Memorandum

To: REGION/DISTRICT DIVISION CHIEFS
Right of Way

Attention: Appraisals, Acquisition,
Condemnation, Local Programs
Senior Right of Way Agents

Date: December 13, 2006

File: Appraisals
Acquisition
Local Programs
General

From: **DEPARTMENT OF TRANSPORTATION**
RIGHT OF WAY
MAIL STATION 37

Subject: EMINENT DOMAIN LAW CHANGES-OWNER-INITIATED APPRAISALS

Senate Bill (SB) 1210 becomes effective January 1, 2007. Sections 1-8 amend the Code of Civil Procedure relating to eminent domain procedure. This memorandum will establish initial implementation guidelines to meet the requirements of the new legislation until the appropriate manual revisions are completed. Subsequent memoranda are anticipated to fully address all aspects of both SB 1210 and SB 1650.

All offers made to owners after January 1, 2007, will include a written notice indicating they are eligible to receive reimbursement of up to $5,000 for reasonable costs of an independent appraisal ordered by the owner of a property the Department of Transportation (Department) intends to purchase under threat of eminent domain. The reimbursement is based on a number of conditions:

1. The appraisal must be initiated (ordered) by the owner whose property has been designated for acquisition. The Department shall not order the independent appraisal or be a party to any contract for the independent appraisal.

2. The selected appraiser must be licensed with the Office of Real Estate Appraisers.

3. To ensure that appraisal costs are reasonable and justifiable, the Department will require that copies of the owner-appraiser contracts (if any), the appraisal report, and invoice are submitted by the owner concurrent with submission of the reimbursement request. The Department will require appraisal cost reimbursement requests to be made in writing, and submitted to the Department within 90 days of the earliest of the following dates: (1) the date the selected appraiser requests payment for the appraisal from the owner; or, (2) the date upon which the owner or someone on the owner's behalf, remitted full payment to the selected appraiser for the appraisal.

The Districts/Regions will include the written notice in the Summary Statement Relating to the Purchase of Real Property or an Interest Therein (sample attached) at the time of the first written offer.

The Department, while making every attempt to settle with the owner, should reasonably adhere to project schedules, understanding that the owner's appraisal completion date may or may not fall within time frames needed to deliver a Right of Way (R/W) certification.

When a copy of the property owner's appraisal is provided to the Department, the Acquisition Branch will review and determine if the new data warrants further consideration by the Appraisal Branch per R/W Manual Section 7.10.01.00. Then the Appraisal Branch should offer a written response to the acquisition agent regarding its impact on the Department's appraisal.

SUZETTE M. MUSETTI , Chief
Office of Appraisals and
Local Programs

DONALD E. GREBE, Chief
Office of Project Delivery

SB 1210 Legislation
Sample Exhibit 8-EX-16

C: BGRhinehart
HQ Office Chiefs
HQ Appraisal, Acquisition, Local Program Seniors
RBWilliams, HQ Legal

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION

EXHIBIT
8-EX-16 (REV 12/2006)

SUMMARY STATEMENT RELATING TO THE PURCHASE OF REAL PROPERTY OR AN INTEREST THEREIN

(Form #)

SAMPLE

The California Department of Transportation is proposing to .

Your property located at is within the project area, and is also identified by your county assessor as Parcel No. .

Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and the California Relocation Assistance and Real Property Acquisition Guidelines require that each owner from whom the Department of Transportation purchases real property or an interest therein or each tenant owning improvements on said property be provided with a summary of the appraisal of the real property or interest therein, as well as the following information:

1. You are entitled to receive full payment prior to vacating the real property being purchased unless you have heretofore waived such entitlement. You are not required to pay recording fees, transfer taxes, or the pro rata portion of real property taxes which are allocable to any period subsequent to the passage of title or possession.

2. The State will offer to purchase any remnant(s) considered by the State to be an uneconomic unit(s) which is/are owned by you or, if applicable, occupied by you as a tenant and which is/are contiguous to the land being conveyed.

3. All buildings, structures and other improvements affixed to the land described in the referenced document(s) covering this transaction and owned by the grantor(s) herein or, if applicable, owned by you as a tenant, are being conveyed unless other disposition of these improvements has been made. The interest acquired is . The property being purchased comprises and is described in the attached deed and outlined in color on the attached map.

4. The market value of the property being purchased is based upon a market value valuation which is summarized on the attached Summary Statement and such amount:

   a. Represents the full amount of the of just compensation for the property to be purchased;

   b. Is not less than the approved of the fair market value of the property as improved;

   c. Disregards any decrease or increase in the fair market value of the real property to be acquired prior to the date of valuation caused by the public improvement for which the property is to be acquired or by the likelihood that the property would be acquired for such public improvement, other than that due to physical deterioration within the reasonable control of the owner or occupant; and

   d. Does not reflect any consideration of or allowance for any relocation assistance and payments or other benefits which the owner is entitled to receive under an agreement with the Department of Transportation.

5) Pursuant to Civil Code of Procedure Section 1263.025 should you elect to obtain an independent appraisal, the Department will pay for the actual reasonable costs up to $5,000 subject to the following conditions;

   a. You, not the Department, must order the appraisal. Should you enter into a contract with the selected appraiser, the Department of Transportation will not be a party to the contract.

   b. The selected appraiser must be licensed with the Office of Real Estate Appraisers (OREA)

   c. Appraisal cost reimbursement requests must be made in writing, and submitted to the Department of Transportation [*insert appropriate address*] within 90 days of the earliest of the following dates: (1) the date the selected appraiser requests payment from you for the appraisal; or, (2) the date upon which you, or someone on your behalf, remitted full payment to the selected appraiser for the appraisal. Copies of the contract (if a contract was made), appraisal report, and invoice for completed work by the appraiser must be provided to the Department of Transportation concurrent with submission of the appraisal cost reimbursement request. The costs must be reasonable and justifiable.

6. The owner of a business conducted on a property to be acquired, or conducted on the remaining property which will be affected by the purchase of the required property, may be entitled to compensation for the loss of goodwill. Entitlement is contingent upon the ability to prove such loss in accordance with the provisions of Sections 1263.510 and 1263.520 of the Code of Civil Procedure.

7. If you ultimately elect to reject the State's offer for your property, you are entitled to have the amount of compensation determined by a court of law in accordance with the laws of the State of California.

8. You are entitled to receive all benefits that are available through donation to the State of California of all or part of your interest in the real property sought to be acquired by the Department of Transportation as set out in Streets and Highways Code Sections 104.2 and 104.12.

Senate Bill No. 1210

CHAPTER 594

An act to amend Sections 1250.410, 1255.040, 1255.410, 1255.450, and 1255.460 of, to add Section 1263.025 to, and to repeal Sections 1255.420 and 1255.430 of, the Code of Civil Procedure, to add Section 1091.6 to the Government Code, and to amend Sections 33333.2 and 33333.4 of the Health and Safety Code, relating to eminent domain.

[Approved by Governor September 29, 2006. Filed with Secretary of State September 29, 2006.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1210, Torlakson. Eminent domain.

(1) Existing law governing settlement offers in eminent domain proceedings authorizes the recovery of litigation expenses under certain circumstances. Existing law provides that if a court finds, on motion of the defendant, that the offer of the plaintiff was unreasonable and the offer of the defendant was reasonable in light of the evidence admitted and the compensation awarded in the proceeding, then the costs allowed shall include the defendant's litigation expenses.

This bill would define litigation expenses to mean the party's reasonable attorney's fees and costs, including reasonable expert witness and appraiser fees.

(2) Existing law authorizes the plaintiff to make an ex parte application to the court to take possession of property prior to judgment and sets forth the procedures the plaintiff must follow. Existing law authorizes any defendant or occupant of the property to move for relief from the order if the hardship to the defendant of having possession taken at the time specified is substantial.

This bill would revise and recast those provisions. Among other changes to those provisions, the bill would authorize a plaintiff to make an ex parte application to the court for possession when the record owner cannot be located, would authorize the plaintiff to make a motion to the court for possession and would provide for a noticed hearing. The bill would require the plaintiff to serve a copy of the motion on the record owner and on the occupants of the property within specified time periods. The bill would authorize a defendant or occupant of the property to oppose the motion and seek a hearing on the motion regardless of whether the hardship of having possession taken at the time specified in the order is substantial. The bill would require the written opposition to be signed under penalty of perjury, thereby expanding the scope of an existing crime and creating a state-mandated local program. The bill would require the court to make an order for possession if the motion is not opposed and the court makes

specified findings. The bill would also authorize a court to issue an order of possession upon an ex parte application by a utility if an emergency exists, as specified. The bill would make other, related changes.

(3) The Eminent Domain Law requires a condemnor to have the property appraised by an expert before depositing with the State Treasury the probable amount of compensation that will be awarded in a condemnation proceeding.

This bill would require a public entity to offer to pay the reasonable costs, not to exceed $5,000, of an independent appraisal ordered by the owner of a property that the public entity offers to purchase under a threat of eminent domain, as specified, at the time the public entity makes the offer to purchase the property. This appraisal would be required to be conducted by an appraiser licensed by the Office of Real Estate Appraisers.

(4) Existing law prohibits public officers and employees from being financially interested in any contract made by them in their official capacity or by any body or board of which they are members.

This bill would prohibit an officer who is also a member of the governing body of an organization that has an interest in, or to which the public agency may transfer an interest in, property that the public agency may acquire by eminent domain from voting on any matter affecting that organization.

(5) Existing law requires that a redevelopment plan contain time limits, not to exceed 12 years, for the commencement of eminent domain proceedings to acquire property within the redevelopment project area.

This bill would provide that the time limitation may only be extended by amendment of the redevelopment plan after the redevelopment agency finds, based on substantial evidence, that significant blight remains within the project area and that the blight cannot be eliminated without the use of eminent domain.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 1250.410 of the Code of Civil Procedure is amended to read:

1250.410. (a) At least 20 days prior to the date of the trial on issues relating to compensation, the plaintiff shall file with the court and serve on the defendant its final offer of compensation in the proceeding and the defendant shall file and serve on the plaintiff its final demand for compensation in the proceeding. The offer and the demand shall include all compensation required pursuant to this title, including compensation

for loss of goodwill, if any, and shall state whether interest and costs are included. These offers and demands shall be the only offers and demands considered by the court in determining the entitlement, if any, to litigation expenses. Service shall be in the manner prescribed by Chapter 5 (commencing with Section 1010) of Title 14 of Part 2.

(b) If the court, on motion of the defendant made within 30 days after entry of judgment, finds that the offer of the plaintiff was unreasonable and that the demand of the defendant was reasonable viewed in the light of the evidence admitted and the compensation awarded in the proceeding, the costs allowed pursuant to Section 1268.710 shall include the defendant's litigation expenses.

(c) In determining the amount of litigation expenses allowed under this section, the court shall consider the offer required to be made by the plaintiff pursuant to Section 7267.2 of the Government Code, any deposit made by the plaintiff pursuant to Chapter 6 (commencing with Section 1255.010), and any other written offers and demands filed and served before or during the trial.

(d) If timely made, the offers and demands as provided in subdivision (a) shall be considered by the court on the issue of determining an entitlement to litigation expenses.

(e) As used in this section, "litigation expenses" means the party's reasonable attorney's fees and costs, including reasonable expert witness and appraiser fees.

SEC. 2. Section 1255.040 of the Code of Civil Procedure is amended to read:

1255.040. (a) If the plaintiff has not made a deposit that satisfies the requirements of this article and the property includes a dwelling containing not more than two residential units and the dwelling or one of its units is occupied as his or her residence by a defendant, the defendant may serve notice on the plaintiff requiring a deposit of the probable amount of compensation that will be awarded in the proceeding. The notice shall specify the date by which the defendant desires the deposit to be made. The date shall not be earlier than 30 days after the date of service of the notice and may be any later date.

(b) If the plaintiff deposits the probable amount of compensation, determined or redetermined as provided in this article, on or before the date specified by the defendant, the plaintiff may obtain an order for possession that authorizes the plaintiff to take possession of the property 30 days after the date for the deposit specified by the defendant or any later date as the plaintiff may request.

(c) Notwithstanding Section 1268.310, if the deposit is not made on or before the date specified by the defendant or such later date as the court specifies on motion and good cause shown by the plaintiff, the compensation awarded to the defendant in the proceeding shall draw legal interest from that date. The defendant is entitled to the full amount of such interest without offset for rents or other income received by him or her or the value of his or her continued possession of the property.

(d) If the proceeding is abandoned by the plaintiff, the interest under subdivision (c) may be recovered as costs in the proceeding in the manner provided for the recovery of litigation expenses under Section 1268.610. If, in the proceeding, the court or a jury verdict eventually determines the compensation that would have been awarded to the defendant, then the interest shall be computed on the amount of the award. If no determination is ever made, then the interest shall be computed on the probable amount of compensation as determined by the court.

(e) The serving of a notice pursuant to this section constitutes a waiver by operation of law, conditioned upon subsequent deposit by the plaintiff of the probable amount of compensation, of all claims and defenses in favor of the defendant except his or her claim for greater compensation.

(f) Notice of a deposit made under this section shall be served as provided by subdivision (a) of Section 1255.020. The defendant may withdraw the deposit as provided in Article 2 (commencing with Section 1255.210).

(g) No notice may be served by a defendant under subdivision (a) after entry of judgment unless the judgment is reversed, vacated, or set aside and no other judgment has been entered at the time the notice is served.

SEC. 3. Section 1255.410 of the Code of Civil Procedure is amended to read:

1255.410. (a) At the time of filing the complaint or at any time after filing the complaint and prior to entry of judgment, the plaintiff may move the court for an order for possession under this article, demonstrating that the plaintiff is entitled to take the property by eminent domain and has deposited pursuant to Article 1 (commencing with Section 1255.010) an amount that satisfies the requirements of that article.

The motion shall describe the property of which the plaintiff is seeking to take possession, which description may be by reference to the complaint, and shall state the date after which the plaintiff is seeking to take possession of the property. The motion shall include a statement substantially in the following form: "You have the right to oppose this motion for an order of possession of your property. If you oppose this motion you must serve the plaintiff and file with the court a written opposition to the motion within 30 days from the date you were served with this motion." The written opposition shall be signed under penalty of perjury and contain a brief description of the hardship that will be caused if the motion for an order of possession is granted.

(b) The plaintiff shall serve a copy of the motion on the record owner of the property and on the occupants, if any. The plaintiff shall set the court hearing on the motion not less than 60 days after service of the notice of motion on the record owner of unoccupied property. If the property is lawfully occupied by a person dwelling thereon or by a farm or business operation, service of the notice of motion shall be made not less than 90 days prior to the hearing on the motion.

(c) Not later than 30 days after service of the plaintiff's motion seeking to take possession of the property, any defendant or occupant of the

property may oppose the motion in writing by serving the plaintiff and filing with the court the opposition. The written opposition shall be signed under penalty of perjury and contain a brief description of the hardship that will be caused if the motion for an order of possession is granted. The plaintiff shall serve and file any reply to the opposition not less than 15 days before the hearing.

(d) (1) If the motion is not opposed within 30 days of service on each defendant and occupant of the property, the court shall make an order for possession of the property if the court finds each of the following:

(A) The plaintiff is entitled to take the property by eminent domain.

(B) The plaintiff has deposited pursuant to Article 1 (commencing with Section 1255.010) an amount that satisfies the requirements of that article.

(2) If the motion is opposed by a defendant or occupant within 30 days of service, the court may make an order for possession of the property upon consideration of the relevant facts and any opposition, and upon completion of a hearing on the motion, if the court finds each of the following:

(A) The plaintiff is entitled to take the property by eminent domain.

(B) The plaintiff has deposited pursuant to Article 1 (commencing with Section 1255.010) an amount that satisfies the requirements of that article.

(C) There is an overriding need for the plaintiff to possess the property prior to the issuance of final judgment in the case, and the plaintiff will suffer a substantial hardship if the application for possession is denied or limited.

(D) The hardship that the plaintiff will suffer if possession is denied or limited outweighs any hardship on the defendant or occupant that would be caused by the granting of the order of possession.

(e) (1) Notwithstanding the time limits for notice prescribed by this section and Section 1255.450, a court may issue an order of possession upon an ex parte application by a water, wastewater, gas, electric, or telephone utility, as the court deems appropriate under the circumstances of the case, if the court finds each of the following:

(A) An emergency exists and as a consequence the utility has an urgent need for possession of the property. For purposes of this section, an emergency is defined to include, but is not limited to, a utility's urgent need to protect the public's health and safety or the reliability of utility service.

(B) An emergency order of possession will not displace or unreasonably affect any person in actual and lawful possession of the property to be taken or the larger parcel of which it is a part.

(2) Not later than 30 days after service of the order authorizing the plaintiff to take possession of the property, any defendant or occupant of the property may move for relief from an emergency order of possession that has been issued under this subdivision. The court may modify, stay, or vacate the order upon consideration of the relevant facts and any objections raised, and upon completion of a hearing if requested.

SEC. 4. Section 1255.420 of the Code of Civil Procedure is repealed.

SEC. 5. Section 1255.430 of the Code of Civil Procedure is repealed.

SEC. 6. Section 1255.450 of the Code of Civil Procedure is amended to read:

1255.450. (a) As used in this section, "record owner" means the owner of the legal or equitable title to the fee or any lesser interest in property as shown by recorded deeds or other recorded instruments.

(b) The plaintiff shall serve a copy of the order for possession issued under Section 1255.410 on the record owner of the property and on the occupants, if any. If the property is lawfully occupied by a person dwelling thereon or by a farm or business operation, service shall be made not less than 30 days prior to the time possession is to be taken pursuant to the order. In all other cases, service shall be made not less than 10 days prior to the time possession is to be taken pursuant to the order. Service may be made with or following service of summons.

(c) At least 30 days prior to the time possession is taken pursuant to an order for possession made pursuant to Section 1255.040, 1255.050, or 1255.460, the plaintiff shall serve a copy of the order on the record owner of the property and on the occupants, if any.

(d) Service of the order shall be made by personal service except that:

(1) If the person on whom service is to be made has previously appeared in the proceeding or been served with summons in the proceeding, service of the order may be made by mail upon that person and his or her attorney of record, if any.

(2) If the person on whom service is to be made resides out of the state, or has departed from the state or cannot with due diligence be found within the state, service of the order may be made by registered or certified mail addressed to that person at his or her last known address.

(e) When the record owner cannot be located, the court may, for good cause shown on ex parte application, authorize the plaintiff to take possession of unoccupied property without serving a copy of the order for possession upon a record owner.

(f) A single service upon or mailing to one of several persons having a common business or residence address is sufficient.

SEC. 7. Section 1255.460 of the Code of Civil Procedure is amended to read:

1255.460. An order for possession issued pursuant to Section 1255.410 shall:

(a) Recite that it has been made under this section.

(b) Describe the property to be acquired, which description may be by reference to the complaint.

(c) State the date after which plaintiff is authorized to take possession of the property.

SEC. 8. Section 1263.025 is added to the Code of Civil Procedure, to read:

1263.025. (a) A public entity shall offer to pay the reasonable costs, not to exceed five thousand dollars ($5,000), of an independent appraisal ordered by the owner of a property that the public entity offers to purchase

under a threat of eminent domain, at the time the public entity makes the offer to purchase the property. The independent appraisal shall be conducted by an appraiser licensed by the Office of Real Estate Appraisers.

(b) For purposes of this section, an offer to purchase a property "under a threat of eminent domain" is an offer to purchase a property pursuant to any of the following:

(1) Eminent domain.

(2) Following adoption of a resolution of necessity for the property pursuant to Section 1240.040.

(3) Following a statement that the public entity may take the property by eminent domain.

SEC. 9. Section 1091.6 is added to the Government Code, to read:

1091.6. An officer who is also a member of the governing body of an organization that has an interest in, or to which the public agency may transfer an interest in, property that the public agency may acquire by eminent domain shall not vote on any matter affecting that organization.

SEC. 10. Section 33333.2 of the Health and Safety Code is amended to read:

33333.2. (a) A redevelopment plan containing the provisions set forth in Section 33670 shall contain all of the following limitations. A redevelopment plan that does not contain the provisions set forth in Section 33670 shall contain the limitations in paragraph (4):

(1) (A) A time limit on the establishing of loans, advances, and indebtedness to be paid with the proceeds of property taxes received pursuant to Section 33670 to finance in whole or in part the redevelopment project, which may not exceed 20 years from the adoption of the redevelopment plan, except by amendment of the redevelopment plan as authorized by subparagraph (B). This limit, however, shall not prevent agencies from incurring debt to be paid from the Low and Moderate Income Housing Fund or establishing more debt in order to fulfill the agency's housing obligations under subdivision (a) of Section 33333.8. The loans, advances, or indebtedness may be repaid over a period of time longer than this time limit as provided in this section. No loans, advances, or indebtedness to be repaid from the allocation of taxes shall be established or incurred by the agency beyond this time limitation. This limit shall not prevent agencies from refinancing, refunding, or restructuring indebtedness after the time limit if the indebtedness is not increased and the time during which the indebtedness is to be repaid is not extended beyond the time limit to repay indebtedness required by this section.

(B) The time limitation established by subparagraph (A) may be extended only by amendment of the redevelopment plan after the agency finds, based on substantial evidence, that (i) significant blight remains within the project area; and (ii) this blight cannot be eliminated without the establishment of additional debt. However, this amended time limitation may not exceed 30 years from the effective date of the ordinance adopting

the redevelopment plan, except as necessary to comply with subdivision (a) of Section 33333.8.

(2) A time limit, not to exceed 30 years from the adoption of the redevelopment plan, on the effectiveness of the redevelopment plan. After the time limit on the effectiveness of the redevelopment plan, the agency shall have no authority to act pursuant to the redevelopment plan except to pay previously incurred indebtedness and to enforce existing covenants or contracts, unless the agency has not completed its housing obligations pursuant to subdivision (a) of Section 33333.8, in which case the agency shall retain its authority to implement requirements under subdivision (a) of Section 33333.8, including its ability to incur and pay indebtedness for this purpose, and shall use this authority to complete these housing obligations as soon as is reasonably possible.

(3) A time limit, not to exceed 45 years from the adoption of the redevelopment plan, to repay indebtedness with the proceeds of property taxes received pursuant to Section 33670. After the time limit established pursuant to this paragraph, an agency may not receive property taxes pursuant to Section 33670, except as necessary to comply with subdivision (a) of Section 33333.8.

(4) A time limit, not to exceed 12 years from the adoption of the redevelopment plan, for commencement of eminent domain proceedings to acquire property within the project area. This time limitation may be extended only by amendment of the redevelopment plan after the agency finds, based on substantial evidence, both of the following:

(A) That significant blight remains within the project area.

(B) That this blight cannot be eliminated without the use of eminent domain.

(b) If a redevelopment plan is amended to add territory, the amendment shall contain the time limits required by this section.

(c) When an agency is required to make a payment pursuant to Section 33681.9, the legislative body may amend the redevelopment plan to extend the time limits required pursuant to paragraphs (2) and (3) of subdivision (a) by one year by adoption of an ordinance. In adopting this ordinance, neither the legislative body nor the agency is required to comply with Section 33354.6, Article 12 (commencing with Section 33450), or any other provision of this part relating to the amendment of redevelopment plans.

(d) When an agency is required pursuant to Section 33681.12 to make a payment to the county auditor for deposit in the county's Educational Revenue Augmentation Fund created pursuant to Article 3 (commencing with Section 97) of Chapter 6 of Part 0.5 of Division 1 of the Revenue and Taxation Code, the legislative body may amend the redevelopment plan to extend the time limits required pursuant to paragraphs (2) and (3) of subdivision (a) by the following:

(1) One year for each year in which a payment is made, if the time limit for the effectiveness of the redevelopment plan established pursuant to

paragraph (2) of subdivision (a) is 10 years or less from the last day of the fiscal year in which that payment is made.

(2) One year for each year in which a payment is made, if both of the following apply:

(A) The time limit for the effectiveness of the redevelopment plan established pursuant to paragraph (2) of subdivision (a) is more than 10 years but less than 20 years from the last day of the fiscal year in which a payment is made.

(B) The legislative body determines in the ordinance adopting the amendment that, with respect to the project, all of the following apply:

(i) The agency is in compliance with the requirements of Section 33334.2 or 33334.6, as applicable.

(ii) The agency has adopted an implementation plan in accordance with the requirements of Section 33490.

(iii) The agency is in compliance with subdivisions (a) and (b) of Section 33413, to the extent applicable.

(iv) The agency is not subject to sanctions pursuant to subdivision (e) of Section 33334.12 for failure to expend, encumber, or disburse an excess surplus.

(3) This subdivision shall not apply to any redevelopment plan if the time limits for the effectiveness of the redevelopment plan established pursuant to paragraph (2) of subdivision (a) is more than 20 years after the last day of the fiscal year in which a payment is made.

(4) The legislative body by ordinance may adopt the amendments provided for under this subdivision following a public hearing. Notice of the public hearing shall be mailed to the governing body of each of the affected taxing entities at least 30 days prior to the hearing. Notice shall also be published in a newspaper of general circulation in the community at least once, not less than 10 days prior to the date of the public hearing. The ordinance shall contain a finding of the legislative body that funds used to make a payment to the county's Educational Revenue Augmentation Fund pursuant to Section 33681.12 would otherwise have been used to pay the costs of projects and activities necessary to carry out the goals and objectives of the redevelopment plan. In adopting an ordinance pursuant to this subdivision, neither the legislative body nor the agency is required to comply with Section 33354.6, Article 12 (commencing with Section 33450), or any other provision of this part.

(e) This section shall apply only to redevelopment projects for which a final redevelopment plan is adopted pursuant to Article 5 (commencing with Section 33360) on or after January 1, 1994, and to amendments that add territory and that are adopted on or after January 1, 1994.

SEC. 11. Section 33333.4 of the Health and Safety Code is amended to read:

33333.4. (a) Every legislative body that adopted a final redevelopment plan prior to October 1, 1976, that contains the provisions set forth in Section 33670 but does not contain all of the limitations required by

Section 33333.2, shall adopt an ordinance on or before December 31, 1986, that contains all of the following:

(1) A limitation on the number of dollars of taxes that may be divided and allocated to the redevelopment agency pursuant to the plan, including any amendments to the plan. Taxes shall not be divided and shall not be allocated to the redevelopment agency beyond that limitation, except as necessary to comply with subdivision (a) of Section 33333.8.

(2) A time limit on the establishing of loans, advances, and indebtedness to finance in whole, or in part, the redevelopment project. No loans, advances, or indebtedness to be repaid from the allocation of taxes shall be established or incurred by the agency beyond the time limitation, except as necessary to comply with subdivision (a) of Section 33333.8.

(3) A time limit, not to exceed 12 years, for commencement of eminent domain proceedings to acquire property within the project area. This time limitation may be extended only by amendment of the redevelopment plan after the agency finds, based on substantial evidence, both of the following:

(A) That significant blight remains within the project area.

(B) That this blight cannot be eliminated without the use of eminent domain.

(b) The limitations established in the ordinance adopted pursuant to this section shall apply to the redevelopment plan as if the redevelopment plan had been amended to include those limitations. However, in adopting the ordinance, neither the legislative body nor the agency is required to comply with Article 12 (commencing with Section 33450) or any other provision of this part relating to the amendment of redevelopment plans.

(c) The limitations established in the ordinance adopted pursuant to this section shall not be applied to limit allocation of taxes to an agency to the extent required to eliminate project deficits created under subdivision (g) of Section 33334.6 in accordance with the plan adopted pursuant thereto for the purpose of eliminating the deficit or to comply with subdivision (a) of Section 33333.8. In the event of a conflict between these limitations and the obligations under Section 33334.6 or subdivision (a) of Section 33333.8, the legislative body shall amend the ordinance adopted pursuant to this section to modify the limitations to the extent necessary to permit compliance with the plan adopted pursuant to subdivision (g) of Section 33334.6, to permit compliance with subdivision (a) of Section 33333.8, and to allow full expenditure of moneys in the agency's Low and Moderate Income Housing Fund in accordance with Section 33334.3. The procedure for amending the ordinance pursuant to this subdivision shall be the same as for adopting the ordinance under subdivision (b).

(d) This section shall not be construed to allow the impairment of any obligation or indebtedness incurred by the legislative body or the agency pursuant to this part.

(e) In any litigation to challenge or attack any ordinance adopted pursuant to this section, the court shall sustain the actions of the legislative body and the agency unless the court finds those actions were arbitrary or

capricious. The Legislature finds and declares that this is necessary because redevelopment agencies with project areas established prior to October 1, 1976, have incurred existing obligations and indebtedness and have adopted projects, programs, and activities with the authority to receive and pledge the entire allocation of taxes authorized by Section 33670 and that it is necessary to protect against the possible impairment of existing obligations and indebtedness and to allow the completion of adopted projects and programs.

(f) The ordinance adopted by the legislative body in compliance with this section does not relieve any agency of its obligations under Section 33333.8, 33334.2, 33334.3, Article 9 (commencing with Section 33410), or any other requirement contained in this part.

(g) A redevelopment plan adopted on or after October 1, 1976, and prior to January 1, 1994, containing the provisions set forth in Section 33670, shall also contain:

(1) A limitation on the number of dollars of taxes that may be divided and allocated to the agency pursuant to the plan, including any amendments to the plan. Taxes shall not be divided and shall not be allocated to the agency beyond this limitation, except pursuant to amendment of the redevelopment plan, or as necessary to comply with subdivision (a) of Section 33333.8.

(2) A time limit, not to exceed 12 years, for commencement of eminent domain proceedings to acquire property within the project area. This time limitation may be extended only by amendment of the redevelopment plan after the agency finds, based on substantial evidence, both of the following:

(A) That significant blight remains within the project area.

(B) That this blight cannot be eliminated without the use of eminent domain.

SEC. 12. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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