



BEST BEST & KRIEGER
ATTORNEYS AT LAW

Indian Wells
(760) 568-2611

Irvine
(949) 263-2600

Los Angeles
(213) 617-8100

Ontario
(909) 989-8584

3750 University Avenue, Suite 400, P.O. Box 1028, Riverside, CA 92502
Phone: (951) 686-1450 | Fax: (951) 686-3083 | www.bbklaw.com

Sacramento
(916) 325-4000

San Diego
(619) 525-1300

Walnut Creek
(925) 977-3300

Washington, DC
(202) 785-0600

Kim A. Byrens
(951) 826-8273
kim.byrens@bbklaw.com

Memorandum

ABx1 26 Bonds and Financing Issues

January 31, 2012

Issue 1: Bond debt service payments and other cash flow issues for payment of obligations. Many agencies have semi-annual payment schedules, and agencies that have variable rate debt, have monthly payment schedules. Many cities have comingled the funds in a single investment pool, and then advance funds from the pool to make debt service payments. The comingled pool is then reimbursed from tax increment. What are the implications from ABx1 26?

Discussion: ABx1 26 requires the auditor controllers to remit payments to the successor agencies for the payment of enforceable obligations on January 16, 2012 and June 1, 2012. The *Matasantos* decision delayed the initial remittance of funds to May 16, 2012.

The Department of Finance, however, has made a recommendation to counties that all bond payments should be paid in accordance with the bond covenants. The recommendation is that the successor agencies and the counties work together to meet the timely payment of debt service.

One problem point is that the successor agency is not allowed to accumulate surplus funds or reserve, although the law allows the maintenance of payment and reserve funds pledged to the repayment of bonds.

The entire year's debt service schedule should be listed in the EOPS and ROPS to ensure funds are available to pay annual debt service.

There is a limitation on enforceable obligations in that they don't include obligations to the agency that formed the RDA. The past practice of advancing funds by the city from comingled funds, and then getting reimbursed from tax increment, should be avoided.

Issue 2: Alteration in rights to receive bond payments. Do the provisions of ABx1 26 alter the priority of payments for bond issues?

Discussion: This issue arises when the agency has several issues of bonds which are secured by different project areas or are secured by splitting the increment into various components such as Low and Moderate Income Housing Pledge, a senior pledge on 80% money and a subordinate pledge on 80% money.



BEST BEST & KRIEGER
ATTORNEYS AT LAW

The allocation of funds is to be conducted annually by the auditor controller's office. Under 34182(c) the auditor-controller, using the values on the August 20 equalized roll, determines the amount that would have been allocated to the RDA had the RDA not been dissolved. That amount is deposited into the Redevelopment Property Tax Trust Fund, and used for the payment of the enforceable obligations. Under Section 34183, the county takes its administrative expenses, withholds payments under pass-through agreements and statutory pass throughs, and remits the amounts needed for ROPS (for six month fiscal period, although there are recommendations from everyone to include more than 6 months' of ROPS on the schedule) in order of priority as follows:

1. Bonded debt service;
2. Revenue bond pledges where tax increment needed to supplement the revenue pledge;
3. Other ROPS payable from tax increment;
4. Administrative costs; and
5. Remaining funds go to local agencies.

Within the pledge for payment of debt service the successor agency should honor the covenants of the bond documents for the pledge of increment. That is to say, the hierarchy of funds would be (1) housing funds; (2) the senior pledge of 80% money; and (3) subordinate pledge of 80%.

This is based on the Department of Finance guidance statement that revenue pledges are to be honored (Section 34175(a)). "In order to maintain the pledges, it may be necessary to continue to segregate the revenues received attributable to each project area as has been done in the past. It is recommended that the county auditor-controller and the successor agency coordinate efforts to create subaccounts in order to comply with bond covenants applicable to each project area. Maintaining subaccounts (in the similar fashion as done under prior law) will facilitate a successor agency's ability to set aside the required specific revenues for each bond payment and make payments from those specific revenues first, if and as required by the bond obligations."

On the other hand, bond covenants can require that no excess funds may be released from the lien of the indenture until all bond payments are made. Section 34169(f) provides that all reasonable steps should be taken to avoid a default.

**Issue 3: Do unencumbered bond funds go to Auditor Controller?
What happens to bond financed property?**

Discussion: Under Section 34177(d) all unencumbered funds balances are to be remitted to the county. Section 34169(b) requires successor agencies to perform obligations



BEST BEST & KRIEGER
ATTORNEYS AT LAW

required pursuant to any enforceable obligations, including, but not limited to, observing covenants for continuing disclosure obligations and those aimed at preserving the tax-exempt status of the interest payable on any outstanding agency bonds.

The Department of Finance acknowledges that, “specific situations involving bonds that have been sold but for which the specific things to be done with the bond proceeds are not obligated through contracts for performance will have to be reviewed to see if obligations to bond holders require such contracts to be made by successor agencies or whether bonds must be defeased.” Look to covenants as to use of proceeds in the indenture and any description of the project in the official statement.

Bond financed property is subject to limitations on use. Look to the indenture to determine if there are limitations on the sale or other use of the property.

Issue 4: Preparation of annual reports and audits – compliance with Rule 15c2-12.

Discussion: Continuing disclosure obligations should be observed, which will include the preparation of audits and other tabular or project information. Questions remain as to the entity that would be audited, and the nature of the annual audit (particularly in 2012). Then there is the reality of obtaining the relevant information, and the entity that is responsible for compelling and providing that information. In theory, the county has the information as to the incremental value, and the remaining information requested will need to be derived from that.

Issue 5: Joint Powers Authorities with RDA as a member, are they usable?

Discussion: Section 34178(b)(3) provides that joint exercise of powers agreements are valid and binding on the successor agency for joint powers agreements where a redevelopment agency is a member of a joint powers authority. The limitation is that the successor agency’s rights, duties and performance obligations under the joint exercise of powers agreement are limited by the constraints imposed on successor agencies by ABx1 26.

Thus, as long as the successor agency isn’t amending or acting in some capacity under the JPA, or disposing of RDA assets, then the JPA should continue to operate as it always had without oversight. **Provided, however,** that each JPA should be reviewed. There are certain circumstances under which a former redevelopment agency might be engaged as more than a benign member.

Issue 6: Can the successor entity issue refunding bonds?

Discussion: Section 34180(b) provides that the successor entity can issue, with the approval of the oversight board, the refunding of bonds or other debt of the former redevelopment agency in order to provide for savings, or to finance debt service spikes. However, no additional debt may be created and debt service may not be accelerated.



BEST BEST & KRIEGER
ATTORNEYS AT LAW

ABx1 26 does not explain what the security for the refunding obligations would be. Clean-up legislation is needed to describe the nature of a refunding obligation. For example, who is the issuer? What is the source of funds for repayment? Can costs of issuance be paid from proceeds? Can the maturity be extended (with or without consent)? Can the successor agency extend or renew liquidity or other bond security contracts which expire in the middle of the term of the bonds?