Date of Hearing: June 23, 2021

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
SB 734 (Hueso) – As Amended March 10, 2021

SENATE VOTE: 40-0

SUBJECT: Redevelopment agencies: passthrough agreements: modification.

SUMMARY: Allows local agencies to modify specified redevelopment passthrough agreements. Specifically, **this bill**:

1) Allows a successor agency and one or more taxing entities to enter into an agreement to modify the interest owed under a passthrough agreement that was entered into before January 1, 1994.

2) Requires an agreement entered into pursuant to this bill to be comply with the following:

   a) The agreement shall reduce the interest rate for any passthrough agreement to 0%.

   b) The term of agreement that is modified shall not exceed 40 years.

   c) The agreement may provide for the forgiveness of up to 25% of the outstanding principal amount of deferred passthrough payment owed by the former redevelopment agency (RDA) to the taxing entity under the passthrough agreement.

3) States that a taxing entity benefiting from a modification of a passthrough agreement is not liable to pay any amount under the passthrough agreement in excess of the amount provided under the agreement modified in accordance with this bill.

4) Declares that allowing for a modification of passthrough payments does not constitute a gift of public funds within the meaning of Section 6 of Article 16 of the California Constitution as the action serves a public purpose.

EXISTING LAW:

1) Requires successor agencies to dispose of former RDA assets, at an oversight board's direction, pursuant to specific statutory requirements.

2) Requires successor agencies to make any payments related to enforceable obligations, as specified in an adopted recognized obligation payment schedule (ROPS), and remit unencumbered balances of RDA funds to the county auditor-controller for distribution to local taxing entities in the county.

3) Requires the Department of Finance (DOF) to provide a successor agency with a "finding of completion" after the agency remits specified RDA property tax allocations and unencumbered cash assets to the county auditor-controller through a due diligence process.

4) Requires the county auditor-controller, upon receipt of property tax revenue, to distribute funds as specified.

FISCAL EFFECT: None.

COMMENTS:

1) **Bill Summary and Author's Statement.** This bill requires that passthrough payment calculations take into account any modifications agreed to by the successor agency and one or more taxing entities for passthrough payments where payments were deferred with interest. Such an agreement must make the interest rate 0%, and cannot be for longer than 40 years. This bill allows an agreement to forgive up to 25% of the outstanding principal amount.

   According to the author, "Senate Bill 734 seeks to provide relief to many of California's financially limited communities that are currently financially obligated to remit property taxes, sales taxes, or other local revenue sources toward repayment of compounding and decades-old deferral obligations. Without this bill, the required statutory authority is absent and counties are hindered in their ability to restructure or provide relief from exorbitant debt to municipalities. This statutory authority is much needed to help alleviate municipalities from these unconsciously high decades-old obligations that in some cases has spiraled to 100 and 200%."

2) **Redevelopment Agencies.** From the early 1950s until the state dissolved them in 2011, RDAs used property tax increment financing to pay for economic development projects in blighted areas. Generally, property tax increment financing involves a city or county forming a tax increment financing district to issue bonds and use the bond proceeds to pay project costs within the boundaries of a specified project area. To repay the bonds, the district captures increased property tax revenues generated when projects financed by the bonds increase assessed property values within the project area.

   To calculate the increased property tax revenues captured by the district, the amount of property tax revenues obtained by any local agency that receives a share of property tax revenues from property within a project area is "frozen" at the amount it received from that property prior to the project area's formation. In future years, as the project area's assessed valuation grows above the frozen base, the resulting additional property tax revenues—the increment—flows to the tax increment financing district instead of other local agencies. After the bonds have been fully repaid, the district is dissolved, ending the diversion of tax increment revenues from participating local agencies. Property tax revenues then flow back to each local agency that receives a share of the property tax.

   Citing a significant State General Fund deficit, Governor Brown's 2011-12 budget proposed eliminating RDAs and returning billions of dollars of property tax revenues to schools, cities, and counties to fund core services. Among the statutory changes that the Legislature adopted to implement the 2011-12 budget, AB X1 26 (Blumenfield) Chapter 11, Statutes of 2011 dissolved all RDAs. Following the resolution of legal challenges, RDAs dissolved on February 1, 2012. At the time of dissolution, over 400 RDAs statewide were diverting 12% of property taxes, over $5.6 billion yearly.

3) **RDA Dissolution.** AB X1 26 (2011) established successor agencies to manage the process of unwinding former RDA affairs. With the exception of seven cities, the city or county that created each former RDA now serves as that RDA's successor agency.

One of a successor agency's primary responsibilities is to make payments for the enforceable obligations RDAs entered into. These payments are supported by property tax revenues that would have gone to RDAs, but are instead deposited in a Redevelopment Property Tax Trust Fund (RPTTF). Enforceable obligations include bonds, bond-related payments, some loans, payments required by the federal government, obligations to the state or imposed by state law, payments to RDA employees, judgements or settlements, and other legally binding and enforceable agreements or contracts. Any remaining property tax revenues that exceed these enforceable obligations return to cities, counties, special districts, and school and community college districts to support core services. The amount that these taxing entities receive increases as the successor agency pays off these enforceable obligations. If a successor agency adds additional enforceable obligations, the slower this stream of property tax revenue returns to these taxing entities.

Each successor agency has an oversight board responsible for supervising and approving its actions. The oversight board includes one member of the legislative body from each type of taxing entity, including the county, city, special districts, schools, and community colleges. Additionally, the county board of supervisors appoints a public member, and the mayor or board of supervisors appoints one member to represent RDA employees.

The DOF can review and request reconsideration of an oversight board's decision. Once a successor agency takes over for an RDA, it reviews the RDA's outstanding assets and obligations and develops a plan to resolve those obligations, also known as a ROPS. To obtain required DOF approval, a successor agency submits a series of ROPS to DOF. If DOF agrees with the plan, it issues a Finding of Completion. DOF continues to review ROPS twice per year, and approves the payment amounts for each item listed on the ROPS. If the successor agency and DOF disagree, they can enter a meet and confer process to resolve any disputes.

4) **County Auditor-Controller Order of Operations.** Dissolution law outlines a specific series of steps for county auditor-controllers to figure how much property tax revenue it must allocate to the successor agency and the specific priority for which obligations are repaid first. Upon receipt of the property tax revenue collected within the former RDA's areas, the auditor-controller goes through the following steps in order:

   a) Deducts its administrative costs.

   b) Remits the amount that each taxing entity would have received as RDA law read on January 1, 2011, or pursuant to any passthrough agreement entered into before January 1, 1994, as though the requirement to set aside funds for the Low and Moderate Income Housing Fund was still in effect.

   c) Determines whether revenue is attributable to additional ad valorem property tax rates voters approved for pension programs or the State Water Project, and allocates funds for that purpose unless they are pledged to pay off RDA debt.

   d) Allocates funds to the successor agency for ROPS payments in the following order:

      i) Debt service payments for tax allocation bonds.

ii) Revenue bond payments only if the successor agency's tax increment revenues were also pledged for their repayment.

iii) Payments for other ROPS debts and obligations.

iv) Successor agency administrative cost allowance.

v) Local taxing entities, except for funds attributable to voter approved property tax rates in excess of 1% in support of pension programs and State Water Project, which goes to the agencies that approved the increase.

5) **Passthrough Agreements.** Before 1994, some RDAs negotiated passthrough agreements to help compensate other taxing entities for their diverted property tax revenue. These passthrough agreements varied based on: (1) the principal amount passed on to the taxing entity, (2) whether the agreement included interest payments, and (3) the length of the agreement. These negotiated passthrough agreements had a profound impact on state and local budgets because they diverted property tax revenue from other taxing entities, including school districts. When the Legislature enacted the Community Redevelopment Law Reform Act [AB 1290 (Isenberg) Chapter 942 Statutes of 1993), these negotiated passthrough agreements were estimated to cost the State General Fund $1 billion annually because of their impact on schools.

For example, in 1990 the City of Huntington Park in Los Angeles County negotiated passthrough agreements with the County of Los Angeles and the Consolidated Fire Protection District of Los Angeles County. Under this agreement, 48.9% of the RDA's revenue passed through to the County and 15.5% to the fire protection district. The RDA used the remaining 35.6%. The agreements also included provisions for the county to loan the RDA parts of its passthrough necessary to comply with existing developer agreements. These loans accrued interest at 7% compounded annually. As of 2019, the City of Huntington Park has $216 million in outstanding principal and interest payments.

AB 1290 allowed existing passthrough agreements to continue, but replaced these negotiated agreements for new RDAs, or RDAs amended after the law went into effect, with a statewide formula to passthrough a set percentage to all affected taxing entities. Under this formula, after complying with required deposits to the Low and Moderate Income Housing Fund:

a) Starting with the first year, the RDA must pay affected taxing entities an amount equal to 25% of the tax increment the RDA receives.

b) Starting with the 11^{th} year, in addition to the first allocation, the RDA must pay affected taxing entities an amount equal to 21% of the tax increment the RDA receives.

c) Starting with the 31^{st} year, in addition to the first two allocations, the RDA must pay affected taxing entities an amount equal to 14% of the tax increment the RDA receives.

When passthrough is paid off, property tax revenue that was going to satisfy the conditions of the passthrough agreement can instead return to all taxing entities based on their proportional share of property tax revenue.

6) **Renegotiating Debts.** AB X1 26 created successor agencies to unwind RDA obligations so that property tax revenues previously going to RDAs flow back to the local agencies generating the revenue. There is currently no mechanism for successor agencies and the recipients of passthrough payments to renegotiate the terms of the debt owed. The cities in support of this legislation note that the dissolution of RDAs saddled numerous cities in Los Angeles County with exorbitant debts associated with previous passthrough agreements. In several cases, the interest owed is more than double the principal debt.

7) **Policy Considerations**. The Committee may wish to consider the following:

   a) **What is the Incentive**? SB 734 would create a process to negotiate lower principal and interest payments for these pre-1994 agreements. Successfully renegotiating these agreements would allow more property tax revenue to flow to the successor agency, pay off enforceable obligations, and speed up the dissolution process, which could benefit the state and other local governments. However, it is unclear why any recipient of a passthrough payment would agree to these reduced terms. Under this bill, a county could agree to reduce the interest rate on debt to 0% and forgive 25% of outstanding principal of a passthrough agreement with the successor agency. There is no clear incentive for a county to do this. Counties, like cities, are obligated to provide services to, and to act in the best interest of, their residents. It is unclear why a county that faces its own financial obligations would use this bill to renegotiate the terms of a passthrough agreement and forfeit potential revenue from debts owed to the county.

   b) **Gift of Public Funds**? Section 6 of Article 16 of the California Constitution prohibits the Legislature from making a gift of public funds. Although this bill states legislative intent that it does not constitute a gift of public funds because it serves a public purpose, it is unclear whether it could nevertheless be construed to be a gift of public funds by applying its provisions retroactively to pre-1994 passthrough agreements.

8) **Related Legislation**. AB 832 (Bloom) transfers all land use related plans and functions of the form RDA in the City of Los Angeles to the City of Los Angeles, and deems that the land use authority of the city's general plan and any other adopted land use documents would apply instead of the redevelopment plan. AB 832 is on the Assembly Inactive File.

   SB 438 (Laird) makes specified loan agreements between the City of Atascadero and its former RDA enforceable obligations. SB 438 is pending in the Assembly Housing and Community Development Committee.

9) **Arguments in Support.** The City of Huntington Park writes in support, "SB 734 provides problem solving options that local governments can turn to for the purpose of restructuring debt and authorizing a successor agency and one or more taxing agencies to enter into an agreement to modify the interest owed by a former RDA under a pass- through agreement that was entered into before January 1, 1994 and limits the interest to 0%. Additionally, this bill authorizes a successor agency and one or more taxing agencies to enter into an agreement to modify a pass-through agreement under this bill's provisions for the purpose of financial relief from the principal amount of outstanding deferred passthrough payment owed by the former RDA to a taxing entity. This bill would provide relief to underprivileged communities that pledged property taxes, sales taxes, or other local revenue sources toward repayment of these compounding and decades-old deferral obligations."

10) **Arguments in Opposition.** None on file.

11) **Double-Referral.** This bill is double-referred to the Housing and Community Development Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

City of Huntington Park
City of Pico Rivera

Opposition

None on file.

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