

## Portion of Text of AB 1389 Related to Passthrough Payments

33684. (a) (1) This section shall apply to each redevelopment project area that, pursuant to a redevelopment plan that contains the provisions required by Section 33670, meets any of the following:

(A) Was adopted on or after January 1, 1994, including later amendments to these redevelopment plans.

(B) Was adopted prior to January 1, 1994, but amended after January 1, 1994, to include new territory. For plans amended after January 1, 1994, only the tax increments from territory added by the amendment shall be subject to this section.

(2) This section shall apply to passthrough payments, as required by Sections 33607.5 and 33607.7, for the 2003-04 to 2008-09, inclusive, fiscal years. For purposes of this section, a passthrough payment shall be considered the responsibility of an agency in the fiscal year the agency receives the tax increment revenue for which the passthrough payment is required.

(3) For purposes of this section, "local educational agency" is a school district, a community college district, or a county office of education.

(b) On or before October 1, 2008, each agency shall submit a report to the county auditor and to each affected taxing entity that describes each project area, including its location, purpose, date established, date or dates amended, and statutory and contractual passthrough requirements. The report shall specify, by year, for each project area all of the following:

(1) Gross tax increment received between July 1, 2003, and June 30, 2008, that is subject to a passthrough payment pursuant to Sections 33607.5 and 33607.7, and accumulated gross tax increments through June 30, 2003.

(2) Total passthrough payments to each taxing entity that the agency deferred pursuant to a subordination agreement approved by the taxing agency under subdivision (e) of Section 33607.5 and the dates these deferred payments will be made.

(3) Total passthrough payments to each taxing entity that the agency was responsible to make between July 1, 2003, and June 30, 2008, pursuant to Sections 33607.5 and 33607.7, excluding payments identified in paragraph (2).

(4) Total passthrough payments that the agency disbursed to each taxing entity between July 1, 2003, and June 30, 2008, pursuant to Sections 33607.5 and 33607.7.

(5) Total sums reported in paragraph (4) for each local educational agency that are considered to be property taxes under the provisions of paragraph (4) of subdivision (a) of Sections 33607.5 and 33607.7.

(6) Total outstanding payment obligations to each taxing entity as of June 30, 2008. This amount shall be calculated by subtracting the amounts reported in paragraph (4) from paragraph (3) and reporting any positive sum.

(7) Total outstanding overpayments to each taxing entity as of June 30, 2008. This amount shall be calculated by subtracting the amounts reported in paragraph (3) from paragraph (4) and reporting any positive sum.

(8) The dates on which the agency made payments identified in paragraph (6) or intends to make the payments identified in paragraph (6).

(2) A revised estimate of the agency's total outstanding passthrough payment obligation to each taxing agency pursuant to paragraph (6) of subdivision (b) and paragraph (6) of subdivision (c) and the dates on which the agency intends to make these payments.

(c) On or before October 1, 2009, each agency shall submit a report to the county auditor and to each affected taxing entity that describes each project area, including its location, purpose, date established, date or dates amended, and

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statutory and contractual passthrough requirements. The report shall specify, by year, for each project area all of the following:

(1) Gross tax increment received between July 1, 2008, and June 30, 2009, that is subject to a passthrough payment pursuant to Sections 33607.5 and 33607.7.

(2) Total passthrough payments to each taxing entity that the agency deferred pursuant to a subordination agreement approved by the taxing entity under subdivision (e) of Section 33607.5 and the dates these deferred payments will be made.

(3) Total passthrough payments to each taxing entity that the agency was responsible to make between July 1, 2008, and June 30, 2009, pursuant to Sections 33607.5 and 33607.7, excluding payments identified in paragraph (2).

(4) Total passthrough payments that the agency disbursed to each taxing entity between July 1, 2008, and June 30, 2009, pursuant to Sections 33607.5 and 33607.7.

(5) Total sums reported in paragraph (4) for each local educational agency that are considered to be property taxes under the provisions of paragraph (4) of subdivision (a) of Sections 33607.5 and 33607.7.

(6) Total outstanding payment obligations to each taxing entity as of June 30, 2009. This amount shall be calculated by subtracting the amounts reported in paragraph (4) from paragraph (3) and reporting any positive sum.

(7) Total outstanding overpayments to each taxing entity as of June 30, 2009. This amount shall be calculated by subtracting the amounts reported in paragraph (3) from paragraph (4) and reporting any positive sum.

(8) The dates on which the agency made payments identified in paragraph (6) or intends to make the payments identified in paragraph (6).

(d) If an agency reports pursuant to paragraph (6) of subdivision (b) or paragraph (6) of subdivision (c) that it has an outstanding passthrough payment obligation to any taxing entity, the agency shall submit annual updates to the county auditor on October 1 of each year until such time as the county auditor notifies the agency in writing that the agency's outstanding payment obligations have been fully satisfied. The report shall contain both of the following:

(1) A list of payments to each taxing agency and to the Educational Revenue Augmentation Fund pursuant to subdivision (j) that the agency disbursed after the agency's last update filed pursuant to this subdivision or, if no update has been filed, after the agency's submission of the reports required pursuant to subdivisions (b) and (c). The list of payments shall include only those payments that address obligations identified pursuant to paragraph (6) of subdivision (b) and paragraph (6) of subdivision (c). The update shall specify the date on which each payment was disbursed.

(2) A revised estimate of the agency's total outstanding passthrough payment obligation to each taxing agency pursuant to paragraph (6) of subdivision (b) and paragraph (6) of subdivision (c) and the dates on which the agency intends to make these payments.

(e) The county auditor shall review each agency's reports submitted pursuant to subdivisions (b) and (c) and any other relevant information to determine whether the county auditor concurs with the information included in the reports.

(1) If the county auditor concurs with the information included in a report, the county auditor shall issue a finding of concurrence within 45 days.

(2) If the county auditor does not concur with the information included in a report or considers the report to be incomplete, the county auditor shall return the report to the agency within 45 days with information identifying the elements of the report

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with which the county auditor does not concur or considers to be incomplete. The county auditor shall provide the agency at least 15 days to respond to concerns raised by the county auditor regarding the information contained in the report. An agency may revise a report that has not received a finding of concurrence and resubmit it to the county auditor.

(3) If an agency and county auditor do not agree regarding the passthrough requirements of Sections 33607.5 and 33607.7, an agency may submit a report pursuant to subdivisions (b) and (c) and a statement of dispute identifying the issue needing resolution.

(4) An agency may amend a report for which the county auditor has issued a finding of concurrence and resubmit the report pursuant to paragraphs (1), (2), and (3) if any of the following apply:

(A) The county auditor and agency agree that an issue identified in the agency's statement of dispute has been resolved and the agency proposes to modify the sections of the report to conform with the resolution of the statement of dispute.

(B) The county auditor and agency agree that the amount of gross tax increment or the amount of a passthrough payment to a taxing entity included in the report is not accurate.

(5) The Controller may revoke a finding of concurrence and direct the agency to resubmit a report to the county auditor pursuant to paragraphs (1), (2), and (3) if the Controller finds significant errors in a report.

(f) On or before December 15, 2008, and annually thereafter through 2014, the county auditor shall submit a report to the Controller that includes all of the following:

(1) The name of each redevelopment project area in the county for which an agency must submit a report pursuant to subdivision (b) or (c) and information as to whether the county auditor has issued a finding of concurrence regarding the report.

(2) A list of the agencies for which the county auditor has issued a finding of concurrence for all project areas identified in paragraph (1).

(3) A list of agencies for which the county auditor has not issued a finding of concurrence for all project areas identified in paragraph (1).

(4) Using information applicable to agencies listed in paragraph (2), the county auditor shall report all of the following:

(A) The total sums reported by each redevelopment agency related to each taxing entity pursuant to paragraphs (1) to (7), inclusive, of subdivision (b) and, on or after December 15, 2009, pursuant to paragraphs (1) to (7), inclusive, of subdivision (c).

(B) The names of agencies that have outstanding passthrough payment obligations to a local educational agency that exceed the amount of outstanding passthrough payments to the local educational agency.

(C) Summary information regarding agencies' stated plans to pay the outstanding amounts identified in paragraph (6) of subdivision (b) and paragraph (6) of subdivision (c) and the actual amounts that have been deposited into the county Educational Revenue Augmentation Fund pursuant to subdivision (j).

(D) All unresolved statements of dispute filed by agencies pursuant to paragraph (3) of subdivision (e) and the county auditor's analyses supporting the county auditor's conclusions regarding the issues under dispute.

(g) (1) On or before February 1, 2009, and annually thereafter through 2015, the Controller shall submit a report to the Legislative Analyst's Office and the

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Department of Finance and provide a copy to the Board of Governors of the California Community Colleges. The report shall provide information as follows:

(A) Identify agencies for which the county auditor has issued a finding of concurrence for all reports required under subdivisions (b) and (c).

(B) Identify agencies for which the county auditor has not issued a finding of concurrence for all reports required pursuant to subdivision (b) and all reports required pursuant to subdivision (c) or for which a finding of concurrence has been withdrawn by the Controller.

(C) Summarize the information reported in paragraph (4) of subdivision (f). This summary shall identify, by local educational agency and by year, the total amount of passthrough payments that each local educational agency received, was entitled to receive, subordinated, or that has not yet been paid, and the portion of these amounts that are considered to be property taxes for purposes of Sections 2558, 42238, and 84751 of the Education Code. The report shall identify, by agency, the amounts that have been deposited to the county Educational Revenue Augmentation Fund pursuant to subdivision (j).

(D) Summarize the statements of dispute. The Controller shall specify the status of these disputes, including whether the Controller or other state entity has provided instructions as to how these disputes should be resolved.

(E) Identify agencies that have outstanding passthrough payment liabilities to a local educational agency that exceed the amount of outstanding passthrough overpayments to the local educational agency.

(2) On or before February 1, 2009, and annually thereafter through 2015, the Controller shall submit a report to the State Department of Education and the Board of Governors of the California Community Colleges. The report shall identify, by local educational agency and by year of receipt, the total amount of passthrough payments that the local educational agency received from redevelopment agencies listed in subparagraph (A) of paragraph (1).

(h) (1) On or before April 1, 2009, and annually thereafter until April 1, 2015, the State Department of Education shall do all of the following:

(A) Calculate for each school district for the 2003-04 to 2007-08, inclusive, fiscal years the difference between 43.3 percent of the amount reported pursuant to paragraph (2) of subdivision (g) and the amount subtracted from each school district's apportionment pursuant to paragraph (6) of subdivision (h) of Section 42238 of the Education Code.

(B) Calculate for each county superintendent of schools for the 2003-04 to 2007-08, inclusive, fiscal years the difference between 19 percent of the amount reported pursuant to paragraph (2) of subdivision (g) and the amount received pursuant to Sections 33607.5 and 33607.7 and subtracted from each county superintendent of schools apportionment pursuant to subdivision (c) of Section 2558 of the Education Code.

(C) Notify each school district and county superintendent of schools for which any amount calculated in subparagraph (A) or (B) is nonzero as to the reported change and its resulting impact on apportionments. After April 1, 2009, however, the department shall not notify a school district or county superintendent of schools if the amount calculated in subparagraph (A) or (B) is the same amount as the department calculated in the preceding year.

(2) On or before April 1, 2010, and annually thereafter until April 1, 2015, the State Department of Education shall do all of the following:

(A) Calculate for each school district for the 2008-09 fiscal year the difference between 43.3 percent of the amount reported pursuant to paragraph (2) of

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subdivision (g) and the amount subtracted from each school district's apportionment pursuant to paragraph (6) of subdivision (h) of Section 42238 of the Education Code.

(B) Calculate for each county superintendent of schools for the 2008-09 fiscal year the difference between 19 percent of the amount reported pursuant to paragraph (2) of subdivision (g) and the amount received pursuant to Sections 33607.5 and 33607.7 and subtracted from each county superintendent of schools apportionment pursuant to subdivision (c) of Section 2558 of the Education Code.

(C) Notify each school district and county superintendent of schools for which any amount calculated in subparagraph (A) or (B) is nonzero as to the reported change and its resulting impact on revenue limit apportionments. After April 1, 2010, however, the department shall not notify a school district or county superintendent of schools if the amount calculated in subparagraph (A) or (B) is the same amount as the department calculated in the preceding year.

(3) For the purposes of Article 3 (commencing with Section 41330) of Chapter 3 of Part 24 of Division 3 of the Education Code, the amounts reported to each school district and county superintendent of schools in the notification required pursuant to subparagraph (C) of paragraph (1) and subparagraph (C) of paragraph (2) shall be deemed to be apportionment significant audit exceptions and the date of receipt of that notification shall be deemed to be the date of receipt of the final audit report that includes those audit exceptions.

(4) On or before March 1, 2009, and annually thereafter until March 1, 2015, the Board of Governors of the California Community Colleges shall do all of the following:

(A) Calculate for each community college district for the 2003-04 to 2007-08, inclusive, fiscal years the difference between 47.5 percent of the amount reported pursuant to paragraph (2) of subdivision (g) and the amount subtracted from each district's total revenue owed pursuant to subdivision (d) of Section 84751 of the Education Code.

(B) Notify each community college district for which any amount calculated in subparagraph (A) is nonzero as to the reported change and its resulting impact on apportionments. After March 1, 2009, however, the board shall not notify a school district or county superintendent of schools if the amount calculated in subparagraph (A) is the same amount as the board calculated in the preceding year.

(5) On or before March 1, 2010, and annually thereafter until March 1, 2015, the Board of Governors of the California Community Colleges shall do all of the following:

(A) Calculate for each community college district for the 2003-04 to 2007-08, inclusive, fiscal years the difference between 47.5 percent of the amount reported pursuant to paragraph (2) of subdivision (g) and the amount subtracted from each district's total revenue owed pursuant to subdivision (d) of Section 84751 of the Education Code.

(B) Notify each community college district for which any amount calculated in subparagraph (A) is nonzero as to the reported change and its resulting impact on revenue apportionments. After March 1, 2010, however, the board shall not notify a community college district if the amount calculated in subparagraph (A) is the same amount as the board calculated in the preceding year.

(6) A community college district may submit documentation to the Board of Governors of the California Community Colleges showing that all or part of the

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amount reported to the district pursuant to subparagraph (B) of paragraph (4) and subparagraph (B) of paragraph (5) was previously reported to the California Community Colleges for the purpose of the revenue level calculations made pursuant to Section 84751 of the Education Code. Upon acceptance of the documentation, the board of governors shall adjust the amounts calculated in paragraphs (4) and (5) accordingly.

(7) The Board of Governors of the California Community Colleges shall make corrections in any amounts allocated in any fiscal year to each community college district for which any amount calculated in paragraphs (4) and (5) is nonzero so as to account for the changes reported pursuant to paragraph (4) of subdivision (b) and paragraph (4) of subdivision (c). The board may make the corrections over a period of time, not to exceed five years.

(i) (1) After February 1, 2009, for an agency listed on the most recent Controller's report pursuant to subparagraph (B) or (E) of paragraph (1) of subdivision (g), all of the following shall apply:

(A) The agency shall be prohibited from adding new project areas or expanding existing project areas. For purposes of this paragraph, "project area" has the same meaning as in Sections 33320.1 to 33320.3, inclusive, and Section 33492.3.

(B) The agency shall be prohibited from issuing new bonds, notes, interim certificates, debentures, or other obligations, whether funded, refunded, assumed, or otherwise, pursuant to Article 5 (commencing with Section 33640).

(C) The agency shall be prohibited from encumbering any funds or expending any moneys derived from any source, except that the agency may encumber funds and expend funds to pay, if any, all of the following:

(i) Bonds, notes, interim certificates, debentures, or other obligations issued by an agency before the imposition of the prohibition in subparagraph (B) whether funded, refunded, assumed, or otherwise, pursuant to Article 5 (commencing with Section 33460) of this chapter.

(ii) Loans or moneys advanced to the agency, including, but not limited to, loans from federal, state, local agencies, or a private entity.

(iii) Contractual obligations that, if breached, could subject the agency to damages or other liabilities or remedies.

(iv) Obligations incurred pursuant to Section 33445.

(v) Indebtedness incurred pursuant to Section 33334.2 or 33334.6.

(vi) Obligations incurred pursuant to Section 33401.

(vii) An amount, to be expended for the monthly operation and administration of the agency, that may not exceed 75 percent of the average monthly amount spent for those purposes in the fiscal year preceding the fiscal year in which the agency was first listed on the Controller's report pursuant to subparagraph (B) or (E) of paragraph (1) of subdivision (g).

(2) After February 1, 2009, an agency identified in subparagraph (B) or (E) of paragraph (1) of subdivision (g) shall incur interest charges on any passthrough payment that is made to a local educational agency more than 60 days after the close of the fiscal year in which the passthrough payment was required. Interest shall be charged at a rate equal to 150 percent of the current Pooled Money Investment Account earnings annual yield rate and shall be charged for the period beginning 60 days after the close of the fiscal year in which the passthrough payment was due through the date that the payment is made.

(3) The Controller, with the concurrence of the Director of Finance, may waive the provisions of paragraphs (1) and (2) for a period of up to 12 months if the Controller determines all of the following:

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(A) The county auditor has identified the agency in its most recent report issued pursuant to paragraph (2) of subdivision (f) as an agency for which the auditor has issued a finding of concurrence for all reports required pursuant to subdivisions (b) and (c).

(B) The agency has filed a statement of dispute on an issue or issues that, in the opinion of the Controller, are likely to be resolved in a manner consistent with the agency's position.

(C) The agency has made passthrough payments to local educational agencies and the county Educational Revenue Augmentation Fund, or has had funds previously withheld by the auditor, in amounts that would satisfy the agency's passthrough payment requirements to local educational agencies if the issue or issues addressed in the statement of dispute were resolved in a manner consistent with the agency's position.

(D) The agency would sustain a fiscal hardship if it made passthrough payments to local educational agencies and the county Educational Revenue Augmentation Fund in the amounts estimated by the county auditor.

(j) Notwithstanding any other provision of law, if an agency report submitted pursuant to subdivision (b) or (c) indicates outstanding payment obligations to a local educational agency, the agency shall make these outstanding payments as follows:

(1) Of the outstanding payments owed to school districts, including any interest payments pursuant to paragraph (2) of subdivision (i), 43.3 percent shall be deposited in the county Educational Revenue Augmentation Fund and the remainder shall be allocated to the school district or districts.

(2) Of the outstanding payments owed to community college districts, including any interest payments pursuant to paragraph (2) of subdivision (i), 47.5 percent shall be deposited in the county Educational Revenue Augmentation Fund and the remainder shall be allocated to the community college district or districts.

(3) Of the outstanding payments owed to county offices of education, including any interest payments pursuant to paragraph (2) of subdivision (i), 19 percent shall be deposited in the county Educational Revenue Augmentation Fund and the remainder shall be allocated to the county office of education.

(k) (1) This section shall not be construed to increase any allocations of excess, additional, or remaining funds that would otherwise have been allocated to cities, counties, cities and counties, or special districts pursuant to clause (i) of subparagraph (B) of paragraph (4) of subdivision (d) of Section 97.2 of, clause (i) of subparagraph (B) of paragraph (4) of subdivision (d) of Section 97.3 of, or Article 4 (commencing with Section 98) of Chapter 6 of Part 0.5 of Division 1 of, the Revenue and Taxation Code had this section not been enacted.

(2) Notwithstanding any other provision of law, no funds deposited in the county Educational Revenue Augmentation Fund pursuant to subdivision (j) shall be distributed to a community college district.

(l) A county may require an agency to reimburse the county for any expenses incurred by the county in performing the services required by this section.