶27-33, 100, 110-11, 159, 173)

Although many redevelopment special funds contain moneys not needed this year to repay obligations, special fund moneys are set aside as trust funds because they will be needed in future years and preservation of the money against that need has been promised to bondholders and obligees. A similar case arose in Veterans of Foreign Wars v. State (3d Dist.1974) 36 Cal.App.3d 688, 695-96, when the State wrongfully appropriated funds it declared to be surplus in the special Veterans' Farm and Home Building Fund of 1943. The Third District ruled:

> To call money in the Building Fund of 1943 "surplus," in the sense that it will never be needed to finance bond service costs during decades of bonded indebtedness, requires an economic crystal ball which no one possesses. Yesterday's surplus may be tomorrow's dire need. Although legislative draftsmanship applies the term "surplus" to the source of the $500,000 appropriations, this court, obligated to enforce the Constitution, views the term as a semantic device, without real meaning.

The Supreme Court strongly protected special funds in Daugherty v. Riley (1934) 1 Cal.2d 298, when the State tried to take from the Corporation Commission Fund to build new state buildings.

> When collected this revenue is permanently set apart under the continuing appropriation under section 28 of the Corporate Securities Act for the use of the department. In this respect the revenues are in the nature of a trust fund raised for a particular purpose in the exercise by the state of its police power. They are not state revenues in the sense that they may be used for any state purpose as long as the department is not in need of them, and the justification for their collection is to make the department self-supporting.

These special funds were created by statute. Redevelopment special funds are founded in the

Constitution, Article XVI §16, and enjoy even greater protection.

Absent payment of tax increment into the special fund, and protection of that fund from attack, "a redevelopment agency will be unable to sell its bonds if purchasers cannot depend upon the agency's having a source of revenue from which to meet its obligations." (Redevelopment Agency v. County of San Bernardino (1978) 21 Cal.3d 255, 264-65; Petition ¶35.) Article XVI §16 establishes a single purpose financing mechanism. Moneys paid into the special fund may only be used to pay principal and interest on indebtedness incurred by the agency to carry out the redevelopment project. The words "by the agency" in §16 incorporate into the Constitution the element of local control of tax increment funds. **Tax increment can only be used to pay "indebtedness ... incurred by the redevelopment agency to finance ... the redevelopment project."** (Article XVI §16(b)) Money in the special/trust fund is constitutionally off limits to the host community, the State, or any other person or entity. (E.g., Petition ¶¶32, 35, 173) If not, no agency could make a secure pledge of revenues to repay indebtedness because tax increment would be subject to diversion for non-redevelopment purposes.

The importance of providing a commercially secure pledge of revenues in order to attract private investment is at the heart of the thinking that underlies tax increment financing. Until the enactment of Article XVI, §16, funding for redevelopment had been dependent upon federal grants and annual appropriations from local legislative bodies—an irregular and unreliable source of funds. The purpose of the constitutional amendment was to provide a reliable, secure, long term source of funds based principally in private investment and free from the limitations of annual budgeting and community politics. The Report of the Joint Senate Journal—Assembly Interim Committee on Community Redevelopment and Housing Problems (Appendix to Senate Journal (1951 Reg. Sess., at 22) notes:

> "It has been pointed out by its proponents [i.e. the proponents of a constitutional amendment enacting tax increment r financing] that if legislation were [assed to allow such an allocation of taxes, it would remove redevelopment programs from community polities and would establish a climate of direct fiscal estimating understood and preferred by private enterprise."

(quoted in Redevelopment Agency v. County of San Bernardino (1978) 21 Cal.3d 255, 265, n.5.)

Uncertain revenue sources diminish the ability to sell bonds, defeating the very purpose of

Article XVI §16. (Redevelopment Agency v. County of San Bernardino (1978) 21 Cal.3d 255, 264-65; Community Development Comm'n v. County of Ventura (5th Dist.2007) 152 Cal.App.4th 1470, 1484; Redevelopment Agency v. Malaki (3d Dist.1963) 216 Cal.App.2d 480, 490.) To fulfill their statutory duties effectively, agencies must resort to private capital markets that require a stable and predictable source of revenue to repay indebtedness. If the Legislature may divert tax increment to non-redevelopment purposes, then tax increment cannot be a stable, secure, long-term source of financing for redevelopment. ABX4-26 is fatally inconsistent with Article XVI §16.

C. ABX4-26 Violates Trust Obligations, Impairs the Irrevocable Pledge and Constitutes an Unconstitutional Taking

The fundamental purpose of tax increment financing and Article XVI §16 is binding assurance to investors in redevelopment bonds that their investments cannot be impaired for any expediency. (Marek at 1082-83; Redevelopment Agency v. County of San Bernardino (1978) 21 Cal.3d 255, 264-65.) Bondholders/creditors[9] are protected in §§33671 and 33671.5, with added bolding:

> In any redevelopment plan or in the proceedings for the advance of moneys, or making of loans, or the incurring of any indebtedness (whether funded, refunded, assumed, or otherwise) by the redevelopment agency to finance or refinance, in whole or in part, the redevelopment project, **the portion of taxes mentioned in subdivision (b) of Section 33670 may be irrevocably pledged for the payment of the principal of and interest on such loans, advances, or indebtedness.**
>
> **Whenever any redevelopment agency is authorized to, and does, expressly pledge taxes allocated to, and paid into a special fund of, the agency** pursuant to Section 33670, to secure, directly or indirectly, the obligations of the agency including, but not limited to, bonded indebtedness and agreements pursuant to subdivision (b) of Section 33401, **then that pledge heretofore or hereafter made shall have priority over any other claim to those taxes not secured by a prior express pledge of those taxes.**

Any law directing the use of tax increment funds after they have been pledged must meet the special fund standard in Marek, United States Trust Co. v. New Jersey (1977) 431 U.S. 1, and dozens of other governing cases. (E.g., 15 McQuillan on Municipal Corporations §43:132 (2008).)[10] A pledge lien's property and contract interests cannot be impaired absent due process and fair compensation.

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[9] The terms "creditors" and "bondholders" are largely interchangeable in this action, given Article XVI §16 and constitutional prohibitions on impairment of contract, and are used interchangeably.

[10] Petitioners rely heavily on Marek because it is a very clear statement of governing California law, but Marek is far from an isolated case. United States Trust Co. v. New Jersey (1977) 431 U.S. 1, states the same principles and has been followed repeatedly in state and federal courts.

The pledge lien means that tax increment must be used to satisfy payment covenants of the debt for which the pledge was made and, if current payment needs are met, used in a manner that does not prejudice creditors. (Marek at 1082-83; McQuillan §43:132.) This test is met when tax increment is first applied to satisfy current payment obligations of bonds or other indebtedness for which increment is pledged (§33671.5) and any excess is invested for future payments to creditors or spent for redevelopment. (§33603; Marek at 1083.) Both benefit creditors. Further redevelopment increases assessed values and tax revenues that secure debt repayment. The SERAF transfer meets neither test. Money transferred to SERAF is irretrievably lost to redevelopment creditors and benefits them in no way. Marek held at 1082, with added bolding:

> Article XVI, section 16, and section 33670, subdivision (b) dictate that **tax increment revenues "*shall be allocated to and when collected shall be paid into a special fund of the redevelopment agency*" to pay its indebtedness.** (Italics added.) The very notion of a "special fund of the redevelopment agency" plainly implies that the agency itself will control the utilization of tax increment funds and militates against the notion of a process budgetarily controlled by county auditors. This reading of the "special fund" language is virtually mandated by section 33603, the carry-over provision, which authorizes redevelopment agencies to "invest any money held in reserves or sinking funds, or any money not required for immediate disbursement, in property or securities ..." and section 33670 which mandates payment of tax increment revenues into the "special fund" until the agency's "loans, advances and indebtedness, if any, and interest thereon have been paid" .... It is clear the **Legislature contemplated the "special fund" would provide a reliable fund of money to be used to pay any and all obligations incurred by a redevelopment agency and that up to the amount of the agency's total indebtedness, tax increment revenues not expended currently would be accumulated for payment of such indebtedness when due.**

Bondholders are vitally interested in security of the revenues pledged to repay principal and interest.[11] Preservation of the special fund is critical because investors know what history shows: real estate values—the ultimate determinant of repayment security—can go down as well as up. Redevelopment involves long-term transactions and relationships among the agency, its legislative body, developers and participants in the project area, and private investors (Friends of Mammoth v.

[11] Redevelopment Agency v. County of San Bernardino (1978) 21 Cal.3d 255, 264-65 ["a redevelopment agency will be unable to sell its bonds if purchasers cannot depend upon the agency's having a source of revenue from which to meet its obligations"]; Community Dev. Comm'n v. County of Ventura (5th Dist.2007) 152 Cal.App.4th 1470, 1484.) Courts consistently interpret Article XVI §16 to ensure a stable, secure, long-term source of revenues to repay redevelopment indebtedness. (E.g., Marek; Lancaster Redevelopment Agency v. Dibley (2d Dist.1993) 20 Cal.App.4th 1656; Redevelopment Agency v. Malaki (3d Dist.1963) 216 Cal.App.2d 480, 490.)

Town of Mammoth Lakes Redevelopment Agency (3d Dist.2000) 82 Cal.App.4th 511, 529 ["'a redevelopment agency is unique among public agencies since in order to achieve its objective of eliminating blight it must rely on cooperation with the private sector'"], quoting County of Santa Cruz v. City of Watsonville (6th Dist.1985) 177 Cal.App.3d 831, 841; accord, Redevelopment Agency of City of Chula Vista v. Rados Bros. (4th Dist.2001) 95 Cal.App.4th 309, 316.) Bonds are ultimately sold on trust—that the agency will complete the project successfully, that land values will increase and repay bonds with interest and that tax increment pledged to repay bonds will be collected, retained, preserved in the special fund, and paid over time under the bond terms. ABX4-26 shatters the final, essential component of trust that enables bondholders to buy bonds by putting the State on an equal or superior level to bondholders despite the prior pledge to bondholders.

D. ABX4-26 Impairs Existing Contracts, Constituting an Unconstitutional Taking

Union City Redevelopment Agency illustrates the impossible circumstances that ABX4-26 creates. The Agency has invested over $60 million in tax increment and bond funds to redevelop the area surrounding the Union City BART Station and has leveraged nearly $40 million more in local, State and federal grant funds. The plan includes a two-sided BART station with more parking and enhanced access, high-density residential, office and neighborhood-serving retail uses and an intermodal transit facility. (Petition ¶¶82-83) Current outstanding principal on Agency bonds is over $96 million. The Agency's SERAF obligation is $7.7 million. The Agency anticipates some $18.6 million in tax increment revenue in fiscal 2009-2010, but only about $2.6 million will remain after mandatory payments for bond debt service, contractual pass-through payments, statutorily-required payments to taxing entities, deposits in the low and moderate income housing fund and contractual obligations, exclusive of the SERAF payment. (Petition ¶¶93-96)

Even by borrowing the entire low and moderate income housing fund deposit for this fiscal year as authorized by §§33334.2(k) and/or 33690(c), the Agency cannot make the full SERAF payment. Borrowing the housing fund deposit for the SERAF payment would force the Agency into default on its $14.9 million loan required under a Disposition and Development Agreement for an affordable housing project. Delay or failure in performance of that agreement would require the Agency to repay $22.6 million in grant funds. (Petition ¶¶85-87) Thus, to make the 2009-2010 SERAF

payment, the Agency must default on (1) payment of its bonds; (2) payment terms of its contractual pass-through agreements; and (3) the terms of two grants. Alternatively, the Agency could fail to make the required SERAF payment and suffer the penalties prescribed by §33691(e), also making it impossible for the Agency to comply with grants and other existing obligations. (Petition ¶¶95-96)

As just illustrated, ABX4-26 creates multiple impairments of contract and bond indentures, causing an unconstitutional taking, any one of which invalidates the statute. These include:

- The §33675 Statement of Indebtedness process ensures that a project special fund is not allocated tax increment unless its full existing indebtedness, both current year and future, exceeds the agency's total tax increment and other legally available funds. There is no surplus available to pay SERAF. Obligations of project creditors are secured by future tax increment to which the agency is entitled by law. Total funds available as security are limited to the difference between the project debt limit set in §33333.4 and the tax increment that the special fund has already received. Existing creditors have "priority over any other claim to those taxes not secured by a prior express pledge of those taxes" under §33671.5. Section 33671.5 is a contract term for the benefit of existing creditors (e.g., Sutter Basin Corp. v. Brown (1953) 40 Cal.2d 235, 241, cert. denied (1954) 346 U.S. 855; May v. Board of Directors (1949) 34 Cal.2d 125; Rand v. Bossen (1945) 27 Cal.2d 61) whose claim to present and future tax increment and special fund money has constitutional priority over SERAF.
- Bondholders of redevelopment bonds will lose $2.05 billion in irrevocably pledged security for their bonds. (E.g., Veterans of Foreign Wars v. State of California (3d Dist.1974) 36 Cal.App.3d 688, 692-94.)[12]
    (a) Section 33331.5 provides only a one-year extension but the $2.05 billion take cannot be recouped in one year and thereby creates an impairment of contract, a taking of private property and a violation of Article XVI §16 through the diminution of funds.

[12] The Third District explained at 694: "When part of a fund wholly committed by statute is later appropriated to an alien purpose, the appropriation necessarily causes a partial repeal by implication. The repeal occurs because the fund cannot finance the later appropriation without violating part of its earlier commitment. The two laws simply cannot operate concurrently and completely. One must give way."

(b) The suspension penalty in §33691(e) is fatally inconsistent with §33607.5 which protects bondholders from unanticipated claims on redevelopment funds, and impairs existing bonds and contracts creating constitutional violations.

(c) Section 33334.2(k) permits suspension of payments to the Low and Moderate Income Housing Fund ("LMIHF") from July 1, 2009 to June 30, 2010 but requires payment in full by June 30, 2015 with no identified source of funds for that payment. ABX4-26 forces agencies to borrow from LMIHF with no visible means of repayment subject to the 5% penalty or the suspension penalty on failure to repay.

(d) Sections 33690(c) and 33690.5(c) authorize borrowing from the LMIHF if there are insufficient other funds but requires repayment within five years. ABX4-26 forces agencies to borrow from LMIHF with no visible means of repayment subject the 5% penalty or the suspension penalty on failure to repay.

- The §33691(a)(1) definition of "existing indebtedness" as that "required by law or by provision of the existing indebtedness to be made during the fiscal year of the relevant allocation required by §33690 or 33690.5" violates Article XVI §16 and the rights of bondholders and creditors because that definition attempts to ignore the multi-year nature of the rights and obligations of redevelopment agencies that is expressly recognized in Article XVI §16. (Marek v. Napa Community Redevelopment Agency (1988) 46 Cal.3d 1070, 1082 [an agency is entitled to **all** tax increment until all its indebtedness is paid].)
- The new definition of "redevelopment" in §33020.5 declaring: "'redevelopment' also means payments to school districts in the fiscal years specified in §§33690 and 33690.5" violates Article XVI §16 and the rights of bondholders and creditors because tax increment financing is created, authorized and defined by Article XVI §16, and the Legislature lacks the power to amend the Constitution and adopt definitions inconsistent with Article XVI §16. The Legislature also may not amend a statute to alter a definition to affect past transactions. (Government Code §53996; §§33690(a)(3), (b), 33690.5(a)(3), (b); e.g., Honey Springs Homeowners Assn. v. Board of Supervisors (4th Dist. 1984) 157 Cal.App.3d 1122, 1137.)
- SERAF payments under ABX4-26 are clearly in addition to pass-through payments made

pursuant to §33607.5, contrary to the "exclusive payments" language in §33607.5(f)(1(B), and impair the obligations of existing bonds and contracts into which the exclusive payments language is incorporated as a matter of law.

- ABX4-26 creates an unconstitutional taking because it imposes exactions that lack a nexus between the impact of, or benefit to, a government purpose or project and the reason for the exaction, **and** there is no "rough proportionality" between the impact/benefit and the amount of exaction. (Dolan v. City of Tigard (1994) 512 U.S. 374; Nollan v. California Coastal Comm'n (1987) 483 U.S. 825; Ehrlich v. City of Culver City (1996) 12 Cal.4th 854, 865-67, cert. denied (1996) 519 U.S. 929.) ABX4-26 fails both tests.

California "cannot refuse to meet its own financial obligations because it would prefer to spend the funds to promote the public good rather than the welfare of its creditors" or creditors of its subordinate public bodies. (Sonoma County Org. of Public Employees v. County of Sonoma, 23 Cal.3d 296, 314 n.17 ["the state may not compel a local entity to impair an obligation that the local entity itself would be precluded from impairing under the contract clause"], following United States Trust Co. v. New Jersey (1977) 431 U.S. 1.) "[A] change in laws made after the issuance of assessment bonds which adversely impacts either bondholders or the owners of property secured by the bonds is an impermissible impairment of contract under the federal and California Constitutions." (Community Facilities District v. Harvill (4th Dist.1999) 74 Cal.App.4th 876, 880.)

"Contract rights are a form of property and as such may be taken for a public purpose provided that just compensation is paid." (United States Trust Co. v. New Jersey (1977) 431 U.S. 1, 19 n.16.) A statute cannot take away a vested contractual right. (Oakland Paving Co. v. Barstow (1889) 79 Cal. 45, 47; People v. United States Fire Ins. Co. (3d Dist.1976) 61 Cal.App.3d 231, 235; Favot v. Kingsbury (3d Dist.1929) 98 Cal.App.284, 291; Russell v. Sebastian (1914) 233 U.S. 195, 210.) State action impairing a vested right that contravenes constitutional criteria permitting impairment is in violation of the due process clause in the Fourteenth Amendment. (Olson v. Cory (2d Dist.1982) 134 Cal.App.3d 85, 100, cert. denied (1983) 459 U.S. 1172.)

E. Impairment of Contract—ABX4-26 Is Inconsistent with §33607.5(f)(1)(B)

SERAF payments are also barred by §33607.5(f)(1)(B), which protects bondholders from

unanticipated claims on redevelopment funds derived from any source, not just tax increment, by providing with emphasis: "The payments made pursuant to this section are the **exclusive payments** that are required to be made by a redevelopment agency to affected taxing entities during the term of a redevelopment plan." Schools funded by SERAF are clearly "affected taxing entities" within the meaning of this statute. (§33353.2; Meaney v. Sacramento Housing & Redevelopment Agency (1st Dist.1993) 13 Cal.App.4th 566, 583) Law at the time bonds are issued is incorporated into the bond as part of the contract relation. (E.g., Sutter Basin Corp. v. Brown (1953) 40 Cal.2d 235, 241, cert. denied (1954) 346 U.S. 855 ("laws in existence at that time, under the authority of which the bonds were issued, '* * * enter into and become a part of the contract to such an extent that the obligation of the contract cannot thereafter be impaired or fulfillment of the bond obligation hampered or obstructed by a change in such laws.'"), quoting County of San Bernardino v. Way (1941) 18 Cal.2d 647, 661; May v. Board of Directors (1949) 34 Cal.2d 125, 129 ("The statute under which the bonds are issued is a part of the contract between the bondholders and the district and cannot be substantially impaired under the Constitution."); Rand v. Bossen (1945) 27 Cal.2d 61.) SERAF payments under ABX4-26 are clearly in addition to pass-through payments made pursuant to §33607.5, contrary to the "exclusive payments" language in §33607.5(f)(1(B), and thus impair the obligations of contract. (Petition ¶¶44-50, 60, 70, 115-20, 149, 151)

F. ABX4-26 Constitutes an Unconstitutional Gift of Public Funds—Article XVI §6

California Constitution Article XVI §6 provides that the Legislature shall have no "power to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever." The prohibition applies to all government bodies including the State itself. (Golden Gate Bridge & Highway District v. Luehring (1st Dist.1970) 4 Cal.App.3d 204, 207.) The term "gift" "includes all appropriations of public money for which there is no authority or enforceable claim." (Conlin v. Board of Supervisors (1893) 99 Cal. 17, followed in Jordan v. California Dept. of Motor Vehicles (3d Dist.2002) 100 Cal.App.4th 431, 450.)

A transfer from one public entity to another to serve the purposes of the recipient violates Article XVI §6. (Santa Barbara County Water Agency v. All Persons (1957) 47 Cal.2d 699, 707, rev'd on other grounds sub nom. Ivanhoe Irrigation District v. McCracken (1958) 357 U.S. 275. The SERAF

transfer of the $2.05 billion serves the State's purposes, reducing its obligation to fund schools, but does not benefit redevelopment agencies or the beneficiaries of the special funds. This take of redevelopment funds to reduce the State's Proposition 98 obligation is an unconstitutional gift of special funds set aside for a restricted purpose by Article XVI §16. Transfer of redevelopment funds to schools outside the project impact/detriment rationale underlying §33607.5 to reduce the State's obligation to fund schools creates an unconstitutional gift of public funds. (Golden Gate Bridge & Highway District v. Luehring (1st Dist.1970) 4 Cal.App.3d 204.) Article XVI §6 prohibits taking funds from one group of taxpayers and transferring those funds to another public entity for the benefit of another group of taxpayers, unless the funds are used "in furtherance of the *particular* public purpose of the transferring governmental entity." (Id. at 208 (applying former Article XIII §25, now Article XVI §6); see Edgemont Community Service District v. City of Moreno Valley (4th Dist.1995) 36 Cal.App.4th 1157, 1163-66.) Article XVI §6 prohibits "diversion to an extraneous purpose of public moneys raised for a limited purpose." (Golden Gate Bridge & Highway District v. Luehring (1st Dist.1970) 4 Cal.App.3d 204, 214; see Petition ¶¶125, 148-49, 176-77.)

G. ABX4-26 Violates Proposition 1A (Article XIII §25.5) at Least Two Ways

Proposition 1A (Article XIII §25.5) prohibits the Legislature from reducing, suspending or delaying receipt of a proportionate share of property tax revenues due to a city, county, special district or similar local public body. A redevelopment agency that fails to deposit required SERAF funds or "arrange for full payment to be provided on the agency's behalf" is barred from engaging in any normal operations. (ABX4-26 §8, adding §33691(e)) New §33334.2(k) addresses failure to repay funds to low and moderate income housing fund or to pay into SERAF, imposing an additional 5% allocation to the housing fund on an "agency that fails to pay or have paid on its behalf" the SERAF funds. New §33691(d) provides that an agency that cannot allocate the full amount "may enter into" an agreement with the legislative body to fund the amount. The permissiveness of this option is eliminated in §33691(e) which imposes the suspension penalty for an agency that fails to pay and "fails to arrange for full payment to be provided on the agency's behalf." As the only alternate payors are the cities and counties that create redevelopment agencies, these provisions, the 5% penalty and the suspension penalty all violate Proposition 1A. (Petition ¶¶63-68, 159, 163-66)

A second type of Proposition 1A violation is temporal in nature. ABX4-26 provides that "the legislative body may amend the redevelopment plan to extend the time limits" by one year. (ABX4-26 adding §33331.5) Any extension necessarily extends the time before cities and counties will receive the full tax increment to which they are entitled. Effectively requiring by economic duress that agencies obtain amendment of their redevelopment plans to extend receipt of tax increment by one year in order to pay bondholders and creditors, ABX4-26 creates a temporal violation of Proposition 1A because extension of tax increment to redevelopment agencies necessarily delays receipt of increment by cities and counties by that year of extension. (Petition ¶¶63-68, 159, 163-66)

H. ABX4-26 Violates Due Process by Vague, Uncertain and Inconsistent Legislation

All persons have a constitutional right to a reasonable opportunity to know what is required and what is prohibited. No law may properly be drafted or interpreted to encourage or facilitate arbitrary and potentially discriminatory enforcement. (City of Chicago v. Morales (1999) 527 U.S. 41, 52, 58-59; Kolender v. Lawson (1983) 461 U.S. 352, 357; Smith v. Goguen (1972) 415 U.S. 566, 575.) The vague and uncertain provisions of ABX4-26 violate substantive due process because there is no clarity enabling 45 County Auditors to apply this statute uniformly. ABX4-26 permits multiple interpretations with no standards to govern application of its provisions. (E.g., Kugler v. Yocum (1968) 69 Cal.2d 371, 376-77; State Board of Education v. Honig (3d Dist.1993) 13 Cal.App.4th 720, 750.) ABX4-26 is internally inconsistent, e.g., (1) as between §33691(b) and the suspension penalty, (2) as between §33691(e)(2) and §33691(e)(3)(C), and (3) as between §§33690(a)(3) and 33690.5(a)(3). ABX4-26 is also inconsistent with existing statutes, creating conflicting obligations. (Petition ¶¶150-51, 169)

I. ABX4-26 Violates the Gann Spending Limit (Article XIIIB)

Article XIIIB of the California Constitution (the Gann spending limit) limits the increase of spending by public entities from the proceeds of taxes of all types. Article XIIIB was adopted in 1979, the year after the adoption of Proposition 13A (Article XIIIA), which limited the level and rate of increase of property taxes. Article XIIIB was designed to ensure that the Legislature and local governments did not defeat or undo the objective of Proposition 13A by adopting or increasing income and other taxes to offset the Proposition 13A reduction in property taxes and using these new

or increased taxes to maintain the level and rate of increase of spending that existed prior to the adoption of Proposition 13A. Article XIIIB establishes a base year spending level and limits the rate of increase of spending over the base year level in subsequent years. Article XIIIB has had little or no effect on redevelopment agencies in the past because agencies do not possess the authority to levy taxes and the Legislature, in §33678, has determined that tax increment allocated to a redevelopment project special funds shall not be deemed to be the proceeds of taxes so long as the tax increment is spent for a purpose that "[p]rimarily benefits the project area." (§33678(b)(1)(B). This qualification on the exemption of tax increment from "the proceeds of taxes" is founded in law and logic. Article XIIIB is targeted at annual appropriations for general government operations (see Article XIIIB §8), not at capital projects (see Article XIIIB §9). The tax increment funds represent revenues from assessed values created by redevelopment, not new or increased taxes.

Since the financial impact of redevelopment projects on schools has already been fully mitigated by pass-through payments pursuant to agreements or §33607.5, payments of tax increment to SERAF do not primarily benefit the project areas. The additional spending of SERAF funds for students residing in projects or housing supported by projects is annual appropriation spending, not project area spending, and is thus spending from "the proceeds of taxes" within the meaning of Article XIIIB and §33678.

Because redevelopment agencies lack the power to tax and tax increment spent primarily for the benefit of the project area is deemed by §33678 not to be the proceeds of taxes, the Article XIIIB base level of redevelopment agencies is essentially zero. The spending for SERAF required by ABX4-26 is all, or mostly all, spending in excess of agency Article XIIIB limits. The consequence of spending in excess of the Article XIIIB limit is that the excess must be returned to the taxpayers "by a revision of the tax rate ... within the next two subsequent fiscal years." Article XIIIB §2(b).

The only tax rate relevant to tax increment is the tax allocation formula of Article XVI §16, which can only be changed by constitutional amendment and cannot be changed to the detriment of existing creditors. There are only two outcomes that can follow from the spending in excess of Article XIIIB limits required by ABX4-26, either the refunds called for by Article XIIIB must not be made or the allocations to the project special funds required by Article XVI §16 must be

reduced. Both outcomes are unconstitutional and require that ABX4-26 be held invalid and unenforceable.

VI. NO ARGUMENT OR MECHANISM CAN SAVE ABX4-26

A. SERAF Differs Markedly from Proper Pass-Throughs, Set Asides

Diversions to SERAF are imposed after plan adoption and after sale of the bonds, and they destroy the ability of any investor to calculate the security for repayment at the time of making an investment. Thus, SERAF differs from §§33334.2, 33401 and 33607.5 claims on tax increment that attach as a matter of law at the adoption of the redevelopment plan for the project. They do not prejudice the pledge of tax increment because they are prior in time to the pledge. (§33671.5) Pass-through payments and set asides imposed by operation of law at plan adoption do not interfere with the primary purpose of tax increment—to attract private funding by enabling private investors to evaluate their investment in light of reliable sources of repayment. (Redevelopment Agency v. County of San Bernardino (1978) 21 Cal.3d 255, 264-65; Community Dev. Comm'n v. County of Ventura (5th Dist. 2007) 152 Cal.App.4th 1470, 1484.) Investors can "pencil out" their repayment security by noting the tax revenues produced by existing assessed values, estimating increased revenues from the project and subtracting known pass-throughs and set asides.

Redevelopment projects, like all development, can be required to pay for financial burden or detriment caused to public agencies by the project and for the value of benefits specifically conferred on the project. These are known costs of the project. Project costs include actual costs incurred by other public agencies as a result of the project such as accounting services provided by other public entities. The agency would have to pay for accounting services if it hired an accountant directly, so payment for services provided by another public agency is payment of project costs. (Arcadia Redevelopment Agency v. Ikemoto (2d Dist.1993) 16 Cal.App.4th 444.) Various statutory provisions authorize payment of tax increment to other taxing agencies, e.g., for administration of property tax collection and allocation under Revenue and Taxation Code §95.3 and "pass-through" payments under former §33401(b) and current §§33607.5 and 33607.7 to alleviate a financial burden of a project. The principles underlying all of these payments is that tax increment may be used to pay costs related to or caused by the project and that payments are limited to actual costs. (E.g.,

Arbuckle-College City Fire Protection District v. County of Colusa (3d Dist.2003) 105 Cal.App.4th 1155.) Notably, §33607.5(f)(1)(B) declares: "The payments made pursuant to this section are the exclusive payments that are required to be made by a redevelopment agency to affected taxing entities during the term of a redevelopment plan." ABX4-26 violates this law.

Set asides for low and moderate income housing are similarly justified. Substandard housing is common to the condition of blight, elimination of which is the prerequisite to redevelopment power. (§§33031(a), 33039, 33070, 33071) Redevelopment often displaces low and moderate income residents from the project area, and this project impact is mitigated by providing housing outside the area upon a finding that "the use will be of benefit to the project." (§33334.2(g)(1)) From its start, redevelopment included production of affordable housing; the definition of "redevelopment" always included provision of residential structures. (§33020) When occupants are relocated (§33410 *et seq.*; Gov. Code §§7260 *et seq.*), affordable housing units that are destroyed must be replaced within four years. (§33413) Redevelopment agencies have always had authority to spend tax increment for affordable housing. Individual findings of benefit to the project area are required to use tax increment outside that area (§33334.2(g)(1)) consistent with Article XVI §16. No individual findings are made to support diversion of tax increment to SERAF.

SERAF is plainly not a project cost. SERAF offsets a part of the State's obligation to fund schools, not a project cost created by redevelopment. (Exhibit 23).

B. Unlike ERAFs, ABX4-26 Does Not Compensate or Avoid Impacts on Creditors

Petitioners do not concede that earlier ERAF shifts were constitutional, but earlier ERAFs differed and perhaps avoided violation of Article XVI §16 and the constitutional rights of creditors. Earlier ERAFs provided that, if an agency did not pay the ERAF transfer, the legislative body had to pay. Payment by city or county would have eliminated the unconstitutionality. Since earlier ERAF diversions, California voters adopted Proposition 1A (Article XIII §25.5) barring diversion of local government property taxes. (Petition ¶¶52-52, 63-68, 75, 79-80, 163-66; Exhibits 12, 13) Proposition 1A forecloses this potential safety valve for saving SERAF from constitutional violations.

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C. Authorization of SERAF Payments From Any Lawful Source Does Not Cure Unconstitutional Prejudice to Bondholders and Creditors

ABX4-26's instruction that the transfer to SERAF may be paid with funds from any lawful source does not cure the constitutional violations. Despite ABX4-26's authorization for payments from any lawful source, redevelopment agencies, as a practical matter, are forced by ABX4-26 to resort to unconstitutional payments from tax increment funds because they have no available source of payment to SERAF other than tax increment.[13] Agencies lack power to tax (Petition ¶¶22, 25, 156, 167) and have no meaningful source of funding not derived from tax increment and revenue on invested tax increment and proceeds of loans that must be repaid. (Id. ¶¶21, 121-22, 151) Agencies are funded by borrowing secured by a pledge of tax increment and by incidental government grants for purposes unrelated to SERAF.[14] Generally, bond proceeds are not available for SERAF.[15] Other fund sources, like federal Community Development Block Grants, are subject to program limitations that prohibit their use to pay SERAF. (24 C.F.R. §§570.200 *et seq.*) Courts consistently recognize that redevelopment agencies are primarily dependent on tax increment revenue to fund their activities.[16]

The text of ABX4-26 is clear that the Legislature intended the primary source of SERAF would be tax increment. The Legislature relied on tax increment to pay SERAF by basing the formula to set an agency's share of SERAF on that agency's proportionate share of tax increment received

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[13] Judge Connelly recognized this reality in invalidating AB1389. (Exhibit 17 at 12:23-28)

[14] Grant funds typically cannot be used for ERAF or SERAF. (Petition ¶121)

[15] Treasury Regulations 26 C.F.R. §1.148-6(d)(3) generally prohibit use of tax-exempt bond proceeds to finance working capital expenditures. There are very limited exceptions under which tax-exempt bond proceeds can be used to finance working capital, e.g., costs of issuing bonds, certain debt guaranty fees, capitalized interest on bonds, certain initial start-up expenditures of the bond-financed facility and debt service paid from excess sale or investment earnings. See also §§33651-61 (authorized encumbrances and covenants for bond proceeds). None of these exceptions is applicable.

[16] Marek at 1082 ["Redevelopment agencies chiefly rely upon tax increment revenues to finance their activities"]; City of El Monte v. Commission on State Mandates (3d Dist.2000) 83 Cal.App.4th 266, 269 ["The most important method of financing employed by a redevelopment agency is what is known as tax increment financing."]; Arcadia Redevelopment Agency v. Ikemoto (2d Dist.1993) 16 Cal.App.4th 444, 451 ["Borrowing has become the primary funding method [for redevelopment agencies]. The 'tax increment' provides the main source of funds to repay loans"]; Community Redevelopment Agency v. Bloodgood (2d Dist.1986) 182 Cal.App.3d 342, 344; Exhibit 17 at 12 n.5 (April 30, 2009 Ruling).

statewide (§§33690(a)(2), 33690.5(a)(2)), measuring payment as a portion of tax increment allocated to that agency in fiscal 2009-2010 and 2010-20. Tax increment principally funds redevelopment agencies and other sources are incidental and unpredictable. (Petition ¶¶21, 121-22, 151) The Legislature itself recognized that agencies did or might not have funds available to pay into SERAF by providing in ABX4-26 for borrowing from the Low and Moderate Income Housing Fund, from the legislative body, and otherwise. (§§33334.2(k), 33690(c), 33690.5(c)) Agencies have no source of funds to repay the borrowing, however, so it merely postpones the onset of the suspension penalty. (Petition ¶¶121-22, 151, 159, 161, 169)

D. Petitioners Plainly Have Standing to Sue

A writ of mandate may issue "upon the verified petition of the party beneficially interested" (CCP §1086), "ensur[ing] that the courts will decide only actual controversies between parties with a sufficient interest in the subject matter of the dispute to press their case with vigor." (Common Cause v. Board of Supervisors (1989) 49 Cal.3d 432, 439.) A "beneficially interested" petitioner has "some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large." (Carsten v. Psychology Examining Committee (1980) 27 Cal.3d 793, 796, followed in People ex rel. Department of Conservation v. El Dorado County (2005) 36 Cal.4th 971, 986, 990, and in California Ass'n for Health Services at Home v. Department of Health Services (3d Dist.2007) 148 Cal.App.4th 696, 704-07.)

John F. Shirey is a California taxpayer affected by ABX4-26. (Petition ¶4) Genest conceded and Judge Connelly found Shirey had taxpayer standing to assert a facial challenge (Exhibit 17 at 7 n.3) Taxpayer standing under CCP §526a and common law exists for actions for declaratory relief, mandamus and, in some cases, damages. The essence of a taxpayer action is an illegal or wasteful expenditure of public funds, injury to the public fisc or damage to public property. (Humane Society of United States v. State Board of Equalization (1st Dist.2007) 152 Cal.App.4th 349, 355 [collecting cases on point].) Taxpayer actions against the State are entirely proper. (Serrano v. Priest (1971) 5 Cal.3d 584, 618 n.38, further appeal (1976) 18 Cal.3d 728, cert. denied (1977) 432 U.S. 907.) As a California citizen, Shirey is entitled to seek affirmative relief to compel performance of public duty—the duty to obey the California and U.S. Constitutions. (Imagistics Int'l, Inc. v. Department of

General Services (3d Dist.2007) 150 Cal.App.4th 581, 593-54; Connerly v. State Personnel Board (3d Dist.2001) 92 Cal.App.4th 16, 29.)

Shirey also has standing as executive director of CRA and as a citizen. (Petition ¶4; People ex rel. Department of Conservation v. El Dorado County (2005) 36 Cal.4th 971, 986-95 [state department head may sue as to department business by statute and necessity]; Connerly v. State Personnel Board (3d Dist.2001) 92 Cal.App.4th 16, 29, followed in Imagistics Int'l, Inc. v. Department of General Services (3d Dist.2007) 150 Cal.App.4th 581, 593-54.) When "the question is one of public, as opposed to private, interest, and petitioner seeks performance of a public duty," petitioner " 'need not show that he has any legal or special interest in the result, since it is sufficient that he is interested as a citizen in having the laws executed and the duty in question enforced.' " (Board of Social Welfare v. County of Los Angeles (1945) 27 Cal.2d 98, 101 [quoting Am.Jur.].)

Petitioners Redevelopment Agency of Union City and Redevelopment Agency of Fountain Valley have standing as redevelopment agencies directly affected by ABX4-26. They sue to "preserve and protect the security of the Bonds and the rights of the Bond Owners." (Exhibit 38 at 29) They also assert the interests of similarly situated redevelopment agencies and of residents and businesses in their redevelopment project areas who are adversely affected by ABX4-26. (Petition ¶¶2-3) A political subdivision may challenge the constitutionality of a state statute on its own behalf, on behalf of others similarly situated and on behalf of constituents whose rights are bound up in the entity's duties. (Central Delta Water Agency v. State Water Resources Control Board (3d Dist.1993) 17 Cal.App.4th 621, 630.) Public entities have legal capacity to sue and be sued. (Gov. Code §945.) Public entities have standing to challenge the constitutionality of a statute that has a significant and direct effect on performance of the entities' duties. (E.g., Selinger v. City Council (4th Dist. 1989) 216 Cal.App.3d 259, 271-72; Jefferson Union High School District. v. City Council (1st Dist. 1954) 129 Cal.App.2d 264, 267; see Exhibit 17 at 7 n.3.) Although public bodies generally cannot raise due process or equal protection challenges to actions by state agencies,[17] that rule only applies to

[17] Native American Heritage Comm'n v. Board of Trustees (2d Dist.1996) 51 Cal.App.4th 675, 683; San Miguel Consolidated Fire Protection District v. Davis (3d Dist.1994) 25 Cal.App.4th 134, 143-45. But see Star-Kist Foods, Inc. v. County of Los Angeles (1986) 42 Cal.3d 1, 5-9, cert. denied (1987) 480 U.S. 930 (finding standing under facts at issue).

challenges based on constitutional provisions affording rights solely to individuals, unlike Article XVI §16,[18] and also does not apply when the public entity's claim "is best understood as a practical means of asserting the individual rights of its citizens." (Sanchez v. City of Modesto (5th Dist.2006) 145 Cal.App.4th 660, 674, cert. denied (2007) 128 S.Ct. 438, 169 L.Ed.2d 306 [collecting cases].)

Petitioner California Redevelopment Association has standing to sue to resolve issues of substantial public interest affecting its membership and those it serves. (Apartment Ass'n of Los Angeles County, Inc. v. City of Los Angeles (2d Dist.2006) 136 Cal.App.4th 119, 129; Hunt v. Washington State Apple Advertising Comm'n (1977) 432 U.S. 333, 343.) Nonprofit organizations involved in the subject matter such as CRA routinely have standing in public interest actions. (E.g., League of Women Voters v. Eu (3d Dist.1992) 7 Cal.App.4th 649, 657.) (Petition ¶1)

E. This Action May Properly Proceed with Plaintiff and Defendant Classes

CCP §382 authorizes class actions when "the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court." As explained in the accompanying motions and briefing in support of class certification, the facts before this Court present a compelling case for certification of a defendant class composed of the county auditors in the 45 counties with redevelopment agencies in California as was done in the AB1389 challenge (Exhibit 21) and a plaintiff class.

F. Respondents Are Properly Named in the Petition

Under CCP §379(a), all persons may be joined as defendants/respondents if there is asserted against them either

> (1) Any right to relief jointly, severally or in the alternative, in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action; or
>
> (2) A claim, right, or interest adverse to them in the property or controversy which is the subject of the action.

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[18] E.g., Community Redevelopment Agency v. County of Los Angeles (2d Dist.2001) 89 Cal.App.4th 719; Redevelopment Agency v. County of Los Angeles (4th Dist.1999) 75 Cal.App.4th 68; Redevelopment Agency v. California Comm'n on State Mandates (4th Dist.1997) 55 Cal.App.4th 976; Arcadia Redevelopment Agency v. Ikemoto (2d Dist.1993) 16 Cal.App.4th 444; Bell Community Redevelopment Agency v. Superior Court (2d Dist.1985) 169 Cal.App.3d 24.

Litigants in doubt as to the person from whom they are entitled to redress may join two or more defendants in a single action "with the intent that the question as to which, if any, of the defendants is liable, and to what extent, may be determined between the parties." (CCP §379(c); Landau v. Salam (1971) 4 Cal.3d 901, 907; Lambert v. Southern Counties Gas Co. (1959) 52 Cal.2d 347, 353.)

Respondents are responsible for administering ABX4-26. The Department of Finance prepares and administers California's annual financial plan, the California Budget. (http://www.dof.ca.gov; see Government Code §§13070-340.) The Director of Finance determines amounts ABX4-26 requires redevelopment agencies to remit to county auditors for deposit in county SERAFs. (§§33690(a), 33690.5(a)) (Petition ¶¶5, 107, 181) County auditors are the chief fiscal officers for their counties and are required to deposit funds in SERAFs and report (Id.) and to distribute SERAF funds to particular school districts and county offices of education. (§§33690(j), 33690.5(j); see Gov. Code §§26900-26922; Rev. & Tax. Code §2601.) (Petition ¶¶6, 107, 154, 169)

G. The Dispute Is Justiciable

The issues before this Court are narrowly defined and clearly justiciable. The dispute is not hypothetical or abstract, as ABX4-26 requires action by November 15, 2009, with additional actions occurring thereafter and payment by May 10, 2010. (Petition ¶¶13, 107, 153, 156, 181; §33690(a)(1), (2); Cedars-Sinai Medical Center v. Superior Court (1998) 18 Cal.4th 1, 7.)

An aspect of justiciability appears in the political question doctrine under which courts decline to hear controversies that revolve around policy choices and value determinations constitutionally committed for resolution to the legislative or executive branch. (Schabarum v. California Legislature (3d Dist.1998) 60 Cal.App.4th 1205, 1213-15.) Even so, "it is a judicial function to interpret the law, including the Constitution," and "to declare when an act of the Legislature or the executive is beyond the constitutional authority vested in those branches." (Id. at 1213.) Although "enactment of a budget bill is a legislative function," and "both a right and a duty that is expressly placed upon the Legislature and the Governor by our state Constitution. (Cal. Const., Art. IV, §12.),"

> deference does not mean complete forbearance. "[A] challenge to the constitutionality of an act is inherently a judicial rather than political question and neither the Legislature, the executive, nor both acting in concert can validate an unconstitutional act or deprive the courts of jurisdiction to decide questions of constitutionality." (*California Radioactive Materials Management Forum* v. *Department of Health Services* [3d Dist.1993] 15

> Cal.App.4th [841,] 869.) Because this lawsuit seeks an adjudication of the constitutionality of the state budget act, a judicial function which does not usurp the functions of the two other coordinate branches, the constitutional question was justiciable.

(Schabarum v. California Legislature at 1215.)

H. The Dispute Is Ripe

The dispute is ripe, as this Petition is filed as soon as possible following enactment of ABX4-26. (Pacific Legal Foundation v. California Coastal Comm'n (1982) 33 Cal.3d 158, 170.) No remedies exist that Petitioners could exhaust (e.g., Common Cause v. Board of Supervisors (1989) 49 Cal.3d 432, 441; County of Sonoma v. Commission on State Mandates (1st Dist.2000) 84 Cal.App.4th 1264; City of El Monte v. Commission on State Mandates (3d Dist.2000) 83 Cal.App.4th 266), and exhaustion should not be considered because Petitioners, bondholders, the California public, and others face imminent harm and the issues are of significant public interest. (E.g., Lindeleaf v. ALRB (1986) 41 Cal.3d 861, 870; Sail'er Inn, Inc. v. Kirby (1971) 5 Cal.3d 1, 7; Department of Personnel Admin. v. Superior Court (3d Dist.1992) 5 Cal.App.4th 155, 170.)

Actual default on bonds is not a prerequisite to ripeness. ABX4-26 has been enacted into law and signed by the Governor. " 'A controversy is "ripe" when it has reached, but has not passed, the point that the facts have sufficiently congealed to permit an intelligent and useful decision to be made.' " Pacific Legal Foundation v. California Coastal Comm'n (1982) 33 Cal.3d 158, 171 [citation omitted].) Transfer of SERAF required by ABX4-26 is to occur by May 10. (Petition ¶¶13, 107, 153) A "facial challenge is generally ripe the moment the challenged regulation is passed," while an as-applied claim is ripe when a final decision as to how to proceed is reached. (Bronco Wine Co. v. Jolly (3d Dist.2005) 129 Cal.App.4th 988, 1034, cert. denied (2006) 546 U.S. 1150.) Both challenges are fully ripe; ABX4-26 is law and tells Genest and County Auditors how to proceed. Nothing more is to be enacted before they are required to act.

I. Petitioners' §1983 Claim for Equitable Relief Is Entirely Valid

The State is not a party. Petitioners may sue state officials in their official capacity for injunctive relief: "Of course a state official in his or her official capacity, when sued for injunctive relief, would be a person under §1983 because 'official-capacity actions for prospective relief are not treated as actions against the State.' " (Will v. Michigan Department of State Police (1988) 491 U.S. 58, 71

n.10 [citation omitted]; accord, Hafer v. Melo (1991) 502 U.S. 21, 27.)

VII. PETITIONERS HAVE NO OTHER ADEQUATE REMEDY

Absent a writ or injunctive relief holding ABX4-26 unconstitutional and barring its effectiveness before the May 10, 2010 date for transfer of funds to SERAFs, Petitioners have no adequate remedy. CCP §1086 provides that a writ of mandate "must be issued in all cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law." Mere presence of some remedy at law will not defeat equitable relief. (Varney v. Superior Court (4th Dist.1992) 10 Cal.App.4th 1092, 1098.) The writ is improper only if the remedy at law is "'speedy, adequate, and efficacious to the end in view . . . *reach[ing] the whole mischief and secur[ing] the whole right of the party in a* perfect manner at the present time and not in the future. Otherwise, equity will interfere and give such relief and aid as the exigencies of the case may require.'" (Hicks v. Clayton (4th Dist.1977) 67 Cal.App.3d 251, 264, quoting Quist v. Empire Water Co. (1928) 204 Cal. 646, 652-53.)

Absence of a plain, speedy, and adequate remedy in the ordinary course of law is clear. Redevelopment agencies must transfer the funds mandated by ABX4-26 to county SERAFs no later than May 10, 2010. Failure to do so will invoke the suspension penalty in §33691. Once paid into SERAFs, the funds will be disbursed to schools and promptly spent. Recovering that money will be extraordinarily difficult, if not impossible and could create financial hardships for counties and school districts. A writ of mandate is available to prevent implementation of an invalid statute. (Hotel Employees & Restaurant Employees Int'l Union v. Davis (1999) 21 Cal.4th 585, 590; Planned Parenthood Affiliates v. Van de Kamp (1st Dist.1986) 181 Cal.App.3d 245, 263 [prohibitory mandate is "used to restrain state officials from enforcing ministerial statutory provisions found to be unconstitutional"].) Redevelopment agencies, schools, county auditors and many others urgently need to know if ABX4-26 is constitutional. Given that urgency, availability of declaratory judgment is no barrier to mandamus. (MacPhail v. Court of Appeal (1985) 39 Cal.3d 454, 455-57; Glendale City Employees' Ass'n v. City of Glendale (1975) 15 Cal.3d 328, 343, cert. denied (1976) 424 U.S. 943; Clean Air Constituency v. California State Air Resources Board (1974) 11 Cal.3d 801, 808-09.)

VIII. ALL WRIT OF MANDATE REQUIREMENTS ARE MET

The requirements for issuance of a writ of mandate are (1) a clear, present and usually

ministerial duty on the part of the respondent and (2) a clear, present and beneficial right in the petitioner to performance of that duty. (California Correctional Supervisors Org. v. Department of Corrections (3d Dist.2002) 96 Cal.App.4th 824, 827; McCabe v. Snyder (3d Dist.1999) 75 Cal.App.4th 337, 340.) Both requirements are fully met. Respondents must follow the Constitution, before any statute. In County of Sacramento v. Hickman (1967) 66 Cal.2d 841, 845, for example, the Supreme Court issued a writ compelling a county assessor to follow Revenue and Taxation Code provisions requiring assessment of all taxable property at an announced fraction of full cash value:

> Indeed, the issues presented are of great public importance and must be resolved promptly. The assessment of all taxable property in Sacramento County is currently being undertaken, and the local assessment roll must be completed on or before July 1 (Rev. & Tax. Code, §616); unsecured property taxes became due on March 6 (Rev. & Tax. Code, §2901) and, if unpaid, will become delinquent and subject to penalty on August 31 (Rev. & Tax. Code, §2922). Petitioners list a number of administrative tasks relative to the equalizing, levying, collecting, and protesting of property taxes which must also be performed in the forthcoming months, and sufficiently show that the delay attendant upon first submitting this matter to a lower court would result in confusion in the administration of the tax laws and hardship and expense to the general public.

Mandate or other equitable remedy is proper when a legal damages remedy is inadequate. (Code Civ. Proc. §526(a)(4).) A damages remedy is inadequate when a defendant will be unable to pay the judgment. (Hicks v Clayton (1977) 67 Cal.App.3d 251, 264.) Existence of a remedy at law will not defeat a claim for equitable relief (Quist v. Empire Water Co. (1928) 204 Cal. 646, 653; Varney v. Superior Court (4th Dist.1992) 10 Cal.App.4th 1092, 1098) unless the remedy at law is adequate to the facts. The legal remedy "'must reach the whole mischief and secure the whole right of the party in a perfect manner at the present time and not in the future. Otherwise, equity will interfere and give such relief and aid as the exigencies of the case may require.'" (Hicks v. Clayton (4th Dist.1977) 67 Cal.App.3d 251, 264, quoting Quist v. Empire Water Co. at 652–53.) When a litigant faces the likelihood that money cannot be recovered, the legal remedy fails and equitable relief is warranted.

A remedy at law is inadequate even if damages can be proved to the penny if the defendant is insolvent. Insolvency creates the "inference that any money judgment would not be efficacious." (Hicks v. Clayton (4th Dist.1977) 67 Cal.App.3d 251, 264.) Insolvency is not the only factor, but courts properly consider a defendant's inability to respond in damages in determining whether to grant injunctive relief or specific performance. (Id.) Actual or potential insolvency may warrant an

injunction to maintain the status quo pending judgment both so that litigants may not deliberately strip themselves of assets to unable to pay any judgment (West Coast Construction Co. v. Oceano Sanitary District (2d Dist.1971) 17 Cal.App.3d 693, 700; Lenard v. Edmonds (1st Dist.1957) 151 Cal.App.2d 764, 769), and to prevent other action to defeat the plaintiff's rights. (Weingand v. Atlantic Savings & Loan Ass'n (1970) 1 Cal.3d 806, 819–20 [foreclosure prior to resolution of plaintiffs' claims would defeat their claims for recovery of land through constructive trust]; Asuncion v. Superior Court (4th Dist.1980) 108 Cal.App.3d 141, 147 [staying eviction pending resolution is proper to maintain status quo]; Duvall v. White (3d Dist.1920) 46 Cal.App. 305, 308.)

California school districts are not generally insolvent, but they are at risk financially;[19] funds they receive are very likely to be spent and irretrievable. As a result, authorities addressing insolvency of a defendant are relevant because California's approximately 1000 school districts will be defendants if redevelopment agencies must seek return of funds paid to SERAF. Restoring SERAF funds to contributing redevelopment agencies will be extremely difficult, if not impossible, creating financial hardships for school districts as well as redevelopment agencies. Some 400 agencies would be required to make claims and file suits against some 1000 school districts and others, after expensive effort to track funds from SERAF accounts to their recipients. Depending on amounts involved and individual agency circumstances, some may be unable to afford the effort.

If the funds have been spent, there may be no way to recover them even if they can be traced to the recipient that spent them. SERAF and ERAF money is dedicated by Constitution or statute to schools and other purposes (e.g., Triple Flip and VLF Swap) and is unavailable for repayment to redevelopment agencies. If SERAFs continue to exist, redevelopment agency funds deposited in a SERAF in May 2010 and wrongfully disbursed to schools or others cannot be readily recouped from

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[19] E.g., O'Connell, Westly, Núñez Report California Schools in Fiscal Trouble (July 7, 2005) ("financial health of California's 982 school districts and 58 county offices of education is in worse shape than in previous years"), available at http://www.cde.ca.gov/nr/ne/yr05/yr05rel77.asp; Michael S. Roth, Superintendent, John Swett Schools, SCHOOLS UPDATE (March 2008) ("If we made no cuts for next year (the 2008-2009 budget year) the District would be insolvent by the end of 2009-2010."), available at www.jsusd.k12.ca.us/signal/signalMARCH08.doc; Board of Education, Cotati-Rohnert Park Unified School District Special Board Meeting Minutes –January 27, 2009 ("County Office of Education has directed the Board to make structural changes in the unrestricted general fund to prevent fiscal insolvency."), available at http://www.crpusd.org/boe/minutes/0708/January%2027,%202009%20Special%20BOT%20minutes%20.pdf.

SERAF in future years because recipients of SERAF funds and their percentage shares change from year to year for many reasons. First, the Legislature regularly amends and adjusts pertinent laws to alter who gets what and with what priority. Triple Flip and VLF Swap are two obvious examples,[20] but a host of other diversions from ERAF exist[21] and reason to expect diversions from SERAF. Second, recipients of SERAF funds may change from year to year. Third, the Legislature could halt future deposits into SERAF and require funds to move in some different manner. SERAFs are new this year, and earlier transfers were made to ERAFs. For all these reasons, SERAF funds improperly disbursed to schools in 2010 or 2011 may never be recoverable from future year SERAFs.

IX. HARM TO REDEVELOPMENT AGENCIES IS FAR MORE THAN MONETARY

Redevelopment agencies face crippling loss of funds coupled with damage to their credit and ability to raise future funds and their ability to complete projects already underway. Marketability of redevelopment bonds depends on the irrevocable pledge of 100% of the tax increment to be used for bond repayment and project costs. (Petition ¶¶34-38, 41, 62, 119) Bond investors rely on that pledge in evaluating their investment in light of reliable sources of repayment of principal and interest. (Redevelopment Agency v. County of San Bernardino (1978) 21 Cal.3d 255, 264-65; Community Dev. Comm'n v. County of Ventura (5th Dist. 2007) 152 Cal.App.4th 1470, 1484.) An agency is entitled to receive and hold **all** tax increment until **all** of its indebtedness is paid. Marek v. Napa Community Redevelopment Agency (1988) 46 Cal.3d 1070, 1082. Petitioners, redevelopment agencies, their local communities, and California citizens face irreparable injury in that

- there will be insufficient funds to complete and pay for existing projects already undertaken;
- agencies will lack funds to undertake and pay for projects planned and under contract;

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[20] The complex Triple Flip and VLF Swap under Revenue and Taxation Code §§97.68, 97.70 take funds from ERAF to compensate cities and counties for revenue losses resulting from the State's 25% suspension of local sales and use tax authority and reduction in vehicle license fees. (Petition ¶¶16-17, 74; see Exhibit 17 at 13 n.7)

[21] E.g., Revenue & Taxation Code §97.23 (reduction of ERAF contributions of Chino Basin Municipal Water District by amounts allowed under an earlier ERAF statute to maintain a stream of property tax revenue to meet debt service on certain revenue bonds); Revenue & Taxation Code §97.33 (revenues used in calculating ERAF obligations are reduced by amount of property tax revenues lost as result of 1991 Berkeley/Oakland hills fire); Revenue & Taxation Code §97.35 (ERAF shift required of a specific community services district is reduced up to $90,000 for revenues allocated to district's "police protection and personal safety" activities).

- agencies will be forced to use funds held in reserve, sinking funds, investments and fund balances to pay to SERAF, losing funds set aside to pay redevelopment project indebtedness;
- agencies in the future will or may be unable to pay bondholders and other obligors in full because the SERAF transfer will take essential funds and the time permitted by law for the agency's receipt of tax increment or the maturity of the bonds or other obligations will expire;
- bond ratings on bonds and other obligations issued by agencies may suffer, forcing them to pay higher interest or making issuance of bonds and other obligations financially infeasible;
- the ability of agencies to raise funds by issuing bonds and other obligations will be greatly diminished because prospective purchasers cannot rely on agency pledges of repayment; and
- the citizens of California will be irreparably injured by loss or diminishment of tax increment financing as a secure source of funding for redevelopment projects.

All these facts and conclusions are supported in detail in the verified Petition.

Redevelopment agencies are not to blame for cuts to school operations, programs, and staffing. Redevelopment agencies do not exist to fund schools. The State is seeking to shift its Proposition 98 obligations to redevelopment agencies in violation of the California and United States Constitutions.

X. A WRIT OF MANDATE IS PROPERLY ENTERED IN FAVOR OF PETITIONERS

Petitioners have filed a verified petition and complaint with substantial evidence appropriate for judicial notice and extensive briefing. This Court may decide the merits (CCP §1094) or order trial of "a question as to a matter of fact essential to the determination of the motion and affecting the substantial rights of the parties, and upon the supposed truth of the allegation of which the application for the writ is based." (CCP §1090) California's Constitution is a limitation or restriction on the powers of the Legislature. Although strictly construed, constitutional restrictions must be enforced when they apply: "'we also must enforce the provisions of our Constitution and "may not lightly disregard or blink at ... a clear constitutional mandate."'" (County of Riverside v. Superior Court (2003) 30 Cal.4th 278, 285, quoting Amwest Surety Ins. Co. v. Wilson (1992) 11 Cal.4th 1243, 1252, quoting California Finance Agency v. Elliott (1976) 17 Cal.3d 575, 591.) As the Supreme Court held in In re Marriage Cases (2008) 43 Cal.4th 757, 849-50,

> under "the constitutional theory of 'checks and balances' that the separation-of-powers doctrine is intended to serve" (*Superior Court* v. *County of Mendocino* (1996) 13 Cal.4th 45, 53), a court has an obligation to enforce the limitations that the California Constitution imposes upon legislative measures, and a court would shirk the responsibility it owes to each member of the public were it to consider such statutory provisions to be insulated from judicial review.

Although we know with certainty the amount of the $2.05 billion take from redevelopment and substantially how it is to be divided among the 45 counties with redevelopment agencies, we cannot know today or even early next year the specific numbers of students in a project area or in housing supported by redevelopment funds in the approximately 1000 school districts. No one can know until months or years later exactly what dollar disparities SERAF funding will cause for schools or pupils.[22] Neither the United States Constitution nor the California Constitution require such proof. (E.g., United States Trust Co. v. New Jersey (1977) 431 U.S. 1, 19 [impairment exists even though "no one can be sure precisely how much financial loss the bondholders suffered"].)

Given the absence of disputes of material fact based on evidence, the absence of any material dispute of fact affecting substantial rights,[23] and the immediacy of the May 10, 2010 SERAF transfer date (Mooney v. Pickett (1971) 4 Cal.3d 669, 683), Petitioners urge this Court to enter a writ of mandate or, alternatively, grant injunctive relief to postpone the effectiveness of AB1389 and its May 10th date until decision on the merits.

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[22] Even brief examination of State Controller John Chiang's reports reveals that information becomes available only long after the relevant tax year. For example, as of September 27, 2009, the most recent Annual Shared Revenue Estimates Report is for fiscal 2005-2006. (http://www.sco.ca.gov/ard_payments_sharerev.html); the most recent report of ERAF III Property Tax Shifts for Cities is available for fiscal years 2004-2005 and 2005-2006 (http://www.sco.ca.gov/ard_payments_mvlf_city_reductions.html); the only report of Actual VLF Adjustment Amounts per Cities and Counties R&T 97.70 is from October 2005 (http://www.sco.ca.gov/ard_payments_mvlf_vlf_adj_amt.html); and the most recent Community Redevelopment Agencies Annual Report is for the fiscal year ended June 30, 2007. (http://www.sco.ca.gov/Files-ARD-Local/LocRep/redevelop_reports_0607redevelop.pdf). The Department of Education data is more up to date but still a year out of phase. (http://www.cde.ca.gov/re/pn/fb/documents/factbook2009.doc) The California Treasurer's most recent Financial Data Report is for fiscal years 2006-07 and 2007-08 (http://www.treasurer.ca.gov/publications/index.asp).

[23] Dulaney v. Municipal Court (1974) 11 Cal.3d 77, 82; Valtz v. Penta Investment Corp. (4th Dist.1983) 139 Cal.App.3d 803, 810; Reber v. Superior Court (1st Dist.1961) 189 Cal.App.2d 622, 624 (no genuine factual issue tendered by denials in answer).

XI. CONCLUSION

Balancing the State's budget is not the responsibility of the redevelopment agencies; they have to balance their own budgets and pay their own obligations to contractors, bondholders and others. In accordance with these points and authorities, Petitioners respectfully pray this Court to

1. Hold ABX4-26 unconstitutional and invalid;

2. Enjoin any transfer of funds into a county Supplemental Educational Revenue Augmentation Fund ("SERAF") by any member of the defendant class of county auditors in the 45 California counties that have redevelopment agencies, represented by the Respondent/Defendant County Auditor, that might otherwise be required by ABX4-26;

3. Enjoin Respondent/Defendant Michael C. Genest or any of the county auditors from taking any action to compel or enforce the duty of a redevelopment agency under ABX4-26 to remit funds to a county auditor for deposit into a county SERAF;

4. Enjoin the effect of ABX4-26 which imposes penalties on a redevelopment agency that fails to remit funds to the county auditor for deposit in ERAF on or before May 10, 2010 and 2011.

DATED: October 22, 2009

McDONOUGH HOLLAND & ALLEN PC
Attorneys at Law

By: _____
ANN TAYLOR SCHWING

Attorneys for Petitioners and Plaintiffs

CASE TITLE: *California Redevelopment Association, et al. vs. Michael Genest, et al.*

COURT/CASE NO: Superior Court of the County of Sacramento
Case No. 34-2009-80000359

PROOF OF SERVICE

I am employed in the County of Sacramento; my business address is 500 Capitol Mall, 18th Floor, Sacramento, California 95814. I am over the age of eighteen years and not a party to the foregoing action.

I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business.

On October 22, I served the within:

PETITIONERS/PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF WRIT AND COMPLAINT

by personally delivering a true copy thereof, in accordance with Code of Civil Procedure § 1011, to the person(s) and at the address(es) set forth below.

by facsimile transmission, in accordance with Code of Civil Procedure § 1013(e), to the following party(ies) at the facsimile number(s) indicated:

by messenger service. I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed below and providing them to a messenger service for service.

X **by mail** on the following party(ies) in said action, in accordance with Code of Civil Procedure § 1013a(3), by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At McDonough Holland & Allen PC, mail placed in that designated area is given the correct amount of postage and is deposited that same day, in the ordinary course of business, in a United States mailbox in the City of Sacramento, California.

X **by e-mail or electronic transmission** on the following party(ies) whose e-mail addresses are listed below, in accordance with Code of Civil Procedure § 1010.6, and/or based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

by overnight delivery on the following party(ies) in said action, in accordance with Code of Civil Procedure § 1013(c), by placing a true copy thereof enclosed in a sealed envelope, with delivery fees paid or provided for, and delivering that envelope to an overnight express service carrier as defined in Code of Civil Procedure § 1013(c).

SEE ATTACHED SERVICE LIST

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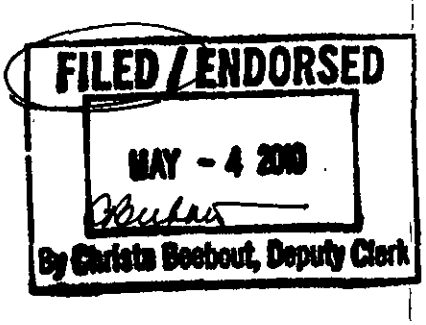
Courtesy Copy for Service on Defendant Class of County Auditors

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this document was executed on October 22, 2009.

Dale M. Carter



SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

CALIFORNIA REDEVELOPMENT ASSOCIATION, COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF UNION CITY, FOUNTAIN VALLEY AGENCY FOR COMMUNITY DEVELOPMENT, on their own behalf and as the representatives of all other California redevelopment agencies, and JOHN F. SHIREY, an individual,

Petitioners and Plaintiffs,

v.

MICHAEL C. GENEST, Director of the Department of Finance, and PATRICK O'CONNELL, Auditor-Controller of the County of Alameda on his own behalf and as the representative of all other County Auditors in the State of California, and Does 1 through 30,

Respondents and Defendants.

No. 34-2009-80000359-CU-WM-GDS
Department 33

RULING ON SUBMITTED MATTER

COUNTY OF LOS ANGELES; COUNTY OF SAN DIEGO; COUNTY OF SAN BERNARDINO; COUNTY OF SAN MATEO; COUNTY OF RIVERSIDE; COUNTY OF ORANGE; COUNTY OF ALAMEDA; and DON KNABE, an individual,

Petitioners and Plaintiffs,

v.

MICHAEL C. GENEST, Director of the Department of Finance; PATRICK O'CONNELL, Auditor-Controller of the County of Alameda; DOES 1 through 150,

Respondents and Defendants.

No. 34-2009-80000362-CU-WM-GDS
Department 33

In July 2009, the Legislature enacted a package of bills during a special session called to address a fiscal emergency declared by the Governor. Among the bills enacted during the special session was Assembly Bill 26 ("AB 26"), which provides for a shift of funds during the 2009-2010 and 2010-2011 fiscal years from each redevelopment agency ("RDA") established under the Community Redevelopment Law ("CRL") to schools districts and county offices of education located partially or entirely within any project area of the RDA. (Stats. 2009, 4th Ex. Sess., ch. 21.) Among the funds to be shifted from RDAs are tax increment revenues used to finance redevelopment activities pursuant to section 16 of article XVI of the California Constitution ("section 16").

Petitioners in each the above-entitled cases challenge the constitutionality of AB 26 and seek to enjoin the shift of redevelopment funds the bill requires. Petitioners in Case No. 34-2009-80000359 ("redevelopment petitioners") contend that AB 26 violates section 16; the prohibition on the impairment of contractual obligations under section 9 of article I of the California Constitution and section 10 of article I of the United States Constitution; the prohibition of the use of moneys deposited in a special fund for a purpose unrelated to that of the special fund; the prohibition on a gift of public funds under section 6 of article XVI of the California Constitution; the requirements for the support of school districts in section 8 of article 16 of the California Constitution ("Proposition 98"); the prohibition on wealth-related disparities and attendant unequal educational opportunities in school districts under section 7 of article I of the California Constitution and *Serrano v. Priest* (1971) 5 Cal.3d 584, (1977) 18 Cal.3d 728; the prohibition in section 25.5 of article XIII of the California Constitution ("Proposition 1A") on legislative reductions or delays in the allocation of property tax proceeds to local governmental entities on or after November 3, 2004; the spending limit in article XIII B of the California Constitution; prohibitions on vague, uncertain and inconsistent laws under the due process provisions of the California and United States Constitution; and the prohibition of section 1983 of title 42 of the United States Code on the deprivation of rights, privileges and immunities secured by the United States Constitution and laws.

Similarly, the petitioners in Case No. 34-2009-80000362 ("county petitioners") contend that AB 26 allocates tax increment revenues for purposes unrelated to redevelopment, in violation of section 16; permits the extension of redevelopment projects by one year and the concomitant extension of the period during which tax increment revenues generated by the project will be allocated to the RAs rather than the counties, in violation of Proposition 1A; and diverts property taxes apportioned to the local government entities levying the taxes for the payment of state obligations, in violation of section 1 of article XIII A of the California Constitution ("Proposition 13").

As explained below, the court determines that the contentions of both the redevelopment petitioners and the county petitioners lack merit.

BACKGROUND[1]

The CRL, set forth in Health and Safety Code section 33000 et seq.[2] provides for the redevelopment of blighted urban areas by an agency specially formed for that purpose by the legislative body of a local government, including a city council and a county board of supervisors. (§§ 33030 et seq., 33100 et seq.) Among the purposes of the CRL are an expansion of the supply of low- and moderate-income housing; an expansion of employment opportunities for jobless, underemployed and low-income persons; and the provision of an environment for the social, economic, and psychological growth and well-being of citizens. (§§ 33070, 33071.)

Tax Increment Financing of Redevelopment

To finance its redevelopment projects, an RDA may obtain grants or loans from any public or private source, issue bonds, and invest moneys held in reserves or sinking funds or not required for immediate disbursement. (§§ 33600, 33601, 33602, 33603, 33640 et seq. See *Brown v. Community Redevelopment Agency* (1985) 168 Cal.App.3d 1014, 1016-1017) An RDA lacks the power to levy taxes for the purpose of raising revenues to repay the indebtedness it

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[1] This background section of the ruling draws on the ruling issued by the court on April 30, 2009, in Case No. 34-2008-00028334, concerning the validity of legislation providing for the transfer of funds from RAs to school districts during the 2008-2009 fiscal year. (See Redevelopment Petitioners' Request for Judicial Notice in Support of Petition for Writ of Mandate and Complaint, Exhibit 18.)

[2] All further statutory references are to the Health and Safety Code unless otherwise noted.

incurs in redevelopment activities, but it may irrevocably pledge tax increment revenues for the repayment of the indebtedness pursuant to section 16 and the statutory provisions implementing section 16 set forth in section 33670 et seq. of the CRL. (*Ibid.*)

Section 16 was adopted by voters as a part of the California Constitution in November 1952 as former section 19 of article XIII and renumbered without substantive change in 1974. (See Redevelopment Petitioners' Request for Judicial Notice in Support of Petition for Writ of Mandate and Complaint, Exhibits 9, 10 (Proposition 18, Assembly Constitutional Amendment No. 55, adding former § 19 to art. XIII).) Section 16 provides a method of financing redevelopment with tax revenues derived from increases in the assessed value of real property within a redevelopment project area. The method is "self-liquidating" and avoids burdens on the general funds of local governments or increases in property tax rates to pay for redevelopment. (*Ibid.* See Exhibit 8 (Report of the Joint Senate-Assembly Interim Committee on Community Redevelopment and Housing Problems, June 13, 1951, p. 22.)

Specifically, section 16 authorizes the Legislature to enact and implement a method of financing redevelopment projects with tax increment revenues in the following manner: When a redevelopment project is approved and the assessed value of taxable property in the project area increases as a result of redevelopment activities, the taxes levied on such property are divided between the taxing agency and the RDA. (See *Craig v. City of Poway* (1994) 28 Cal.App.4th 319, 325, citing *Redevelopment Agency v. County of San Bernardino* (1978) 21 Cal.3d 255, 259 and *Bell Community Redevelopment Agency v. Woosley* (1985) 169 Cal.App.3d 24, 27.) The taxing agency receives the taxes levied and collected on the assessed value of the property at the time the project is approved, and the additional taxes generated by the increase in the assessed value of the property -- the tax increment -- are deposited in a special fund of the RDA for use in repaying the indebtedness it incurred in financing the project. (*Ibid.*) When the indebtedness has been paid, all taxes levied and collected on the assessed value of the property remain with the taxing agency.

As explained in the 1952 ballot pamphlet materials for section 16's predecessor (Request for Judicial Notice in Support of Petition for Writ of Mandate and Complaint, Exhibit

10), the constitutional provisions are permissive in character and become effective only by the acts of the Legislature and the legislative body of an RDA. The constitutional provisions empower the Legislature to provide for the division of tax revenues in a redevelopment area and to enact those laws necessary to enforce that division. (*Ibid.*) The constitutional provisions empower an RDA to use the tax increment provisions separately or in combination with other powers granted by the CRL and other laws pertaining to RDAs. (*Ibid.*)

In implementing section 16 since 1952, the Legislature seeks to fulfill the intent of the voters approving section 16 whenever the provisions of section 16 require the allocation of money between agencies. (§ 33670.5.) In that context, the Legislature has limited the amount and duration of tax increment diversions from other local governments and school districts with taxing authority to RDAs in a number of ways. The Legislature has:

- Imposed time limits on the duration of redevelopment plans and on the use of tax increment revenues to repay indebtedness incurred to finance redevelopment (§§ 33333.2, 33333.4, 33333.6);
- Limited the amount of bonded indebtedness repayable with tax increment revenues (§ 3334.1);
- Required RDAs to make "pass-through payments" of a percentage of their tax increment revenues to taxing agencies, including school districts, to alleviate the financial burdens incurred by the taxing agencies as a result of the redevelopment of property on which the agencies levy taxes (§§ 33607.5, 33607.7, 33676);
- Authorized county auditors to deduct their costs of assessing, collecting and allocating property tax revenues for other jurisdictions, including tax increment for RDAs, from the allocations of the other jurisdictions (Rev. & Tax. Code § 95.3; *Community Redevelopment Agency v. County of Los Angeles* (2001) 89 Cal.App.4th 719);
- Required RDAs to set aside 20 percent of their annual tax increment revenue in a special fund to increase , improve, and preserve low- and moderate income housing (§ 33334.2).

Allocation of Tax Increment Revenues for School Operations

When addressing state budgetary crises in a number of fiscal years between 1992-1993 and 2008-2009, the Legislature has required RDAs to transfer specified amounts of their legally available funds to the Educational Revenue Augmentation Fund ("ERAF") established in each of their respective county treasuries for distribution to school districts and county offices of education. (See former § 33681 (1992-1993), former § 33681.5 (1993-1994, 1994-1995), § 33681.7 (2002-2003), § 33681.9 (2003-2004), § 33681.12 (2004-2005, 2005-2006), § 33685 (2008-2009). And see Rev. & Tax. Code § 97 et seq.) In requiring these transfers, the Legislature made the following findings: that the primary purposes of the CRL include job creation, the attraction of new private commercial investments, the physical and social improvement of residential neighborhoods, and the provision and maintenance of low- and moderate-income housing; that the achievement of these primary CRL purposes depend upon the existence of adequately maintained and financially solvent schools to serve RDAs' project areas; that RDAs have financially assisted schools serving project areas by paying for the development of school facilities within project areas and by making pass-through payments of tax increment revenues; that RDAs must make additional payments to assist the school programs and operations serving their redevelopment projects to ensure the achievement of CRL objectives because of reduced state revenues available to assist the schools during the fiscal year; and that the RDAs' payments to the schools benefit to the RDAs' project areas. (See, e.g., § 33680.)

In Case No. 34-2008-00028334 decided by this court last year, petitioner California Redevelopment Association and several RDAs challenged the legislation requiring RDAs to transfer a total of $350 million to their county ERAFs for distribution to school districts during the 2008-2009 fiscal year. (See Stats. 2008, ch. 751 (AB 1389).) In a judgment entered May 7, 2009, the court enjoined any actions by state and county officials to enforce the required transfers. The judgment was based on a determination, previously detailed in the court's ruling filed April 30, 2009, that the legislation violated section 16 of article XVI of the California Constitution because, contrary to the intent of section 16, the required transfers to county ERAFs and distributions to schools would result, wholly or partially, in the reallocation and use of tax

increment revenues generated by the RDAs' redevelopment projects for purposes unrelated to the RDAs' projects and communities. The court's ruling explained that, while the use of tax increment revenues to maintain the operations of schools serving redevelopment projects could reasonably be found by the Legislature to serve a proper redevelopment purpose, it could not reasonably be found to do so when an RDA's tax increment revenues were used to maintain schools outside the RDA's projects and community.

AB 26

In the course of addressing the state's budgetary crisis during the 2009-2010 fiscal year, the Legislature enacted AB 26, which again requires a transfer of funds from RDAs to school programs and operations but which provides transfer procedures designed to avoid the section 16 violation identified by the court's judgment in Case No. 34-2009-00028334:. funds transferred by an RDA pursuant to AB 26 would be distributed only to the school(s) serving redevelopment projects of the RDAs. (§§ 33690, subd. (j); 33690.5, subj. (j). See Redevelopment Petitioners' Request for Judicial Notice in Support of Petition for Writ of Mandate and Complaint, Exhibit 23 (Assembly Bill Analysis, Concurrence in Senate Amendments, AB 26 x4 (Budget Committee), as amended July 24, 2009, Comments, p. 4.)

AB 26 provides for the transfer of $1.7 billion for the 2009-2010 fiscal year and $350 million during the 2010-2011 fiscal year from RDAs to county Supplemental Educational Revenue Augmentation Funds ("SERAFs") for distribution by the county auditor-controllers to school districts or county offices of education located partially or entirely within the project area(s) of the RDAs. (See §§ 33690, subd. (a)(1), 33690.5, subd. (a)(1).) The Director of Finance uses a nine-step calculation to determine each RDA's share of the total amount to be transferred to its county SERAF on or before May 10, 2009. (See §§ 33690, subd. (a)(2)(B)-(J), 33690, subd. (a)(2)(B)-(J)).

The obligation of each RDA to make the transfer or payment under AB 26 is subordinate to the lien of any pledge of collateral securing the payment of the principal or interest on any bonds of the RDA, including bonds secured by a pledge of tax increment revenues. (§§ 33690, subd. (a)(3), 33690.5, subd. (a)(3).) The amount of the obligation is declared to be an

indebtedness of the redevelopment project(s) to which the obligation relates, payable from tax increment revenues allocated to the RDA until paid in full. (§§ 33690, subd. (e), 33690.5, subd. (e).) Upon payment of the RDA's AB 26 obligation, the RDA's legislative body may extend, by one year, the time limits in subdivision (a) of sections 33333.2 and 33333.6 on the duration of redevelopment plans and on the use of tax increment revenues to repay the indebtedness. (§ 33333.1.)

In making the transfer or payment required by AB 26, an RDA may use any funds that are "legally available and not legally obligated for other uses, including . . . reserve funds, proceeds of land sales, proceeds of bonds or other indebtedness, lease revenues, interest and other earned income." (See §§ 33690, subd. (b), 33690.5, subd. (b).) If the RDA has insufficient funds to make the full payment, it may suspend its obligation under section 33334.2 to set aside 20 percent of its tax increment revenues in its low- and moderate-income tax housing fund during 2009-2010 (§33334.2, subd. (k)(1)); borrow from its housing fund during both 2009-2010 and 2010-2011 the amount of its annual set-aside under section 33334.2 (§§ 33390, subd. (c), 33690.5, subd. (c));[3] borrow from a joint powers agency created under Government Code section 6500 with repayment of the loan proceeds secured by the legislative body's property tax revenues instead of the RDA's tax increment revenues (§§ 33688); or arrange for the payment by the RDA's legislative body. (§§ 33691, subd. (d), 33692.)

An RDA may pay less than the amount of its AB 26 obligation determined by the Director of Finance pursuant to subdivision (a)(2) of section 33690 or 33690.5 if the RDA and its legislative body adopt a resolution in public hearings, documenting that the RDA requires all or part of the amount to pay its prior existing indebtedness. (§ 33691, subds. (a), (b), (c).) In such a case, the RDA may arrange for its legislative body to pay the portion of its AB 26 obligation for which it lacks available funds, which portion would be deemed to be indebtedness incurred by the RDA to finance part of its redevelopment project(s) within the meaning of section 16 and

[3] In the event that an RDA suspends its obligation to set aside 20 percent of its tax increment revenues in 2009-2010, it must allocate the amount suspended by 2015 or permanently allocate an additional five percent of its tax increment revenues for as long as it receives the revenues. (§ 33334.2, subd. (k)(3).)

would be repayable to the legislative body from tax increment revenues of the RDA. (§ 33691, subd. (d).)

In the event that an RDA and its legislative body adopt a resolution pursuant to subdivisions (a) through (c) of section 33691 but do not arrange for the full amount of its AB 26 obligation to be paid by a joint powers agency pursuant to section 33688 or its legislative body pursuant to subdivision (d) of section 33691 or section 33692, the RDA is prohibited from expanding its redevelopment projects, issuing new bonds or other debt, or encumbering and expending any moneys derived from any source until the full amount of the RDA's obligation is paid to the county SERAF. (§ 33691, subds. (e), (f).) This prohibition does not bar the RDA from encumbering and expending funds to pay pre-existing bonds or other debt issued by the RDA, loans from government agencies and private entities, contractual obligations that would subject the agency to damages or other liabilities if breached, obligations incurred for the acquisition of land and construction of public facilities pursuant to section 33445, indebtedness incurred for the development of housing pursuant to section 33334.2 or 3334.6, or the costs of RDA's operation and administration. (§ 33691, subds. (e)(3).)

An RDA's failure to pay or arrange for the payment of its full AB 26 obligation during 2009-2010 or 2010-2011 would also be required to allocate an additional five percent of its tax increment revenues to its annual 20 percent allocation of tax increment to its low- and moderate-income housing fund under section 3334.2 for as long as the RDA continues to receive tax increment revenues. (§ 33334.2, subd. (k)(4).)

An RDA's payment of its AB 26 obligation to its county auditor-controller for deposit in the county SERAF may be distributed only to school districts or county office of education located partially or entirely within any project area of the RDA. (§§ 33690, subd. (j)(1), 33690.5, subd. (j)(1).) The auditor-controller allocates or apportions the amount of the SERAF deposits among those school districts and county office of education on the basis of their reported average daily attendance. (§§ 33690, subds. (j)(2) and (j)(3), 33690.5, subds. (j)(2) and (j)(3).) The recipient school districts and county office of education must use these amounts to

serve pupils living in the redevelopment areas or in housing supported by the redevelopment funds of the RDA. (§§ 33690, subd. (j)(5), 33690.5, subd. (j)(5).)

Upon the distribution of the SERAF funds to the school districts and county office of education within the RDA's project areas, AB 26 requires the county auditor-controller to notify the Director of Finance of the amount of SERAF funds apportioned to each district or county office. (§§ 33690, subd. (j)(4), 33690.5, subd. (j)(4).) These amounts are deemed to be "allocated local proceeds of taxes" for purposes of calculating the amounts of state revenues required by Proposition 98 to provide a minimum level of support for schools. (§§ 33690, subd. (k)(2), 33690.5, subd. (k)(2). See Cal. Const., art. XVI, § 8; Ed. Code § 41202.) These amounts are also deemed to be "allocated local proceeds of taxes" for purposes of determining the amount of state revenue necessary to eliminate disparities between the revenues available to school districts to spend per pupil and establish roughly equivalent revenues among school districts. (§§ 33690, subd. (k)(2), 33690.5, subd. (k)(2). See Ed. Code § 42238. And see *Serrano v. Priest* (1971) 5 Cal.3d 584, (1977) 18 Cal.3d 728.)

Further, AB 26 requires the county auditor-controller to reduce the property tax revenues allocated by the Legislature to each recipient school district pursuant to Proposition 13 by an amount equivalent to the distributed SERAF funds.[4] (§§ 33690, subd. (k)(1), 33690.5, subd. (k)(1). See Cal. Const., art. XIII A, § 1; Rev. & Tax. Code § 96.1 et seq.; *Amador Valley Joint Union High Sch. Dist. v State Bd. Of Equalization* (1978) 22 Cal.3d 208, 225-227.) The total amount of property tax revenues produced by this reduction is deposited in the county Supplemental Revenue Augmentation Fund ("SRAF") established by Revenue and Taxation Code section 100.06.[5] (*Ibid.* See Stats. 2009, 4th Ex. Sess., ch. 14 (AB 15).) As enacted by AB 15, funds in each county SRAF are used to reimburse the state for the costs of providing health

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[4] These property tax revenues do not include, and are distinguished from, the tax increment revenues diverted to RDAs pursuant to section 16 and §33670 et seq.

[5] The SRAF established by section 100.06 in AB 15 includes the property tax revenues from school districts pursuant to AB 26 as well as property tax revenues of cities, counties and special districts resulting from a suspension of Proposition 1A. (See Cal. Const., art. XIII, § 25.5; Stats. 2009, 4th Ex. Sess., ch. 13 (AB 14) (enacting Rev. & Tax. Code § 100.05, suspending Proposition 1A for 2009-2010 fiscal year).)

care, trial court, correctional and other state-funded services within the county. (Rev. & Tax. Code § 100.06, subdiv. (c).)

Section 1 of AB 26 justifies the shift of redevelopment funds from RDAs to school districts for their education programs and operations on the basis of the following findings:

"(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."

Reflecting the foregoing legislative findings, subdivision (f) of sections 33690 and 33690.5 states the intent of the Legislature that the RDAs' transfers to county SERAFs during the 2009-2010 and 2010-2011 fiscal years "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."

Further, as suggested by the provisions of AB 26 and confirmed by its legislative history, the shift of $1.7 billion in 2009-2010 and $350 million in 2010-2011 from RDAs to

county SERAFs, the reduction of property tax revenues allocated to recipient school districts by an amount equivalent to the amount paid by the RDAs into county SERAFs, and the deposit into county SRAFs of the property tax revenues resulting from the reduction of school districts' allocated property tax revenues reveal a legislative plan to offset state General Fund obligations under Proposition 98 and to fund other services that would otherwise be funded from the state General Fund. (See Redevelopment Petitioners' Request for Judicial Notice in Support of Petition for Writ of Mandate and Complaint, Exhibits 23, 26; County Petitioners' Request for Judicial Notice in Support of Petition for Writ of Mandate, Exhibit 24.)

ANALYSIS

Section 16

Both redevelopment petitioners and county petitioners contend that AB 26 violates section 16 by requiring RDAs to transfer tax increment revenues to county SERAFs for the funding of educational programs and operations of school districts and county offices of education within the RDAs' project areas. Petitioners indicate that section 16 establishes a mechanism using tax increment revenues to pay indebtedness incurred by an RDA to finance redevelopment projects: section 16 provides for the deposit of all tax increment allocated to the RDA in a special fund; permits the RDA to irrevocably pledge the tax increment in the special fund only for the payment of indebtedness incurred to finance redevelopment; and precludes the use of tax increment to fund services or programs unrelated to a redevelopment project or lacking a redevelopment purpose.

According to petitioners, the use of tax increment by AB 26 to financially maintain the educational programs and operations of school districts within redevelopment project areas was enacted by the Legislature to provide relief from the state's General Fund Proposition 98 obligations, not to further any redevelopment purpose such as alleviating a financial burden imposed by redevelopment on a school district or benefiting a redevelopment project area pursuant to section 33607.5. In petitioners' view, the findings to the contrary in section 1 of AB 26 are palpably false, are entitled to no deference by the court, and cannot validate the allocation of RDAs' tax increment revenues or educational programs and operations under section 16.

Petitioners are correct that section 16 restricts the Legislature from requiring an RDA to use its tax increment revenues to finance services and programs unrelated to its redevelopment projects. As the court noted in its ruling in Case No. 34-2008-00028334 (Redevelopment Petitioners' Request for Judicial Notice in Support of Petition for Writ of Mandate and Complaint, Exhibit 18, pp. 8-9), section 16 gives the Legislature broad authority and discretion to enact laws implementing and enforcing its provisions. That authority and discretion, however, is not unbounded. The Legislature must implement section 16 in a manner consistent with the terms of section 16 and the intent of the voters when they approved the section, to provide a method of financing redevelopment projects with tax increment revenues. (See § 33670.5; Request for Judicial Notice in Support of Petition for Writ of Mandate and Complaint, Exhibit 10.) Acting consistent with that intent, the Legislature may enact laws to govern the handling and use of tax increment revenues to finance redevelopment projects under the CRL, but it may not enact laws allocating tax increment revenues for purposes unrelated to redevelopment. In contrast to the Legislature's authority under article XIII A of the California Constitution (Proposition 13) to allocate local property tax revenues among local governments and schools as it deems reasonable (*County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281-1282, citing *Amador Valley Joint Union High School District v. State Board of Equalization* (1978) 22 Cal.3d 208, 208, 226-227, *County of Los Angeles v. Sasaki* (1994) 23 Cal.App.4th 1442, 1457, and *Arcadia Redevelopment Agency v. Ikemoto* (1993) 16 Cal.App.4th 444, 453), the Legislature cannot properly dispense with the constitutional allocation of tax increment revenues to the financing of redevelopment projects pursuant to section 16.

However, section 16 does not define the meaning of redevelopment or the scope of indebtedness that an RDA may incur to finance redevelopment. Rather, such definitions are left to the broad discretion of the Legislature in enacting laws to enforce the provisions of section 16, and this court must defer to the Legislature's exercise of its broad discretion. "Unlike the federal Constitution, which is a grant of power to Congress, the California Constitution is a limitation or restriction on the powers of the Legislature. [Citations.] Two important consequences flow from this fact. [¶] First, the entire law-making authority of the state, except the people's right of

initiative and referendum, is vested in the Legislature, and that body may exercise any and all legislative powers which are not expressly or by necessary implication denied to it by the Constitution. [Citations.] In other words, 'we do not look to the Constitution to determine whether the [L]egislature is authorized to do an act, but only to see if it is prohibited.' [Citation.] [¶] Secondly, all intendments favor the exercise of the Legislature's plenary authority: 'If there is any doubt as to the Legislature's power to act in any given case, the doubt should be resolved in favor of the Legislature's action. [¶] Such restrictions and limitations [imposed by the Constitution] are to be construed strictly, and are not to be extended to include matters not covered by the language used.' [Citations.]" (*Shaw v. People ex. Re. Chiang* (2009) 175 Cal.App.4th 577, 595-596, quoting *People Methodist Hosp. of Sacramento v. Saylor* (1971) 5 Cal.3d 685, 691; accord, *State Personnel Bd. v. Department of Personnel Admin.* (2005) 37 Cal.4th 512, 523.)

Further, a legislative determination of facts justifying specific enactments ordinarily "must not be set aside or disregarded by the courts unless the determination is clearly and palpably wrong and the error appears beyond reasonable doubt from facts and evidence which cannot be controverted and of which the court may properly take notice." (*Lockard v. City of Los Angeles* (1949) 33 Cal.2d 453, 461-462. See *Schabarum v. California Legislature* (1998) 60 Cal.App.4th 1205, 1219-1221.) If the reasonableness of legislative findings is fairly debatable, rather than palpably arbitrary on the face of the findings and on the basis of judicially noticeable facts, the court cannot properly review and question their factual adequacy. (*Ibid.*)..

Only in special circumstances may a court independently scrutinize factual findings. (See *Professional Engineers v. Department of Transportation* (1997) 15 Cal.4th 543, 568-569, 572-573; *Spiritual Psychic Science Church v. City of Azusa* (1985) 39 Cal.3d 501, 514.) Here, no special circumstances exist to support nondeferential scrutiny by the court of the legislative definition of redevelopment to include RDAs' SERAF payments during the 2009-2010 and 2010-2011 fiscal years (§33020.5), the legislative characterization of the SERAF payments as indebtedness incurred to finance redevelopment (§§ 33690, subd. (e), 33690.5, subd. (e)), or the legislative findings supporting this definition and characterization in section 1 of AB 26. No

language in section 16 restricts the Legislature's definitional discretion, and no case law has constrained the Legislature's past expansive exercise of that discretion to control and direct RDAs' use of tax increment by, for example, requiring RDAs to annually set aside 20 percent of their tax increment for low-and moderate-income housing, to allocate or pass through specified percentages of their tax increment to local taxing agencies affected by redevelopment plans, to limit the duration and amount of tax increment used, or to pay the administrative costs of county auditor-controllers in allocating tax increment revenues to RDAs. (See *Community Redevelopment Agency v. County of Los Angeles* (2001) 89 Cal.App.4th 719, 729.) Nothing in section 16 insulates the RDAs from such legislative requirements that control and direct the RDAs' use of tax increment financing to further the purposes of the CRL in eliminating conditions of physical and economic blight in urban neighborhoods.[6]

Thus, even though the RDAs' use of tax increment to maintain the educational programs and operations of school districts serving residents of redevelopment areas or housing assisted by RDAs may expand the previous legislatively defined scope of indebtedness incurred by RDAs to finance redevelopment, AB 26 does not violate section 16. The findings in section 1 of AB 26 delineate a reasonable basis in fact and logic relating the achievement of economic and residential redevelopment objectives to the use of RDAs' SERAF payments to maintain adequate school programs that attract residents, support new businesses and generate employment in redevelopment areas.

That the SERAF payments exceed the pass-through payments made by RDAs to school districts and other affected taxing entities under section 33607.5 does not invalidate the

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[6] *Marek v. Napa Community Redevelopment Agency* (1978) 46 Cal.3d 1070 is not to the contrary. In *Marek*, a county auditor refused to recognize an RDA's executory contractual obligations as indebtedness payable under section 16 with tax increment revenues; the court concluded that indebtedness under section 16 included the RDA's executory obligations and that the auditor was required to pay the RDA tax increment for such indebtedness, a result consistent with the intent of section 16 to provide a reliable source of funds to pay all indebtedness incurred in the process of redevelopment. (*Id.* at p. 1082, 1087.) The court in *Marek* had no occasion to consider whether "indebtedness" within the meaning and intent of section 16 properly includes requirements for the use of tax increment revenues imposed on RDAs by the Legislature pursuant to its authority under section 16, including such requirements that RDAs set aside tax increment for low- and moderate housing, make payments of tax increment to agencies burdened by redevelopment projects, or incur indebtedness payable with tax increment revenues for payments to their county SERAFs. The court in Marek did not hold that an RDA is entitled to all tax increment, free of legislative control and direction consistent with redevelopment objectives, until all its bondholders and creditors are paid.

payments as indebtedness incurred to finance redevelopment. Although section 33607.5 specifies that the pass-through payments are the exclusive payments RDAs are required to make to affected taxing entities, the Legislature is not limited by section 33607.5 from enacting a statute requiring RDAs to make SERAF payments. The Legislature has plenary authority, restricted only by express constitutional limitations, to enact laws which amend, repeal or otherwise depart from laws previously enacted. (See *County Mobilehome Positive Action Com., Inc. v. County of San Diego* (1998) 62 Cal.App.4th 727, 736-739, citing *County of Sacramento v. Lackner* (1979) 97 Cal.App.3d 576, 589-590, and *United Milk Producers v. Cecil* (1941) 47 Cal. App. 2d 758, 764-765 (holding that every legislative body may modify or abolish the acts passed by itself or its predecessors).)

That the payments may also assist the Legislature in meeting state general fund obligations under Proposition 98 and other programs in the midst of a state budgetary crisis does not negate the propriety of the RDAs' SERAF payments as a form of indebtedness incurred to finance redevelopment. As long as the SERAF payments are reasonably related to the achievement of CRL redevelopment purposes -- as they are here -- they may properly be found by the Legislature to benefit redevelopment project areas; the Legislature may simultaneously treat the payments as a form of indebtedness to finance redevelopment and as allocated proceeds of taxes for Proposition 98 computation purposes; and the Legislature may direct equivalent amounts of the property tax allocations of school districts receiving SERAF payments to SRAFs for the reimbursement of state-funded services.

No Impairment of Contracts

The redevelopment petitioners contend the SERAF payments required by AB 26 substantially impairs the irrevocable pledges of tax increment revenues securing repayment of bonds and other debt issued by RDAs to finance redevelopment pursuant to section 16, in violation of the prohibition on the impairment of contractual obligations under section 9 of article I of the California Constitution and section 10 of article I of the United States Constitution. This contention fails because petitioners have made no showing that AB 26 will inevitably impair or has impaired the irrevocable pledges of tax increment securing repayment of

redevelopment debt. (See *Amador Valley Joint Union High Sch. Dist. v State Bd. Of Equalization, supra*, 22 Cal.3d 208, 238-243, distinguishing *United States Trust Co. v. New Jersey* (1977) 431 U.S. 1, 24, and *Allied Structural Steel Co. v. Spannaus* (1978) 438 U.S. 234, 244; *San Miguel Consolidated Fire Protection Dist. v. Davis* (1994) 25 Cal.App.4th 1499, 150-151.)

Petitioners' contention disregards the substantial protections in AB 26 against impairment of existing contractual obligations of the RDAs. In particular, SERAF payments are subordinated to the lien of any pledge of collateral securing payment of the principal or interest on any bonds of the RDAs, including bonds secured by a pledge of tax increment. (§§ 33690, subd. (a)(3), 33690.5, subd. (a)(3).) The SERAF payments are deemed to be indebtedness repayable with tax increment funds. (§§ 33690, subd. (e), 33690.5, subd. (e).) If an RDA fails to pay the full amount of its SERAF payment and is prohibited from issuing new bonds and other obligations pursuant to subdivision (e) of section 33691, the RDA may nonetheless expend funds to pay contractual obligations that could subject the RDA to damages or other liabilities if breached and to pay indebtedness incurred pursuant to sections 33334.2, 33401 or 33445. And, the limits on the duration and amount of tax increment revenues allocations can be extended in certain circumstances. (§§ 3331.5, 33688, subd. (c).)

Petitioners' contention also disregards the variety of options provided in AB 26 to enable RDAs to make their SERAF payments and thereby avoid default. An RDA can borrow from a joint powers entity pursuant to 33688, borrow from its low- and moderate income housing fund pursuant to section 33334.2, or arrange for payment by its legislative body pursuant to subdivision (d) of 33691 or 33692.

Lastly, petitioners ignore the ability of RDAs to make their SERAF payments using any funds that are legally available and not legally obligated for other uses pursuant to subdivision (b) of sections 33690 and 33690.5. Although tax increment revenues may comprise the major portion of an RDA's funds, the Controller's Community Redevelopment Agencies Annual Reports for the fiscal years ended June 30, 2007 and June 30, 2008, indicate substantial amounts of unreserved undesignated fund balances, i.e., funds that are unencumbered and

available to finance redevelopment program expenditures for the fiscal period. (See Redevelopment Petitioners' Request for Judicial Notice in Support of Petition for Writ of Mandate and Complaint, Exhibit 22, pp. vi, vii; Respondent-Defendant Genest's Request for Judicial Notice, Exhibit A, pp, vi, vii.) Such funds may assist in making the SERAF payments and rendering any impairment of contract far less than inevitable.

Proposition 1A

Proposition 1A, adopted by the voters in November 2004, added section 25.5 of article XIII to the California Constitution. Among other things, Proposition prohibits the Legislature from modifying the statutes allocating the total property tax revenues in a county among all of the local agencies in that county below the share they would be allocated under the statutes in effect on November 3, 2004. This prohibition may be suspended beginning with the 2008-2009 fiscal year under specified circumstances, including repayment with interest within three years of any revenues lost.

During the special session at which AB 26 was enacted, the Legislature enacted AB 14 and AB 15 to suspend Proposition 1A. (Stats. 2009, 4th Ex. Sess., chs. 13, 14, enacting Rev & Tax. Code §§ 100.05, 100.06.) The suspension diverted eight percent of the total property tax revenues received by cities, counties and special districts in 2008-2009 and redirected the revenues to a SRAF in each county to be used to reimburse the state for the costs of state-funded services provided in each county.

Both redevelopment petitioners and county petitioners contend that AB 26 violates Proposition 1A by permitting the legislative body of an RDA to extend, by one year, the time limits for the repayment of indebtedness with tax increment funds when the RDA has paid the full amount of its SERAF obligation under section 33690 or 33690.5. (§§ 33333.1) According to petitioners, the extension will divert tax increment revenues to the RDA from a local taxing agency for an additional year, thereby delaying and reducing the local agency's share of real property taxes.

Petitioners' contention fails primarily because an RDA is not a local agency covered by Proposition 1A and lacks any taxing authority. (See Cal. Const., art. XIII, § 25.5, subd. (b).;

Rev. & Tax. Code § 95.) In addition, the significance of any delay attributable to the one-year extension available under section 33333.1 to the legislative body of an RDA fully paying its SERAF obligation is uncertain. The one-year extension rests within the discretion of the legislative body; other discretionary extensions of redevelopment time limits are integral to the redevelopment process (33333.2); and extensions are spread over a period of several decades.

Proposition 13

Proposition 13, adopted by the voters in June 1978, added article XIII A to the California Constitution. Subdivision (a) of section 1 of article XIII A limits the tax rate applicable to real property to one percent of the full cash value of the property. The tax is collected by the counties and apportioned according to law among local agencies within the counties. In *Amador Valley Joint Union High Sch. Dist. v State Bd. Of Equalization* (1978) 22 Cal.3d 208, 225-227, the California Supreme Court determined that article XIII A preserves home rule and local autonomy with respect to the allocation and expenditure of real property tax revenues; it does not empower the Legislature to direct or control local budgetary decisions or program or service priorities.

The county petitioners contend that, when AB 26 directs school district allocations of real property taxes to SRAFs for the purpose of reimbursing the state for a portion of state-funded services and costs, AB 26 violates the requirement of Proposition 13, that locally levied property taxes be apportioned to and controlled by local agencies within the counties.

Petitioners' contention confuses the Proposition 1A suspension described above with the legislative implementation of Proposition 13. The suspension borrows an amount of property tax revenues equal to eight percent of the total property tax revenues received by cities, counties and special districts in 2008-2009, diverts the revenues to county SRAFs to reimburse the state for a portion of state services provided within each county, and schedules repayment of the suspension amounts with interest by June 30,2013. (See Rev. & Tax. Code § 100.06.) At no time does the Legislature seek to direct or control local budgetary decisions in the process of allocating real property taxes among local public entities.

Proposition 4

Proposition 4, adopted by the voters in November 1979, added Article XIII B to the California Constitution. Article XIII B establishes an annual appropriation or spending limit for state and local governments. Pursuant to section 33678, tax increment financing of redevelopment by RDAs pursuant to section 16 is not subject to the spending limit. (See *Bell Community Redevelopment Agency v. Woosley* (1985) 169 Cal.App.3d 24, 31-34; *Brown v. Community Redevelopment Agency* (1985) 168 Cal.App.3d 1014, 1016-1017.)

Redevelopment petitioners contend that AB 26 violates the spending limit of Article XIII B. In petitioners' view, the SERAF payments required by AB 26 primarily benefit the state or students funded by the payments, not redevelopment project areas, and thus are not redevelopment activity exempt under section 33678 from the Article XIII B spending limit.

Petitioners' contention is premised on a rejection of the legislative findings in section 1 of AB 26, that payments by RDAs to maintain adequate school programs and operations in redevelopment project areas is critical to the achievement of CRL objectives and benefits the project areas. As discussed above, these legislative findings are reasonable in fact and logic and must be credited by the court. Accordingly, petitioners' Article XIII B contention is rejected.

Equal protection

Serrano v. Priest, (1971) 5 Cal.3d 584, 614-615, and (1977) 18 Cal.3d 728, 768-769, determined that the disparities in local property tax-based funding of education in California resulted in unequal educational opportunity. To ameliorate these disparities, the Legislature enacted statutory procedures to equalize school district budgets. (See Ed. Code §42238 et seq.)

The redevelopment petitioners contend that AB 26 structures the distribution and use of SERAF payments by recipient school districts and county offices of education in a manner that will result in funding disparities and unequal educational opportunity. Petitioners point specifically to subdivision (j)(5) of sections 33690 and 33690.5, which provides: "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." According to petitioners, this provision permits the use of the SERAF funds to educate only these individual pupils, a relatively small group; the provision precludes the use of SERAF funds for other pupils in the district; and the resulting disparities in per pupil funding are exacerbated by a reduction of the district's property tax revenues pursuant to subdivision (k)(1) of sections 33690 and 33690.5 in an amount equivalent to the amount of the SERAF funds.

Petitioners' literal reading of subdivision (j)(5) gives the statutory provision a significance that does not comport with its purpose and that is inconsistent with other provisions of AB 26. "The meaning of a statute may not be determined from a single word or sentence; the words must be construed in context, and provisions relating to the same subject matter must be harmonized to the extent possible. [Citation.] Literal construction should not prevail if it is contrary to the legislative intent apparent in the statute. The intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act. [Citations.] An interpretation that renders related provisions nugatory must be avoided [citation]; each sentence must be read not in isolation but in the light of the statutory scheme [citation]; and if a statute is amenable to two alternative interpretations, the one that leads to the more reasonable result will be followed [citation.]." (*Lungren v. Deukmejian* (1988) 45 Cal. 3d 727, 735.)

A review of the findings in section 1 of AB 26 and the other provisions of AB 26 reveals a clear legislative intent to financially support adequate schools to serve students who live within redevelopment project areas and housing assisted by RDAs. AB 26 focuses on the adequacy of school programs and operations, not on individual students attending the schools. The language of subdivision (j)(5) is reasonably susceptible to a construction consistent with this legislative intent and focus on school programs and operations; the more literal reading of subdivision (j)(5) is incompatible with the legislative intent and focus. And a construction of subdivision (j)(5) focusing on financial support for school operations instead of individual students avoids much of the disparities in per pupil funding resulting from petitioners' construction of subdivision (j)(5).

Further, subdivision (j)(5) must be read in the context of the highly complex and ongoing computations conducted pursuant to Education Code section 42238 et seq. to equalize

funding and educational opportunity for students throughout California. This ongoing process can be expected to police and largely eliminate funding inequalities with respect to schools receiving SERAF funds.

Proposition 98

Proposition 98, adopted by the voters in November 1988, amended section 8 of article XVI of the California Constitution. Proposition 98 establishes a minimum level of state funding for public schools. Subdivision (b) of section 8 of article XVI provides: "Commencing with the 1990-91 fiscal year, the moneys to be applied by the state for the support of school districts and community college districts shall be not less than the greater of the following [three] amounts. . . . "

The redevelopment petitioners contend that SERAF funds under AB 26 cannot, as intended, lawfully offset the state's Proposition 98 funding obligations "for the support of school districts." Petitioners reiterate their interpretation of subdivision (j)(5) of sections 33690 and 33690.5, that SERAF funds may be used only to educate pupils living in redevelopment areas or in housing supported by RDAs and may not be used "for the support school districts." Petitioners also point to subdivision (k)(2) of sections 33690 and 33690.5, deeming the SERAF funds to be "allocated local proceeds of taxes" under Education Code sections 4102 and 42238 for purposes of Proposition 98 computations.

As explained above with respect to *Serrano* equal educational funding requirements, petitioners inappropriately construe subdivision (j)(5), ignoring the legislative intent and other provisions of AB 26 which focus on the support of schools, not individual students. Contrary to petitioners' contention, subdivision (j) (5) does not restrict the use of SERAF funds to individual students living in redevelopment project areas and RDA-assisted housing.

Gift of Public Funds

The redevelopment petitioners contend that the SERAF payments violate section 6 of article XVI of the California Constitution, which prohibits gifts of public funds. According to petitioners, the RDAs' SERAF payments reduce the state's Proposition 98 obligation to provide a minimum level of funding for schools without benefiting the RDAs or their redevelopment

projects. Petitioners argue that this transfer of public funds violates section 6 of article XVI because the transfer serves, not the purposes of the transferring RDAs, but the differing purposes of the recipient state and schools.

Contrary to petitioners' contention, the SERAF payments serve a public purpose: by helping to support schools operating within RDAs' project areas, the payments have been found by the Legislature to benefit redevelopment of the project areas in accordance with CRL objectives. (See AB 26, § 1.) By serving this public purpose, the SERAF payments do not constitute a gift of public funds. (See *White v. State of California* (2001)88 Cal.App.4th 298, 311-312, quoting *County of Alameda v. Carlson* (1971) 5 Cal.3d 730, 746.)

Special Fund Doctrine

Pursuant to subdivision (b) of section 16, tax increment revenues must be allocated to and paid into a special fund of an RDA to pay the principal of and interest on loans, moneys advanced to, or indebtedness (whether funded, refunded, assumed or otherwise) incurred by the RDA to finance or refinance, in whole or in part, the redevelopment project. Petitioners contend that, under the special fund doctrine, the Legislature may not divert tax increment revenues deposited in the special fund for any purpose other than the purpose of the special fund, to secure payment of indebtedness incurred by the RDA to finance redevelopment. In petitioners' view, the use of tax increment for SERAF payments violates the special fund doctrine and jeopardizes a secure source of financing for redevelopment.

To the extent RDAs make SERAF payments partially or entirely with tax increment revenues, no violation of the special fund doctrine could be expected to occur. As set forth in subdivision (f) of section 33690, the Legislature intends that tax increment be used for SERAF payments to assist in the financing of community redevelopment project pursuant to section 16. Tax increment would not be used for a purpose unrelated to redevelopment or its financing.

CONCLUSION

For the foregoing reasons, the petitions are denied.

Petitioners' request for a stay of a transfer of funds on May 10, 2010, by RDAs to county auditor-controllers pursuant to AB 26 is denied.

Counsel for Respondents shall prepare a proposed judgment consistent with this ruling, serve it on petitioners for approval as to form, and then submit it to the court for review and entry.

Dated: May 4, 2010

LLOYD G. CONNELLY
JUDGE OF THE SUPERIOR COURT

CERTIFICATE OF SERVICE BY MAILING
(C.C.P. Sec. 1013a(4))

I, the undersigned deputy clerk of the Superior Court of California, County of Sacramento, do declare under penalty of perjury that I did this date place a copy of the above entitled notice in envelopes addressed to each of the parties, or their counsel of record as stated below, with sufficient postage affixed thereto and deposited the same in the United States Post Office at 720 Ninth Street, Sacramento, California.

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Superior Court of California,
County of Sacramento

Dated: May 4, 2010

By: C. BEEBOUT, Deputy Clerk

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