



Meeting Date: 01 / 27 / 09

ACTION	TYPE OF ITEM
<input type="checkbox"/> Approved Recommendation	<input type="checkbox"/> Info/Consent
<input type="checkbox"/> Ord. Not(s). _____	<input checked="" type="checkbox"/> Report
<input type="checkbox"/> Res. Not(s). _____	<input type="checkbox"/> Public Hearing (Info/consent)
<input type="checkbox"/> Other _____	<input type="checkbox"/> Other

Prepared By: Kymerly Horner KH Agenda Item No. 0-2

Reviewed By: City Manager MMH City Attorney VA Finance JL Other NA

DATE: January 13, 2009

TO: Community Development Commission

FROM: Curtis P. Cannon, Community Development Director Curtis P. Cannon

SUBJECT: **AB 1389 Statutory Pass-Through Payments**

RECOMMENDATION

That the Community Development Commission ("CDC"):

1. Approve a special budget appropriation in the amount of \$699,259 from the Central City Project Area ("CCRP") Project Area fund balance, \$119,925, from the Downtown Renewal ("R-108") Project Area fund Balance, \$354,966 from the Southwinds Project Area fund balance and \$15,272 from the Ormond Beach Project Area fund balance.
2. Authorize the Community Development Director to pay outstanding pass-through payments within the amounts appropriated to the respective CDC project areas, that are determined by the Community Development Director to be owed to taxing entities during the period July 1, 2003 to June 30, 2008.
3. Authorize the Community Development Director to transmit a letter to the State Controller, formally requesting an extension of the February 1, 2009 AB 1389 deadline regarding compliance with AB 1389 requirements.

DISCUSSION

The Governor's Budget Proposal for fiscal year 2008-09 was first submitted to the legislature in January 2008. At that time, a fiscal emergency was proclaimed to prompt swift action by the legislature to close a \$3.3 billion cash flow shortage in the 2007-08 fiscal year as well as address a \$14.5 billion gap in fiscal year 2008-09. The Legislature passed a series of reductions to resolve the 2007-08 cash flow issue. However, disputes between lawmakers on how to resolve the current year shortfall led to the longest budget stalemate in recent years.

AB 1389 is one of many trailer bills resulting from the State's "budgetary compromise." It calls for \$350 million of redevelopment agency revenues to be diverted to assist the State's budget shortfall. Signed by the Governor in September 2008, it adds section 33684 to the Health and Safety Code, creating a new process for redevelopment agencies to report and document AB1290 "pass-through" payments made to all affected taxing agencies. The call for this new legislation was based primarily on what the State believed to be a discrepancy between property tax growth reported to the State Board of

Equalization by redevelopment agencies and pass-through payments reported by K-12 school districts and community colleges. According to a 2007 State Controller's Office Report, statutory pass-through payments required to be paid to taxing entities pursuant to California Redevelopment Law have been incorrectly calculated by a significant number of redevelopment agencies statewide. Correcting these errors would serve to increase the State's share of funding for schools and other taxing entities, so the legislative intent of AB 1389 is to recalculate the amount of pass-through payments owed and require redevelopment agencies to pay the shortfall.

- **AB1290**

In 1993 the Legislature passed the Community Redevelopment Law Reform Act (AB 1290), which statutorily created a formula to determine the amount of annual tax increment revenue that to be shared with taxing entities present within redevelopment project areas (and added areas) adopted *after* January 1, 1994. The statutory tax sharing amount, or "pass-through," is intended to mitigate the impacts of the redevelopment project areas on these taxing entities. The formula is dictated by Section 33607.5 of the Health and Safety Code and includes three tiers of tax sharing payments. Because the HERO project area was adopted after January 1, 1994, tax increment generated from the HERO original and added project areas is subject to statutory tax sharing as prescribed in Section 33607.5 of the Health and Safety Code.

AB 1290 also required that a certain percentage of tax sharing payments to a local educational agency (e.g., school districts) be deposited in the County's Educational Revenue Augmentation Fund ("ERAF") to off-set the State's obligation to provide funding to certain local educational agencies per Proposition 98.

AB 1290, pursuant to Section 33607.7, also requires tax sharing for redevelopment areas adopted *prior* to January 1, 1994 upon the occurrence of certain triggering events such as an extension of the time to incur indebtedness or an increase in the amount of tax increment that can be collected. The Southwinds, Ormond Beach, and Merged Downtown Renewal and Central City Revitalization Project Areas are subject to Section 33607.7 tax sharing requirements.

- **AB 1389 Reporting Requirements**

Section 33684 of the Health and Safety Code, which was added by AB 1389, requires that each redevelopment agency submit on or before October 1, 2008 a report to the county auditor and each affected taxing agency, the total amount of pass-through payments that the agency was responsible for between July 1, 2003 and June 30, 2008, and the total amount of pass-through payments actually made. This was subsequently extended to November 1, 2008. This section also requires that within 45 days of receipt of the report, the county auditor must either make a finding of concurrence (compliance) or return the report to the agency, identifying areas considered to be incomplete. By December 15, 2008 each county was required to submit a report to the State Controller which listed agencies not in compliance with AB 1389 and agencies with outstanding pass-through obligations. By February 1, 2009, the Controller must submit a report to the Legislative Analyst's Office and the Department of Finance, listing agencies found to be non-compliant and agencies with outstanding pass-through payment liability to a local educational agency.

If an agency is included on these lists, that agency is subject to severe restrictions on its activities, including a prohibition on encumbering any funds, incurring any new debt, adding or expanding any project area, and severely limiting administrative expenditures. The State Controller, with the concurrence of the Director of Finance, may waive these provisions for a period of up to 12 months if the Controller determines that specific criteria is met.

Trigger of AB 1389 Pass-Thorough Obligations

On June 27, 2000, the City Council and the CDC held a joint public hearing to adopt Plan Amendments to the CCRP, R1-08, Ormond Beach and the Southwinds Project Areas. Approval of the Amendments would allow the agency to extend the time and financial limitations to the project areas, thus triggering Section 33607.7 tax sharing obligations. The estimated gain from amending the Redevelopment Plans is approximately \$62,639,518 in additional tax increment revenue, of which approximately \$9,239,790, would be allocated to the housing-set-aside fund and \$23,326,940 would be distributed to other taxing agencies.

On November 1, 2008 CDC staff prepared and submitted the required AB 1389 worksheets to the County Auditor Controller. In doing so staff discovered that at the time of adoption of the June 2000 Plan Amendments, the tax sharing requirements under Section 33607.7 had not been implemented and as a result, tax sharing payments are owed by the CCRP, CCRP Annex, R-108, Ormond Beach and the Southwinds project areas to the Local Educational Agencies (LEA's) in an approximate amount of \$1,189,422. Prior to the Amendments in 2000, the CDC had neither pass-through obligations nor contractual pass-through commitments. The following table presents the preliminary projections (not yet confirmed by the County) for the statutory tax sharing obligations.

Project Area	2004-2005	2005-2006	2006-2007	2007-2008	Totals
R-108	\$693	\$23,483	\$46,149	\$49,600	\$119,925
CCRP	\$61,620	\$123,014	\$235,886	\$278,739	\$699,259
Ormond Beach	-0-	\$15,272	-0-	-0-	\$15,272
Southwinds	-0-	\$64,228	\$129,079	\$161,659	\$354,966
					\$1,189,422

Upon receipt of the County's confirmation, CDC will be required to distribute the outstanding obligations to LEA's in the following proportional manner:

Type of Educational Agency	Payment to ERAF	Payment to Educational Agency
School District	43.3%	56.7%
Community College District	47.5%	52.5%
County Board of Education	19.0%	81.0%

County Auditor's Review

The County of Ventura failed to meet the December 15, 2008 deadline to submit the CDC's report to the State Controller's Office, nor did it submit a letter of concurrence or non-concurrence to the CDC, citing a need for additional time to complete the review. On January 13, 2009, the County completed its review of CDC's reports and sent the CDC its comments and request for revisions. The County has not yet confirmed or denied CDC's status of compliance, nor has it provided the CDC with the additional

information requested to assist with revising our report. As a result, we do not anticipate that the County will provide a letter of concurrence or non-concurrence before the February 1, 2009 State Controller deadline, thus creating a high level of uncertainty as to whether the CDC may be subject to penalties after February 1, 2009.

Conclusion

Due to the nature and complexities of the AB 1389's requirements and the inability to receive a determination of compliance from the county, staff found it necessary to consult with special legal counsel concerning the matter. Special legal counsel recommends that the CDC make any and all outstanding pass-through obligations (with priority to local educational agencies) based on the current tax remittance statements and information related to such revenues from the County on or before February 1, 2009. If the CDC disagrees with the County's information, CDC may consider filing a statement of dispute with the County and State Controller along with any disputed payments. The CDC may also request the Controller to grant a grace period of a minimum of 15 days from the date the County issues its findings, to enable the CDC to respond to any finding of non-compliance and, if necessary, revise and resubmit its report.

This shift of tax increment from redevelopment agencies in order to reduce the State's share of support for schools and community colleges is not a new concept. The first ERAF shift was instituted in 1992-93. The California Redevelopment Association (CRA) recently filed a class action lawsuit in Sacramento Superior Court seeking to block parts of AB 1389 on grounds that it is unconstitutional. AB 1389 was approved in September 2008 as part of the 2008/09 budget package. The lawsuit seeks to invalidate the portion of AB 1389 that authorizes a one-time "raid" of \$350,000 million in redevelopment funds, and also prohibits the State from forcing county auditors to divert redevelopment funds to finance State obligations.

Although proposed as a one-time "redirection of funds" for 2008-09, the future funding of redevelopment activities throughout the State will be jeopardized if these funds are not found to be constitutionally protected from the State's budgetary manipulation. Currently the CDC is able to fund the programs and projects in its operating budget, however such programs and projects may need to be reconsidered if the State continues to require future ERAF shifts.

FINANCIAL IMPACT

The total amount of statutory pass-through payments owed by the CDC at this time is approximately \$1,189,422. The CDC is requesting a special budget appropriation to transfer funds for payment to LEA and ERAF in the following manner: \$699,259 from the fund balance of the CCRP Project Area to Account No. 401-8201-862-8487, \$119,925 from the fund balance of the R-108 Project Area to Account No. 402-8301-862-8487, \$354,966 from the fund balance of the Southwinds Project Area to Account No. 403-8401-862-8487, and \$15,272 from the fund balance of the Ormond Beach Project Area to Account No. 404-8501-862-8487.

KH

Attachment #1 - Special Budget Appropriation

CITY OF OXNARD

REQUEST FOR SPECIAL BUDGET APPROPRIATION

To the City Manager:

January 27, 2009

Request is hereby made for an appropriation of total

\$ 1,189,422

Reason for appropriation: AB 1389 Local Education Agency ("LEA") and Educational Revenue Augmentation Fund (ERAF) statutory payments

<u>FUND</u>	<u>DESCRIPTION/ACCOUNT</u>	<u>AMOUNT</u>
CDC-CCRP (401)	CENTRAL BUSINESS DISTRICT 401-8201 862-8487 - Contractual Services / RDA Erap Payments Net Estimated Change to CDC-CCRP Fund	699,259 <u>(699,259)</u>
CDC-Downtown R-108 (402)	CDC-DOWNTOWN RENEWAL 402-8301 862-8487 - Contractual Services / RDA Erap Payments Net Estimated Change to CDC-Downtown R-108 Fund	119,925 <u>(119,925)</u>
CDC-Southwinds (403)	CDC-Southwinds 403-8401 862-8487 - Contractual Services / RDA Erap Payments Net Estimated Change to CDC-Southwinds Fund	354,966 <u>(354,966)</u>
CDC-Ormond Beach (404)	CDC-Ormond Beach 404-8501 862-8487 - Contractual Services / RDA Erap Payments Net Estimated Change to CDC-Ormond Beach Fund	15,272 <u>(15,272)</u>

Michael Lopez

Manager

DOES NOT REQUIRE CITY COUNCIL APPROVAL

CHIEF FINANCIAL OFFICER

James Cameron

Disposition

Approved _____

Rejected _____

Transfer by Journal Voucher _____

City Manager